



# **CUSTOMS AND EXCISE DEPARTMENT**

## **Guidelines on Criteria for Determining Fitness and Propriety**

For the grant of a licence under section 30, in Part 5, of the  
Anti-Money Laundering and Counter-Terrorist Financing  
(Financial Institutions) Ordinance, Chapter 615

**July 2013**

## **Guidelines for Determining Whether an Applicant for a Licence to Operate a Money Service is a Fit and Proper Person**

**The Guidelines set out the criteria which will be followed by the Commissioner of Customs and Excise ('CCE') in determining whether the applicant for a licence to operate a money service ('applicant') is a fit and proper person and to outline the considerations, which the CCE will have regard to in considering the grant of a licence to operate a money service ('licence').**

### **Introduction**

1. Section 30(3)(a), in Part 5, of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance, Chapter 615 ('AMLO') provides that the CCE may grant a licence to an applicant only if he is satisfied that the individual/each partner/each director/ultimate owner is a fit and proper person to operate a money service/to be associated with the business of operating a money service.
2. Section 30(4), in Part 5, of the AMLO details the matters the CCE must have regard to in determining whether an applicant is a fit and proper person. In addition to the matters he must have regard to, the CCE may take into account any other matter he considers relevant.
3. Whilst an applicant falling within section 30(4) will be subject to scrutiny as to his fitness and propriety to operate a money service, the CCE will have regard to the facts and circumstances of each individual applicant before determining whether he/she is a fit and proper person.

### **Application of the Guidelines**

4. The Guidelines apply to every applicant for a licence under Section 30 of the AMLO. The Guidelines are applicable to both the applicant for a licence as well as to the person who will hold the licence.

## **Criteria for Determining Fitness and Propriety**

5. In assessing an applicant's fitness and propriety, the CCE will take into account the following factors, which will be considered in the context of all the facts and circumstances of each individual case:
  - a. Whether the person has failed to comply with any requirement imposed under the AMLO or any regulation made by the CCE.
  - b. Whether the person, being an individual, is an undischarged bankrupt or is the subject of any bankruptcy proceedings under the Bankruptcy Ordinance.
  - c. Whether the person, being a corporation, is in the course of being wound-up or where a receiver, or such other person having the powers and duties of a receiver, has been appointed in relation to or in respect of any property of the corporation.
  - d. Whether the person has failed to comply with any conditions imposed by the CCE on the licence.
  - e. Whether the person has been convicted of a criminal offence which is not listed in section 30(4)(a) and (b), in Part 5, of the AMLO, but which has a significant and negative bearing on his/her honesty, integrity and reliability.
6. The Guidelines provide general guidance and are not intended to be exhaustive or comprehensive. In assessing the fitness and propriety of an applicant, each case will be considered on its own merits, taking into account all relevant factors including, but not limited to, the criteria set out in the AMLO and paragraph 5.
7. For avoidance of doubt, the Guidelines are advisory. An applicant for a licence to operate a money service or a licensee should seek legal advice where necessary if he/she has concerns about the AMLO and the application of its provisions to him/her.

## **Review of the Guidelines**

8. The Guidelines will be kept under review and may be revised from time to time as considered appropriate.

July 2013

Commissioner of Customs and Excise