

## Luxembourg Update: CSSF provides Clarification on UBO Identification and Verification

On 20 December 2019, Luxembourg's financial regulator, the Commission de Surveillance du Secteur Financier (the "CSSF"), published CSSF circular 19 / 732<sup>1</sup> (the "Circular") regarding clarifications on the identification and verification of the identity of ultimate beneficial owners ("UBO"). The Circular aims to provide guidance to all professionals subject to the AML / CFT supervision of the CSSF (the "Professionals") on the practical implementation of UBO identification requirements and verification measures.

Specifically, the Circular addresses: (i) the UBO identification requirements for customers of Professionals that are natural persons, legal persons or legal arrangements, (ii) the measures to be taken to verify the relevant UBO's identity and (iii) certain indicators that may help detect potential concealment of beneficial ownership information. A number of Financial Action Task Force ("FATF") reports and guidance documents are also incorporated into the Circular.

### Identification

Considerable detail and numerous examples are set out in the Circular in respect of establishing and identifying the UBO of a legal person. The CSSF confirms that Professionals must follow the threefold procedure provided for in the law of 12

November 2004 on the fight against money laundering and terrorist financing when determining the UBO. This threefold procedure requires Professionals to:

- (a) Identify the natural person(s) who directly or indirectly holds or controls a sufficient percentage, namely 25% plus one, of the shares, voting rights or ownership interest in an entity;
- (b) Identify any person who controls the legal entity via other means<sup>2</sup>; and
- (c) After having exhausted all possible means and provided that there are no grounds for suspicion, where no person under 1) or 2) is identified, or if there is any doubt that the person(s) identified is / are the beneficial owner(s), identify any person who holds the position of senior managing official (*dirigeant principal*).

The CSSF provides welcome clarification on this threefold procedure in the Circular noting that the first and second steps are not alternative options. Each of these steps should be fully considered before progressing to the final step. This final step, i.e. identifying the senior managing official as the

<sup>1</sup> [http://www.cssf.lu/fileadmin/files/Lois\\_reglements/Circulaires/Blanchiment\\_terrorisme/cssf19\\_732eng.pdf](http://www.cssf.lu/fileadmin/files/Lois_reglements/Circulaires/Blanchiment_terrorisme/cssf19_732eng.pdf)

<sup>2</sup> The meaning of "other means" is to be broadly interpreted as having the power to exercise or the actual exercise of dominant

influence or control by any means over the customer. Paragraph 52 of the Circular provides a list of non-exhaustive factors for consideration by Professionals on a case by case basis in this regard.

UBO, should only be used as a last resort and constitutes an express fallback option.

In circumstances where other types of entities participate in the ownership structure, different identification procedures will apply when seeking to identify the UBOs of these entities. A different identification procedure will also necessarily apply to a customer that is a natural person.

## Verification

Further to the identification of the UBO, the Professional must take reasonable measures to verify the UBO's identity and the CSSF recognises that these identity verification measures will differ in each particular set of circumstances. It is for each Professional to determine the measures reasonably warranted in light of the AML / CFT risk and ensure that it is satisfied it knows who the UBO is and understands the structure and ownership of the customer concerned.

## Indicators of Concealed Beneficial Ownership

As certain complex legal structures may be designed to obscure the identity of their UBO, the Circular includes a list of the main indicators which may reveal the concealment of beneficial ownership as identified in the joint report published by FATF and the Egmont Group on concealment of beneficial ownership<sup>3</sup>. The CSSF notes that this non-exhaustive list of indicators may assist Professionals when analyzing UBO information for the purposes of identification and verification. The CSSF also notes that the presence of a sole indicator does not necessarily mean the UBO is being concealed.

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<sup>3</sup> <https://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>

## Conclusion

The CSSF acknowledges that the identification of the UBO will not always be a straightforward process and that the particular legal form and ownership structure in question will determine the identification measures that each Professional will need to take. Nevertheless, the Professional must, in all circumstances, go beyond the mere collection of a name or document or check in a registry when identifying the UBO.

Professionals should also be cognizant of reading the Circular in conjunction with other CSSF circulars and regulations related to AML / CFT as well as the applicable legal and regulatory framework.

Having in place adequate and effective AML / CFT policies, procedures, systems and controls will assist Professionals in satisfying their AML / CFT obligations.

In light of the changing AML / CFT requirements and the introduction of the UBO register in Luxembourg, Maples can assist Professionals in reviewing and, if necessary, updating their existing AML / CFT policies and procedures.

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