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BRINGING THE CHANGE

Bringing the change

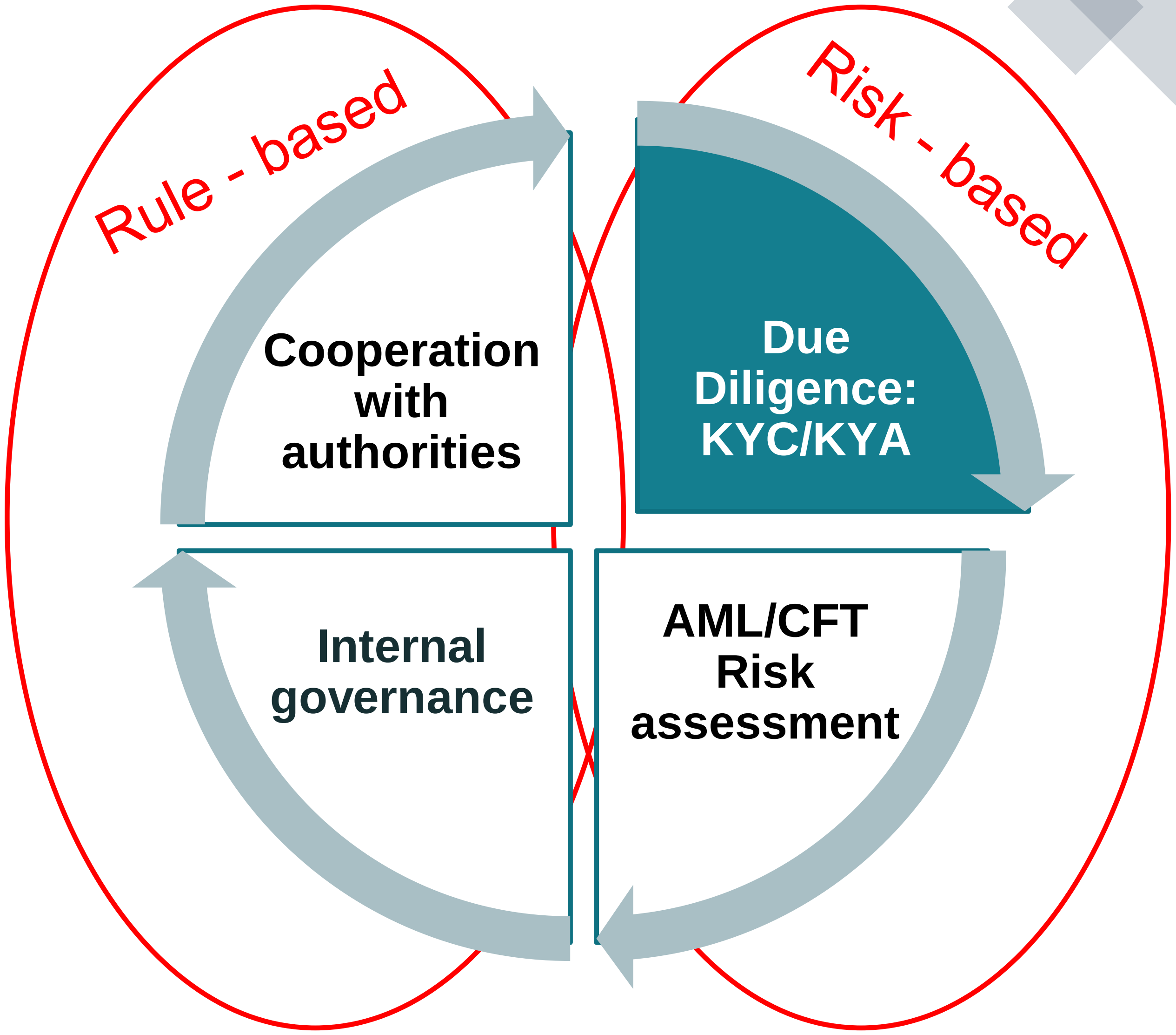
AML/CFT Law 2004
Main obligations

Luxembourg AML/CFT framework is robust, complex and fast tracking in respect of any new regulatory requirements imposed either by European Commission or FATF.

Among main documents which we have to basically know by heart are:
AML Law 2004 as amended in August 2022
CSSF Regulation 12-02 as amended by 20-05
CSSF Circular 19/732

Therefore, CSSF expects you to have outlined AML/CFT framework as a minimum, which concern your AML/CFT governance and excluding your oversight obligations as per 18/698.

CSSF additionally puts the layer of **Rule based and Risk based** obligations meaning that some obligations you can't avoid - full stop - and some can be leveraged by the risk based approach in place. Even though it is up to you to determine such Risk Based Approach, it should be still sufficient enough to meet CSSF AML/CFT requirements.



Due Diligence measures: KYC/KYA

Your main Due Diligence obligation is to know your counterparty control structure. Where natural persons are not exclusively and/or directly involved in the ownership structure of the customer, **the professional may need to look through several layers** of legal entities to determine whether a natural person owns finally more than 25% of shares or voting rights or ownership interests of the legal person customer. Please be aware that it depends n your Risk Based approach if you want to screen all layers and counterparties involved in the portfolio.

FATF outlines obligations to screen below names at minimum.

ASSET → IMMEDIATE SHAREHOLDER → UBOs

You have to know and assess each **business relationship** – relationship which is placed with AIFM on continuous basis, thus having an element of duration: Customer - Investor, Investments – Assets, Counterparties

In respect of your Due Diligence obligations concerning Portfolio side, CSSF expects you to follow below requirements based on your risk-based approach taken:

(CSSF Regulation No 20-05, Article 34)

- the professionals shall carry out an analysis of the ML/TF risk posed by the investment
- take due diligence measures adapted to the risk assessed
- Document and formalize such analyses.

The risk analysis on investments shall be reviewed annually and when particular events require it.

AML/CFT Risk assessment and documentation

Each professional subject to AML Law supervision has to perform **Risk Assessment** on the AIFM itself, Fund, Counterparties and Investments. **Therefore each asset has to have AML/CFT risk scoring.**

Your AIFM and Fund AML/CFT Risk assessment is a Business-wide risk assessment outlining representation of a background of your risk-based approach taken. This reports have to be reviewed annually, confirmed by the Board annually.

There must be a correlation between you AML/CFT Risk assessment on the assets and portfolio with your business wide Fund Risk Assessment.

Risk based approach can be drafted in a separate document approved by the Board or can be part of your AML/CFT Procedures. This is your methodology of a way to justify and reflect how your organization will be conducting Due Diligence on assets based on the types of those assets, strategy, complexity of such asset acquired.

Risk based approach implementation gives flexibility, but doesn't remove your obligations to be compliant

Know Your Asset

Know Your Asset

Enhanced DD	Simplified DD	Normal DD
Formalized REPORT	Ongoing monitoring/ Screening	Periodic review

Internal Governance

CSSF Regulation No 20-05 of 14 August 2020 amending CSSF Regulation No 12-02 on the fight against money laundering and terrorist financing" states in Article 39: The adequate and effective supervisory system shall be part of a sound governance and internal management with respect to AML/CFT as laid down in Article 4 of the Law. This governance and internal management system with respect to AML/CFT shall follow the three lines of defence

FIRST LINE OF DEFENSE - the first line of defence shall be composed of operational units (persons in charge of the execution of business), which is, in principle, in direct contact with the customers and which shall have a good understanding of ML/TF risks

- Portfolio management team
- Operations management team

SECOND LINE OF DEFENSE -the second line of defence shall be composed of the compliance officer, including other support, control and compliance functions involved in AML/CFT. The role of the second line of defence includes providing support, verifying the controls carried out by the first line of defence and contributing to the independent risk control. The involvement of the second line of defence shall increase according to the level of risk attributed to a customer;

- Compliance
- Risk management

THIRD LINE OF DEFENSE - the third line of defence shall be composed of the internal audit function which assesses independently the first two lines of defence and which verifies also the effectiveness of the implemented AML/CFT policies, procedures and programmes."

- Internal audit

Cooperation with authorities – Rule based

Screening obligations: CSSF Regulation 12-02 amended, Article 39 (1) Professionals shall have procedures and implement control mechanisms that allow them, when accepting customers or monitoring the business relationships, to identify, among others:

- Screen PEPs and implement adverse media checks on those
- Monitor complex or unusual transactions
- Sanctions screening: Identify the States, persons, entities and groups subject to restrictive measures in financial matters with respect to the assets it manages and to ensure that the funds will not be made available to these States, persons, entities or groups."

Reporting obligations: Pursuant to the law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended ("AML/CFT Law"), professionals, their directors, officers and employees are obliged:

- Cooperate fully with the Luxembourg authorities responsible for combating money laundering and terrorist financing
- Inform without delay, on their own initiative, the Financial intelligence unit ("FIU") when they know, suspect or have reasonable grounds to suspect that money laundering, an associated predicate offence or terrorist financing is being committed, has been committed or attempted.

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