

December, 2019

## FINANCIAL ANALYSIS UNIT PROVIDES GUIDELINES FOR THE EFFICIENT APPLICATION OF GENERAL INSTRUCTION NO. 59/2019

On December 6, 2019, the Financial Analysis Unit ("UAF") issued Resolution (oficio ordinario) No. 1745, applicable to all reporting entities detailed in Article 3 of Law No. 19,913 (e.g. banks, real estate management companies, insurance companies, among others), in order to enable them to effectively and correctly comply with General Instruction No. 59 dated May 24, 2019 ("Instruction No. 59").

According to the Recommendations of the Financial Action Task Force ("FATF Recommendations") to strengthen the fight against money laundering ("ML") and financing of terrorism ("FT"), Instruction No. 59 introduced amendments to General Instruction No. 49 of 2012, concerning Customer Due Diligence ("CDD"), electronic transfers of funds, and countries/high-risk jurisdictions.

### 1. Risk-Based Principle

In accordance with the criteria of the FATF Recommendations, the UAF provides that for a correct and effective application of Instruction No.59 the risk-based principle must be considered by the reporting entities, and therefore the measures and intensity of these (i.e. enhanced and simplified CDD measures) must be applied following the risk approaches already developed, according to the risk profile established by the reporting entities (both for their customers and for the products and services they offer). For the purpose of enabling the reporting entities to develop and/or review their ML/FT risk approach, they must consider as a tool the document "National ML/FT Risk Assessment (ENR)" issued by the UAF in 2017 (<https://www.uaf.cl/estrategia/evaluacion.aspx>).

### 2.- Rules relating to Electronic Transfers of Funds ("TEF")

**2.2.** TEFs sent: in relation to the TEFs sent by the reporting entities providing such service, they may determine the intensity of the application of the standard by virtue of their LA/FT risk schemes, based on the following guidelines:

**a)** For customers, types of transactions, products and/or services that the reporting entities determine in accordance with their risk approaches to be "low or standard risk", they shall incorporate and record the following: **(i)** amount, currency and date of the transfer; **(ii)** name or business name of the issuing client; **(iii)** number of identity card of the issuing client, for Chileans and residents, or of passport or similar identification document for non-resident foreigners. In case of legal entities, the ID or similar must be requested if it is foreign; **(iv)** account number of the issuing client and institution, or failing that, of the one used as reference for the operation; **(v)** address of the issuing client; and **(vi)** name or business name of the beneficiary.



If you have any questions regarding the matters discussed in this news alert, please contact the following attorneys or call your regular Carey contact.

**Guillermo Acuña**  
Partner  
+56 2 2928 2206  
gacuna@carey.cl

**Ricardo Reveco**  
Partner  
+56 2 2928 2213  
rreveco@carey.cl

**Héctor Juan Hernández**  
Associate  
+56 2 2928 2231  
hhernandez@carey.cl

**Pablo Albertz**  
Associate  
+56 2 2928 2203  
palbertz@carey.cl

This news alert is provided by Carey y Cía. Ltda. for educational and informational purposes only and is not intended and should not be construed as legal advice.

Carey y Cía. Ltda.  
Isidora Goyenechea 2800, 43<sup>rd</sup> Floor  
Las Condes, Santiago, Chile.  
[www.carey.cl](http://www.carey.cl)

In case of money transfer companies, these must be included: **(i)** country or borough of destination of the funds; and **(ii)** country of origin of the funds, or borough if they are domestic transfers.

**b)** For customers, types of transactions, products and/or services that the reporting entities determine in accordance with their risk approaches to be “high risk”, they shall assess, incorporate and record the following, in addition to the information indicated in a) above, one or more of the following relevant information: **(i)** form of payment by the payer (electronic transfer, cash, documents or other); **(ii)** identity card of the payee or passport in the case of individuals. In the case of legal entities, the ID or similar must be requested if it is foreign, and proof of its incorporation, type and legal status; and **(iii)** status of the transfer (settled, annulled, rejected or pending settlement).

### 3. Rules concerning Customer Due Diligence (“CDD”) measures

Each reporting entity, based on its currently risk approach, shall expressly define the criteria for the application to its customers, products and/or services of “standard”, “simplified” or “enhanced” CDD measures set out in Sections 3.1, 3.2 and 3.3 below.

**3.1** In accordance with the above, the reporting entities shall ask their customers for the following: **(i)** name or business name; **(ii)** identity card or passport in the case of individuals. In case of legal entities, the ID or similar must be requested if the person is a foreigner, and proof of their constitution, type and legal status; **(iii)** nationality, profession, occupation or job in the case of individuals, business purpose for legal entities; **(iv)** country of residence; **(v)** domicile in Chile or in the country of origin or permanent residence; **(vi)** e-mail and/or telephone contact; and **(vii)** purpose of the legal or contractual relationship, or of the occasional transaction.

**3.2** When it is determined that the ML/FT risks are high, whether in customers, products, services or others, the reporting entities shall apply “enhanced CDD measures”: **(i)** intended nature of the legal or contractual relationship; **(ii)** source of customer funds; **(iii)** source of customer assets; **(iv)** purpose of the act, operation and/or transaction intended to be performed or effected; **(v)** approval by senior management to start or continue the legal or contractual relationship; **(vi)** enhanced CDD on the customer; and **(vii)** additional customer information and more frequent updating of customer and beneficial owner information and identification documents.

**3.3.** When it is determined that the ML/FT risks are low, the reporting entities may apply “simplified CDD measures”: **(i)** completion of CDD data by use of third party sources of information; **(ii)** postponement of the obligation to verify the identification information of the customer and beneficial owner at the moment when an act, operation and/or transaction is performed above a determined monetary threshold; **(iii)** reduction in the frequency of updating of customer identification data; **(iv)** updating of CDD data based on information obtained from third sources; **(v)** reduction in the intensity of ongoing customer CDD; and **(vi)** exemption from the requirement for background information on the purpose of the legal or contractual relationship, or the occasional transaction.

Thus, according to the risk approach of ML/FT of each reporting entity, it will be expressly defined which of the measures mentioned in sections 3.1., 3.2. and 3.3. above must be applied with respect to its customers, products and/or services.

Finally, for both TEF and CDD adopted measures, the criteria used by the reporting entities to determine the level of ML/FT risk must be set out in writing in their respective risk analysis policies and/or ML/FT prevention manuals.

Resolution No.1745 of the UAF is available [here](#).