



# Seminar for Money Service Operators

## “Compliance Issues under the AMLO ”

Money Service Supervision Bureau

2 October 2013

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# Money Service Operators (MSO) (Licensing, Customer Due Diligence and Record-keeping Requirements)

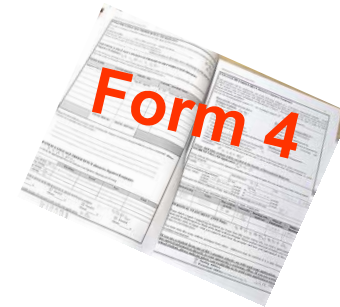


# Changes that require Commissioner of Customs and Excise's (CCE) prior approval

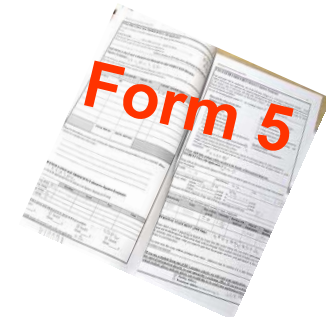
# Need to seek prior approval from the CCE



- ▶ when there is a person proposing to become licensee's director/ultimate owner/partner



- ▶ Licensees wish to add premises to operate a money service or operate a money service at any particular premises





# Offences and Penalty

## Criminal offences

- ▶ contravenes section 35(1), 36(1), 37(1), 38(1), 39(1) of the AMLO
- ▶ is liable on conviction to fine of \$50,000 and to imprisonment for 6 months

## Disciplinary actions

- ▶ Under section 43(1)(c) of the AMLO
  - to publicly reprimand the licensee
  - to order the licensee to take any action for the purpose of remedying the contravention
  - to order the licensee to pay a pecuniary penalty not exceeding \$1,000,000



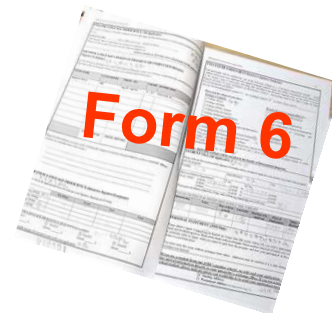


The licensee must notify the CCE in writing of the change **within one month** beginning on the date on which the change takes place

# Needs to notify the CCE the following changes (I) :



- ▶ Change in Business / Corporation Name
- ▶ Change in the Nature of Money Service Business
- ▶ Change in Principal (Correspondence) Address
- ▶ Change in Contact Information
- ▶ Change in Business Premises Information
- ▶ Change in Telephone and Fax No. of Business Premises
- ▶ Change in Information of other Business Being run in the Business Premises

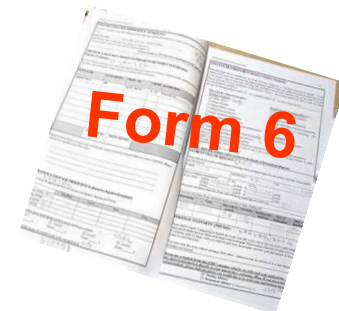




# Needs to notify the CCE the following changes (II) :



- ▶ Change in Occupants of Domestic Business Premises
- ▶ Change in particulars of Sole Proprietor / Partners / Directors / Ultimate Owners
- ▶ Change in Partners / Directors / Ultimate Owners
- ▶ Change in “Fit and Proper” status of Sole Proprietor / Partner / Director / Ultimate Owner
- ▶ Change in bank account used for operating money service business





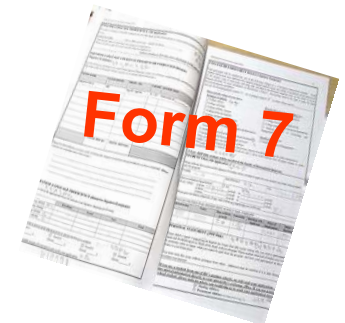
# Cessation of Money Service Business

# Cessation of Money Service Business



To cease to operate a money service or to cease to operate a money service at any of the premises specified in the licence, the licensee must –

- ▶ before the date of cessation, notify the CCE in writing of that intention and the date of cessation; and
- ▶ return the licence to the CCE for cancellation or amendment within 7 days beginning on the date of cessation





# Offences and Penalty

## Criminal offences

- ▶ contravenes section 40(1), 41(1) of the AMLO
- ▶ is liable on conviction to fine of \$50,000

## Disciplinary actions

- ▶ Under section 43(1)(c) of the AMLO
  - to publicly reprimand the licensee
  - to order the licensee to take any action for the purpose of remedying the contravention
  - to order the licensee to pay a pecuniary penalty not exceeding \$ 1,000,000





# Customer Due Diligence (CDD)



# Carrying out CDD (I)

- ▶ Circumstances requiring CDD measures
    - at the outset of a business relationship;
    - before performing
      - ◆ any occasional transaction  $\geq$  \$120,000 or
      - ◆ wire transfer  $\geq$  \$8,000
    - suspicion of ML/TF
    - doubt on the veracity and adequacy of the information previously obtained
- (AML Guideline Chapter 4.1.9)



# Carrying out CDD (II)



## ▶ Measures of CDD

### ➤ identify & verify identity

- ◆ customer & beneficial owner

### ➤ identify & verify identity and authority

- ◆ a person purporting to act on behalf of the customer

### ➤ obtaining information on the purpose & nature of the business relationship

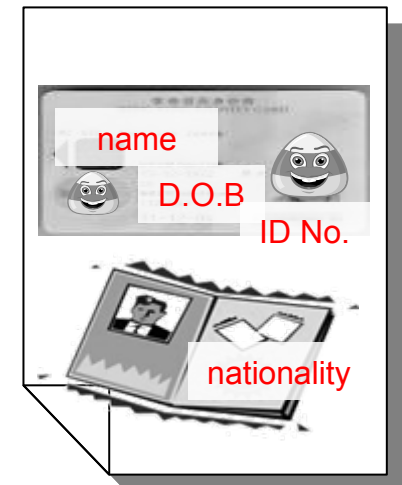
(AML Guideline Chapter 4.1.3)





# Carrying out CDD (III)

- ▶ Identify & Verify Identity of Natural Persons (I)
  - Collecting the identification information:
    - ◆ full name
    - ◆ date of birth
    - ◆ nationality
    - ◆ identity document type and number







# Carrying out CDD (IV)

## ▶ Identify & Verify Identity of Natural Persons (II)

### ▶ Documents required for verification:

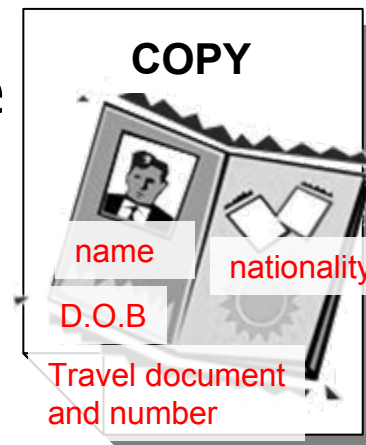
- ◆ for HK residents: A copy of ID card is required

- ◆ for non-HK residents: A copy of valid travel document such as the “biodata” page of passport

- ◆ residential address proof from a reliable source issued within the last 3 months (e.g. utility bill, bank statement)

(AML Guideline Chapter 4.8)

Keep





# Carrying out CDD (V)

- ▶ Identify & Verify Identity of Corporations (I)
  - Obtaining the information below:
    - ◆ Full name
    - ◆ Date and place of Incorporation
    - ◆ Registration / Incorporation number
    - ◆ Registered office address
    - ◆ Name of all directors



# Carrying out CDD (VI)

## ▶ Identify & Verify Identity of Corporations (II)

### ➤ Documents required for verification:

- ◆ Copy of CI & BR certificate
- ◆ Copy of M&A
- ◆ Ownership chart
- ◆ Identity verification documents of directors based on Risk-Based Approach (AML Guideline Chapter 4.9)





# Carrying out CDD (VII)

- ▶ Identify & Verify Identity of Beneficial Owners
  - ▶ Major shareholders:
    - ◆ For Normal risk circumstances, all shareholders holding  $\geq 25\%$  of share capital / voting rights
    - ◆ For High risk circumstances, all shareholders holding  $\geq 10\%$  of share capital / voting rights
  - ▶ Any individuals exercising ultimate control
  - ▶ Any person on whose behalf the customer is acting (AML Guideline Chapter 4.9.14)



# Carrying out CDD (VIII)

- ▶ Special Requirements for High Risk Circumstances
  - Obtaining information on the Source of Wealth and Funds
  - Approval of Senior Management
  - Obtaining Additional Information with Enhanced Monitoring
  - All high-risk customers should be subject to a minimum annual review (up-to-date information) (AML Guideline Chapter 4.11 & Chapter 11)



MSO



# Ongoing Monitoring

# Ongoing Monitoring of Business Relationship (I)



- ▶ MSO must continuously monitor its business relationship with a customer by
    - reviewing from time to time documents, data and information relating to the customer
    - monitoring the activities of the customer to ensure their consistency with the nature of business, the risk profile and source of funds
    - identifying transactions that are complex, large or unusual patterns of transactions without economic or lawful purpose and which may indicate ML/TF
- (AML Guideline Chapter 5.1)



# Ongoing Monitoring of Business Relationship (II)



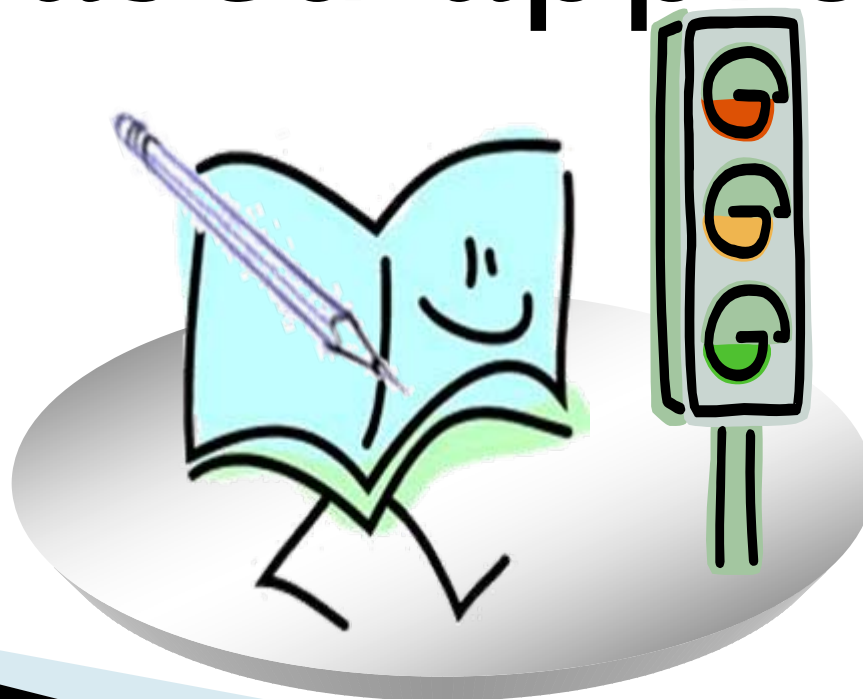
- ▶ **Methods and Procedures:**
    - The extent of monitoring should be linked to the risk profile of the customer which has been determined through the risk assessment.
    - MSOs must take additional measures when monitoring business relationship that pose a higher risk.
    - Exception reports will help MSOs stay apprised of operational activities.
- (AML Guideline Chapter 5.7 – 5.9)







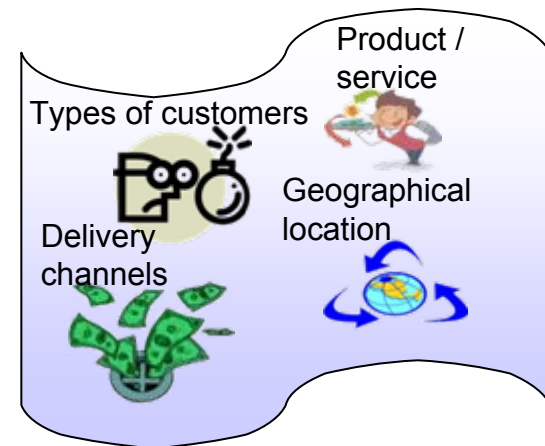
# Risk-based approach



# Risk Identification & Assessment



- ▶ MSOs should identify the risks inherent in the industry and faced by this particular business
- ▶ MSOs should establish and implement adequate & appropriate AML/CFT systems taking into account the following risk factors:
  - types of customers and behaviour
  - product / service
  - delivery channels
  - customer's business organization / geographical locations involved

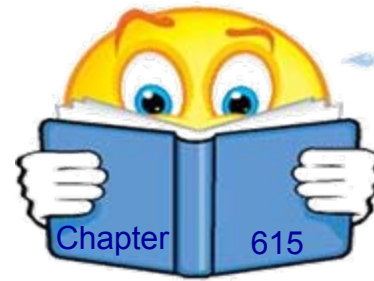




# Staff Training



# Staff Training



- ▶ to ensure relevant staff receive adequate AML/CFT training in carrying out their particular roles in the MSOs with respect to AML/CFT
- ▶ the timing and content of training packages for different groups of staff will need to be adapted by individual company for their own company's needs
- ▶ the frequency of training should be sufficient to maintain the AML/CFT knowledge (AML Guideline Chapter 9.1 – 9.5)



# Suspicious transaction reports

# Suspicious Transactions Reporting



- ▶ to ensure sufficient guidance is given to staff to enable them to form suspicion or to recognise when ML/TF is taking place
- ▶ should formulate a clear internal reporting procedures
- ▶ should appoint a MLRO as a central point for reporting suspicious transactions
- ▶ a disclosure should be made even where no transaction has been conducted by or through the MSOs in the event of suspicion of ML/TF (AML Guideline Chapter 7)



# Remittance transactions





# Remittance transactions

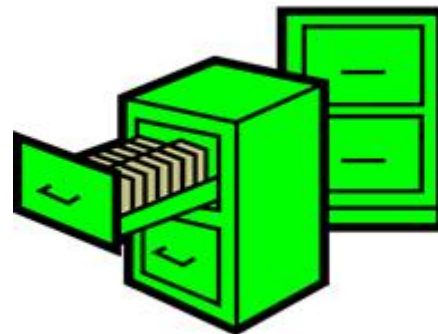
- ▶  $\geq$  \$8,000
- ▶ Identify the originator
- ▶ Verify the identity of the originator by reference to the originator's identification document
- ▶ Record
  - Originator's name
  - Originator's identification document number and if the originator's identification document is a travel document, the place of issue of the travel document
  - Originator's address
  - Currency and amount involved
  - Date and time of receipt of the instructions, the recipient's name and address and the method of delivery

(AML Guideline Chapter 11)





# Record-keeping



# Record-keeping



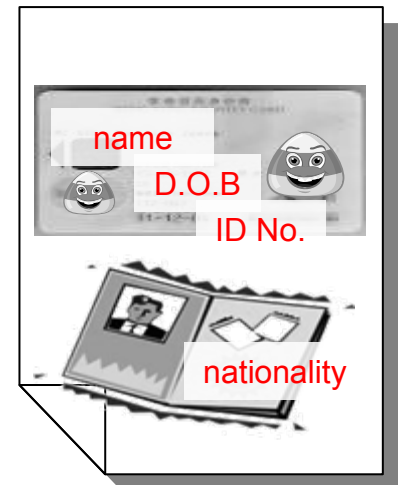
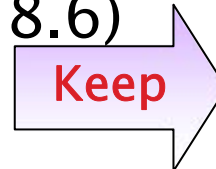
- ▶ MSOs should keep:
    - the original or a copy of the documents, and a record of the data and information, obtained in the course of identifying and verifying the identity of the customer and/or beneficial owner of the customer
    - for a period of six years throughout the business relationship with the customer and after the end of the business relationship
- (AML Guideline Chapter 8.3 – 8.4)



# Record-keeping



- ▶ MSOs should maintain:
    - the original or a copy of the documents, and a record of the data and information, obtained in connection with the transaction
    - for a period of six years after the completion of a transaction, regardless of whether the business relationship ends during the period
- (AML Guideline Chapter 8.5 – 8.6)



# Unable to comply with CDD and Record-keeping Requirements

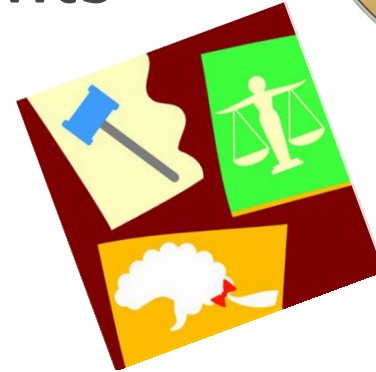


## Criminal offences

- ▶ **knowingly** contravenes a specified provision as defined by AMLO, section 5(5) and 5(7)  
▶ to a fine of \$1,000,000 and to imprisonment for 2 years
- ▶ **with intent to defraud** Commissioner, contravenes a specified provision as defined by AMLO, section 5(6) and 5(8)  
▶ to a fine of \$1,000,000 and to imprisonment for 7 years



# Unable to comply with CDD and Record-keeping Requirements



## Disciplinary actions

- ▶ Under AMLO section 21
  - to publicly reprimand the licensee
  - to order the licensee to take any action for the purpose of remedying the contravention
  - to order the licensee to pay a pecuniary penalty not exceeding the amount that is the greater of \$10 millions or 3 times the amount of the profit gained, or costs avoided, by the licensee as a result of the contravention



# Policy Statement



# What should a Policy Statement include? (I)

- ▶ the culture and values to be adopted and promoted within the business towards the prevention of ML and TF
- ▶ allocation of responsibilities to specific persons
- ▶ a summary of the firm's approach to assessing and managing its ML and TF risk
- ▶ a summary of the firm's procedures for carrying out appropriate identification, verification, customer due diligence, and monitoring checks on the basis of their risk-based approach



# What should a Policy Statement include? (II)

- ▶ a commitment to ensuring all relevant staff are made aware of the law and their obligations under it and are regularly trained in how to recognize suspicious activity / transaction
- ▶ recognition of the importance of staff promptly reporting suspicious activity / transaction
- ▶ a summary of the appropriate monitoring arrangements in place to ensure that the firm's policies and procedures are being carried out



# Reference



- ▶ Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance, Chapter 615
- ▶ Guideline on Anti-Money Laundering and Counter-Terrorist Financing (For Money Service Operators)
- ▶ Circulars and Publications from the Customs and Excise Department



**The End!!!  
Thank You!!!**