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Customs and Excise Department

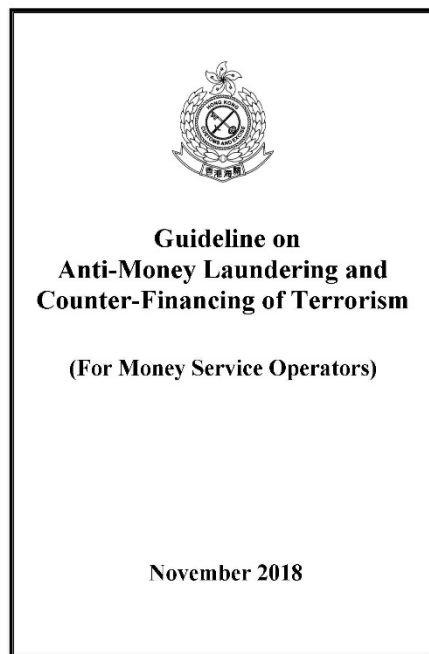
Compliance Functions and Statutory Obligations of Money Service Operators

4 October 2021

Money Service Supervision Bureau

Trade Controls Branch

Guideline on Anti-Money Laundering & Counter-Financing of Terrorism



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<i>Tipping off</i> s.23A(5), DTROP ¹ & OSCO, s.12(5), UNATMO	7.6	It is an offence ("tipping off") to reveal to any person any information which might prejudice an investigation; if a customer is told that a report has been made, this would prejudice the investigation and an offence would be committed. The tipping-off provision includes circumstances where a suspicion has been raised internally within an MSO, but has not yet been reported to the JFIU.
AML/CFT Systems in relation to suspicious transaction reporting		
	7.7	An MSO should implement appropriate AML/CFT Systems in order to fulfil its statutory reporting obligations, and properly manage and mitigate the risks associated with any customer or transaction involved in an STR. The AML/CFT Systems should include: (a) appointment of an MLRO (see Chapter 3); (b) implementing clear policies and procedures over internal reporting, reporting to the JFIU, post-reporting risk mitigation and prevention of tipping off; and (c) keeping proper records of internal reports and STRs.
	7.8	An MSO should have measures in place to check, on an ongoing basis, that its AML/CFT Systems in relation to suspicious transaction reporting comply with relevant legal and regulatory requirements and operate effectively. The type and extent of the measures to be taken should be appropriate having regard to the risk of ML/TF as well as the nature and size of its business.
Money laundering reporting officer		
	7.9	An MSO should appoint an MLRO as a central reference point for reporting suspicious transactions and also as the main point of contact with the JFIU and law enforcement agencies. The MLRO should play an active role in the identification and reporting of suspicious transactions. Principal functions of the MLRO should include having oversight of: (a) review of internal disclosures and exception reports and, in light of all available relevant information, determination of whether or not it is necessary to make a report to the JFIU; (b) maintenance of all records related to such internal reviews; and (c) provision of guidance on how to avoid tipping off.
Identifying suspicious transactions and internal reporting		
	7.10	An MSO should provide sufficient guidance to its staff to enable them to form suspicion or to recognise the signs when ML/TF is taking place. The guidance should take into account the nature of the transactions and customer instructions that staff is likely to encounter, the type of product or service and the means of delivery.
	7.11	An MSO may adopt, where applicable, the "SAFE" approach promoted by the JFIU, which includes: (a) screening the account for suspicious indicators; (b) asking the customers appropriate questions; (c) finding out the customer's records; and (d) evaluating all the above information. Details of the "SAFE" approach are available at JFIU's website (www.jfiu.gov.hk).
	7.12	An MSO should establish and maintain clear policies and procedures to ensure that:



Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) Systems

- Core mind-set: **RBA**
- Adopting a **risk-based approach** to establish and implement adequate and appropriate AML/CFT systems
 - to ensure that proper safeguards exist to mitigate the risks of ML/TF
 - to prevent a contravention of any requirement under **Part 2 or 3** of Schedule 2 to the AMLO (i.e. CDD and Record-keeping requirements)



Risk-based Approach (RBA)

- **Institutional Risk Assessment**

- To identify, assess and understand the ML/TF risks of the MSO itself

(AMLO Guideline 2.2 – 2.9)

- **Customer Risk Assessment**

- To assess the ML/TF risks associated with a business relationship, e.g. customers to MSOs

(AMLO Guideline 2.12 – 2.15)



Customer Due Diligence (CDD) Measures

- CDD must be carried out at the outset of a business relationship; **before** performing any specified occasional transaction or when suspicion arisen in the course of customer identification/verification

(AMLO Guideline 4.2)

- Additional Measures / Enhanced Due Diligence (“EDD”) measures must be applied to higher ML/TF risk situations, e.g. Politically exposed persons (“PEPs”)

(AMLO Guideline 4.9 & 4.10.4)



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Enhanced Due Diligence / Additional Measures

- Obtaining **additional information**, e.g.
 - Customer, e.g. occupation, volume of assets
 - Source of funds or Source of wealth
 - Documents supporting, e.g. Stamped Sales & Purchase agreement
- **Updating** more regularly the identification data of customer/beneficial owner
- Requiring the **first payment** made by the customer's bank account



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EDD Measures

- **Management approval** to commence / continue the relationship
- **Enhanced ongoing monitoring** of the business relationship: more and frequent controls applied and selecting patterns of transactions that need further examination
- **Impose transaction threshold**



Ongoing Monitoring

- MSOs must continuously monitor its business relationship with a customer in two aspects:
 - Ongoing CDD
 - Transaction monitoring



Ongoing Monitoring

- Ongoing CDD
 - Reviewing from time to time the documents, data and information relating to customer
 - Ensuring the obtained CDD information up-to-date and relevant
 - Developing policies and procedures on the frequency of periodic review



Ongoing Monitoring

- Transaction Monitoring
 - **Scrutinizing transactions** to ensure that they are consistent with the customer's risk profile
 - **Identifying transactions** that are complex, large in amount, of unusual patterns and transactions with no apparent economic or lawful purpose
 - Maintaining **adequate** and **effective** transaction monitoring systems and processes



Ongoing Monitoring

- Risk-based approach to Transaction Monitoring:
 - The extent (e.g. frequency & intensity) of monitoring should be commensurate with the ML/TF risk profile of a customer
 - Additional measures must be taken when monitoring business relationships that pose a higher risk



Ongoing Monitoring

- **Systems** and **Processes** should be developed by considering the following factors:
 - Size and complexity of its business
 - ML/TF risks arising from its business
 - Nature of its systems and controls
 - Monitoring procedures existed to serve other business need
 - Nature of the products and service provided



Ongoing Monitoring

- If there are any **grounds for suspicion**, MSOs should:
 - obtain explanation of transaction/activity
 - document the findings/outcomes of steps taken
 - record the rationale of any decision made
 - file Suspicious Transaction Report with the JFIU



Ongoing Review

- **Adjust risk assessment** of a particular customer from time to time or based upon information received from a competent authority
- Review the **extent of the CDD** and **ongoing monitoring** to be applied to the customer
- Keep policies and procedures under **regular review** and **ensure risk mitigation procedures** and controls run effectively



Internal Monitoring System

- Conduct **regular audits**
- Review and update of **risk controls**
- Provision of **regular** and **timely** information to senior management
- Training of employees on **legal responsibilities** and **risk alert**



Compliance Inspection

- Section 9 of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance
- For ascertaining compliance with any provision of the Ordinance / any notice or requirement given or imposed / any condition imposed



Compliance Inspection

- ▶ **Master client list / Master transaction list** (e.g. Excel table)
 - ▶ Originator & Recipient name
 - ▶ Customer Code if available
 - ▶ Telephone no.
 - ▶ Address
 - ▶ Amount of fund
 - ▶ Source of fund
 - ▶ Purpose of fund
 - ▶ Risk level (e.g. high, medium, low)



Compliance Inspection

- ▶ Serving Letter of Requirement
 - ▶ Specified a period for inspection
- ▶ MSO needs to retrieve the specified transaction records
 - ▶ MSO provides relevant transaction records at designated date
 - ▶ If fails to do so, prosecution / disciplinary actions will be taken
- ▶ On-site inspection



Observations

- ▶ **Customer Due Diligence** (Guideline Chapter 4)
 - ▶ **Customer Risk Assessment (CRA) & Institutional Risk Assessment (IRA)**
 - ▶ **Enhanced Due Diligence (EDD)**



Observations

- ▶ **On-going monitor** (Guideline Chapter 5)
- ▶ **No update data for its customer / no clear policies and procedures** (AMLO Guideline 5.2 & 5.3)
- ▶ **No regular review / no frequent reviews for its customers** (AMLO Guideline 5.2 & 5.3)
- ▶ **No effective system (e.g. no computerized system)** (AMLO Guideline 5.4)



Observations

- ▶ **Suspicious Transaction Report (STR)**
(Guideline Chapter 7)
- ▶ **Filing fragmented STR / no STR** (e.g. no matter whether the intended transaction ultimately takes place or not / the transaction had been completed)
(AMLO Guidline 7.19)
- ▶ **Effectiveness STR System** (e.g. play it by ear)
- ▶ **Impact on the application for renewal of MSO licence**



Observations

- ▶ Such improvements are linked with its **Business Plan & Anti-Money Laundering Policy**
- ▶ Submitted **Periodic Return** (PR) must tally with **MSO's records**



Common offences

- ▶ Change of **material particulars**
 - ▶ ± Bank accounts (s.40 of AMLO)
 - ▶ Principal address (s.38 / s.39 of AMLO)
 - ▶ ± Director / Ultimate owner / Partners (s.35 / s.36 / s.37 / s.40 of AMLO)
- ▶ **Fit and Proper Person Declaration**
 - ▶ **Conviction Records** in Hong Kong or elsewhere (s.52 of AMLO)
- ▶ Breach of **licensing requirements**
 - ▶ **CDD** (s.5 / s.20 / s.21 Schedule 2 of AMLO)





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- The End -

Thank you !

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