Guidelines on combatting Money Laundering, Terrorist Financing and Corruption in the Commodity Trading Sector

1. What are the aims of these Guidelines?

The aim of these Guidelines is to:

- raise awareness in the commodity trading industry of the commodity trading specific threats and risks of money laundering (ML), terrorist financing (TF) and corruption;
- address the identified risks and provide a general framework and understanding of "risk based" anti-money laundering (AML), anti-terrorist financing and anti-corruption (AC) measures;
- help commodity trading companies implement "risk based" anti-money laundering, anti-terrorist financing and anti-corruption measures appropriate to the size and nature of their business; and identify "red flags" (indicators of suspicious activity from their counterpart) and take appropriate action in response.

Ultimately, these Guidelines aim to facilitate transactions in commodity trading (rather than hinder them) by encouraging responsible practices by all actors along the commodity value chain.

2. Who should follow these Guidelines?

These Guidelines are intended for all commodity trading companies, including charterers and vessel owners active in the trade of agricultural and other soft commodities, energy commodities, as well as metals and minerals that are based in Switzerland. The Swiss Trading and Shipping Association (STSA) recognizes that a distinction must be made between large multinational trading companies with sophisticated compliance and legal services at a global and regional level, and smaller traders (MSME's and SME's) with more limited controls. Furthermore, commodity trading companies in Switzerland differ in their operations throughout the supply chain: some participate in the extraction, production, transformation, transportation and storage of materials, while others participate in processing the materials into final products and retailing. Acknowledging these differences, the STSA encourages all companies that fall within scope to tailor their adherence to these Guidelines to the circumstances of its operations and to implement them in their company policies accordingly. The STSA underlines, in particular, that it is the responsibility of each individual company to define and implement specific and adequate measures aimed at preventing and addressing the risks identified in accordance with these Guidelines.

3. Context and relevance for the Commodity Trading industry

In response to the Parliamentary Postulate of Seydoux-Christe (17.4204), the Federal Council adopted a Report[1] in February 2020. The report, which draws a ML/TF risk assessment in the commodity trading industry, identifies that risk management practices and controls of traders are not harmonized across the industry. This heterogeneity entails risks. It also concludes that an additional ML liability for the traders acting on their own account is not proportionate to the risks and costs involved and would not bring about a significant material improvement in prevention in this area. Thus, these Guidelines are considered adequate. Furthermore, the sector will continue

[1] Supervision des activités de négoce de matières premières sous l'angle du blanchiment.

to apply measures such as the OECD Guidelines on Responsible Business Conduct and the trading sector's Guidance on Implementing the UN Guiding Principles on Business and Human Rights.

The commodity trading industry recognized the need to harmonize due diligence practices with regard to risk-based controls, and therefore developed these sector-specific Guidelines on due diligence against money laundering and terrorist financing (particularly in connection with corruption) that would strengthen the competitiveness and integrity of the sector, while validating the already existing practice of some traders. These Guidelines are in line with the Federal Council's recommendation and would help commodity trading companies improve access to financing from banks.

The commodity trading industry represents a significant contribution to Switzerland's GDP and plays a central role in international trade, to reconcile mismatches between global supply and demand in the most cost-effective way, as commodities are not necessarily readily available where the demand lies. Natural resources revenues represent a very significant economic opportunity for developing countries, not only to build infrastructure, but also to deliver public services. The economic development potential of commodity trading for developing countries can only materialize when producing countries receive a fair deal in the production and sale of the resources and spend the revenues in ways that benefit the public[2].

The Financial Action Task Force (FATF) issues International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (the FATF Recommendations), aimed at setting minimum standards for action in different countries, to ensure that AML/CTF efforts are consistent internationally. These international standards also apply to ML/TF arising from the commodity trading sector. The text of the FATF Recommendations is available at http://www.fatf-gafi.org. The FATF also maintains an International Co- operation Review Group and publishes a regularly updated list of those countries and jurisdictions that have strategic deficiencies and works with them to address those deficiencies that pose a risk to the international financial system.

Based on these international standards, national AML/CTF and AC regimes have been adopted by countries around the globe. A single, harmonized, global legal regime does not exist. Commodity trading companies therefore need to be up to date with and comply with the legal requirements which apply to their activities in the countries where they operate. In Switzerland, a company trading commodities on its own account is not subject to the Anti-Money Laundering Act (AMLA). Certain exceptions apply[3]. Therefore, these non-binding Guidelines aim at setting a benchmark for commodity trading companies operating from Switzerland when identifying AML/CFT/AC risks and conducting due diligence.

[2] EU policy on high-risk third countries | European Commission (europa.eu).

[3] It should be noted however that the AMLA applies to any company undertaking, on a professional basis, lending activities (such as factoring, commercial transactions financing, financial leasing, mortgage loans, or consumer credits) or receives cash payments in excess of CHF 100'000 or the equivalent in another currency. Trades of the following bank precious metals are subject to legal requirements according to the AMLA: ingots and granules of gold with a minimum fineness of 995 parts per thousand; ingots and granules of silver with a minimum fineness of 999 parts per thousand; ingots and sponges of platinum or palladium with a minimum fineness of 999.5 parts per thousand.

4. What is Corruption, Money Laundering and Terrorist Financing?

There is no unique definition of corruption. Simply put, corruption refers to an abuse of a position of trust in exchange for an unjustified advantage[4]. Corruption includes the behavior of both sides: the person who abuses his or her position of trust – as a public or a private agent – and the person offering, promising, or granting an undue advantage (a bribe) to the agent. Corruption exists in relations with public officials as well as among private individuals; it can be active if the bribe is offered, or passive if it is solicited or accepted. Certain procedures, such as the award of public contracts and licenses, in certain economic sectors (e.g. exploration and extraction of commodities) and in certain countries are more susceptible to corrupt behaviors. Corruption ranges from small grants in anticipation of a future benefit to the payment of very large sums of money to senior government officials. Corruption is a crime according to legal systems in all countries; in the OECD and some other countries, corruption – active or passive – of foreign public agents is also a criminal act, enforceable domestically.

Money laundering is the process by which proceeds of crime are « cleaned » e.g. introduced into the legitimate economy to disguise their illegal origin, with notably the aim to prevent their confiscation by law enforcement authorities. To launder the proceeds of criminal activities, such as human trafficking, forced prostitution, drugs, extortion, corruption, tax fraud, white collar crime, armed robbery and theft, criminals use multiple economic operations to introduce these illicit funds into the financial system. Criminal money laundering structures use complex financial structures (international and large enough to disguise the real use of the money). It becomes more complex when crimes may have been committed by the company in Switzerland or a subsidiary or branch abroad. Furthermore, the large volume of trade and correspondingly large volume of money in commodities trading makes it easier to conceal the potentially criminal origin or use of the assets. Money flows can be concealed, in particular, through illegal agreements between various actors involved in a trade. Money launderers rely on anonymity and deception to cover their tracks, disguise the origin of their funds and hide the real purpose behind their business and transactions. Any person or entity involved in business operations aimed at laundering money can be charged with committing a criminal offense.

Terrorist financing refers to financing of terrorist acts, terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts[5]. Even if such funds have a legitimate origin, the purpose for which they are used is illicit. Those seeking to finance terrorism resort to the same strategies, schemes and covert operations that money launderers employ to disguise the intended illicit purpose of the funds and anonymise the beneficiaries.

Corruption and the acceptance of gifts are often defined as predicate offences to money laundering. The abovementioned offences cannot be carried out without the blind participation of professional intermediaries. Individuals and businesses who are unprepared, unaware or unwilling to be aware of the origin and/or the destination of the money and assets they handle, contribute to illicit proceeds infiltrating the global economy.

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[4] Staatssekretariat für Wirtschaft SECO: Korruption vermeiden – Hinweise für im Ausland tätige Schweizer Unternehmen, 2. Ausgabe, 2008, p. 8, accessible under http://www.news-service.admin.ch/NSBSubscriber/message/attachments/10971.pdf.

[5] FATF (2012-2021), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, www.fatf-gafi.org/recommendations.html.

4.1. How is money laundered?

Money laundering typically involves the following three phases. Depending on the techniques used, the following phases can occur simultaneously or concurrently.

1. Placement

Placement describes the process by which money launderers introduce illegal profits into the financial system. This can be done by breaking up large cash amounts into smaller less conspicuous sums that are then deposited into one or more bank accounts. The aim of the launderer at this stage is to: distance the illegally obtained cash from the source of its acquisition to avoid detection of the underlying criminal activity; and make the funds more liquid enabling them to be transferred or transformed into other financial assets (e.g. money orders etc.).

2. Layering

Layering is the process of hiding the illicit source and ownership of funds by using a complex system of transactions and transfers to create multiple layers between the illicit source and the funds. Once cash has been successfully placed into the financial system (see Placement above), launders engage in multiple complex transactions and transfers to disguise and confuse the audit trail and any criminalinvestigation. Examples of layering include:

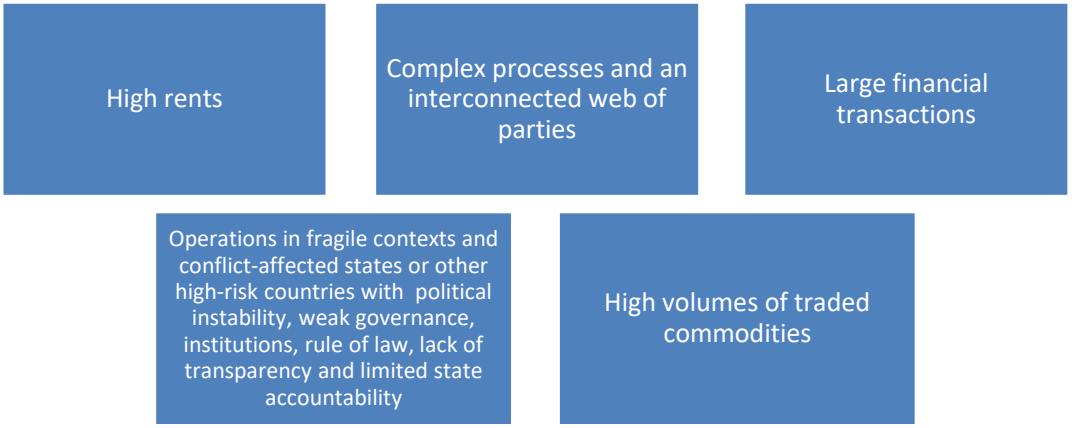
- using multiple banks and accounts in various jurisdictions;
- using professional intermediaries to carry out transactions;
- converting cash into money orders, letters of credit, wire transfers, stocks, bonds or other type of liquid assets (e.g. commodities);
- purchasing valuable assets such as art or jewelry;
- complex dealings with stock and commodities.

3. Integration

Integration is the final stage of the money laundering process whereby the laundered funds are re- introduced into the legitimate economy which the appearance of having derived from a legitimate source. At this stage it is very difficult to distinguish funds of a legal and illegal origin.

5. Risk factors

Corruption risks at the various stages of the commodity supply chain (including, where applicable, extraction, production, trade, storage, transportation, refining and sales) can significantly erode the benefits that developing countries could draw from their commodity sector to achieve development objectives. Raw materials and natural resources play an important economic and fiscal role in both producing and trading countries. As a sector of significant strategic importance, the commodity trading industry may be exposed to corruption risks. This is due to the fact that most of the commodities are located in developing countries, which are very often marked by weak governance and public financial management systems and political instability but where the revenues from the commodity sector play an essential role in the economic development of these countries. The features that make this sector particularly vulnerable to such risks include:



The FATF defines **Trade-based money laundering** as the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimize their illicit origins[6]. In practice, this can be achieved through the misrepresentation of the price, quantity or quality of traded goods. Moreover, trade-based money laundering techniques vary in complexity and are frequently used in combination with other money laundering techniques to further obscure the money trail. The international trade system is clearly subject to a wide range of risks and vulnerabilities that can be exploited by criminal organisations and terrorist financiers. In part, these arise from the enormous volume of trade flows, which obscures individual transactions; the complexities associated with the use of multiple foreign exchange transactions and diverse trade financing arrangements; the commingling of legitimate and illicit funds; and the limited resources that most customs agencies have available to detect suspicious trade transactions. It is easier to hide bribes with the help of minimal over- or under-invoicing on millions of sales units than on individual items where over- or under-invoicing is more noticeable. The most common occurrence is in under-invoicing for exports and over-invoicing for input imports, which leads to an artificial reduction in profit margins and revenues; or increase in the charges of the company's subsidiary operating in the host country. In these types of transactions, affiliated entities registered in tax havens play the role of intermediaries and receive most of the profits, in order to minimize taxes owed in the host country. This mispricing can facilitate tax base erosion, tax evasion, and money laundering, and can be used to conceal the international transfer of illicit financial flows.

[6] https://www.fatf-gafi.org/media/fatf/documents/reports/Trade Based Money Laundering.pdf.

6. Legal Framework applicable to the Commodity Trading industry in Switzerland

These guidelines are based on general principles applicable in the Swiss AML legislation. The Swiss AML legislation implements the FATF international standards. Commodity Trading activities for one's own account are generally not covered neither by the FATF standards nor by the AML legislation in Switzerland, since there are no third-party assets that would be accepted or held in custody as part of the trading activity (see however footnote 3 above). This is in contrast to trading in banked precious metals, where proprietary trading is subject to the AMLA. Nevertheless, if a commodity trading company engages in a transaction, knowing or suspecting that the transaction is linked to or the result of a criminal activity, besides incurring a reputational damage, it could commit a corruption, money laundering or terrorist financing offence under Swiss law. Corruption offences may be part of a variety of other Swiss criminal offenses. Even if a company acts in accordance with Swiss law, its actions may be publishable under another jurisdiction's legislation, such as the US Foreign Corrupt Practices Act[7] (FCPA) and the UK Bribery Act[8], which have significant extraterritorial reach. Hence, adopting measures to detect and prevent these offences is important to identify and stop criminal activity and to protect the reputation of the commodity trading industry.

The Swiss Criminal Code

Money laundering is punishable under *article 305bis of the Swiss Criminal Code (SCC)*, regardless of whether the trader is acting on his own account or for the account of a third party and whether the transaction is based on bank, non-bank or self-financing. If the act could be committed because the company did not take "all necessary and reasonable organizational measures to prevent such an offence", money laundering can be attributed to the company. In addition, it can be attributed to the natural person who committed it in the company, according to *article 102(2) SCC*. **Fraud** (art. 146 SCC) may be considered as a predicate offence of money laundering. Fraud means acting with a view to securing an unlawful gain for oneself or another (including for commercial gain) and willfully inducing an erroneous belief in another person by false pretenses or concealment of the truth, or willfully reinforcing an erroneous belief, and thus causing that person to act to the prejudice of one's own or another's financial interests. **Tax offences** committed under relevant tax laws may also be considered as predicate offences of money laundering. This is notably the case when someone, for the purpose of evading taxes and with fraudulent intent, submits forged, falsified or substantially incorrect documents to the tax administration and that the amount of taxes evaded in a particular tax period exceeds CHF 300'000 or the equivalent in another currency.

Bribery of foreign public officials (*art. 322^{septies} SCC*) means offering, promising or giving any civil servant, member of an executive, legislative or judicial authority, as well as any expert, translator or interpreter employed by any authority an undue advantage, or giving such an advantage to any third party, in order that the person carries out or fails to carry out an act in connection with his official activities which is contrary to his duties or dependent on his discretion. It also concerns any arbitrator or member of the armed forces, as well as any private individual who carries out a public function (art. 322ter and 322^{decies}, para. 2 SCC). Both active and passive bribery are criminal offenses.

– **"Active" bribery** describes an act whereby an undue advantage is offered, promised or

[7] As of July 22, 2004 Anti-Bribery and Books & Records Provisions of The Foreign Corrupt Practices Act Current through Pub. L. 105-366 (November 10, 1998) UNITED STATES CODE TITLE 15. COMMERCE AND TRADE CHAPTER 2B--SECURITIES EXCHANGES (justice.gov).

[8] Bribery Act 2010 (legislation.gov.uk).

granted for the commission or omission of an act in relation to official duties that in contrary to his or her duties or depends on the exercise of his or her discretionary powers.

– **"Passive" bribery** occurs when a person solicits, elicits a promise of or accepts an undue advantage, for his or her own benefit or for the benefit of a third party, for the commission or omission of an act that is contrary to his or her duties or depends on the exercise of his or her discretionary powers (art. 322^{quarter}, 322^{septies} and 322^{novies} SCC).

Bribery of private individuals (art. 322^{octies} SCC) means offering, promising, or giving an employee, partner, agent or any other auxiliary of a third party in the private sector an undue advantage for that person or a third party, in connection with such person's professional or commercial activity on behalf of the third party, in order that the person carries out or fails to carry out an act in connection with his official activities which is contrary to his duties or dependent on his discretion. Accepting bribes is equally prohibited (art. 322^{novies} SCC). Advantages permitted under public employment law or contractually approved by a third party and negligible advantages that are common social practice are not considered undue advantages (art. 322^{decies} para. 1 SCC).

Bribery can take a variety of forms – offering or giving money or anything else of value or advantage. The value does not need to be high; it may comprise meals, travel, entertainment, incentive programs,the passing on of information, among others. In commodities trading, bribery as a money laundering offence can be accumulated with other offences such as **misconduct in public office** (*art. 314 SCC*) or **criminal mismanagement** (*art. 158 SCC*). Frequently, PEPs or foreign officials who exerciseeffective control over the supply of raw materials in the producing country, or persons close to them, are involved.

Misappropriation of funds (art. 138 para. 1 SCC)
Misappropriation means appropriating for one's own or another's unlawful gain financial assets entrusted to oneself for one's own or another's benefit.

In addition to the Swiss legal framework, applicable to companies in Switzerland, other jurisdictions have adopted far-reaching legislation. This is the case with the **Foreign Corrupt Practices Act (FCPA)**. The FCPA anti-bribery provisions apply to all issuers of securities registered on stock exchanges in the United States, any company organized under the laws of the United States, or with its principal place of business in the United States and any citizen or resident of the United States. The 1998 Amendments to the FCPA expanded the jurisdiction of the FCPA to include foreign companies if they cause, directly or through agents, an act in furtherance of a corrupt payment to take place within the United States[9].

Federal Act on the Implementation of International Sanctions

Circumvention of international sanctions
Switzerland implements and enforces internationally imposed sanctions against States, individuals and legal entities and uses the **Embargo Act** (EmbA) as its legal basis. Precise coercive measures are specified in separate sanctions ordinances that are adopted by the Federal Council in conjunction with this Act.

[9] A list of FCPA investigations and imposed fines can be found under SEC.gov | SEC Enforcement Actions: FCPA Cases.

It is important to check whether a transaction is not prohibited due to sanctions or embargoes according to the EmbA and its implementing **Ordinances**. If increased risks occur in a business relationship or transaction or if such risks turn out to be unusual, the commodity trading company must make further clarifications. Money transfers to sanctioned persons may constitute money laundering. In accordance with the implementing ordinances, persons or institutions who hold or manage assets or have knowledge of economic resources in Switzerland subject to an asset freeze must report these to the State Secretariat for Economic Affairs (SECO). Financial institutions must also block the funds of the party subject to an asset freeze. A violationof these duties may entail criminal liability, including fines and imprisonment based on *arts. 9 ff. EmbA*. The SECO provides the possibility to *Search for subjects of sanctions*[10].

[10] Sanktionsmassnahmen (admin.ch).

Guideline 1 – Carry out an initial risk assessment of your business and design a set of procedures appropriate for the risk profile of the business.

Responsible AML/CTF and AC measures for the commodities trading industry should be founded on a **risk-based approach**. An initial risk assessment should look at the business as a whole and design a set of procedures appropriate for the risk profile of the business, which may or may not include each of the below elements. This means that companies and individuals should have an understanding of the AML/CTF/AC risks to which they are exposed and apply adequate and specific AML/CTF/AC measures in a manner and to an extent designed to ensure mitigation of these risks. This requires, in particular, adopting AML/CTF/AC processes, procedures and compliance controls based on the type and level of risk associated with the business. Typically, the Compliance function within a company should be responsible for implementing or overseeing the below.

A **risk-based approach** includes the following **areas of enquiry**:

- Counterparty due diligence and on-boarding (see Guideline 2 – Know your Counterparties (KYC) and establish their risk profiles)
    - Country due diligence (see Guideline 2.1)
- Transactional due diligence (see Guideline 3 – Know the background, nature and purpose of the transaction).
- Material due diligence (see Guideline 4 – Know the specific risks associated with the different materials).

In addition, a **risk-based approach** requires the commodities trading industry to implement systematic reviews and controls, including:

- Recording, updating and documenting information gathered (Guideline 5 – Keep and update records);
- Training staff regularly on the risks, how to mitigate them and when and to whom to report suspicious activities (see Guideline 6 – Training staff and monitor processes and procedures);
- Reviewing the effectiveness and implementation of the controls and making improvements where necessary (see Guideline 7 – If grounded suspicions exist, know how to act).

For further detail, please see the Guidelines which follow.

Guideline 2 – Know Your Counterparty (KYC) and establish their risk profiles – Check for counterparty risk indicators.

Who is a counterparty?

A counterparty is any person or entity with whom a commodity trading company establishes contact in view to forming a contractual relationship. In a transaction, this could be the seller and/or the buyer of the commodity, a transportation company (road, rail or sea), broker (shipping, insurance or cargo) or agent acting for either of them, inspection company, surveyors (cargo, vessel, bunker), as well as a storage company or any other service provider. Commodity trading companies should endeavor to ensure they conduct business only with counterparties with which they can be reasonably sure are engaging in legitimate business activities. To meet this obligation, companies should implement adequate and reasonable measures to establish the identity of their counterparties as well as their beneficial owner or the persons that ultimately control them.

Commodities trading companies should also apply a risk-based classification with respect to the counterparties that they engage with. Certain types of counterparties are inherently riskier than others (e.g. agents that the company retains to obtain or maintain business or counterparties that interact with public officials).

It is equally important to emphasize that commodity trading companies should carry out due diligence on the intermediaries (e.g. agents and/or brokers) acting for one of the parties to a transaction.

Identifying the counterparty

Companies should request documents to verify the counterparty's identification information as follows:

- Where the counterparty is a natural person: Where possible, identity should be verified based on official identity papers (e.g. passport or national ID card) together with other reliable, independent source documents, data, or information as may be appropriate under the circumstances (e.g. copy of a bank statement or utility bill for proof of address if available).
- Legal persons and arrangements: When not publicly accessible, the company's identity should be verified based on official documents proving these entities were properly formed and exist (e.g. certificate issued by the relevant company registry including details of directors, shareholders,ultimate beneficial owners and partners (if available), Articles of Association, Financial Statements).

The documents used to verify the counterparty's identity must be the most recent at the time of undertaking the due diligence. The company should keep copies of the documents. If any identification documents or constitutional documents have expired, the counterparty should equally be requested to submit valid ones. These should be updated in accordance with Guideline 5.

Identifying the beneficial owner[11]

Companies should take reasonable measures to identify the beneficial owners of their counterparts on a risk-based approach. Reasonable should be interpreted in a sense that if the information is available from a credible source, then that can be relied upon and wouldn't necessarily be verified further. The extent of external corroboration (e.g. commercial register or other corporate documents) depends on the type of company, the size of company and the jurisdiction. If the counterparty is a listed company or a subsidiary over which a listed company has majority control, the identity of the beneficial owner need not be established[12].

Practical examples:

- In some jurisdictions, the business register will clearly list direct ownership and it may be easy to check where appropriate.
- Where large conglomerates are involved who entirely own the counterparty via holding companies etc., director's/secretary's certificate (or maybe exchange or other public disclosure) of 100% control by a reputable parent may suffice.

Counterparty risk factors

Examples of counterparty risk factors include but are not limited to:

- "Politically Exposed Person (PEP)" (current or former), including their immediate family (spouse, children, siblings) and close associates as per the FATF definition[13]. This would apply to counterparties with PEPs in their ownership structure or associated with them, like a known advisor.

[11] Beneficial owner refers to the natural person(s) who ultimately owns or controls a counterparty and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

[12] Art. 4 para. 1 Swiss AMLA.

[13] https://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf.

- Counterparty is an "offshore company".
- Counterparty is a resident of a country on the FATF watch list.
- Counterparty is an individual, sole trader, bearer share company, trust, SPV or shell company.
- Counterparties without any substance in the country of incorporation may pose a risk from an AML and facilitation of tax evasion. We would consider it good practice to verify the counterparty's substance (e.g. infrastructure, office premises, etc.) in the country of incorporation if there are doubts.
- Counterparty uses third parties to make or receive the payment.

A counterparty's activity should also be considered in the risk assessment. Other examples of counterparty risk indicators can be found in the **Risk Indicators determining the Due Diligence System List**.

Practical measures companies can adopt to help identify counterparty risk indicators may include (depending on the perceived risk and resources available):

- Screening the names of the counterparty, directors, beneficial owners and intermediaries against PEP lists, sanctions lists (including sanctions evasion list), terrorist financing and other watch lists and similar information issued by government and international organisations periodically through databases (e.g. WorldCheck, Dow Jones);
- Media searches using the names of counterparties, beneficial owners and intermediaries and other appropriate keywords (accounting for false positives).

For existing counterparties, this due diligence should be updated regularly in line with Guideline 5.

Enhanced due diligence (EDD)

Enhanced due diligence refers to a greater level of scrutiny and more rigorous and regular verification procedures and monitoring requirements, compared to ordinary due diligence processes. If risk indicators are identified and the counterparty is considered high-risk based on the jurisdiction of incorporation, where services are provided, the nature of services, interactions with public officials, the company should undertake enhanced due diligence to ensure the counterparty's activities do not raise any Money Laundering, Terrorist Financing or Corruption concerns. Enhanced due diligence generally involves requesting and obtaining additional information or documentation to mitigate the risks, as well as increased monitoring of the counterparty during the lifecycle of the relationship. In certain circumstances, the clients' reaction to such requests for additional information and/or documentation can be an indicator of risk. Companies should establish a separate enhanced due diligence and onboarding process for the recruitment of agents and other high risk counterparties. The company should document the enhanced due diligence it undertakes on its counterparties (for example, by retaining search audit trails on the systems used for searches and the results of keyword internet searches etc.).

If risk indicators (of a suspicious activity, AML, CTF or corruption concerns) remain following thecompany carrying out enhanced due diligence, the matter **should** be escalated within the company to a member of senior management and/or the company's appointed AML/CTF or Compliance/Legal officer (if it has one) to decide on the next steps.

See Guideline 7 "If grounded suspicions exist, know how to act" for further guidance.

Guideline 2.1 – Assessing the level of risk in different jurisdictions – Check for country risk indicators.

When identifying the risk associated with countries and geographic areas, companies should consider the risk related to:

a) the jurisdiction in which the counterparty is based (country of incorporation);
b) the jurisdictions which are the counterparty's main places of business (e.g. branch offices); and
c) the jurisdiction(s) to which the counterparty has relevant personal links (e.g. residence of directors).

To assess country risks, lists/indicators issued by organizations, such as the World Bank and Transparency International may be consulted. Also the Basel AML Index, Overall Ratings Following Peer Reviews Against the Standard of Exchange of Information on Request (EOIR) provided by the OECD, the list of Jurisdictions under Increased Monitoring 2021 provided by the FATF, the Financial Secrecy Index 2020 provided by the Tax Justice Network, the EU list of non-cooperative jurisdictions for tax purposes, the EU List of third countries with weak anti-money laundering and terrorist financing regimes, the Control of Corruption index provided by the Worldbank, the EU Ex-Post Impact Assessment on tax evasion, money laundering and tax transparency in the EU Overseas Countries and Territories may be consulted. When the country is found on any of these lists, companies should be aware that there is an increased ML/TF/corruption risk. Further examples can be found in the Country risk indicators but since the Country risk indicator list is not exhaustive, other lists may also be used.

High and low risk jurisdictions

When identifying lower risk jurisdictions, the FATF encourages companies to take into consideration country risk factors:

- Countries identified by credible sources, such as mutual evaluation or detailed assessment reports, as having effective AML/CTF/AC systems.
- What about sanctions risks?
- Countries identified by credible sources as having a low level of corruption or other criminal activity. All Member States of the EU are required to enact legislation and financial sector procedures in accordance with the EU Anti-Money Laundering Directives (4th, 5th, 6th AMLD and later amendments). The 4th AML Directive implements the revised 2012 FATF standards. All EEA countries have undertaken to implement the AML Directives and all are members of the FATF or the relevant FATF style regional body (for Europe, this is MONEYVAL).Given the commitment to implement the AML Directives, countries may initially presume EU/EEA member states to be low risk; due to the legal nature of a EU Directive, significant variations may however exist in the precise measures that have been taken to transpose the money laundering directive (and its predecessors) into national laws and regulations. Moreover, the effective implementation of the standards will also vary. Where companies have substantive information, which indicates that a presumption of low risk cannot be sustained, either in general or for particular materials, they will need to consider whether their procedures should be enhanced to take account of this information. See the transposition status of the AML Directives across the EU online[14].

[14] Anti-money laundering directive V (AMLD V) - transposition status | European Commission (europa.eu).

Note should also be taken of the FATF "grey list"[15]. Jurisdictions on that list are under increased monitoring, which means that they have committed to resolve swiftly the identified strategic deficiencies within agreed timeframes.

Jurisdictions that find themselves on the FATF "black list", are considered high-risk and have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation[16]. For all countries identified as high-risk, the FATF calls on all members and urges all jurisdictions to apply enhanced due diligence.
Most countries and territories do not qualify as low risk jurisdictions. However, existing standards vary significantly, and companies may have varying risk outcomes, depending on the list used. In addition to a Trading company's own knowledge and experience in the country concerned, particular attention should be paid to any FATF-style or IMF/World Bank evaluations that have been undertaken, including their follow-up recommendations.

Factors may include:

- Geographical risk factors depending on high or low-risk jurisdictions
- Countries linked to terrorist organisations (countries or territories harbouring entities against which the international community has adopted international sanctions);
- Contextual factors – political stability; country governance, transparency, level of (endemic) corruption, fraud activity;
- Evidence of relevant criticism of a jurisdiction, including FINMA[17]/FATF advisory notices;
- Independent and public assessment of the jurisdiction's overall AML regime and need for any assessment to be recent;
- Implementation standards from various industry standards, such as EITI[18] for the energy sector (incl. quality and effectiveness of supervision);
- Frequency of trade with the jurisdiction – need to be proportionate, especially when very small.

Guideline 3 – Know the background and purpose of transaction – Check for transaction risk indicators.

Understanding the background and purpose of the transaction combined with the counterparty due diligence and global counterparty's risk profile, as resulting from the risk assessment, is necessary to inform the applicability and level of ongoing monitoring of the high-risk transaction, which commodity trading companies should carry out. In some cases – depending on the way the transaction is conducted – it might be that the commodity trading company has only a limited access to information allowing a thorough due diligence.

This might include:

- The purpose of the transaction;
- The form and structure of the transaction (level of complexity);
- The value or size of the transaction;
- Where the level or type of activity in the business relationship diverges from what can be reasonably explained, the source of funds could require a more detailed analysis.

Examples can be found in the Transaction risk indicator list.

[15] http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-june-2021.html.
[16] http://www.fatf-gafi.org//publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-june-2021.html.

[17] FINMA's Sanctions and FATF statements available under : https://www.finma.ch/en/documentation/international-sanctions-and-combating-terrorism/.
[18] Extractive Industries Transparency Initiative | (eiti.org).

Guideline 4 – Know the specific risks associated with the different materials – Check for Material risk indicators.

Due to their origin or specifications, some material / commodities are more prone to relate to AML/CTF/AC/sanctions risks than others and require a higher level of diligence around traceability and source verifiability. The different risks associated with specific materials from the Metals and Minerals, Energy and Agricultural commodities should be carefully examined, and where relevant, an enhanced due diligence should be conducted.

Examples can be found in the Material risk indicator list.

Guideline 5 – Keep records up to date and update the due diligence periodically, depending on the level of risk.

Companies should maintain records of the due diligence checks they carry out periodically and have systems in place for recording and storing the documentation and information they gather during their due diligence and other enquiries. Having a full record of the information and documentation available to the companies on a given date in relation to its counterparties and transactions carried out, enables the companies to:

- make informed and appropriate risk assessments of particular counterparties and transactions and determine if EDD and enquiries are required;
- comply with any legal obligations to which they may be subject;
- identify "risk indicators" related to their counterparties and transactions and take appropriate action;
- determine if sufficient suspicions exist to justify declining the counterparty or transaction and, where appropriate, report the situation to relevant law enforcement bodies;
- review their AML/CTF/AC measures and controls and improve them where appropriate;
- comply with legal obligations to respond to requests for information and assistance from relevant law enforcement bodies.

Depending on the risk level identified (high, medium, low risk), due diligence and record keeping should be updated accordingly and periodically.

Guideline 6 – Training staff and monitor processes and procedures.

Staff should be regularly and appropriately trained on Money Laundering, Terrorist Financing and Corruption risks, so they understand their roles and responsibilities to prevent, detect and report suspicions without retaliation or other disciplinary action. The extent of training will be determined by the job function of the individuals. They should know to whom they should report internally. The person(s) designated to receive such reports should know how to handle them and when to report them to the appropriate authorities.

Training of new staff members should take place as soon as reasonably practical after they join, and refresher training should be conducted as appropriate to ensure staff remain aware of new risks or changes to the risk profiles of the various countries, counterparties and transactions.

It is recommended that companies nominate someone within their organization to be responsible for managing and implementing the AML/CTF/AC controls and measures which they put in place and to be the person to whom suspicions are reported.

Companies should set up an anonymous "reporting hotline" or an online "reporting mechanism" if staff is unable to report directly to their AML/CTF/AC officer, Compliance/Legal department or management.

Guideline 7 – If grounded suspicions exist, know how to act.

When the circumstances of a transaction give rise to grounded suspicions of Money Laundering, Terrorist Financing or Corruption and in the absence of a plausible explanation or further documentation allaying those suspicions, companies should:

- refrain from entering into or completing the transaction;
- consider informing the implicated financial intermediary during the pre-transaction phase (due diligence phase), depending on the nature of the information and on the legal obligations of all related parties (involved banks, counterparties, type of contractual obligations, etc.);
- take internal disciplinary and, if appropriate, legal action against employees if violations are identified;
- reporting the suspicions to the appropriate authorities in the relevant jurisdiction.

Risk Indicators determining the Due Diligence System

STSA

Country

- **Transparency International Perception Corruption Index** (Companies should determine each country's risk level based on the PCI score. The higher the score, the lower the risk.)
- **World Governance Indicator**
- **Fragile State Index**
- **FATF List**
- **US Department of State assessment on money laundering and financial crimes**
- **Dodd Frank List**
- **SECO Sanctions Lists**
- **UN Sanctions Lists**
- **EU RAND list of CAHRAs / EU sanctions lists**
- **OFAC Sanctions lists**

When a high-risk country is found on any of these lists, companies should apply enhanced due diligence (EDD).

Counterparty

- **PEPs or counterparties that interact with public officials**
- **Resident of a country on the FATF watch list**
- **Offshore company** (registered in countries other than a country of operation and/or offshore jurisdictions)
- **Agents**
- **Nominee/bearer shareholders or overly complex ownership structure for given nature of business**
- **Newly formed/unknown companies w/o reference or apparent financial means**
- **Ultimate Beneficial Owner (UBO) /management involved in other high-risk businesses like arms, gambling, and antiques and art**
- **No understanding of / processes in place regarding AML/CTF/AC issues**
- **Company, UBO, Intermediaries, Affiliates, Management**

Exercise EDD on the counterparty and additional assurances if necessary before proceeding with the transaction

If appearing on any sanctions/criminal lists or if standing accused or being convicted of serious offences: EDD on the counterparty and if necessary request additional documents

Transaction

- **Large/complex transactions with no visible/apparent economic or lawful purpose**
- **Unusual complexity of the form and structure of the transaction**
- **Aggregated frequent and small transactions**
- **Significant deviations from past activity (or inactivity)**
- **Unrealistically high/low prices**
- **Unusual trade structures given nature of business**
- **Unusual payment with counterparties not well known or having little track record**
- **Unusual patterns of physical cash deposits or withdrawals, which are large when aggregated over a period of time**
- **Unviable product origin, or origin from countries via which neighboring conflict-affected high-risk area minerals are known to transit**

Exercise EDD on the nature of the transaction

Do not accept cash payments above a certain limit

If fraudulent misrepresentation of origin and where necessary, do not proceed with the transactions and comply with reporting obligations

Material

METALS / MINERALS

- **Artisanal gold, direct substitute for cash, easily illegally transported in small valuable quantities**
- **3 T's more likely to originate from artisanal production and originate/transit through conflict-affected areas**

Artisanal production may result in unsafe working conditions, unsafe use of chemical processes, serious abuses of human rights, mined illegally without a license, sites controlled by non-state armed forces, financing conflict, etc. : EDD and where necessary, consider not proceeding with the transactions

ENERGY

- **Is the source verifiable? Where do the products come from?**
- **What is the likelihood that the counterparty will have access to these products?** (i.e., a small unknown counterparty having cargoes from sources generally controlled by SOEs or larger producers)
- **Does the product make sense vis-à-vis the disclosed transaction?** (i.e., gasoline has grades which vary per country)

If the products come from a region known to blend different flows, which may result in a new certificate of origin being issued: EDD on the origin and where necessary, consider not proceeding with the transactions

Exercise EDD on the material's origin and where necessary, consider not proceeding with the transactions

AGRICULTURE

- **Higher value, easier to store/less perishable soft commodities likely to have more risk** (i.e., rice, sugar, animal premixes including vitamins)

Exercise EDD on the material's origin