

# AML / CFT

Anti-money laundering and countering financing of terrorism

# Interpreting “ordinary course of business” Guideline

Updated in December 2017



## What is this guideline for?

1. This guideline is designed to help clarify the meaning of the phrase “in the ordinary course of business”. The meaning of this phrase is important if your business conducts one (or more) of the activities listed under the definitions of financial institution”, “designated non-financial business or profession”, and “high-value dealer” in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act).
2. If you conduct the activity “in the ordinary course of business”, your business will be a reporting entity under the AML/CFT Act. (This is the case unless any regulation or notice has declared your business not to be a reporting entity for the purposes of the AML/CFT Act.)
3. If you are unsure whether an activity you conduct is considered to be “in the ordinary course of business”, this guideline may help you. It explains how your AML/CFT supervisor is likely to approach the interpretation of this phrase.
4. This guideline sets out a number of factors which, when considered together, may indicate whether an activity is in your ordinary course of business. However, it cannot take into account the unique circumstances of your business. Further, it does not constitute legal advice from any of the AML/CFT supervisors and cannot be relied on as such.

## The meaning of “ordinary course of business” in the AML/CFT Act

5. Whether an activity is in your “ordinary course of business” will depend on your particular business. It is ultimately a question of judgement, which takes into account certain factors.
6. For most businesses, it will be obvious whether an activity they conduct is in their “ordinary course of business”. For example, it is in the ordinary course of business for most retail banks to accept deposits from the public.
7. Some businesses may, however, find it difficult to interpret this phrase. For example, a business that conducts an activity rarely, or in a very limited capacity, or only on certain occasions, may be unsure whether that activity is in its ordinary course of business.
8. If you are unsure whether an activity your business conducts is in your “ordinary course of business”, you should consider whether the activity:
  - Is normal or otherwise unremarkable for your particular business (ie, features in your systems, processes, advertising, staff training etc.)
  - Is frequent
  - Is regular
  - Involves significant amounts of money
  - Is a source of income for your business
  - Involves significant allocation of resources

- Is involved in a service or product that is offered to customers
9. You should consider the extent to which each factor accurately describes the activity in your business. Each factor is not definitive by itself; instead, all factors should be taken into consideration. Together, they will indicate whether the activity is in your ordinary course of business.
  10. For example, you may conduct an activity that is insignificant in scale or extent but it still may be in your ordinary course of business if you conduct it frequently and it features prominently in your advertising and staff manuals.
  11. If, after considering these factors, you are still unsure whether you are a reporting entity, you should seek professional legal advice, or contact your AML/CFT supervisor. If you have not established a relationship with a supervisor, contact your AML/CFT supervisor and they will advise you on what you need to do. If you are unsure of who your AML/CFT supervisor is, contact any of the AML/CFT supervisors for further assistance.

### **Activity considered normal or otherwise unremarkable**

12. Activities that are very unusual for a business, given its history and normal operations, are less likely to be considered “ordinary”. Various aspects of a business or operation may help you with this analysis. For example, if an activity features in your company’s staff manual and training, or if you have a prescribed procedure for it, it is more likely to be in your ordinary course of business. Likewise, if you advertise the activity, it is more likely to be in your ordinary course of business.

### **Frequency of the activity**

13. As with all factors set out in this guideline, whether an activity occurs frequently will require an assessment of the activity in the context of your business. The more frequent the activity over a period of time, the more likely it is to be an ordinary part of your business.

### **Regularity of the activity**

14. How regularly you conduct the activity is also a relevant factor. “Regular” in this sense means predictable, uniformly occurring and consistent. The more “regular” an activity, the more likely it is to be in your ordinary course of business.
15. For the avoidance of doubt, regularity in this context is closely related to frequency. However, they are distinct considerations: an activity that is conducted on the 4th of April each year is regular but not frequent.

### **Financial scale of the activity**

16. The amount of money involved in an activity, proportional to the rest of your business, is also relevant. The more money it involves, the more likely it is to be in the ordinary course of your business.

17. To assess this factor, we suggest you take a period of time and consider the money involved in the activity. Please consider both transaction values and the revenue your business derives from it. This averaging will give a more accurate indication of the nature of the activity in your business. For the avoidance of doubt, low-value activities may still be an ordinary part of your business, depending on the other factors outlined in this guideline.

### **Activity generates revenue**

18. A related, although separate, factor is whether the activity is involved in the generation of revenue. Naturally, an activity is more likely to be in the ordinary course of business if it is conducted with the intention of generating revenue.

### **Resources committed to the activity**

19. The more resources an activity consumes, the more likely it is to be in the ordinary course of business. Resources could mean staff time, capital expenditure and/or any other input. Once again, we suggest you take a period of time and consider the resources you commit to the activity in question.
20. For example, if you have a staff member who is permanently involved in a particular activity, it is very likely this activity is an ordinary part of your business.

### **Activity involved in offering to customers**

21. Most of the activities listed under the definitions of “financial institution” and “designated non-financial business or profession” in the AML/CFT Act explicitly involve a customer or third party. If an activity is involved in the offering of a product or service to customers or third parties, it is much more likely to be considered in the ordinary course of business.

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