

NKF Banking, Finance & Regulatory Team – Update 01/2018

Publication of the revised FINMA-Circular 2016/07 "Video and Online Identification"

The Swiss Financial Market Supervisory Authority ("FINMA") published the final draft of the revised Circular 2016/07 "Video and Online Identification" ("Circular 2016/07") on 17 July 2018. Circular 2016/07 is applicable to financial intermediaries ("FI") according to Art. 2 para. 2 of the Swiss Anti-Money Laundering Act ("AMLA") as well as FIs according to Art. 2 para. 3 AMLA.

The revised Circular 2016/07 will enter into force granting a transitional period which last until 1 January 2020. In other words, until 1 January 2020 the FI can choose whether to apply the previous requirements under Circular 2016/07 or implement the revised (less stringent) requirements. Originally, a transitional period of six months was envisaged, which, however, was deemed too short in particular by interest groups of banks.

1. Key changes

The most important changes in comparison to the previous version of Circular 2016/07 are:

- Identity verification must be done by one optically variable and **additionally another randomly selected security feature**;
- The requirement to **identify** the contracting party **via a TAN** (or comparable method) has been **repealed**;
- Option to **continue identification procedure** in case of **indications for increased risks**;
- Explicit requirement for **adequacy of quality of the image**;
- Only **official identification documents of the respective issuing country** may serve as proof of identification;
- **Documentation requirement for each identification process**;
- The FI assesses the **authenticity of the identification** document by checking at least **two randomly selected security features**. Furthermore, the FI ensures that the photograph of the contracting party was taken during the identification process;
- In case of electronic copies of an identification document, a payment by the contracting party may also be transferred from **an account held** in the contracting party's name at a bank **in a member state of the Financial Action Task Force (FATF)** (in addition to banks in Switzerland and Liechtenstein).

2. Identity verification

According to Circular 2016/07 the FI will be required to review the authenticity of the identification documents by using a specific device to read and decrypt the information in the Machine Readable Zone ("MRZ") and by examination of **one optically variable** and (newly) an **additional further randomly selected security feature** of the identification document. Examples of other security features are, e.g., a coloured line pattern (guilloche) or optically recognizable elevations (ID number, date of birth, size etc.).

In case the FI is **not familiar with the identification document** (and only in such case), it is required to **compare such document to reference documents according to an identity document database** with regards to security features, character type and size, and layout. This is particularly the case if certain documents are presented only rarely or irregularly to the FI in question and in particular concerns identity cards of foreign countries.

The requirement to verify the identity of a contracting party **via a TAN** or comparable method has been **abolished** as it was deemed to offer **little added value**. In contrast, the FI continues to be required to verify the contracting party's residential address.

3. Stopping the video identification process

The requirement to stop the video identification process in case of indications of increased risks was abrogated as well in the revised regulation. Consequently, the FI is permitted to **continue the identification process** even if there are **indications of increased risks**. However, the FI must ensure that a respective client is accepted only subject to **approval of a supervisor, a superior department or the management board** according to Art. 18 AMLO-FINMA.

4. Online identification process

a) Electronic copy of an identification document

The following three requirements for the online identification by electronic copy of an identification document were added to Circular 2016/07:

- The image quality must be suitable to enable correct identification. The FI, may use technical means to compensate for difficult lighting conditions;
- During the identification process, only official identification documents of the respective issuing country (which have a MRZ and optical security features such as holographic-kinematic features or printing elements with a tilting effect) may serve as proof of identification;
- The FI must document each identification process. The photographs of the identification document and the contracting party and, where appropriate, the qualified electronic signature must be stored.

Please note: In the consultation procedure of the draft revised Circular, it was proposed to include a requirement according to which merely specifically trained employees of the FI would have been allowed to conduct an online identification procedure. This proposal was strongly criticized as it would not have permitted the delegation of this function. The proposal was therefore abolished in the final version of Circular 2016/07.

b) Electronic copy of an identification document authenticated by the financial intermediary

The following three requirements for the online identification by electronic copy of an identification document were included in Circular 2016/07:

- The FI obtains photographs of all the relevant pages of the contracting party's identification document. The FI verifies that the photograph taken of the contracting party matches the photograph in the latter's identification document;
- The FI assesses the authenticity of the identification document by checking at least two randomly selected security features. It also ensures that the photograph of the contracting party was taken in the course of the identification process (selfie with liveness detection);
- In addition, the financial intermediary or custodian bank shall arrange to receiving a payment by the contracting party transferred from an account held in the contracting party's name at a bank in Switzerland or Liechtenstein. An account with a bank in a member state of the FATF is also deemed sufficient provided that such country has in its country audit by the FATF:
 - **not** been rated **non-compliant** with regards to the FATF recommendations on *customer due diligence* and *wire transfers*, and

- **not been rated low for "immediate outcomes" regarding supervision (No. 3) and preventive measures (No. 4).**

The foregoing equally applies in case of an electronic copy of an identification document with qualified electronic signature or in case of identifications of legal entities and partnerships.

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