



MSSB/SAN_01/2018

7 February 2018

Circular to Money Service Operators

Anti-Money Laundering / Counter-Terrorist Financing

United Nations Sanctions

In relation to Chapter 6 of the Guideline on Anti-Money Laundering and Counter-Terrorist Financing and further to our circular of 29 September 2017 on *Combating Financing of Weapons of Mass Destruction Activities*, the Customs and Excise Department (“C&ED”) would like to further elaborate the expectations on actions that should be taken by Money Service Operators (“MSOs”) regarding sanctions imposed by the United Nations Security Council (“UNSC”) and the early alert circulars which will be issued by the C&ED on this subject from time to time.

1. Expected regulatory standards

The UNSC from time to time imposes sanctions on countries, entities and individuals deemed to be engaged in activities including terrorism, proliferation of weapons of mass destruction (“WMD”) and corruption. UNSC sanctions resolutions may also target activities, such as trade in certain commodities, which are deemed to support such activities or governments and regimes engaging in them. The UNSC also issues lists of individuals, entities, vessels, etc. that are subject to sanctions.

United Nations sanctions are generally implemented in Hong Kong via regulations under the United Nations Sanctions Ordinance (Cap.537) (“UNSO”), except for UNSC Resolution 1373 relating to terrorism which is covered by the United Nations (Anti-Terrorism Measures) Ordinance (Cap.575) (“UNATMO”). A designation by a Committee of the UNSC of a person as a terrorist or terrorist associate or of property as terrorist property is effected through specification by the Chief Executive under the UNATMO. Sanctions lists are published and updated via notices in the Government Gazette pursuant to the relevant legislation. The C&ED provides links to these notices in its circulars issued to MSOs and requires them to screen all new designations against their client lists as soon as practicable whenever there are such updates.

In practice, there is likely to be a time gap between issuance of new or revised sanctions resolutions and/or sanctions lists, and their implementation in Hong Kong. The C&ED would remind MSOs that whether or not UNSC sanctions resolutions or sanctions lists have been implemented through Hong Kong legislation, there are offences under existing anti-money laundering and counter-terrorist financing laws that are relevant. For example:

- (a) it is an offence under section 4 of the Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap.526) (“WMD(CPS)O”) for a person to provide any services where he believes or suspects, on reasonable grounds, that those services will or may assist the development, production, acquisition or stockpiling of WMD in Hong Kong or elsewhere;
- (b) it is an offence under section 25 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap.405) (“DTROP”) and the Organized and Serious Crimes Ordinance (Cap.455) (“OSCO”) for a person to deal with any property knowing or having reasonable grounds to believe it to



represent any person's proceeds of drug trafficking or of an indictable offence ^{Note 1} (which includes an offence under section 4 of the WMD(CPS)O) respectively;

- (c) section 25A of the DTROP and the OSCO as well as sections 12 and 14 of the UNATMO make it an offence if a person fails to disclose, as soon as it is reasonable for him to do so, his knowledge or suspicion of any property that directly or indirectly, represents a person's proceeds of, was used in connection with, or is intended to be used in connection with, drug trafficking, an indictable offence ^{Note 1} (which includes an offence under section 4 of the WMD(CPS)O) or is terrorist property respectively;
- (d) section 15 of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap.615) ("AMLO") specifies that a financial institution must, in any situation that by its nature may present a high risk of money laundering or terrorist financing, take additional measures to mitigate the risk of money laundering or terrorist financing. Section 5(5) and (6) of the AMLO makes it a criminal offence if a financial institution knowingly, or with the intent to defraud the relevant authority, contravenes the above provision.

Inclusion of a country, individual, entity or activity in a UNSC sanctions resolution or sanctions list may constitute grounds for knowledge or suspicion for the purposes of relevant anti-money laundering and counter-terrorist financing laws, thereby triggering statutory (including reporting) obligations as well as offence provisions

MSOs should therefore ensure that in their sanctions screening of customers and payments, they pay regard to countries, individuals, entities and activities included in UNSC sanctions resolutions and sanctions lists as soon as practicable after they are promulgated by the UNSC and regardless of whether the relevant sanctions have been implemented in Hong Kong via UNSO or otherwise. Screening of customers and payments should include customers and transactions:

- (a) involving individuals or entities named in UNSC sanctions resolutions or sanctions lists, whether as customers or related parties;
- (b) connected with countries included in UNSC sanctions resolutions (high-risk jurisdictions); or
- (c) associated with activities named in UNSC sanctions resolutions or sanctions lists.

In addition, MSOs should ensure that they fulfil their obligations with regard to customer due diligence (including enhanced due diligence), transaction monitoring and record-keeping under Schedule 2 of the AMLO, and suspicious transaction reporting under the OSCO, the UNATMO or the DTROP. MSOs should also be alert to the risk of inadvertently committing offences including those of providing services under section 4(1) of the WMD(CPS)O and dealing in proceeds of an indictable offence or drug trafficking under section 25(1) of the OSCO or section 25(1) of the DTROP respectively.

2. Early alert circulars

To help enhance the effectiveness of MSOs' screening and other actions with regard to United Nations sanctions, the C&ED will, with effect from the date of this circular, issue alert circulars whenever new or revised sanctions resolutions or sanctions lists relating to terrorism, terrorist financing and proliferation are promulgated by the UNSC. MSOs are also advised to browse the UNSC Sanctions Committee website (<https://www.un.org/sc/suborg/en/sanctions/information>)

^{Note 1} Section 25(4) of the OSCO stipulates that an indictable offence includes conduct outside Hong Kong which would constitute an indictable offence if it had occurred in Hong Kong. So, for example, where it is shown that the relevant property came from some identifiable acts committed overseas, it will be caught by section 25(1) of the OSCO if such conduct constituted an indictable offence in Hong Kong, irrespective of the legal position in the jurisdiction where such conduct took place.



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regularly for other relevant new or revised sanctions resolutions or sanctions lists promulgated by UNSC from time to time.

MSOs are reminded that it is each MSO's own legal and regulatory obligation to ensure that UNSC sanctions resolutions and sanctions lists are incorporated into screening databases, whether internal or provided by external vendors, as soon as practicable after promulgation by the UNSC. In particular, MSOs should review all existing UNSC sanctions resolutions and sanctions lists issued by the UNSC before the date of this circular by making reference to the UNSC Sanctions Committee website. A list of UNSC sanctions resolutions containing sanctions measures not yet enacted in Hong Kong under the UNSO at the date of this circular, with relevant URLs, is attached.

Should you have any queries regarding the contents of this circular, please contact us at 2707 7819.

Money Service Supervision Bureau
Customs and Excise Department

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Reference links:

1. Resolution 2270:

http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2270%282016%29

2. Resolution 2321:

http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2321%282016%29

3. Resolution 2371:

http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2371%282017%29

4. Resolution 2375:

https://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2375%282017%29

5. Resolution 2397:

https://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2397%282017%29