



GUIDELINES ON DUE DILIGENCE OBLIGATIONS WITH RESPECT TO CLIENTS AND THEIR BENEFICIAL OWNERS

Background regulations: Articles L. 561-2-2, L. 561-4-1 to L. 561-12, R. 561-1 to R. 561-22 of the Monetary and Financial Code and Articles 320-20, 321-147, 325-22, 325-62 of the AMF General Regulation

In accordance with Articles L. 561-4-1 and following of the Monetary and Financial Code, persons subject to the prevention of money laundering and terrorist financing obligations have client due diligence obligations. The purpose of these guidelines is to assist portfolio asset management companies, financial investment advisers and crowdfunding investment advisers (hereinafter referred to as “regulated entities”) in implementing these obligations. This implementation uses a risk-based approach, and reporting entities may usefully refer to Position/Recommendation 2019-15 on the risk-based approach to anti-money laundering and counter-terrorist financing (AML/CFT).

1. CONCEPTS OF CLIENT, BUSINESS RELATIONSHIP AND BENEFICIAL OWNER

1.1. Distinction between a business relationship and an occasional client

A business relationship, for the purposes of AML/CFT, is defined in Article L. 561-2-1 of the Monetary and Financial Code.

It covers as a minimum:

- the client and, where applicable, the person acting on the client’s behalf under law or contract;
- the client’s beneficial owner or owners, where applicable.

A person is considered to have entered into a business relationship with a regulated entity:

- where a contract (whether written or not) exists if it requires several successive transactions to be carried out between the contracting parties or creates continuing obligations for them; for example: a discretionary mandate;
- where no contract exists, if the person benefits on a regular basis from the involvement of the regulated entity in carrying out several transactions or a transaction of a continuous nature.

Entering into a contract or the general terms and conditions for the use of a service or product is not in itself sufficient to constitute a business relationship.

However, the duration of the commercial or professional relationship is a determining factor in qualifying a business relationship. This idea of duration is reflected in the use, in Article L. 561-2-1, of the terms “on a regular basis” or “a transaction of a continuous nature” to describe the involvement of a regulated entity in a business relationship. The concept of a business relationship is therefore the same as that of a regular client. As long as the commercial or professional relationship is of a certain duration, the frequency with which the client contacts the financial institution has no bearing on the characterisation of the business relationship.

Conversely, when the transactions carried out are by nature one-off, their frequency is a determining factor in qualifying a business relationship.

The regulated entity must distinguish between occasional clients and business relationships in its risk classification.

An occasional client, as referred to in Article L. 561-5 II of the Monetary and Financial Code and defined in Article R. 561-10 I of the same Code, is a “passing” client who contacts the regulated entity for the purpose of preparing or carrying out a one-off transaction or being assisted in preparing or carrying out such a transaction, whether carried out in a single transaction or in several transactions that appear to be interrelated. The regulated entity is required to carry out the same due diligence with regard to an occasional client in accordance with Article L. 561-5 II and Article R. 561-10 II of the Monetary and Financial Code, in particular in the following cases:

- Where there is a suspicion that the transaction may involve money laundering or terrorist financing, including transactions that generate a suspicious transaction report;
- Or where the amount of the transaction or related transactions exceeds €15,000;
- Or where the amount of the transaction or related transactions settled in cash exceeds €10,000;

1.2. Clients of investment management companies as defined in the Risk Factor Guidelines

As stated in AMF Position 2019-14, the AMF complies with the European Supervisory Authorities’ Joint Risk Factors Guidelines (JC 2017 37).

In accordance with sections 218 and 219 (reproduced below) of Chapter 9 of these Guidelines, which relate to investment fund providers, the client (“customer”) of a portfolio asset management company is defined based on the method used to purchase units or shares in the collective investment managed by the portfolio asset management company:

“The measures funds or fund managers should take to comply with their CDD obligations will depend on how the customer or the investor (where the investor is not the customer) comes to the fund. The fund or fund manager should also take risk-sensitive measures to identify and verify the identity of the natural persons, if any, who ultimately own or control the customer (or on whose behalf the transaction is being conducted), for example by asking the prospective investor to declare, when they first apply to join the fund, whether they are investing on their own behalf or whether they are an intermediary investing on someone else’s behalf.”

219. The customer is:

- a) a natural or legal person who directly purchases units of or shares in a fund on their own account, and not on behalf of other, underlying investors; or
- b) a firm that, as part of its economic activity, directly purchases units of or shares in its own name and exercises control over the investment for the ultimate benefit of one or more third parties who do not control the investment or investment decisions; or
- c) a firm, for example a financial intermediary, that acts in its own name and is the registered owner of the shares or units but acts on the account of, and pursuant to specific instructions from, one or more third parties (e.g. because the financial intermediary is a nominee, broker, multi-client pooled account/omnibus type account operator or operator of a similar passive-type arrangement); or
- d) a firm’s customer, for example a financial intermediary’s customer, where the firm is not the registered owner of the shares or units (e.g. because the investment fund uses a financial intermediary to distribute fund shares or units, and the investor purchases units or shares through the firm and the firm does not become the legal owner of the units or shares).”

Where the portfolio asset management company does not market the units or shares of collective investments directly but uses one or more investment services providers, FIAs or foreign distributors, the AMF considers that

the client is defined according to the status of the person entered in the register as managing the collective investment unit or share registry:

- Where the name of the end investor appears in the register as the official owner of the securities, the client in respect of whom the portfolio asset management company should apply the due diligence measures is that end investor (the shareholder or unitholder of the collective investment), in accordance with d) of section 219 of the Guidelines;
- Where the name of a financial intermediary (e.g. a custodian account-keeper or a Euroclear member) acting in its own name and on behalf of the end investor appears in the register, the client in respect of whom the portfolio asset management company should apply the due diligence measures is that financial intermediary, in accordance with c) of section 219 of the Guidelines.

The definition of the portfolio asset management company's client, within the meaning of these Guidelines, i.e. "on the liabilities side" of the funds, has no bearing on the characterisation of a business relationship on the assets side.¹

1.3. Beneficial owner

One of the objectives in preventing the use of financial systems for money laundering and terrorist financing is to prevent, through sufficient transparency, the use of "shield" structures by money launderers and terrorist financiers. It is therefore essential that regulated entities determine the natural persons who are to be considered as beneficial owners, under the conditions prescribed by the regulations.

The French legislator has defined "beneficial owner" in Article L. 561-2-2 of the Monetary and Financial Code as the natural person or persons:

- either who ultimately controls, directly or indirectly, the client when the client is a legal entity or a legal structure such as a trust or a fiduciary arrangement;
- or for whom a transaction is executed or an activity is carried out.

The beneficial owner is therefore one or more natural persons.

- Is it mandatory to have a beneficial owner separate from the client?

Where the client is a natural person acting on his/her own account, he/she is the final and real beneficiary of the transaction. In this case, there is no separate beneficial owner.

Identifying the beneficial owner (or owners) is required when the client is not the beneficiary of the transaction, either because a legal entity is acting as a shield or because a natural person is acting on behalf of another.

Where the client is a company (**1.3.1**), a collective investment (**1.3.2**) or operates within the framework of a trust or any other comparable legal structure governed by foreign law (**1.3.3**), the beneficial owners are the natural persons who meet the criteria set out in Articles R. 561-1 to R. 561-3-0 of the Monetary and Financial Code.

1.3.1. The client is a company

If the client is a company, pursuant to the first paragraph of Article R. 561-1 of the Monetary and Financial Code, the regulated entity must consider as beneficial owner or owners:

- either the natural person or persons who directly or indirectly hold more than 25% of the capital or voting rights of the company; the calculation of this percentage takes into account the holding chain, where applicable;

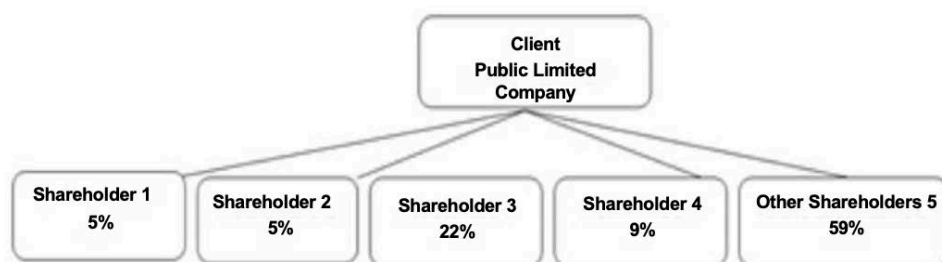
¹ AMF Position/Recommendation DOC-2019-15: Guidelines regarding the risk-based approach to anti-money laundering and counter-terrorist financing.

- or the natural person or persons who exercise, by any other means, a power of control over the company within the meaning of Article L. 233-3 I 3° and 4° of the Commercial Code, i.e. where they effectively determine, through the voting rights they hold, the decisions made at this company’s general meetings or where they are a partner or shareholder of this company and have the power to appoint or dismiss the majority of the members of this company’s administrative, management or supervisory bodies.

Concept of “beneficiary of last resort”: Where no natural person has been identified according to the criteria set out in the first paragraph of Article R. 561-1 of the Monetary and Financial Code and the regulated entity has no suspicion of money laundering or terrorist financing against the client company, the second paragraph of Article R. 561-1 of the Monetary and Financial Code allows the regulated entity to determine a beneficial owner of last resort.

This beneficial owner of last resort is the legal representative of the company (e.g. the chief executive officer of public limited companies with a board of directors or the chairman of simplified joint-stock companies). If the legal representative is a legal entity, the beneficial owner is the natural person or persons who legally represent the legal entity.

Example: The diagram below illustrates the case of a regulated entity under the AMF’s jurisdiction whose client is a public limited company whose capital is held by several natural person shareholders.



The “Other Shareholders 5” box represents a highly fragmented group of natural person shareholders (less than 5% of the capital held by each shareholder). The assumption is that each of the shares carries a single voting right.

In such a situation, the firm must identify any beneficial owner or owners meeting the criteria set out in Article R. 561-1 of the Monetary and Financial Code.

In this example:

There is no natural person who meets the definition of beneficial owner in respect of a natural person who holds, directly or indirectly, more than 25% of the capital or voting rights of the client company.

However, the regulated entity concerned must determine whether certain shareholders who do not hold more than 25% of the capital or voting rights of the client company “exercise, by any other means, a power of control over the company”, either because they effectively determine, through the voting rights they hold, the decisions made at that company’s general meetings, or because they have the power to appoint or dismiss the majority of the members of that company’s administrative, management or supervisory bodies.

The regulated entity must therefore consider the significance of the 22% stake held by shareholder 3 in relation to that of the other shareholders, if it exercises the power of control expressed in Article R. 561-1 of the Monetary and Financial Code.

Where no natural person has been identified according to the criteria set out in the first paragraph of Article R. 561-1 of the Monetary and Financial Code and the regulated entity has no suspicion of money laundering or terrorist financing against the client company, the beneficial owner of last resort is the legal representative of the company (e.g. the chief executive officer of public limited companies with a board of directors or the chairman of simplified joint-stock companies).

1.3.2. The client is a collective investment

The client may be a French collective investment² or its equivalent in foreign law.

Collective investments governed by French law take two legal forms:

- **Collective investments that do not have legal personality**, such as UCITS and retail investment funds set up as unit trusts, private equity funds, securitisation mutual funds, real estate investment funds, etc. Management of this type of collective investment and its representation with regard to third parties is carried out by an investment management company;
- **Collective investments with legal personality (legal form)**, such as investment companies with variable capital, free partnership companies, real estate investment companies, investment companies with fixed capital, forestry investment companies, open-ended real estate investment companies, securitisation companies, etc. Management of this type of collective investment and its representation with regard to third parties is also³ carried out by an investment management company.

In accordance with Article R. 561-2 of the Monetary and Financial Code, the regulated entity must consider as the beneficial owner or owners⁴ the natural person or persons who:

- either hold, directly or indirectly, more than 25% of the units or shares or voting rights of the collective investment; the calculation of this percentage takes into account the holding chain (see section 1.3.5);
- or exercise, by any other means, a power of control over the collective investment within the meaning of Article L. 233-3 I 3° and 4° of the Commercial Code (i.e. where they effectively determine, through the voting rights they hold, the decisions made at this collective investment's general meetings or where they are a partner or shareholder of this collective investment and have the power to appoint or dismiss the majority of the members of this collective investment's administrative, management or supervisory bodies) or, if the collective investment is not a company, over the management company that manages this collective investment.

Where no natural person has been identified according to the above criteria and the regulated entity has no suspicion of money laundering or terrorist financing against the collective investment, the beneficial owner is:

- where the collective investment is a company, the natural person or persons who are the legal representatives determined in accordance with the provisions of Article R. 561-1 (e.g. the chief executive officer of public limited companies with a board of directors or the chairman of simplified joint-stock companies) or, where the collective investment is managed by an investment management company, the natural person or persons who effectively manage that investment management company as defined in paragraph 4 of Article L. 532-9 II of the Monetary and Financial Code; or

² The list of collective investments governed by French law is specified in Article L. 214-1 of the Monetary and Financial Code.

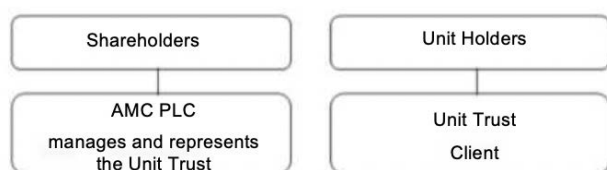
³ Except in the case of self-managed open-ended investment companies (one case to date). In the other cases, blanket authorisation are delegated to an investment management company.

⁴ In practice, the question of identifying the beneficial owner of the collective investment of an investment management company arises when this management company places an order on behalf of the CIU.

- where the collective investment is not a company, the natural person or persons who effectively manage that portfolio asset management company.⁵

Example 1: Collective investment without legal personality

The diagram below illustrates the case of a regulated entity under the AMF’s jurisdiction whose “client” is a UCITS incorporated as an authorised unit trust governed by French law, managed and represented with regard to third parties by a portfolio asset management company (a public limited company with simple voting shares).



In such a situation, the regulated entity must identify any beneficial owners who meet:

- either the definition of a natural person or persons holding, directly or indirectly, more than 25% of the units of said unit trust;
- or the definition of a natural person or persons who exercise, by any other means, a power of control, within the meaning of Article L. 233-3 I 3° and 4° of the Commercial Code, over the portfolio asset management company representing said unit trust. In this case, this refers to the natural persons who, by virtue of the voting rights they hold, effectively determine the decisions made at the portfolio management company’s general meetings or who have the power to appoint or remove the majority of the members of the portfolio management company’s administrative, management or supervisory bodies.

Where no natural person has been identified according to the two criteria set out above and the regulated entity has no suspicion of money laundering or terrorist financing against the unit trust, the beneficial owner is that natural person or persons who effectively manage the portfolio management company.

Example 2: Collective investment with legal personality

The diagram below illustrates the case of a regulated entity under the AMF’s jurisdiction whose “client” is a UCITS incorporated as an authorised SICAV (open-ended investment company) governed by French law, managed and represented with regard to third parties by a portfolio asset management company (a public limited company with simple voting shares).



⁵ As defined in paragraph 4 of Article L. 532-9 II of the Monetary and Financial Code.

In this example, the regulated entity must identify any beneficial owners who meet either the definition of a natural person or persons holding, directly or indirectly, more than 25% of the shares or voting rights of the SICAV,⁶ or the definition of a natural person or persons who exercise, by any other means, a power of control over the SICAV because they effectively determine, through the voting rights they hold, the decisions made at the SICAV's general meetings, or because they have the power to appoint or dismiss the majority of the members of the SICAV's administrative, management or supervisory bodies.

Where no natural person has been identified during these investigations and the regulated entity has no suspicion of money laundering or terrorist financing against the SICAV, the second paragraph of Article R. 561-2 of the Monetary and Financial Code allows the regulated entity to determine a beneficial owner of last resort. This beneficial owner of last resort is the natural person or persons who are the legal representatives of the SICAV (e.g. the chief executive officer if the SICAV is a public limited company or the chairman if the SICAV is a simplified joint-stock company) or, where the SICAV is managed by an investment management company, the natural person or persons who effectively manage that investment management company as defined in paragraph 4 of Article L. 532-9 II of the Monetary and Financial Code. If the legal representatives are legal entities, the beneficial owner is the natural person or persons who legally represent those legal entities.

Finally, it should be pointed out that, depending on the services provided and the transactions carried out, where a person mentioned in Article L. 561-2 6° of the Monetary and Financial Code does not have the collective investment as a client but has the portfolio management company as a client (this is the case in particular where this person provides the portfolio asset management company with the service of reception-transmission of orders on behalf of third parties or the service of order execution as part of the financial management of collective investments by the management company), then it is on the basis of the risk posed by the portfolio asset management company that client due diligence obligations are implemented, in particular identifying the beneficial owner(s).

1.3.3. The client is a legal entity other than a company or a collective investment⁷

In accordance with Article R. 561-3 of the Monetary and Financial Code, if the client is a legal entity that is neither a company nor a collective investment, the regulated entity must consider as beneficial owner(s) those natural person(s) satisfying one of the following conditions:

- They hold, directly or indirectly, more than 25% of the capital of the legal entity (Article R. 561-3 1° of the Monetary and Financial Code);
- They are entitled, by virtue of a legal act designating them for this purpose, to become holders, directly or indirectly, of more than 25% of the capital of the legal entity (Article R. 561-3 2° of the Monetary and Financial Code);
- They have the power to appoint or dismiss the majority of the members of the legal entity's administrative, management, executive or supervisory bodies (Article R. 561-3 3° of the Monetary and Financial Code);
- They exercise by other means a power of control over the legal entity's administrative, management, executive or supervisory bodies (Article R. 561-3 4° of the Monetary and Financial Code).

Where no natural person has been identified as the beneficial owner according to these criteria and the regulated entity has no suspicion of money laundering or terrorist financing against the client, Article R. 561-3 allows the

⁶ While ensuring that there is no control as referred to in Article R. 561-2, for example as a result of an "agreement" between certain shareholders of the SICAV.

⁷ This category includes, in particular, associations, corporate foundations or economic interest groups.

regulated entity to determine a beneficial owner of last resort. This beneficial owner of last resort is the natural person or persons who legally represent the legal entity. Accordingly, where the client is an association, a corporate foundation, an endowment fund or an economic interest group, the beneficial owner is:

- a) The legal representative(s) of the association;
- b) The chairman, chief executive officer and, where applicable, the member(s) of the foundation's management board;
- c) The chairman of the endowment fund;
- d) The natural person(s) and, where applicable, the permanent representative of legal entities appointed as directors of the economic interest group.

Example: The client of the regulated entity under the AMF's jurisdiction is an association declared in accordance with the Law of 1 July 1901.⁸

Natural persons who are members of the association and who enjoy or could be required to enjoy, at any time during the life of the association, a right of repossession⁹ over their personal contributions,¹⁰ whether this right of repossession is enshrined in the articles of incorporation or results from a decision taken by the general meeting, must be considered as beneficial owners within the meaning of Article R.561-3 of the Monetary and Financial Code in respect of persons who are entitled, by virtue of a legal act designating them for this purpose, to become owners of more than 25% of the association's capital.

1.3.4. The client operates within the framework of a trust or any other comparable legal structure governed by foreign law

In accordance with Article R. 561-3-0 of the Monetary and Financial Code, if the client operates within the framework of a trust¹¹ or any other comparable legal structure (special-purpose assets) governed by foreign law,¹² the regulated entity under the AMF's jurisdiction must consider as a beneficial owner any natural person satisfying one of the following conditions:

- He/she has the capacity of settlor, trustee, beneficiary or third-party protector under the conditions provided for in Title XIV of Book III of the Civil Code, or settlor, administrator, beneficiary or protector in the case of trusts or any other comparable legal structure governed by foreign law;
- He/she holds, directly or indirectly, more than 25% of the property, rights or collateral included in a trust estate or in any other comparable legal structure governed by foreign law;
- He/she is entitled, by virtue of a legal act designating him/her for this purpose, to become a holder, directly or indirectly, of more than 25% of the property, rights or collateral included in the trust estate or in any other comparable legal structure governed by foreign law;
- He/she belongs to the category of persons in whose main interest the trust or other comparable legal structure governed by foreign law was established or operates, where the natural persons who are beneficiaries of the trust or other comparable legal structure have not yet been designated;
- He/she exercises by other means a power of control over the property, rights or collateral included in a trust estate or any other comparable legal structure governed by foreign law.

⁸ The regulated entity must check this point.

⁹ The right of repossession means the possibility for a member of an association to repossess or recover his/her contribution, whether physical or in cash.

¹⁰ When a person transfers ownership or enjoyment of property to an association, he/she makes a contribution.

¹¹ Trusts were introduced into the [Civil Code](#) (Articles [2011](#) and following) by the [law of 19 February 2007](#). A trust is defined as "a transaction whereby one or more settlors transfer property, rights or collateral, or a set of property, rights or collateral, present or future, to one or more trustees who, holding them separate from their own assets, act for a specific purpose for the benefit of one or more beneficiaries".

¹² The category of special-purpose assets governed by foreign law includes, but is not limited to, the British *trust*, the German *Treuhand*, the Mexican *fideicomisos*, the Swiss *fiducie*, the Canadian *trust/fiducie*, the Liechtenstein *fondation*, the *wakf* in Islamic law.

1.3.5. In the event of a holding chain

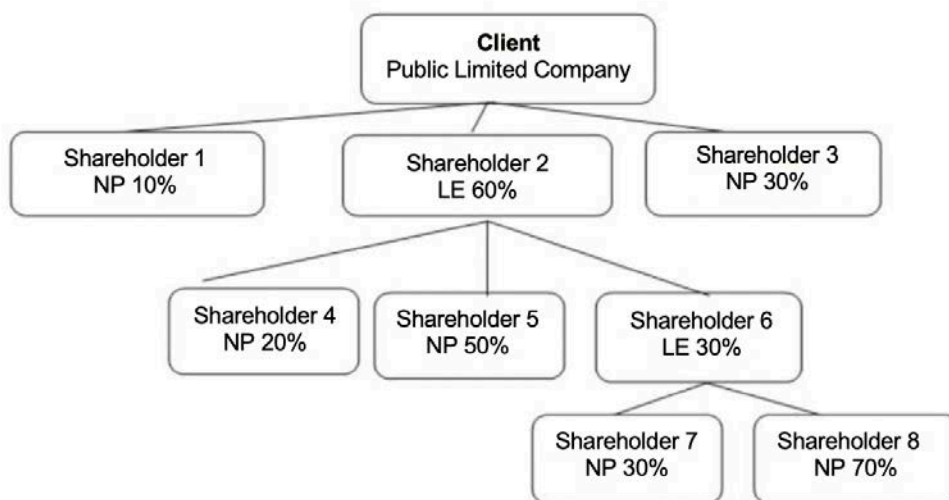
The regulated entity may have a “holding chain” that needs to be traced back to the ultimate natural person(s) meeting the legal and regulatory criteria for a beneficial owner.

Position

In the case of a holding chain, the regulated entity must identify those natural persons at each level of the chain and calculate for each of them the percentages of ownership of the client’s capital or voting rights.

Example 1:

The diagram below illustrates the case of a regulated entity under the AMF’s jurisdiction whose client is a public limited company whose capital (1 share = 1 voting right) is held by a chain of shareholders (1 to 8), either natural persons (NP) or legal entities (LE), distributed over three levels:



In such a situation, the regulated entity must consider the natural person shareholders at each level (shareholders 1, 3, 4, 5, 7 and 8 in this case) and assess whether or not they meet the criteria for beneficial owners referred to in Article R. 561-1 paragraph 1 of the Monetary and Financial Code.

Identification of shareholders meeting the criteria of holding more than 25% of the client’s capital or voting rights:

- Level 1:
 - Shareholder 1 is not a beneficial owner (natural person directly holding 10% of the client’s capital).
 - Shareholder 2 is not a beneficial owner (legal entity).
 - Shareholder 3 is a beneficial owner (natural person directly holding 30% of the client’s capital).
- Level 2:
 - Shareholder 4 is not a beneficial owner (natural person indirectly holding 12% of the client’s capital (via shareholder 2 = 60% x 20%)).

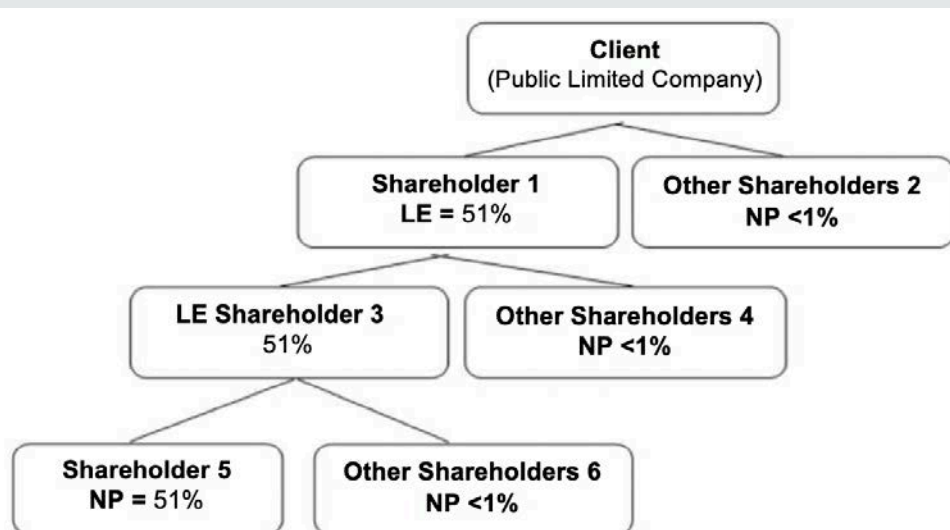
- Shareholder 5 is a beneficial owner (natural person indirectly holding 30% of the client’s capital (via shareholder 2 = 60% x 50%)).
- Shareholder 6 is not a beneficial owner (legal entity indirectly holding 18% of the client’s capital (via shareholder 2 = 60% x 30%)).
- Level 3:
 - Shareholders 7 and 8 are not beneficial owners (natural persons indirectly holding 5.4% and 12.6% of the client’s capital respectively).¹³

Ultimately, in this example, two natural persons are beneficial owners (shareholders 3 and 5) as they hold, directly or indirectly, more than 25% of the company’s capital.

The other natural persons do not fall within the definition of beneficial owners unless they exercise control over the company by any other means within the meaning of Article L. 233-3 I 3° and 4° of the Commercial Code.

Example 2:

The diagram below illustrates the case of a regulated entity under the AMF’s jurisdiction whose client is a public limited company whose capital (1 share = 1 voting right) is held by a chain of shareholders (1 to 6) distributed over three levels (natural persons (NP) or legal entities (LE)). The boxes entitled “Other Shareholders” (2, 4 and 6) refer to very diffuse and unconnected groups of shareholders (holding less than 1% of capital per shareholder).



In such a situation, the regulated entity must consider the natural person shareholders at each level (shareholders 2, 4, 5 and 6 in this case) and assess whether or not they meet the criteria for beneficial owners referred to in Article R. 561-1 paragraph 1 of the Monetary and Financial Code.

In the above example, there is no natural person who meets the definition of beneficial owner given in Article R. 561-1 paragraph 1 of the Monetary and Financial Code, in respect of a direct or indirect holding of more than

¹³ 5.4% via Shareholders 2 and 6 = (60% x 30% x 30%) and 12.6% via shareholders 2 and 6 = (60% x 30% x 70%).

25% of the client’s capital. This is because shareholder 5 indirectly holds, through shareholders 1 and 3, only 13%¹⁴ of the capital of the client’s public limited company and the “Other Shareholders” each hold less than 1%.

However, shareholder 5 could be considered to meet the definition of beneficial owner provided in Article R. 561-1 of the Monetary and Financial Code if, as a natural person, the shareholder exercises, by any other means, a power of control over the client within the meaning of Article L. 233-3 I 3° and 4° of the Commercial Code. If this were the case, the beneficial owner would be shareholder 5.

If shareholder 5 does not exercise a power of control over the client within the meaning of Article L. 233-3 I 3° and 4° of the Commercial Code, where the client is a public limited company, and in the absence of any suspicion of money laundering or terrorist financing on the part of the regulated entity, its legal representative is the beneficial owner of last resort within the meaning of Article R. 561-1 paragraph 2 of the Monetary and Financial Code.

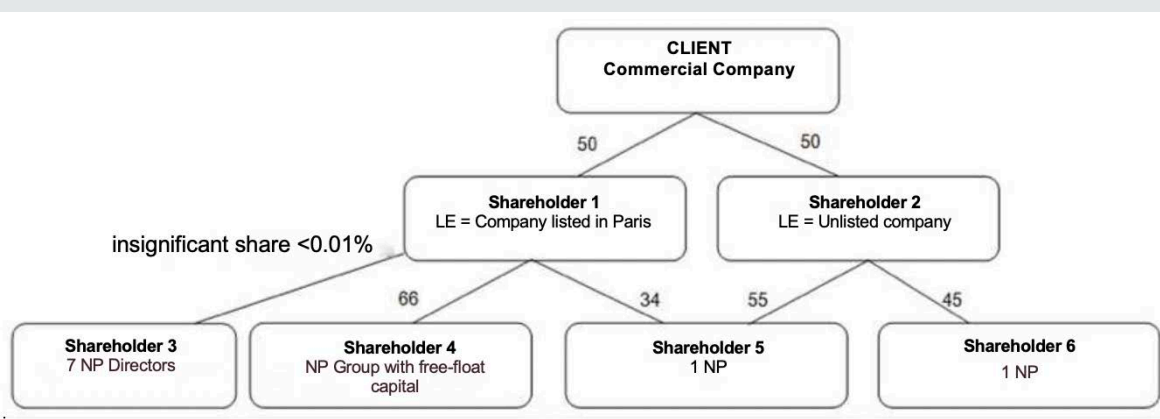
Example 3:

The diagram below illustrates the case of a regulated entity under the AMF’s jurisdiction whose client is a public limited company whose capital is held by a chain of shareholders (1 to 6), either natural persons (NP) or legal entities (LE), distributed over two levels as follows:

- At the first level are two companies, one of which has its securities admitted for trading on a regulated market in France and whose free float capital represents 66% of the capital. This free float is distributed among a very large number of shareholders who each hold only a very small share of the capital.

At the second level, there are several shareholders as shown in the diagram below.

- The assumption is that there is no person who exercises, by any other means, a power of control over the client company, within the meaning of Article L. 233-3 I 3° and 4° of the Commercial Code.



As the client is a company, the criteria to be considered are those specified in Article R. 561-1 of the Monetary and Financial Code.

Shareholders 3, 4, 5 and 6 are the natural persons for whom it must be established whether or not they are beneficial owners within the meaning of the aforementioned article.

¹⁴ 51% x 51% x 51% = 13.2%.

Identification of shareholders meeting the criteria of holding more than 25% of the client's capital:

- ⇒ Shareholder 3 (7 natural person directors) does not meet the definition of beneficial owner (indirect holding via shareholder 1 of an insignificant share of the client's capital).
- ⇒ Shareholder 4 (floating shareholding) could meet the definition of a beneficial owner (indirect holding via shareholder 1 of 33% of the client's capital (50% x 66%)), but these are shareholders who individually hold only a very small share of the client's capital.
- ⇒ Shareholder 5 is a beneficial owner:
 - It indirectly holds 27.5% (50% x 55%) of the client's capital (via the unlisted company);
 - It indirectly holds 17% (50% x 34%) of the client's capital (via the listed company).

However, the beneficial owner(s) of a listed company (shareholder 1) is (are) not subject to the identification obligation. Shareholder 5 must be identified because of its indirect holding of 27.5% (50% x 55%) of the client's capital via the unlisted company.

- ⇒ Shareholder 6 indirectly holds (via shareholder 2) 22.5% of the client's capital (50% x 45%). Accordingly, shareholder 6 is not a beneficial owner (holding <25% of the client's capital).

Ultimately, in the event that no person exercises control within the meaning of Article R. 561-1 of the Monetary and Financial Code, only shareholder 5 should be subject to identification and identity verification measures.

➤ What happens when identifying a beneficial owner is not possible?

Articles R. 561-1 to R. 561-3 of the Monetary and Financial Code allow regulated entities that do not suspect money laundering or terrorist financing to identify a beneficial owner of last resort where the client is a company, a collective investment or a legal entity that is neither a company nor a collective investment (see above).

Identifying a beneficial owner of last resort is therefore neither stipulated where the client is a trust or any other comparable legal structure under foreign law (Article R. 5613-0), nor permitted in the event of any suspicion of money laundering or terrorist financing.

In these two situations, where regulated entities are unable to identify the beneficial owner, **they do not enter into a business relationship**, in accordance with Article L. 561-8, and, if they suspect money laundering or terrorist financing, they report this suspicion to TRACFIN.

2. CLIENT DUE DILIGENCE OBLIGATIONS

Client due diligence obligations relate to:

- identifying and verifying the identity of the client (**2.1**) and, where applicable, the beneficial owner (**2.2**);
- information on the purpose and nature of the business relationship and any other relevant information (**2.3**).

These apply before entering into the business relationship (**2.4**).

Using the risk-based approach, regulated entities must implement simplified, complementary and/or enhanced due diligence (**2.5**).

2.1. Identifying and verifying the identity of the client

2.1.1. Identification

Identification is carried out on a declarative basis and involves obtaining the identity details specified in Article R. 561-5 of the Monetary and Financial Code:

- For natural persons: first and last name and date and place of birth;
- For legal entities: legal form, business name, registration number and registered office address.¹⁵

Self-employed individuals are identified as natural persons.

Regulated entities identify, under the same conditions as the client, the persons acting on behalf of the client under law or contract (legal or statutory representative or person with delegated authority). For example, if the legal representative or agent is:

- a natural person, regulated entities record the natural person's first and last name and date and place of birth;
- a legal entity (e.g. investment management companies representing a collective investment that is not a company), regulated entities record the legal entity's legal form, business name, registration number and registered office address.

In accordance with the last paragraph of Article R. 561-5, they also verify the powers of the person acting on behalf of the client. To this end, they must obtain a document justifying this person's capacity as representative. For example, this document may be:

- for the representative of a minor, the family record book or birth certificate;
- for the representative of a protected adult, the guardianship or wardship ruling;
- for the representative of a company or association, the articles of incorporation of the company or association or a delegation of authority in due and proper form. Providing a K-bis extract from the commercial register that is less than 3 months old may suffice when the company is established in France and the function of the legal entity's representative that appears on this document is sufficient to determine the powers attached to it;
- for the representative of a collective investment undertaking, the fund prospectus or equivalent documents identifying the investment management company;
- for a legal representative of a local authority, the appointment decree or the delegation of authority of persons.

2.1.2. Verification

Verifying the identity of a client and, where applicable, the client's representative is based, in accordance with Article L. 561-5 2° of the Monetary and Financial Code, on the "presentation of any written document that provides proof of identity".

Pursuant to Article R. 561-5-1 of the Monetary and Financial Code, the written document providing proof of identity may be in physical format (see 3° of the aforementioned article) or digital format (see 1° and 2° of the aforementioned article).

- Verifying identity on presentation and recording of an official identity document in physical format

Verifying the identity of a client, who is a natural person, is based on the presentation of an original and valid official identity document bearing a photograph (such as a national identity card, passport, residence permit or the valid receipt of an application for a residence permit/residence card or an application for asylum).

From 1 January 2021, identification itself will in all cases involve taking a copy of the identity document presented.¹⁶ In the meantime, regulated entities that record the information listed in Article R. 561-5-1 paragraph

¹⁵ See Article R. 561-5 3° and 4° of the Monetary and Financial Code where the client is operating within the framework of a trust or where the client is a collective investment that is not a company.

¹⁶ Article R. 561-5 3° as amended with effect from 1 January 2021 – Decree No. 2018-284 of 18 April 2018.

3 of the Monetary and Financial Code¹⁷ must ensure that the identity document presented includes each of these items of information and ensure the quality and completeness of the data entered in their client base.

Position

Regulated entities must define in their internal procedures all identity documents that meet the requirements of Article R. 561-5-1 of the Monetary and Financial Code, which are therefore admissible for the purpose of verifying the identity of the client.

The official nature of the identity document does not require it to be issued by the French authorities. It may be an identity document issued by a foreign authority, in which case it may be issued in the client's country of origin or in France by the consulate or embassy of that country of origin. However, identity documents written exclusively in a foreign language and/or in an alphabet other than the Latin alphabet do not provide a real guarantee unless they are translated into French. The identity document may be translated by a staff member, a sworn translator or any automated means, according to a risk-based approach.

Position

Given the risk of counterfeit documents, regulated entities must be particularly vigilant in verifying the authenticity of the identity document presented. Where it is difficult in practice to ascertain this, in particular where the document has been issued by a foreign authority, regulated entities must collect additional documentary evidence to confirm the identity of such persons.

Verifying the identity of a legal entity client is based on the presentation of the original or copy of any deed or extract from an official register dated less than three months ago or any extract from the Official Journal, establishing the name, legal form, registered office address and identity of the partners and company directors, and of the legal representatives or their equivalents in foreign law. For example, this document may be:

- For a company, a K-bis extract (from the commercial register) dated less than three months ago;
- For an association, an extract from the Official Journal recording its declaration at the prefecture;
- For an association or foundation recognised as a public interest organisation, a copy of the decree of the Council of State recognising the public interest organisation;
- For a corporate foundation or an endowment fund: an extract from the Official Journal recording its authorisation or its declaration at the prefecture;
- For a commercial company established outside France, the registration in a register or a certificate of legal validity of the company, accompanied, where applicable, by a translation or a certificate of incorporation supplemented by other documents providing all the information required under Article R. 561-5-1 paragraph 4. Where the company cannot be issued in its country with documents that are less than three months old, the financial institution must check with the company that the documents provided are up to date. In this case, these documents must be certified by a legal representative of the company or any person authorised by said legal representative, who shall attest to this. Otherwise, the financial institution must obtain the documents required to update the documents provided (minutes of the board of directors, etc.).

Verifying the identity of a trust client is based on the presentation of the original or copy of the trust agreement or, in the case of trusts established by law, an extract from the Official Law Journal. If the client has its registered office outside France, verification of identity is based on the presentation of documents equivalent to those required by French regulations, such as the trust deed or the letter of wishes in the case of a trust.

- Verifying identity using electronic means of identification

¹⁷ "First and last name and date and place of birth of the person, as well as the type, date and place of issue of the document and the name and capacity of the authority or person who issued the document and, where applicable, authenticated it."

Under the terms of Article R. 561-5-1 of the Monetary and Financial Code, regulated entities may verify the identity of a client by using an electronic means of identification:

- 1) either issued under a French electronic identification scheme notified to the European Commission pursuant to European Regulation 910/2014 on electronic identification and trust services for electronic transactions in the internal market (known as the “eIDAS Regulation”), or under a scheme notified by another European Union Member State under the same conditions, and which offers a high level of guarantee within the meaning of the eIDAS Regulation;
- 2) or presumed reliable within the meaning of Article L. 102 of the Post and Electronic Communications Code.

As the use of this type of system is considered to be equivalent to face-to-face verification of identity, the implementation of additional due diligence measures specific to entering into a remote business relationship is not required under these circumstances by the regulations.¹⁸

2.2. Identifying and verifying the identity of the beneficial owner

Where, after completing its research, the regulated entity has identified the natural persons that meet the definition of beneficial owners, where applicable, by going through the entire “holding chain” and taking into account the cases mentioned in Articles R. 561-1 to R. 561-3-0 of the Monetary and Financial Code, it must implement its due diligence obligations with regard to the beneficial owners identified.

In this respect, before entering into a business relationship with the client, the regulated entity, after having identified the beneficial owner (2.2.1), must verify the identity details obtained for the beneficial owner on presentation of any written document that provides proof of identity (2.2.2).

2.2.1. Beneficial owner identification

Identifying the beneficial owner is done according to the same procedures as those defined for the client (in Article R. 561-5 of the Monetary and Financial Code) and therefore entails recording the first and last names of the natural persons concerned along with their date and place of birth. These identity details may be gathered verbally, since reviewing and copying the supporting documents is part of the “verification” procedure.

Pursuant to Article R. 561-7 of the Monetary and Financial Code, the regulated entity must be able to prove to the AMF that the measures taken to identify the beneficial owner comply with Articles R. 561-1 to R. 561-3-0 of the Monetary and Financial Code.

To help with identifying the beneficial owners, the regulated entity may consult the register of beneficial owners of legal entities mentioned in Article L. 561-46 of the Monetary and Financial Code.

Regulated entities are not required to identify the beneficial owner of the business relationship where the client is a company whose securities are admitted for trading on a regulated market in France, in another Member State of the European Union, in another State party to the Agreement on the European Economic Area or in a third country that imposes obligations recognised as equivalent by the European Commission within the meaning of Directive 2004/109/EC. These companies are subject to disclosure requirements that ensure transparency of ownership information.

Position

This exemption also applies where the client is more than 75% owned by a listed company. As the client is more than 75% owned by the listed company, determining the beneficial owner of the client would amount to

¹⁸ Article R. 561-20 of the Monetary and Financial Code.

identifying the beneficial owners of the listed company. However, the regulations provide for an exemption with regard to listed companies.

2.2.2. Verifying the identity of the beneficial owner

Verifying the identity details provided is carried out using **measures appropriate to the risk** of money laundering and terrorist financing posed by the business relationship, in accordance with Article R. 561-7 of the Monetary and Financial Code.

Unless there is a high risk of money laundering and terrorist financing, and provided there is no suspicion of these, regulated entities may verify the identity of the beneficial owner of legal entities listed in the French register and, where applicable, foreign registers kept by public authorities, **by obtaining an extract from that register**. They must ensure that the register contains the required identity details, namely the first and last names and date and place of birth. If there is any doubt as to the accuracy of the data contained in the register, they must verify the identity of the beneficial owner by any other appropriate means.

In the case of legal entities in other jurisdictions whose beneficial owner is not listed in an official foreign register, regulated entities may, **where the risk is low and subject to justification**, verify the identity of that person based on **a declaration completed and signed by the client**.

Position

To verify the identity of the beneficial owner, regulated entities must not limit themselves to simply consulting private databases, even if these databases contain all the identity details provided for by the regulations.

Where the risk is high and/or in cases of doubt or suspicion, regulated entities must verify the identity of the beneficial owner by collecting information and documents, according to a risk-based approach. Examples of such information include the annual report, articles of incorporation, register of the client's shareholders, minutes of general meetings and organisation charts.

Position

The presentation of an official identity document and obtaining a copy of it, which is not required in principle for the beneficial owner, is deemed necessary if there is any doubt regarding the identity of the beneficial owner.

2.3. Information about the business relationship

Information about the business relationship is subject to a principle of proportionality. It is based on the degree of risk posed by the business relationship. As a reminder, the nature and scope of the information obtained, the frequency with which that information is updated and the scope of the analysis carried out must be appropriate to the risk of money laundering and terrorist financing posed by the business relationship. Regulated entities must therefore be able to justify to the AMF the implementation of appropriate measures in relation to the risk of money laundering and terrorist financing posed by the business relationship.

Accordingly, where the risk is low (Article L. 561-9 1°), the regulated entity may **simplify** its information about the business relationship (Article R. 561-14-1 3°) and, for example, be satisfied with simple declarative information, provided that it can justify to the AMF the adequacy of the due diligence carried out.

Conversely, information about the business relationship is enhanced in high-risk cases, whether these are specified by the legislator (see Article L. 561-10 of the Monetary and Financial Code) or by the regulated entity itself (see Article L. 561-10-1 of the Monetary and Financial Code). In these cases, the regulated entity must obtain documents corroborating the client's declarations.

In accordance with Articles L. 561-5-1 and R. 561-12 of the Monetary and Financial Code, **before entering into a business relationship**, regulated entities must obtain and analyse the information they need to understand the purpose and nature of the relationship, primarily with a view to building a risk profile.

It is their responsibility to obtain, according to a risk-based approach, relevant information or documents:

- on each of the parties to the business relationship (i.e. the client and, where applicable, the beneficial owner);
- and on the way in which the business relationship is expected to operate or on its economic justification (for example, whether the product or service is used for professional or personal purposes, whether the transactions envisaged are purely international or domestic in nature, etc.).

The Order of 2 September 2009, issued pursuant to Article R. 561-12 of the Monetary and Financial Code, provides an indicative list of the information that may be gathered. In their procedures, regulated entities determine the information and documents to be obtained, bearing in mind their risk classification, particularly the services offered, the type of clients and the profile of business relationships.

Obtaining and analysing this information enables regulated entities to build a risk profile of the business relationship, understand the transactions carried out and consequently perform appropriate ongoing due diligence.

The regulated entity must therefore remain attentive to events and transactions likely to affect the client's risk level, in particular the risk that the client may participate in a money laundering transaction.

- Relevant information to be obtained, where applicable, for natural persons (client and beneficial owner)

Using a risk-based approach, regulated entities must obtain information **on the financial and professional situation** of natural persons. This information provides an understanding of the transactions that will be carried out (for example, when the client's income is derived in whole or in part from their real estate assets).

The degree of precision of this information may vary depending on whether it relates to the client or beneficial owner and according to a risk-based approach. In any event, regulated entities must obtain, from the client or by any other means, information about the beneficial owner, without having to question that beneficial owner.

The **professional situation** of natural persons is a piece of information that can be used to identify potential politically exposed persons (PEPs).

Where the client is a natural person and enters into a business relationship for the purposes of his/her professional activity, regulated entities may also obtain, for example:

- the SIREN number (French business identification number) for self-employed professionals and micro-entrepreneurs;
- the K-bis extract (from the commercial register) for auto-entrepreneurs;
- the D1 extract for artisans.

Proof of the client's home address and, where applicable, the beneficial owner's address, is among the pieces of information listed in the aforementioned Order as indicative only. Obtaining such proof is therefore not essential for the purpose of understanding the business relationship. Regulated entities must determine, as part of their internal procedures and according to a risk-based approach, whether documentary proof of home address needs to be obtained and, if so, the type of proof to be obtained. In the case of a remote business relationship (see part 3), regulated entities may, as a measure to combat documentary fraud, require that proof of address be obtained from a document with a "2D-Doc" barcode to ensure the integrity of the document and the information it contains.

Moreover, obtaining proof of address may be useful in relation to implementing the obligations relating to the fight against tax fraud and tax evasion. Pursuant to Article 1649 AC of the General Tax Code, regulated entities are required to identify the tax residence of the client and, where applicable, the beneficial owner. To this end, they rely on the information obtained about the business relationship for the purposes of AML/CFT, including proof of

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address. In addition, knowledge of the tax residence of the client and, where applicable, the beneficial owner, may constitute an important piece of information for the purposes of AML/CFT.

Using a risk-based approach, regulated entities must obtain information on the **source of funds** when entering into a business relationship.

Position

Providing only information indicating that the funds come from an account opened in the client's name is not sufficient in high risk/high risk profile cases.

Using a risk-based approach, regulated entities must obtain information about the **destination of funds**.

Position

Where this verification is carried out, it is not sufficient to know whether the funds are being paid into an account in the client's name; the client should also be asked about the purpose of the transactions.

Where **third parties** (agents with power of attorney, third-party payers, etc.) are involved or are required to be involved in the business relationship, it may be relevant to understand, in addition to **the identity of these persons, the nature of any existing relationship** (family, business relationship, etc.) between the client, and where applicable the beneficial owner, and this third party, and even to know the source of the funds.

- Relevant information to be obtained for legal entities

Other relevant information that the regulated entity may obtain, according to a risk-based approach, includes the articles of incorporation, corporate purpose, business sector and financial situation of legal entities (e.g. annual accounts, tax return).

Regulated entities must obtain and analyse any other relevant information, according to a risk-based approach, for example:

- for an association, its main sources of income (such as donations, membership fees, subsidies or economic activities), its main donors and the composition of its board;
- for a commercial company, its main suppliers or customers if the type of product justifies it, for example, opening an account.

For newly created companies that do not have information on their financial situation, regulated entities must obtain, for example, a provisional balance sheet and the expected invoicing volume for customers/suppliers, the average monthly workload, the professional background of the executives and any partners, and the physical, financial and human resources put in place to achieve the business plan.

With regard to legal structures (such as trusts), regulated entities must analyse in particular the information contained in the contract, including its purpose. They must analyse the reasons for the existence of this structure (e.g. organisation/supervision of inheritance, etc.), the context of its creation and the relationship between the trustees.

2.4. When to carry out due diligence on clients and beneficial owners

The Monetary and Financial Code specifies when to identify and verify the identity of the client and the client's beneficial owner(s) as follows:

In principle, due diligence is carried out BEFORE:

- entering into a business relationship with the client or assisting the client in the preparation or execution of a transaction (Article L. 561-5 I of the Monetary and Financial Code);

- carrying out a transaction on behalf of an occasional client where the obligation to identify and verify the client and the beneficial owner is required.

In exceptional cases, due diligence is carried out:

- **DURING** the time the business relationship is being established, where the risk of money laundering or terrorist financing appears to be low and when preventing any interruption to normal business activities is necessary (Article L. 561-5 IV);
- **AT THE LATEST** at the time the contract is entered into and before the start of the transaction covered by the contract (Article R. 561-6 3°), where the regulated entity, because of the low risk posed by the client or product, has chosen to implement simplified due diligence measures in application of Article L. 561-9 1° of the Monetary and Financial Code.

Furthermore, and in any event, **THROUGHOUT THE BUSINESS RELATIONSHIP,**

- The identity details obtained must be updated as part of ongoing due diligence and must be such that the risk profiles of the beneficial owners can be updated with regard to the regulated entity's risk classification (Articles L. 561-5-1 and R. 561-12 of the Monetary and Financial Code). These updates are particularly important when the client's beneficial owner is a PEP.

Position

The regulated entity is not systematically required to identify and verify the identity of its client, and of the beneficial owner(s) where applicable, each time a transaction is carried out. The regulated entity may rely on the identification and verification measures already taken, unless there is reason to believe that further verification is necessary.

Where the regulated entity has good reason to believe that the information previously obtained is no longer accurate or relevant, it must again identify and verify the identity of the client and beneficial owner (Article R. 561-11 of the Monetary and Financial Code).

This may be the case, for example:

- where the regulated entity has a suspicion of money laundering because the client's transactions change significantly, in a way that is not consistent with the client's known activity, in particular with the amounts usually involved;
- or where public information (in the press or other media) or information obtained when updating information about the business relationship indicates that the beneficial owner(s) have changed following, for example, a change in the majority shareholder(s) in a company (in particular in the case of a merger/takeover/acquisition).

2.5. Implementation of the risk-based approach

Using a risk-based approach, the legislator has defined special procedures for applying the obligation to identify and verify the identity details of the client and beneficial owner, which simplify, enhance or supplement those specified in Articles L. 561-5 and R. 561-7 of the Monetary and Financial Code described above.

Regulated entities must demonstrate ongoing due diligence throughout the business relationship in order to determine whether the conditions required for applying specific arrangements are still met.

They must implement simplified **(2.5.1)** or enhanced **(2.5.2)** due diligence measures that are detailed in their internal procedures. Additional due diligence measures **(2.5.3)** are those provided for in the regulations.

2.5.1. Simplified due diligence measures

α) For persons, services and products that pose a low risk, and provided there is no suspicion of money laundering or terrorist financing, **identifying clients and beneficial owners alone is sufficient** (Articles L. 561-9 2° and R. 561-14-2 of the Monetary and Financial Code):

- verifying the identities of the client and the beneficial owner is not required;
- obtaining information about the business relationship is not required.

Persons posing a low risk are those listed in Article R. 561-15, and services and products posing a low risk are those listed in Article R. 561-16.

However, the regulated entity must ensure that the conditions specified in Article R. 561-15 of the Monetary and Financial Code are met.

β) Where, other than in these cases above, the risk appears to be low, the regulated entity may defer verifying the identity of the client and beneficial owner in accordance with the procedures specified in Articles L. 561-5 IV and R. 561-6. It may also **simplify its information about the business relationship** and **simplify the measures of ongoing due diligence** (Articles L. 561-9 1° and R. 561-14-1).

This simplification consists of adapting the following to suit this low risk:

- (i) the timing and frequency of implementing these measures;
- (ii) the extent of the measures implemented;
- (iii) the amount of information obtained;
- (iv) the quality of the information sources used.

The regulated entity must be in a position to justify to the AMF that the scope of the due diligence measures it implements is appropriate to the risks it has assessed.

2.5.2. Enhanced due diligence measures

α) For persons, services and products that, according to the regulated entity, pose a high risk, identifying and verifying the identities of the client and the beneficial owner, information about the business relationship and ongoing due diligence require enhanced measures (compared to those required in other cases).

These enhanced measures are at the discretion of the regulated entity, which must at all times be able to justify to the AMF the adequacy of its due diligence to the level of risk identified.

β) When faced with a transaction that is particularly complex or unusually high in value or with no apparent economic justification or with no apparent lawful purpose, enhanced scrutiny is required in relation to:

- (i) the source of funds;
- (ii) the destination of funds;
- (iii) the purpose of the transaction;
- (iv) the identity of the person benefiting from the transaction.

γ) When using a financial institution distributor¹⁹ based outside the EEA, the obligation to identify and verify the identity of the beneficial owner requires that the contract concluded between the portfolio asset management company and that distributor states that the distributor applies identification and identity verification procedures equivalent to those applicable in the Member States of the European Union and has access to the identity details

¹⁹ Person mentioned in Article L. 561-2 1° to 6° of the Monetary and Financial Code.

of the beneficial owner of the business relationship. The depositary of the investment fund shall ensure this is done.

2.5.3. Additional due diligence measures

Article L. 561-10 specifies **four cases** that require additional due diligence (themselves detailed in Articles R. 561-19, R. 561-20, R. 561-20-2 and R. 561-20-4 of the Monetary and Financial Code):

- 1) Entering into a relationship remotely (see section 3 below).
- 2) The client is a PEP (see AMF Position/Recommendation DOC 2019-17 Guidelines on the Concept of Politically Exposed Persons).
- 3) Where the product or transaction poses **by its very nature** a particular risk of money laundering or terrorist financing because it favours anonymity (in particular in the case of bearer securities). Regulated entities must identify and verify the identity of the client and, where applicable, the beneficial owner **at the time of repayment of these products**.
- 4) Where the transaction involves persons domiciled, registered or based in high-risk third countries. **Regulated entities must increase the frequency with which they update** the information required to provide knowledge of their client and, where applicable, the beneficial owner of the business relationship.

3. SPECIAL CASE: ENTERING INTO A RELATIONSHIP REMOTELY

Entering into a business relationship remotely is becoming commonplace with the development of digitalised business processes and the proliferation of professionals operating only remotely. In the view of both the FATF Recommendations and Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015, entering into a business relationship remotely poses higher risks of money laundering and terrorist financing, which require the introduction of sufficient identity verification guarantees.

For this reason, Articles L. 561-10 1° and R. 561-20 of the Monetary and Financial Code require additional due diligence measures when a business relationship is entered into remotely with a client:

- where the client or the client's legal representative is not physically present before the financial institution, its third-party introducer or external service provider for identification purposes (but is instead online, for example);
- and where verifying the client's identity has not been carried out using an electronic means of identification mentioned in Article R. 561-5-1 1° or 2°, considered equivalent to "face-to-face".

However, Article L. 561-10 provides that when a business relationship is entered into remotely with (i) a low-risk person or (ii) exclusively for one or more low-risk products, as defined in Article L. 561-9 2° of the Monetary and Financial Code, and provided there is no suspicion of money laundering or terrorist financing, regulated entities are not required to implement these additional measures. Instead, they implement the simplified due diligence measures in accordance with Article L. 561-9.

In addition to identifying the client and, where applicable, the beneficial owner, pursuant to Article L. 561-5 of the Monetary and Financial Code, regulated entities must choose, from among the restricted list of measures provided in Article R. 561-20 of the same Code, **at least two separate measures** to be implemented for the purpose of verifying the identity of the client.

These measures include:

- Obtaining **a copy of the identity document and one additional supporting document** to confirm the client’s identity. This measure does not require regulated entities to obtain, in addition to a copy of an official identity document, a second official identity document, even if such a document would confirm the identity of a client. The additional supporting document must contain *“information confirming the client’s identity”*, i.e. for a natural person, first and last name and date and/or place of birth. A social security card, payslip or family record book can therefore be used as additional supporting documents. However, bank account details do not meet this requirement as they do not confirm the client’s identity and therefore cannot be used as additional supporting documents. The same applies to the proof of address. For a legal entity, the additional supporting document can be, for example, the articles of incorporation.
- Implementing measures for verifying and certifying the copy of the identity document (for a natural person) or an extract from the official register (for a legal entity) by a third party independent of the person being identified. For example: the regulated entity itself obtaining a K-bis extract via the Infogreffe site, or its foreign equivalent.

Position

The third party independent of the person being identified is either (i) a public authority or a ministerial public officer, such as a notary, embassy or consulate employee, and their foreign equivalents, or (ii) an independent third party offering technological solutions for the “verification/certification” of copies of identity documents based, for example, on biometric data, if these solutions are governed by legislation or by standards guaranteeing their reliability and security.

- Obtaining confirmation of the client’s identity from a third party that is itself subject to AML/CFT requirements and located in an EU/EEA country or an “equivalent” third country under the conditions of Article L. 561-7 II of the Monetary and Financial Code governing the procedures for sharing personal data.

Position

In this case, the regulated entity must contact the independent third party directly, without going through its client’s intermediary, and make sure that the confirmation covers all the client’s identity details.

Two other additional due diligence measures, based on the eIDAS Regulation, which has the advantage of setting a European standard for electronic identification, are being introduced.

The regulated entity may:

- use an electronic means of identification delivered as part of an electronic identification scheme, either French or from another EU Member State, that has been notified to the European Commission and that offers a substantial level of guarantee within the meaning of the eIDAS Regulation (Article R. 561-20 5° of the Monetary and Financial Code);
- obtain an advanced or qualified electronic signature or a valid advanced or qualified electronic stamp based on a qualified certificate bearing the identity of the signatory (i.e. first and last names for a natural person) or of the stamp creator (for a legal entity) and issued by a qualified trust service provider (QTSP) recognised as such by the French National Cybersecurity Agency ANSSI or by the equivalent competent national authority in another EU Member State within the meaning of the eIDAS Regulation (Article R. 561-20 6° of the Monetary and Financial Code).

The new procedures for verifying the client’s identity resulting from Regulation No. 910/2014 “eIDAS”
Regarding the use of an electronic means of identification with a high or substantial level of guarantee: The France Connect platform puts regulated entities in contact with French or European identity providers who have

developed electronic means of identification (with a high or substantial level of guarantee) that have been notified to the European Commission.

Regulated entities are therefore invited to join the Interministerial Directorate for Digital Technology and the State Information and Communication System (DINSIC), which manages this platform. They will then be able to add the “France Connect” icon to their website and determine which identity providers they wish to use (depending on the level of guarantee – high or substantial – that the providers offer).

Regarding obtaining a valid electronic signature or stamp based on a qualified certificate issued by a Qualified Trust Service Provider (QTSP): Regulated entities may obtain this signature or stamp on any relevant document. The list of QTSPs that issue a valid electronic signature or electronic seal based on a qualified certificate is available at the following address: <https://webgate.ec.europa.eu/tl-browser/#/search/type/3>.

In addition, regulated entities must, where appropriate, verify the identity of persons acting on behalf of the client when entering into a business relationship remotely, in accordance with the same procedures (implementation of at least two additional due diligence measures, from among those mentioned above).

4. OBLIGATIONS TO RETAIN IDENTIFICATION DOCUMENTS AND VERIFY THE IDENTITY OF CLIENTS AND BENEFICIAL OWNERS

These obligations are provided for in Articles L. 561-12 and R. 561-7 of the Monetary and Financial Code. Subject to more restrictive provisions, the regulated entities must retain:

- documents and information, regardless of the format, relating to the identity of their regular or occasional clients and, where applicable, the beneficial owners of the business relationship for a period of five years following the closure of the accounts or the termination of the relationship with these clients;
- within the limits of their remit, documents and information, regardless of the format, relating to transactions made by their regular or occasional clients and documents recording the characteristics of transactions subject to enhanced scrutiny under Article L. 561-10-2 of the Monetary and Financial Code for a period of five years following their execution;
- the results of the enhanced scrutiny prescribed in Article L. 561-10-2 of the Monetary and Financial Code must, pursuant to Article R. 561-22 of the aforementioned Code, be recorded in writing and retained for five years;
- documents and records relating to declarations to TRACFIN for a period of five years following the termination of the business relationship concerned, involving one or more beneficial owners.

Position

The information retained must enable regulated entities to respond quickly to requests for information from the AMF required to fulfil its duties or to justify to the AMF the adequacy of their due diligence with regard to the risks identified.

The AMF General Regulation stipulates that regulated entities must determine in their internal procedures the conditions for retaining the information and documents required to comply with AML/CFT obligations and explicitly requires them to retain supporting documents and reports relating to the transactions referred to in Article L. 561-15 of the Monetary and Financial Code (suspicious transaction reports).²⁰

²⁰ Article 320-21 in particular.

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The AMF points out that the retention procedures must ensure compliance with the requirements (i) for the protection of personal data²¹ and (ii) for professional secrecy and confidentiality relating to suspicious transaction reports.²²

Position

The AMF recommends that regulated entities ensure that “client” files are compliant and up-to-date, regardless of the length of the relationship with the client, and that suspicious transaction reports are not included in these files.

5. USE OF THIRD PARTIES FOR IMPLEMENTING DUE DILIGENCE OBLIGATIONS

Regulated entities may use a third party to implement client due diligence measures:²³

- either a third-party introducer (in the case of third-party introduction);
- or an external service provider (in the case of outsourcing).

In both cases, the regulated entity that uses the third party **remains fully responsible for implementing its due diligence obligations, particularly as regards the AMF.**

The differences between the two arrangements lie in the scope of the obligations that can be entrusted and in the fact that **the third-party introducer implements its own AML/CFT procedures**, which it is also required to have in its capacity as a regulated entity (see below).

The obligation to report to TRACFIN may not be entrusted to third parties, under either third-party introduction or outsourcing arrangements.

5.1. Third-party introduction

5.1.1. Definition of third-party introduction

Third-party introduction is a mechanism strictly regulated by Article L. 561-7 of the Monetary and Financial Code that allows a regulated entity to use the services of a third-party (hereinafter referred to as a “third-party introducer”) that meets the conditions set out in the regulations when it comes to implementing certain due diligence obligations at the start of a business relationship.

Third-party introduction relates only to the implementation of the client due diligence obligations set out in Article L. 561-5 I to Article L. 561-5-1 of the Monetary and Financial Code, specifically:

- identifying the client and verifying the client’s identity before entering into a business relationship;
- where appropriate, identifying the beneficial owner and verifying the beneficial owner’s identity before entering into a business relationship;
- obtaining information about the business relationship.

The services of a third-party introducer may not be used to implement the obligations provided for in Article L. 561-6 of the Monetary and Financial Code, i.e. implementing, for the entire duration of the business relationship, **ongoing due diligence** and carrying out a thorough examination of the transactions executed while ensuring that they are consistent with up-to-date information about the business relationship. When regulated entities use a

²¹ Following the entry into force of the GDPR, the Single Authorisation No. AU-003 (Deliberation No. 2011-180 of 16 June 2011 on the single authorisation of personal data processing implemented by entities subject to anti-money laundering and counter-terrorist financing requirements and the application of financial sanctions) has no longer had any legal value since 25 May 2018. Until such time as GDPR standards are produced, this single authorisation remains available on the CNIL website.

²² See in particular Articles L. 561-18 to L. 561-21 of the Monetary and Financial Code.

²³ Defined in section 1.2 above.

third party to implement these due diligence measures, they do so within the scope of **outsourcing as provided for in Article R. 561-38-2** of the Monetary and Financial Code.

Third-party introduction differs from outsourcing, however, in that the third-party introducer implements its own AML/CFT procedures and not those of the regulated entity. A third-party regulated entity may act as a third-party introducer and as an external service provider depending on the due diligence measures.

5.1.2. Procedure for appointing a third-party introducer

According to Article L. 561-7 I 1° of the Monetary and Financial Code, the third-party introducer must meet certain quality and geographical location requirements. **It is the responsibility of the regulated entity to ensure that this is the case.**

- **The third-party introducer may be a professional person practising his/her profession or business or having his/her registered office in France subject to the AML/CFT rules referred to in 1° to 2° b or in 3° a, 5°, 6°, 12°, 12° a or 13° of Article L. 561-2 of the Monetary and Financial Code, i.e. either an entity subject to supervision by the ACPR, except for intermediaries in banking operations and payment services and intermediaries in crowdfunding, or an entity subject to supervision by the AMF, or a law or accounting professional;**
- **The third-party introducer may also be a person belonging to an equivalent category** to those mentioned in 1° to 2° b or in 3° a, 5°, 6°, 12°, 12° a or 13° of Article L. 561-2 of the Monetary and Financial Code **under foreign law and established in an EU or EEA Member State**, which implies that he/she is subject to the AML/CFT regulations of that EU or EEA Member State and subject to the supervision of the competent authority of that State;
- **The third-party introducer may also be a person belonging to an equivalent category** to that mentioned in 1° to 2° b or in 3° a, 5°, 6°, 12°, 12° a or 13° of Article L. 561-2 of the Monetary and Financial Code **under foreign law and established in a third country (outside the EU or EEA)** that imposes equivalent obligations in terms of AML/CFT, which implies that he/she is subject to the AML/CFT regulations of that third country and subject to the supervision of the competent authority of that country.

Position

In all cases, appointing a third-party introducer must be based on a risk-based approach conducted by the regulated entity, including:

- **Analysing the risks potentially posed by the third-party introducer (nature of the business operated by the third-party introducer, nature and purpose of the business relationship likely to be entered into with the client). This analysis must be subject to written procedures (analysis criteria, etc.).**
- **Reviewing the potential risks with regard to its risk classification.**
- **Verifying the information available with the national and international bodies engaged in AML/CFT²⁴ as regards the quality of the anti-money laundering and counter-terrorism financing regulations applicable in the third-party introducer's country.**
- **Consulting, where appropriate, its subsidiaries, branches or group entities located in the third-party introducer's country in order to check the reputation of the third-party introducer.**
- **Searching for potential public sanctions, including criminal ones, imposed on the third-party introducer that may contain one or more AML/CFT complaint,²⁵ and, where applicable, the remedial measures taken by the third-party introducer as a result of this sanction.**

²⁴ In particular the FATF mutual evaluation reports available on the FATF website.

²⁵ In particular the sanctions issued by the AMF and the ACPR or by their counterparts for third parties located outside France. The regulations do not prohibit the appointment of a third-party introducer that has been sanctioned.

As part of the risk-based approach, the regulated entity must ensure that the third-party introducer (French or foreign) is able to implement, on a permanent basis, the French AML/CFT obligations provided for in Article L. 561-5 I and Article L. 561-5-1 of the Monetary and Financial Code (see below).

5.1.3. Controls and responsibilities

Pursuant to Article R. 561-13 of the Monetary and Financial Code, a **written agreement is entered into** between the regulated entity and the third-party introducer, which sets out the procedures for monitoring the due diligence measures implemented by the third-party introducer.

The regulated entity's internal control system (both permanent and periodic)²⁶ ensures compliance with the provisions of the agreement, with the regulated entity remaining responsible for the related AML/CFT obligations.²⁷ The regulated entity must therefore formalise appropriate procedures and implement the relevant controls to ensure that it complies at all times with the legal and regulatory provisions of Articles L. 561-5, L. 561-5-1 and L. 561-6 of the Monetary and Financial Code.

In any event, it is the duty of the regulated entity to justify to the AMF that it has implemented control procedures to ensure that it has a firm grasp on using the services of the third-party introducer.

Should the third-party introducer and regulated entity using the services of the third-party introducer enter into an agreement, this would not release them from their respective AML/CFT obligations in respect of the legislation applicable to them. They must provide evidence to their respective supervisory authority that they meet their obligations.

5.1.4. Third-party introduction within a group

Pursuant to Article L. 561-7 of the Monetary and Financial Code, it is permitted, **within a group**, to appoint, as third-party introducer, a person **belonging to an equivalent category** to that mentioned in 1° to 2° b or in 3° a, 5°, 6°, 12°, 12° a or 13° of Article L. 561-2 of the Monetary and Financial Code **under foreign law and established in a third country (outside the EU or EEA) included on the European blacklist**.

The third-party introducer may belong to the same group as the regulated entity under the following conditions:

- The third-party introducer mentioned in 1° to 2° b or in 3° a, 5°, 6° or 8° of Article L. 561-2 of the Monetary and Financial Code **belonging to an equivalent category under foreign law**;
- The group is a group within the meaning of Article L. 511-20, excluding mixed groups, a financial conglomerate within the meaning of Article L. 517-3 or a group within the meaning of Articles L. 322-1-2, L. 322-1-3 and L. 356-2 of the Insurance Code or within the meaning of Article L. 111-4-2 of the Mutual Society Code or within the meaning of Article L. 931-2-2 of the Social Security Code;
- The group **applies the measures provided for by the legal or regulatory provisions of French law** in accordance with Article L. 561-33 when the parent company has its registered office in France, or **equivalent measures when this is not the case**;
- Where the third-party introducer is located in a third country that appears on the list of high-risk third countries with strategic deficiencies published by the European Commission (Delegated Regulation (EU) 2016/1675), **the group must notify the ACPR** that it uses this third-party introducer, together with the

²⁶ Articles R. 561-38-3 and R. 561-38-4 of the Monetary and Financial Code and Articles 320-20, 321-147 and 550-10 of the AMF General Regulation.

²⁷ Article L. 561-7 of the Monetary and Financial Code.

documents justifying that the group ensures that the third-party introducer has implemented the group procedures mentioned in Article L. 561-33.

Position

Where the third-party introducer is part of a group, the regulated entity may rely on the existing procedures, organisation structure and internal control at the group level to ensure that the third-party introducer carries out its due diligence, provided that these procedures and controls cover the third-party introducer effectively. The agreement covering the third-party introducer may consist of an internal procedure.

5.1.5. Sending and sharing of information collected by the third-party introducer

Sending information between the third-party introducer and the regulated entity using it

To ensure compliance with Article L. 561-5 I and Article L. 561-5-1 of the Monetary and Financial Code, the regulated entity using the services of a third-party introducer must be in possession of the identity details of the client and verify these details (and those of the beneficial owner, where appropriate), the information relating to the nature and purpose of the business relationship and any other relevant information.

Two cases should be highlighted:

- a) Where the third-party introducer is governed by French Law, the regulated entity using its services must be able to have access to the information obtained by the third-party introducer before entering into the business relationship²⁸ in accordance with Articles R. 561-5 and R. 561-12²⁹ of the Monetary and Financial Code, since the third-party introducer is subject to the same obligations as the regulated entity.
- b) Where the third-party introducer is located outside France, verifying the client's identity (and that of the beneficial owner where appropriate) and gathering information on the business relationship may not necessarily be based on the regulated entity's access to the aforementioned information.

In accordance with the law applicable to the third-party introducer, the information and documents collected by the foreign third-party introducer when entering into the business relationship with the client³⁰ do not necessarily comply with the French legislative requirements for entering into a business relationship.

Position

Where the third-party introducer is located outside France, the regulated entity must ensure that the information obtained by the third-party introducer satisfies the requirements of French legislation.³¹ Where the information obtained by the third-party introducer does not enable the regulated entity to comply with the obligations provided for in Articles L. 561-5 and L. 561-5-1, it must not enter into a business relationship or carry out transactions in accordance with Article L. 561-8, or it must implement, itself or by any other means (e.g. through outsourcing), the obligations of due diligence.

²⁸ The third-party introducer is often already engaged in a business relationship with the client for which it acts as an introducer for similar activities or not.

²⁹ The information related to the knowledge of the client and of the business relationship likely to be collected for the purpose of assessing the AML/CFT risks is listed in the Order of 2 September 2009 adopted pursuant to Article R. 561-12 of the Monetary and Financial Code.

³⁰ In this case, it is often a client established in the country of the third-party introducer whose identity must be verified by means of other supporting documents than those referred to in Article R. 561-5-1 of the Monetary and Financial Code.

³¹ Pursuant to Article L.561-7 I b) of the Monetary and Financial Code.

In all cases, where the regulated entity has good reasons to believe that the identity of the client and the identity details previously obtained by the third-party introducer are no longer accurate or relevant, it must carry out again the procedures to identify and verify the identity of the client, pursuant to Article R. 561-11 of the Monetary and Financial Code.³²

- What are the procedures for exchanging information between the third-party introducer and the regulated entity?

In accordance with Article L. 561-7 of the Monetary and Financial Code, the regulated entity has access to the information collected by the third-party introducer. Article R. 561-13 of the Monetary and Financial Code stipulates that the third-party introducer must, **without delay**, send the information and copies of the documents that it has collected as part of implementing the due diligence measures to the regulated entity.

In accordance with the same Article, the **procedures for sending** information and documents collected as part of implementing the due diligence measures and the procedures for monitoring those measures must be specified in a written agreement between the regulated entity and third-party introducer.

These procedures must be defined in such a way as to enable the regulated entity to fulfil its obligations, including detecting PEPs or persons subject to asset freezing measures. It is possible to implement automated real-time information-sharing systems.

The agreement entered into between the regulated entity and the third-party introducer must **also stipulate the procedures for retaining the information and copies of documents collected** and may specify the main contacts for each party.

Sharing the information collected with other entities

Pursuant to Article L. 561-7 II of the Monetary and Financial Code, the regulated entity may communicate the information³³ obtained from a third-party introducer:

- To another person mentioned in Article L. 561-2 1° to 6° of the Monetary and Financial Code, located or having its registered office in France (excluding payment institutions that mainly provide the money transfer services);
- To an institution offering financial activities equivalent to those carried out by the persons referred to in Article L. 561-2 1° to 6° under the following cumulative conditions:
 - The institution receiving the information must be located in another Member State of the European Union, in a State party to the EEA agreement or in a third country that imposes equivalent obligations in terms of AML/CFT included on the list compiled by order of the minister responsible for the economy, or be part of a group or a financial conglomerate that has introduced an organisation and the procedures mentioned in Article L. 561-33 of the Monetary and Financial Code.³⁴
 - The institution receiving the information must ensure an adequate level of protection with regard to the private life and the fundamental freedoms and rights of persons when dealing with information of a personal nature, pursuant to Articles 68 and 69 of the French Data Protection Act No. 78-17 of 6 January 1978.³⁵

³² It is the regulated entity's responsibility to carry out this new identification/verification procedure.

³³ Information obtained pursuant to Articles L. 561-5 I and L. 561-5-1 of the Monetary and Financial Code.

³⁴ Order of 27 July 2011 on the list of third countries imposing equivalent AML/CFT requirements.

³⁵ The countries of the EEA are considered as providing an equivalent level of protection of personal data. In these countries, the processing of personal data is governed by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, which repeals Directive 95/46/EC.

5.1.6. Special Cases

Using a third-party introducer can prove problematic under certain circumstances, and the attention of regulated entities should be drawn to the following cases, which all pose high risks in terms of controlling the third-party introducer:

- **The third-party introducer reduces or enhances the intensity of its client due diligence measures**, either because of its own assessment of the risk or because of the domestic law applicable to it. In this case, the regulated entity that uses the services of a third-party introducer is required to verify the level of risk posed by the client with regard to French laws and verify its own risk classification so as to determine whether the due diligence measures implemented by the third party are sufficient.

Position

The agreement between the regulated entity and the third-party introducer provided for in Article R. 561-13 of the Monetary and Financial Code includes among the control procedures an obligation for the third-party introducer to inform the regulated entity of the reduction or increase in intensity of the measures provided for in Articles L. 561-5 I and L. 561-5-1 of the Monetary and Financial Code that have been implemented.

- **The third-party introducer introduces a client that is considered a “politically exposed person” according to its own legislation.**

Position

The regulated entity must verify whether or not the status of “politically exposed person” is applicable in France too and, where appropriate, authorise entering into a business relationship with the “politically exposed person” pursuant to Article R. 561-20-2 1° of the Monetary and Financial Code, regardless of the due diligence conducted by the third-party introducer.

Conducting client identification and identity verification due diligence is distinct from the decision to enter into a business relationship, which is a decision that may be made only by a member of the executive body of the regulated entity to whom the “politically exposed person” is introduced (or by any other accredited person by the executive body for this purpose).³⁶

- **The third-party introducer is responsible for ensuring the application of Article L. 561-10 of the Monetary and Financial Code** on additional due diligence measures with regard to the client, certain products or transactions:

The cases referred to in the aforementioned Article require that the regulated entity implement a risk-based approach to ensure that the third-party introducer:

- complies with the additional due diligence measures referred to in the aforementioned Article or equivalent measures under its national legislation;
- is able to provide without delay relevant and quality information on the client, product or transaction, even where this information is different from that required in the third-party introducer’s country.

5.2. Outsourcing

Outsourcing enables a regulated entity to instruct a third-party external service provider to carry out, in its name and on its behalf, all or part of the due diligence relating to its AML/CFT obligations.

It is nevertheless governed by regulations.

³⁶ Article R. 561-20-2 1° of the Monetary and Financial Code.

In accordance with Article R. 561-38-2 of the Monetary and Financial Code, the implementation of TRACFIN reporting obligations cannot be entrusted to an external service provider. However, these provisions in no way preclude the option of appointing, within a group, a TRACFIN reporting person shared by the various entities of the group, pursuant to Article R. 561-28 of the same code.

All regulated entities under AMF supervision may use outsourcing.

Services outsourced to a third party are considered as being performed by the regulated entity itself and must be carried out in accordance with the AML/CFT obligations for which it is directly responsible. Accordingly, the regulated entity's procedures must be used to carry out the AML/CFT due diligence/activities.

Nevertheless, where the external service provider is itself subject to AML/CFT obligations, the outsourcing agreement must reflect the procedures put in place by that provider, together with the regulated entity where appropriate, to comply with AML/CFT obligations.

The regulated entity's internal control system, both permanent and periodic, must also cover the activities that the regulated entity has outsourced, where applicable, to an external service provider, with the regulated entity remaining responsible for compliance with the relevant AML/CFT obligations. Regulated entities must ensure in particular that the due diligence measures outsourced to a service provider have been implemented effectively and in accordance with their own procedures by the external service provider.

Where regulated entities make use of a technological solution developed by a third party, for example for remote identification, detection of PEPs or monitoring of unusual transactions, it is their responsibility to:³⁷

- Assess the risks posed by the tool, its reliability and its compatibility with their procedure;
- Ensure that the external service provider has a back-up solution to guarantee continuity of service or, failing that, provide the service itself.

The requirements and procedures for outsourcing must be defined in the outsourcing agreement entered into between the regulated entity and external service provider, including the procedures for accessing the information required by the regulated entity to comply effectively with its reporting obligations. If a technological solution developed by a third party is used, this agreement must stipulate that the contracting parties must be notified of changes to the solution (e.g. functionalities, algorithms used, sources accessed through the tool, etc.) and that their prior consent must be obtained.

³⁷ See the opinion of the European supervisory authorities on the use of innovative solutions for implementing client due diligence obligations (JC 2017 81).