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COMMISSION FOR THE  
PREVENTION OF MONEY  
LAUNDERING AND  
MONETARY OFFENCES

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SAMPLE  
CATALOGUES OF  
RISK  
TRANSACTIONS  
RELATED TO  
MONEY  
LAUNDERING AND  
TERRORIST  
FINANCING

**INVESTMENT  
FIRMS**

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## Introduction and regulatory framework

Act 10/2010, of 28 April on the prevention of money laundering and the financing of terrorism establishes the status of obliged persons regarding investment service companies and those engaged in the management of collective investment institutions.

This status implies a legal duty to comply with a series of obligations to prevent money laundering and terrorist financing as outlined in the Act and the implementing regulations.

Among these obligations, Article 17 of Act 10/2010, of 28 April, states that the obliged persons shall closely examine any act or transaction, regardless of the amount, which, due to its nature, may be related to money laundering or terrorist financing, preparing a written report of the examination results. In particular, the obliged persons shall closely examine any transaction or pattern of behaviour that is complex, unusual or does not have an apparent economic or lawful purpose, or shows signs of fraud or simulation.

This legal obligation also implies that the obliged persons, by establishing the internal control measures referred to in Article 26, shall define the manner of fulfilment of this duty of special examination and shall prepare **a list of transactions likely to be related to money laundering or terrorist financing, and shall ensure its dissemination among its managers, employees and agents**, and the periodic review of the list.

Therefore, the Commission for the Prevention of Money Laundering and Monetary Offences, in the exercise of its functions, in collaboration with associations in this sector and in order to make it easier for these entities to comply with this legal obligation, has prepared this sample catalogue of risk transactions, which lists examples of transactions which may be linked to money laundering and terrorist financing.



## Content and purpose of the risk transactions catalogue

This sample catalogue of risk transactions aims to guide those investment firms and collective investment management companies listed as obliged persons under Act 10/2010 for the compliance of the obligation of special inspection. For this purpose it contains a series of behaviours or patterns to be taken into account by those obliged within this sector when developing their own list of risk transactions as required by law.

The obliged persons must always bear in mind that this catalogue does not comprehensively list all possible cases of risk transactions possibly linked to money laundering and terrorist financing, on the contrary, the obliged person must develop its own list of transactions adapted to its experience and risk assessment, although the guidelines of this sample catalogue are designed to assist and guide the obliged persons towards compliance.

The inclusion of transactions in this catalogue does not imply that they are necessarily linked to money laundering or terrorist financing activities, merely that they are “likely” to be linked to these activities, to the extent that they comprise a number of risk factors.

The role of the obliged persons is to determine, through the special inspection, if the specific transactions detected, which are included in their own list of risk transactions, display signs of being linked to money laundering or terrorist financing. In particular, they shall report to the Executive Service of the Commission (SEPBLAC) any transactions showing obvious inconsistencies with the nature, turnover or operational background of the customers, provided that, after the special inspection, no economic or professional justification to carry out such transactions is found.

Thus, it is possible that, after performing the special inspection of certain transactions, it is concluded that they do not present evidence of being related to money laundering or terrorist financing, despite their inclusion in this catalogue, and accordingly they shall not be reported to SEPBLAC.

It is important to emphasise that the special inspection is essential, and therefore SEPBLAC may not be reported to merely based on the fact that the transactions are included in this catalogue. The obliged persons must perform the special inspection in all cases, but only when finding circumstantial evidence shall they issue the relevant communication.



Similarly, it should be noted that the legislation on this subject has a clearly preventive nature, in order to prevent funds coming from criminal activities from being channelled through the sector. Therefore, it is essential to strengthen two types of measures:

- Firstly, those designed to detect suspicious transactions before they are carried out, in order to prevent illicit proceeds from entering the system.
- Also, those enabling an in-depth examination of transactions, so as to obtain enough data to prevent future transactions that follow the same pattern.

Finally, obliged persons should be reminded that the reports sent to SEPBLAC under the provisions of Article 18 of Act 10/2010, should contain the information and data required in paragraph 2 of this Article, and in any case must be a result of a special structured inspection of the transactions.



## Indicators and examples of potential risk transactions

### A. RISKS ASSOCIATED WITH THE PARTIES INVOLVED

#### Customer identification is impossible or difficult<sup>1 1</sup>

- a) Failure to obtain or verify customer identification data.
- b) Contacting the beneficiary of the transaction, once identified, is impossible.
- c) Potential customers refusing to provide their business details or giving false or incorrect data.
- d) Customers repeatedly using schemes such as communities of property or similar to change the ownership of assets, when there is evidence of such schemes being used precisely in order to produce a change in the ownership.

#### Characteristics and behaviour of the parties involved

- a) Customers or proxies who are nationals or residents of tax havens or high-risk territories, defined as those that are listed for this purpose by the Spanish authorities and other international organisations to which Spain is party. In addition to the above, each entity may, depending on other variables, determine which territories or jurisdictions shall be subject to the same types of measures.
- b) Customers or proxies who are nationals or residents of countries not cooperating in the fight against money laundering and terrorist financing; jurisdictions with scarce regulation or none whatsoever, or States in which the existence of particularly active criminal organisations is a known fact (e.g., drug trafficking, organised crime, human trafficking, support for terrorism, etc.).
- c) Customers with publicly known criminal or police records or linked to persons subject to transactional bans or linked to terrorist financing activities.

<sup>1</sup> Furthermore, in some cases the entity should refrain from carrying out the transaction or terminate the relationship with the customer



- d) Customers considered Persons with Public Accountability or who are related with such persons pursuant to the legal definition thereof.
- e) Customers who avoid attending offices and operate through remote systems, provided that this is not consistent with the customer's usual behaviour or lacks any economic sense.
- f) Customers giving the same address or telephone number as those of another seemingly unrelated customer.

#### Acting through nominees

- a) Customers who systematically act through nominees so that their identity is not known.
- b) Customers who purchase a large number of shares or stocks and put them in the name of different companies or individuals, provided that such transaction is devoid of economic logic.
- c) Coordinated actions of two or more parties (or represented by a single person) in order to transfer funds between them under the guise of results produced in contracting market operations (e.g. derivatives markets through the member's daily account and subsequent breakdown to the parties' accounts).
- d) Customers who state or appear not to act on their own behalf, or who introduce another customer with the intention of avoiding or relaxing customer due diligence.

#### Using transactions or structures intended to obscure shareholder identity.

- a) Using schemes that may impair the ability to identify the ultimate owner, such as using -without any apparent economic or lawful logic- a Spanish investment firm to custody foreign securities whose ownership is more difficult to trace back to the original registration system of such securities. (For example, customers hiring the custody of German securities when this could be done directly with a German entity, provided that this scheme does not have a reasonable logic such as the use of an entity as the global custodian of the customer's portfolio or similar).
- b) Subjecting share loan contracts or other transactions involving a change of ownership to jurisdictions which hinder or prevent the investment firm from obtaining information about the successful outcome of the operation when such choice of jurisdiction is not justified.



- c) Instructions to transfer the amount resulting from the settlement of transactions to persons other than the holder without any apparent economic logic.



**B. RISKS ASSOCIATED WITH THE MEANS OF PAYMENT USED**

- a) Purchase of a large amount of financial instruments and shares in collective investment schemes by means of cash deposits, with the possibility of immediate surrender.
- b) Deposits made by the administrators or managers of assets in cash, bearer cheques or other transferable means of payment, when the data of the customer on whose behalf the purchases are made are not specified, or even where specified , if they do not confirm the lawful source of the funds.
- c) Payments made by cash deposits by different persons in favour of a third party customer of the entity.
- d) Customers wishing to invest through bank cheques, cashier's cheques or other banking instruments, especially when involving amounts that are slightly below the legal thresholds, where the transaction is not related to the customer's usual investment practice.
- e) Transactions through bearer cheques, either directly or by cheque endorsement through a third party.
- f) Transactions paid by transfers ordered by companies or persons other than the purchaser, without the submission of documents and evidence showing a relationship between them.



### C. RISKS ASSOCIATED WITH TRANSACTIONAL CHARACTERISTICS

- a) Transactions devoid of logic or any apparent economic or lawful purpose.
- b) Customers constantly and systematically unconcerned about returns. In particular, the following transactions may be included:
  - Customers who purchase shares or stocks and upon their sale are unconcerned about any losses which, depending on their profile, may be relevant.
  - Customers declaring that the management should seek losses.
  - Customers making investment decisions that are not consistent with the investment policy and contrary to their usual practice.
  - Customers giving specific instructions to perform the portfolio management transactions using a particular entity or particular assets. (This operation may hide a planned change of ownership).
- c) Successive transfers, close in time, of securities representing the share capital of unlisted companies whose value increases or decreases significantly and without an economic or legal reason to justify same.
- d) Transfers of funds issued from a large number of accounts and received by an investment fund (or several funds managed by the same Management company) to subscribe for shares on behalf of a single customer.
- e) Accounts at investment firms with significant cash balances and certain permanence in time.
- f) Purchases and sales of illiquid listed securities at prices significantly different from market prices (e.g. purchase of shares of investment companies at prices that differ significantly from the legal conditions to be met by the company).
- g) Tax arbitrage by laundering dividends with clear signs of concealing the customer's identity using derivative transactions to cover the risk of the two-month tenure term required by tax regulations.
- h) Transfer of securities received or ordered from tax havens or designated territories.



- i) Inactive accounts suddenly receiving large investments that are unrelated to the customer's normal business.
- j) Transfers of funds or securities between accounts belonging to seemingly unrelated customers and without any apparent economic logic.
- k) Where the nature or volume of customer transactions are not consistent with their operational or patrimonial background.
- l) Market transactions with large amounts of illiquid listed shares that generate appreciable changes in their quoted price, possibly aimed at creating an apparently legal source of the funds in a subsequent transaction. Where such intention is confirmed, the case would not be considered a high-risk transaction, yet a suspicious transaction.
- m) Purchase of unlisted companies in organised markets that are in financial difficulties or without any activity, provided that the buyer's known profile does not justify such practice.
- n) Receiving orders to operate in a certain manner, when another structure would be more logical for the transaction in question, and also the form chosen by the customer greatly obscures the transaction. (This would be the case of customers using a Spanish entity to perform transactions in a foreign market, and requesting custody in Spain or in another third territory other than that of origin, without any apparent reason).
- o) Design transactions or customers requesting the design of OTC structures (custom designed operations not contracted on organised secondary markets) with or without the use of derivatives, the use of which has no apparent economic or lawful purpose.
- p) Instructions to liquidate transactions that stray from standard, usual or logical schemes in terms of market practices. (For example, the use of share loans for liquidation without the loan being returned – with or without guarantees - when the customer's characteristics and ordinary or reasonably expected operational practice do not justify the transaction).
- q) Frequent changes in the accounts used by a single customer so transactions may not be easily tracked.
- r) Alleged purchase and sale transactions of stocks or financial instruments through non-registered entities ("boiler rooms"), especially when the contributions for settlement are made in cash and / or are sent to alleged intermediaries in tax



havens or to omnibus accounts owned by foreign intermediaries registered in their respective countries.

- s) Purchase and sale of significant quantities of shares in the name of entities domiciled in legally obscure countries, but on behalf of unknown third parties, especially when such entities do not usually operate with the shares.