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Customs and Excise Department

Compliance Functions & Statutory Obligations of Money Service Operators

14 December 2023

Money Service Supervision Bureau

Trade Controls Branch

AML/CFT/CPF Regulatory Regime

Cap. 615 Anti-Money Laundering
and Counter-Terrorist Financing
Ordinance
(AMLO)



**AMLO
Cap. 615**

**Guideline
for MSOs**

Guideline on Anti-Money
Laundering & Counter-
Financing of Terrorism
(For MSOs)



Cap. 405

Drug Trafficking
(Recovery of Proceeds)
Ordinance

Cap. 455

Organized
and
Serious Crimes
Ordinance

Cap. 575

United Nations
(Anti-Terrorism Measures)
Ordinance

Cap. 537

United
Nations
Sanctions
Ordinance

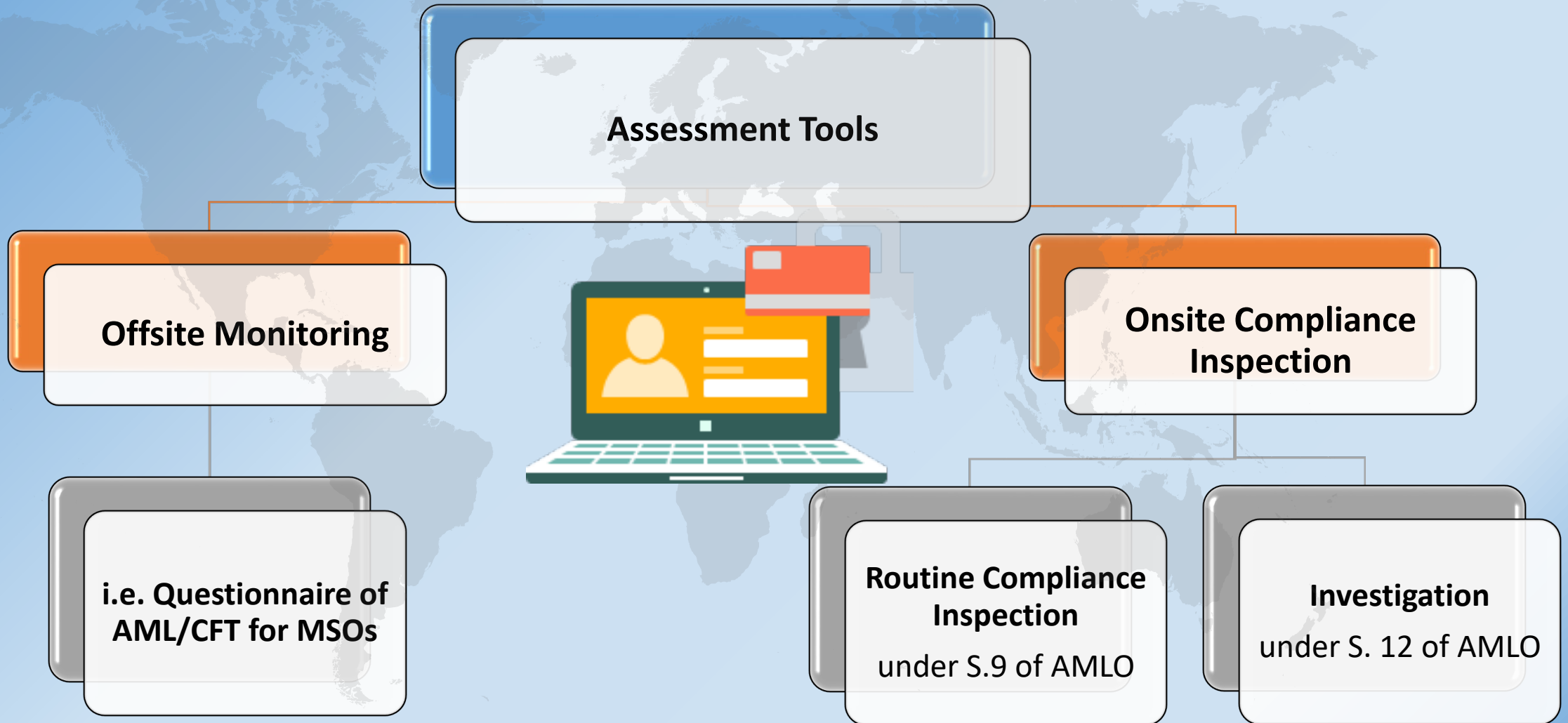
Cap. 526

Weapons of Mass Destruction
(Control of Provision of Services)
Ordinance



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Overview of MSSB Risk-based Supervisory Approach



Routine Compliance Inspection

Section 9, AMLO

"Powers to enter, inspect, make copies / record details of any specified business record, and make inquiries of the MSO concerning any specified business record / transaction."

➡ **Utilize a Central Database for Master Client List**

Section 10, AMLO

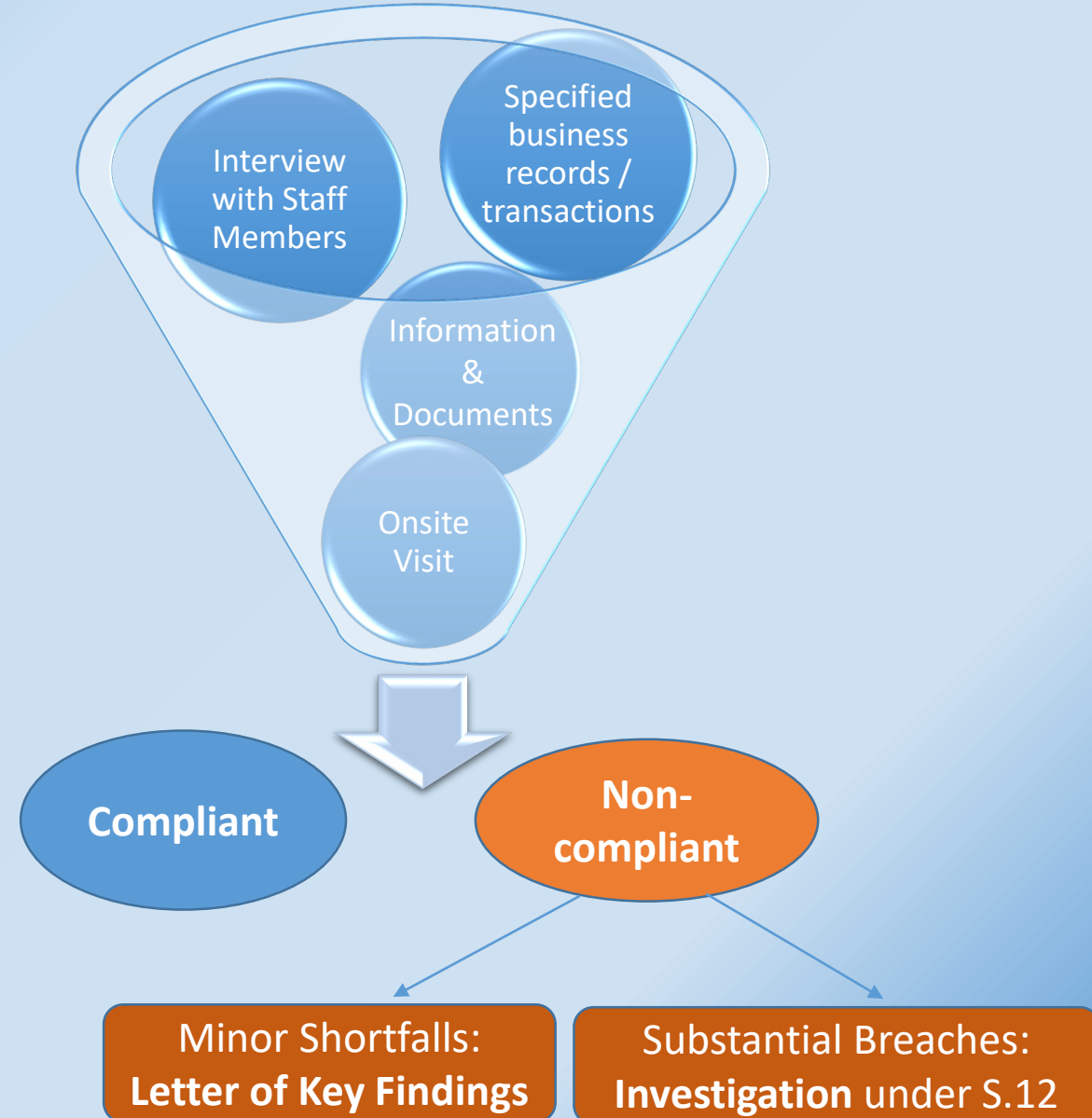
Produces false or misleading record/ document/ answer in purported compliance with a requirement:



Criminal Offence

On indictment to a fine of \$1,000,000 and to imprisonment for 2 year

On summary conviction to a fine at level 6 and to imprisonment for 6 months



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Investigation

Appointment of Investigators---S. 11, AMLO

- has reasonable cause to believe that an offence under the AMLO may have been committed
- for the purpose of considering whether to exercise any power under section 21 or 43 of the AMLO

Powers of Investigators – S.12, AMLO

In writing require a covered person to-

1. Produce of any record or document
2. Attend before the investigator at the specified time and place
3. Answer any question
4. Give explanation or further particulars



Failure to comply with a requirement imposed under section 9 or 12 commits an offence.



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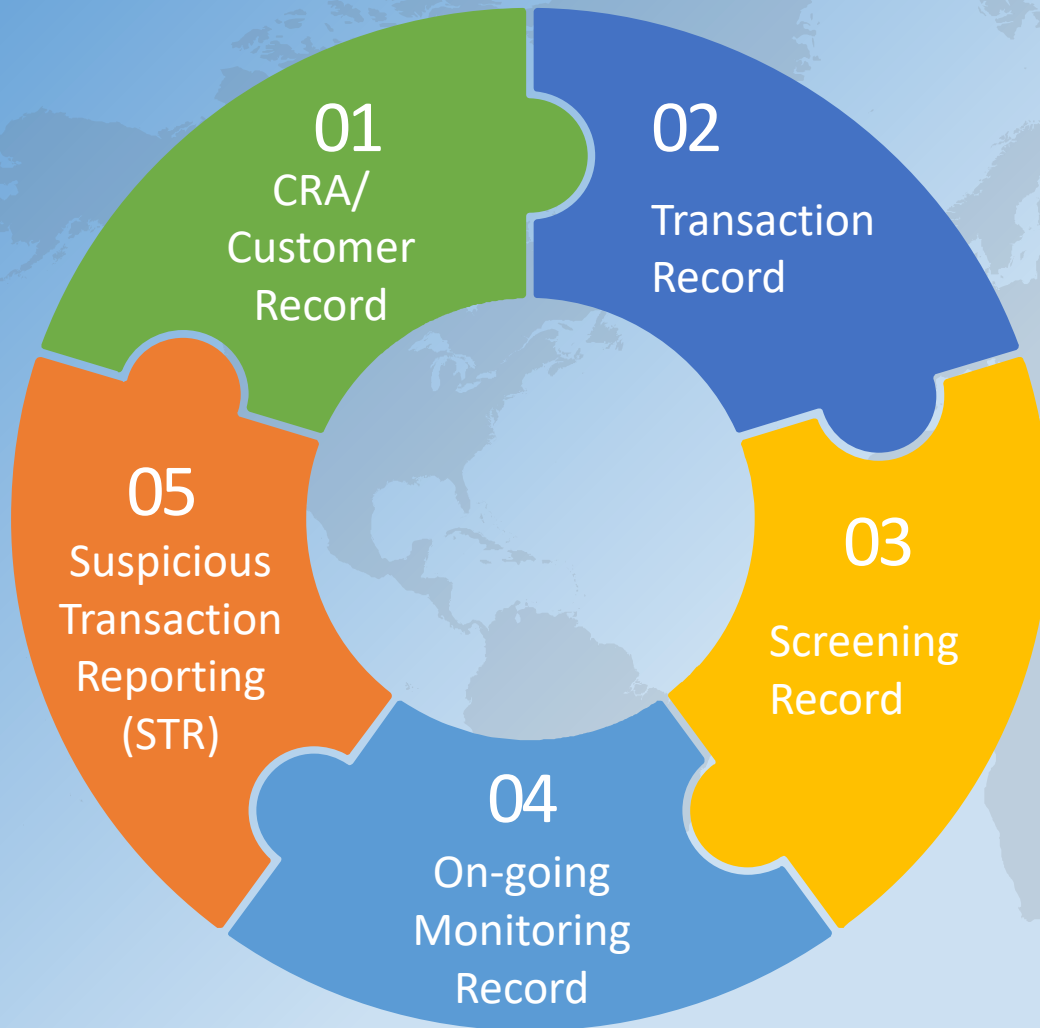
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Deficiencies Identified from Compliance Inspections

Customer Record	<ul style="list-style-type: none"> ❌ Verify customer's identity (i.e. legal person) ❌ Obtain written authorization on behalf of another person
Transaction Record	<ul style="list-style-type: none"> ❌ Record addresses (originator & recipient) ❌ Retain records permit reconstruction of complete transaction (i.e. WhatsApp orders, counterparty settlements)
Screening Record	<ul style="list-style-type: none"> ❌ Record the date when screening was conducted ❌ Screening conducted towards recipients & agents ❌ Alert reviews with record kept to demonstrate procedures
Customer Risk Assessment ("CRA") Record	<ul style="list-style-type: none"> ❌ Use of CRA / scoring matrix with application of RBA ❌ Customers risks rated according to effective risk assessment framework
Enhanced Due Diligence ("EDD")	<ul style="list-style-type: none"> ❌ Documentary proof to verify transaction purpose/ SoF/ SoW ❌ Transaction monitoring with meaningful parameters/ threshold set ❌ Counterparties' risks taken into account
Suspicious Transaction Reporting ("STR")	<ul style="list-style-type: none"> ❌ Sufficient management awareness and training on STR reporting ❌ Quantified risk assessment methodology and STR reporting chain



Circular to MSO on Record Keeping Requirements



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Customs and Excise Department

MSSB/MIS_04/2022

16 June 2022

Circular

Circular to Money Service Operators

**Anti-Money Laundering / Counter-Terrorist Financing
Record-keeping Requirements**

The Customs and Excise Department (“C&ED”) would like to remind Money Service Operators (“MSOs”) of the importance of keeping accurate and up-to-date records and documents in relation to money service business, in compliance with the requirements set out in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (“AMLO”) and the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Money Service Operators) (“the Guideline”).



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Supervisory Findings of Customer Due Diligence Related Issues



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MSSB/MIS_03/2023
22 November 2023

Circular

Circular to Money Service Operators

Anti-Money Laundering / Counter-Terrorist Financing (“AML/CFT”)

Supervisory Findings of Customer Due Diligence (“CDD”) Related Issues

This circular highlights the deficiencies or inadequacies identified by the Customs and Excise Department (“C&ED”) from compliance inspections of licensees’ AML/CFT policies, procedures and controls (collectively referred to as “AML/CFT systems”). We also provide expected regulatory standards and non-exhaustive examples of good practices to assist money service operators (“MSOs”) in reviewing the adequacy of their AML/CFT systems.

Identified Issues:

- ◆ **CDD/CRA:** failed to follow up on inconsistent information provided by customers
- ◆ **Identification and verification of a BO:** failed to identify, and take reasonable measure to verify all beneficial owners
- ◆ **Identification and Verification of PPTA:** failed to identify the corporate customer and treated a PPTA as the customer



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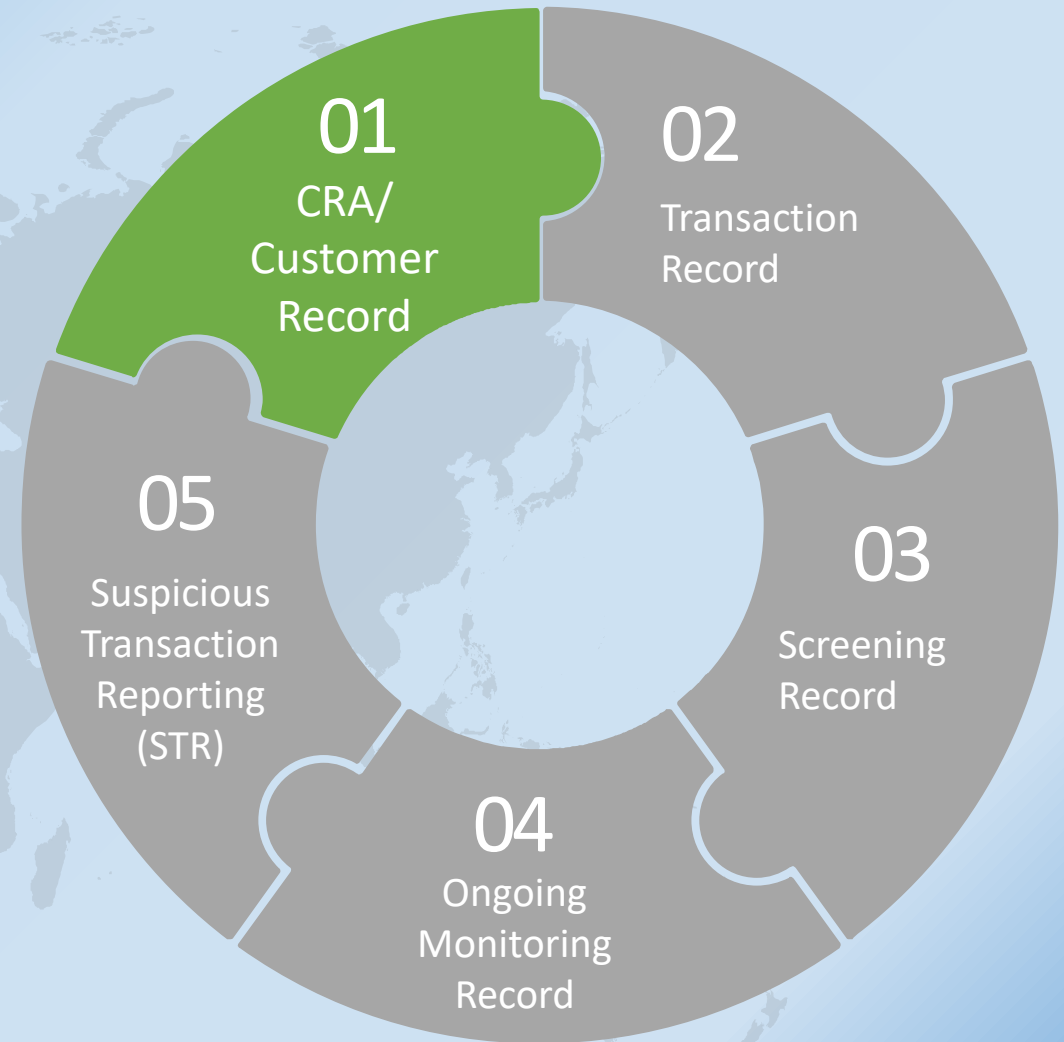
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Customer Record

At the outset of a business relationship/ before performing any occasional transaction

- ◆ Obtain the original or a copy of the document, record of the data/ information obtained in the course of *identifying and verifying* the identity of:
 - a. the customer
 - b. the beneficial owner of the customer
 - c. person purport to act on behalf of the customer
 - d. other connected parties to the customer

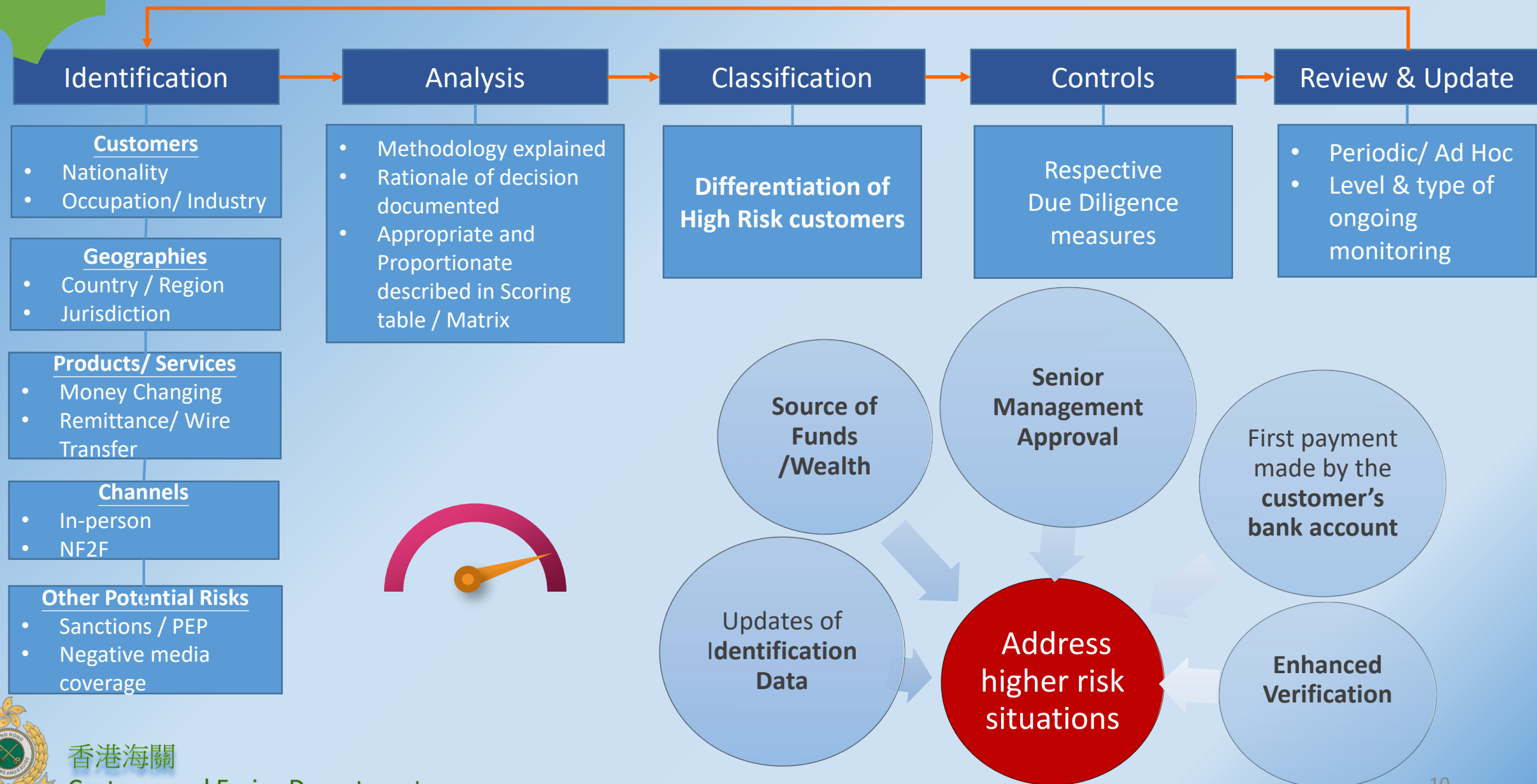
***MSO should make appropriate enquiries where there are indications that the customer is **not** acting on his own behalf
(Chapter 4.4.4 of Guideline of AML/CFT for MSOs)



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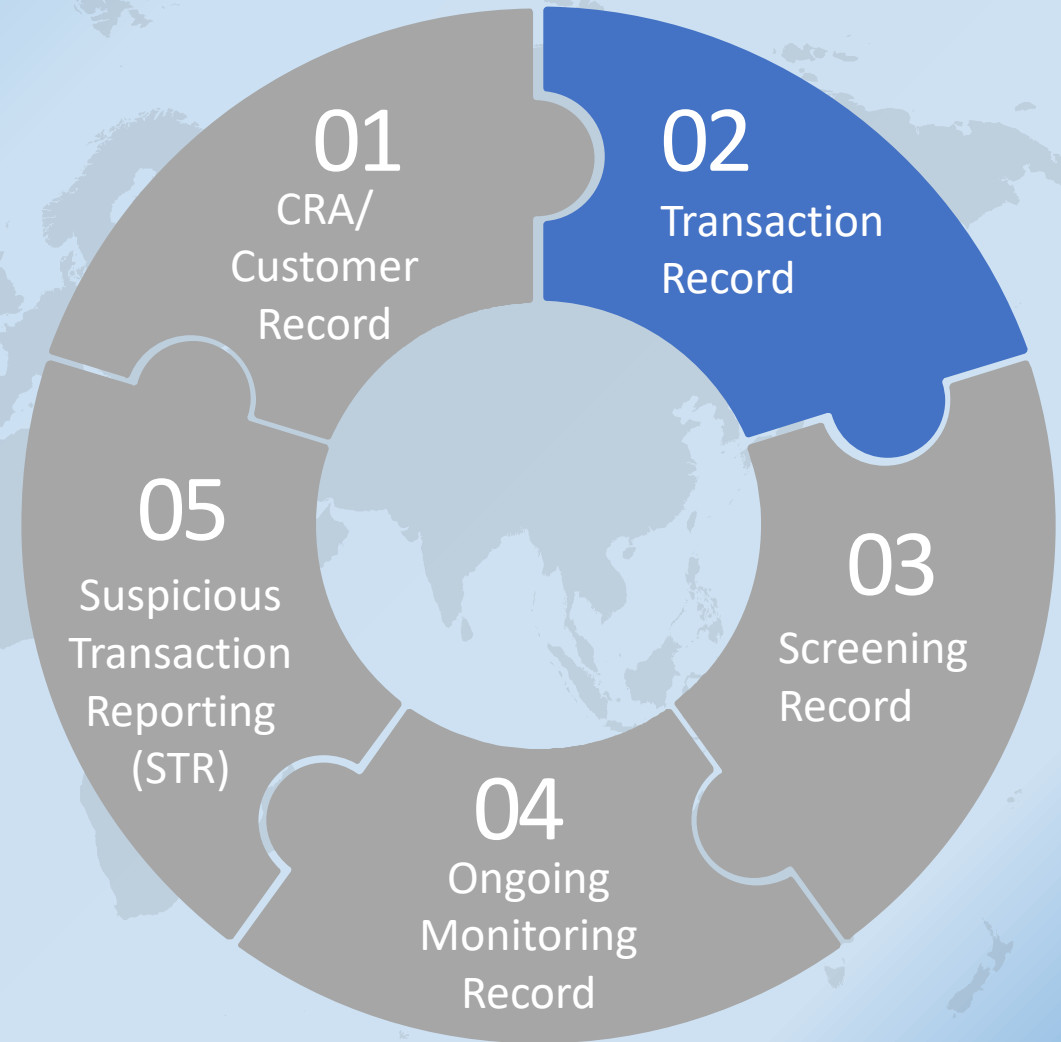
Customer Risk Assessment / Enhanced Due Diligence



Transaction Record

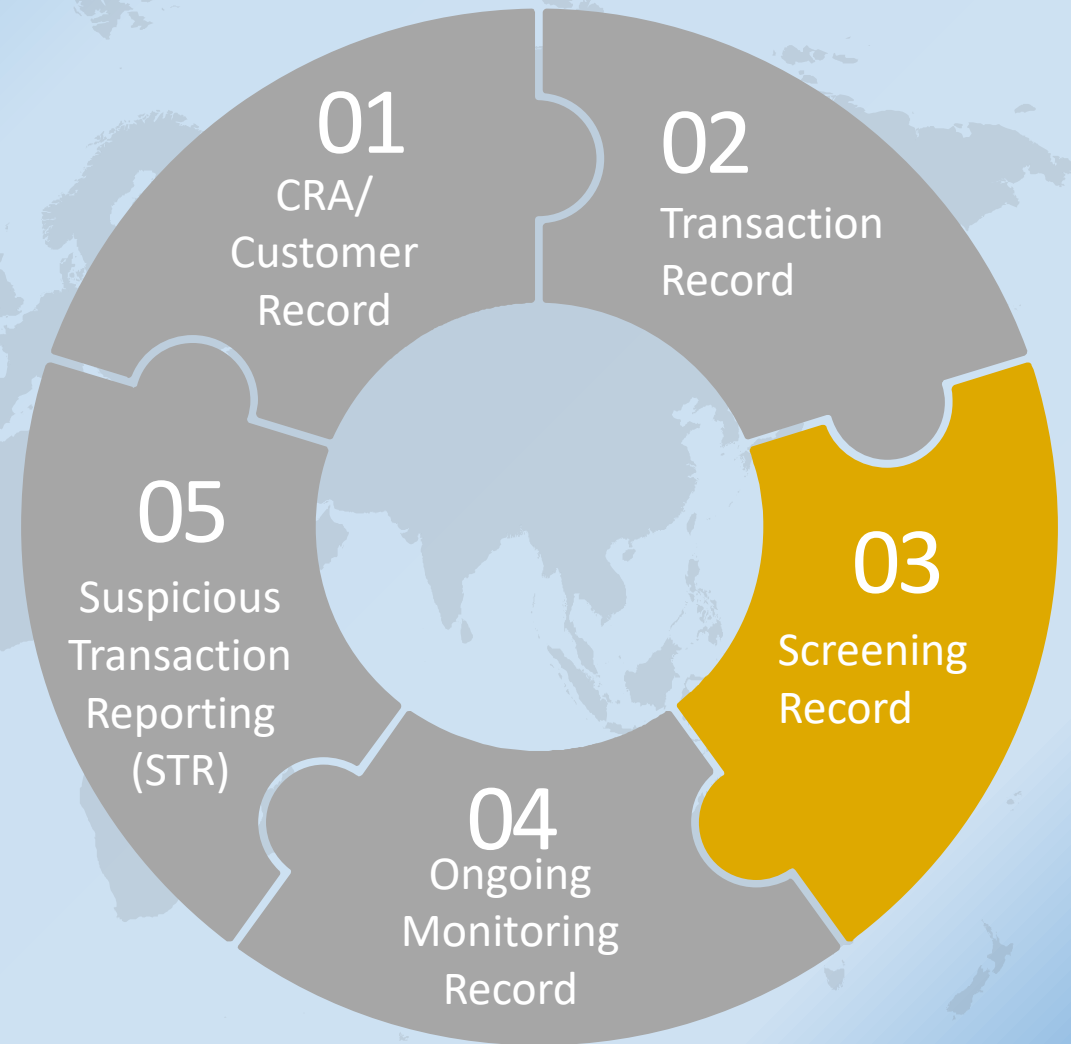
Including but not limited to :

- ◆ Records on sending/ receipt of instruction using any instant messaging software/ mobile application
- ◆ Sufficient to permit reconstruction of individual transaction



Sanction Compliance programme & Screening Record

- ◆ PEP list and Sanction Lists
- ◆ Screening conduct against the customer, any beneficial owner of the customer and all relevant parties in a transaction (including the recipient and intermediary)
- ◆ Enhanced checking result



Definition of “PEP” and “Former PEP”



PEP

- An individual who is or has been entrusted with a prominent public function in a place outside Hong Kong
- A spouse, a partner, a child or a parent of that individual
- A close associate of that individual



Former PEP

- An Individual who, being a politically exposed person, has been but is not currently entrusted with a prominent public function in a place outside Hong Kong
- A spouse, a partner, a child or a parent of that individual
- A close associate of that individual

EDD measures for non-Hong Kong PEP



MSO to establish procedures

→ Screening against commercially available databases

Customer or a beneficial owner of a customer is a Hong Kong PEP

- Apply all following EDD measures:
1. Obtain senior management approval;
 2. Take reasonable measures to clarify the customer's or the BO's SoW and SoF;
 3. Conduct enhanced ongoing monitoring of the business relationship



Risk Assessment towards Former PEP

MSO should conduct an appropriate assessment on the ML/TF risk associated with the PEP status taking into account various risk factors, Including but not limited to:



1



The level of (informal) influence that the individual could still exercise

2



The seniority of the position that the individual held as the PEP; and

3



Whether the individual's previous and current function are linked in any way



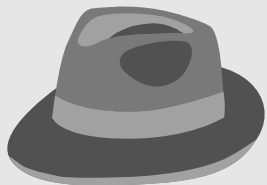
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MSO does not apply EDD measures to a former non-Hong Kong PEP but without conducting an appropriate risk assessment → contravening section 10 of schedule 2

Ongoing Customer Due Diligence

- review of customer records periodically or upon trigger events



Examine Background & purpose of transaction, findings and steps taken by MSO

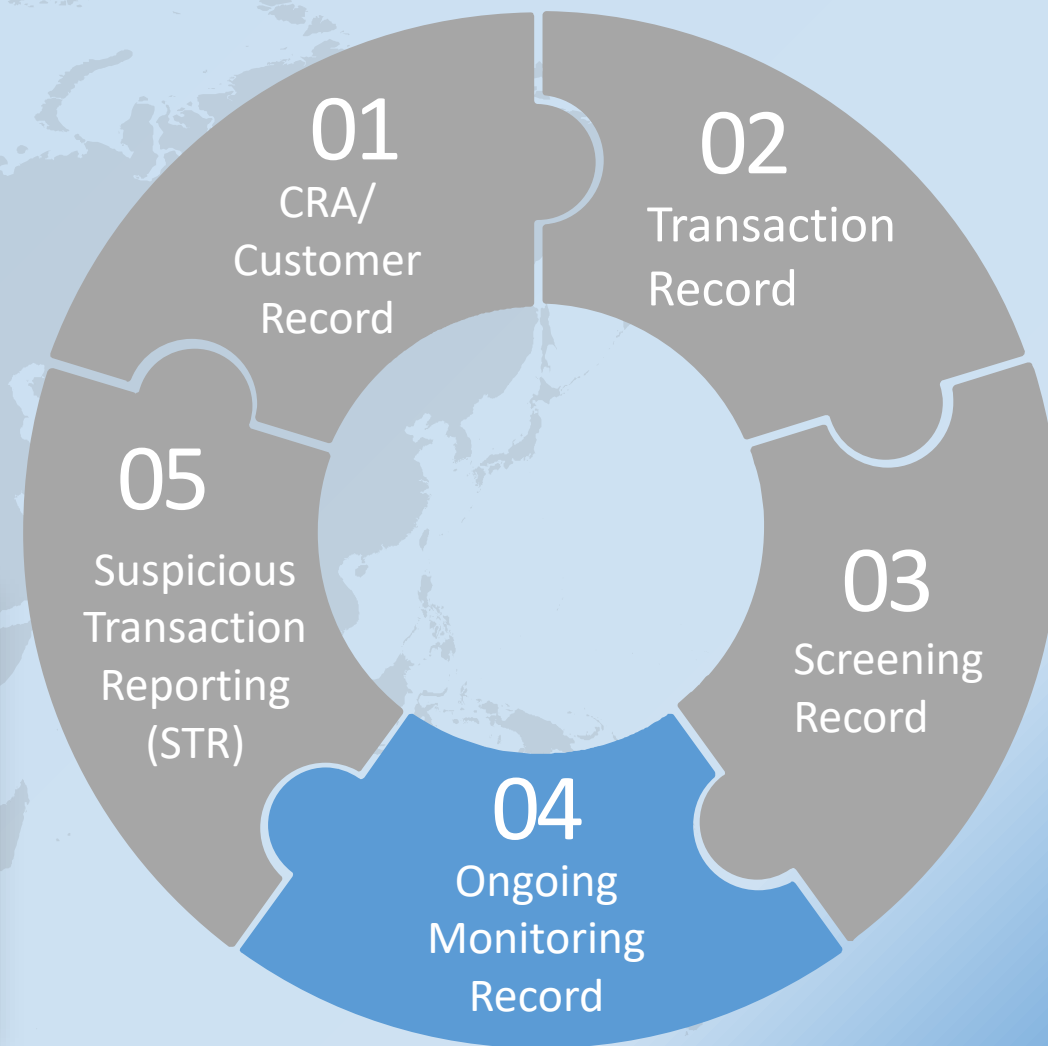
Transaction Monitoring

- complex, usually large in amount
- no apparent economic or lawful purpose

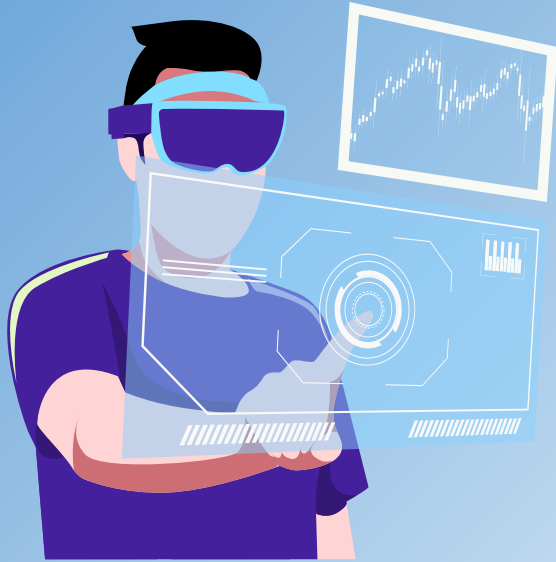


Rationale of any decision should be documented in writing

Ongoing Monitoring Requirements – S.5 of Schedule 2 to the AMLO



Transaction Monitoring System



- Accurate CDD Records
- Effective Risk Assessment

Data Inputs

Flagging of Unusual Transactions/
Activities

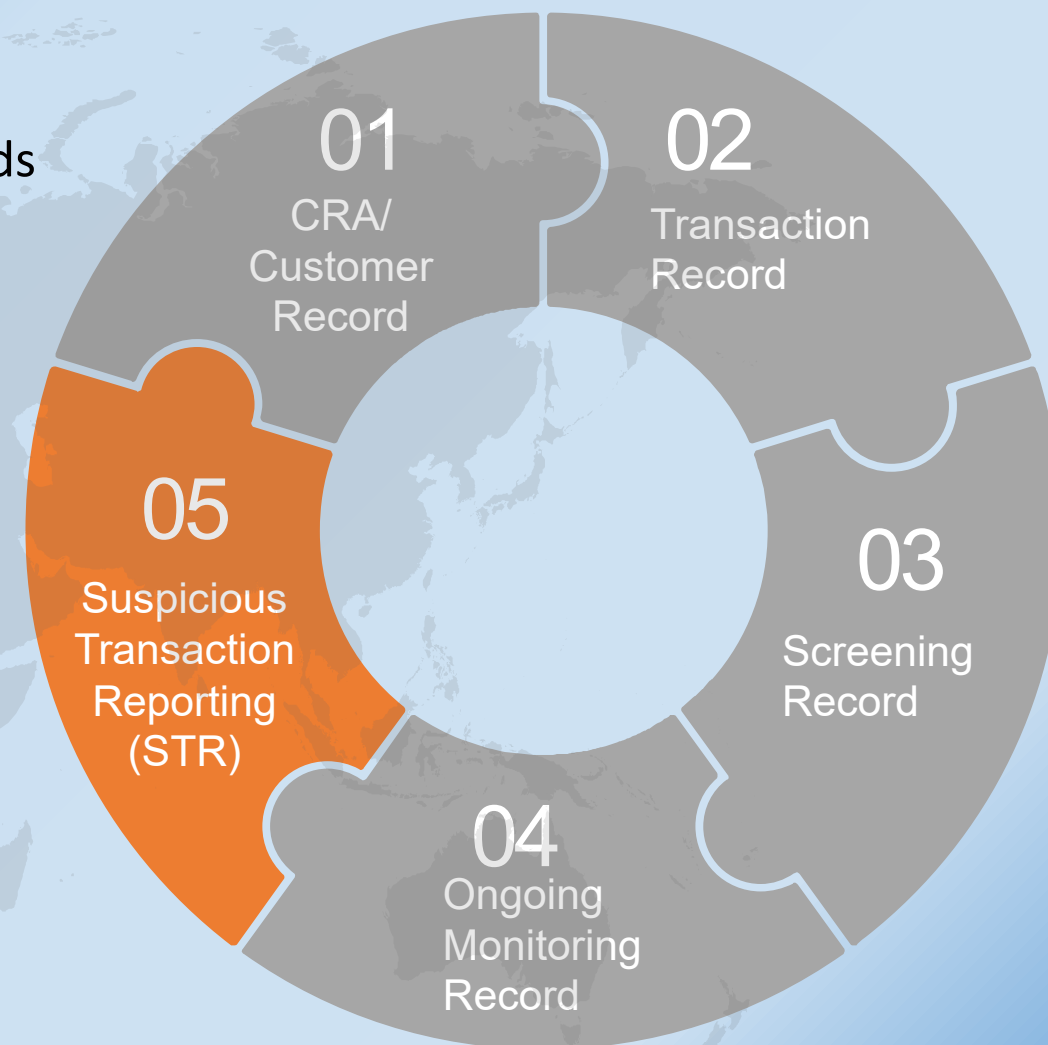
- Rule-based Parameters (e.g.: automated system)
- Identify Key Patterns
- Profiling
- Data Capturing
- Watchlists

- Evaluation
- Investigation
- Escalation

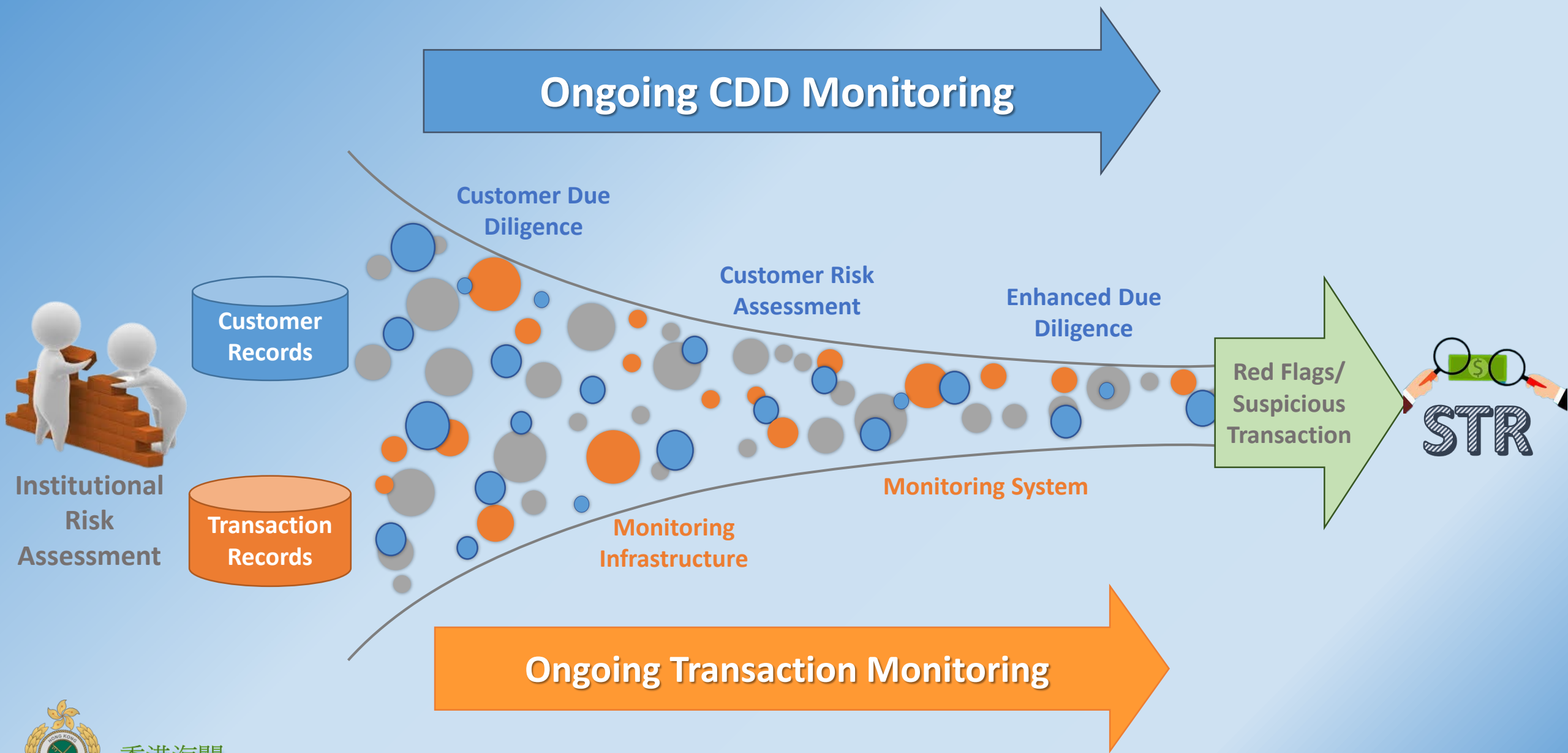
Results

Further Actions

*Documented Rules' Definitions and Escalation Processes
*Defined Transaction Monitoring Responsibilities within the MSO



Ongoing CDD Monitoring



Delivery Channel Risks



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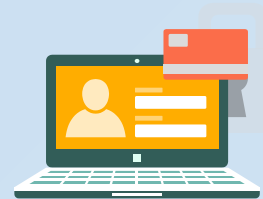
MSSB/MIS_05/2021

13 December 2021

Circular

Circular to Money Service Operators
Anti-Money Laundering / Counter-Terrorist Financing
Money Laundering and Terrorist Financing Risks
Associated with Delivery Channels

In view of recent incidents involving unfulfilled cross-border / cross boundary remittance by Money Service Operators (“MSOs”) in which customers’ funds were frozen by the regulatory bodies or law enforcement agencies in other jurisdictions, the Customs and Excise Department (“C&ED”) would like to remind MSOs to exercise increased vigilance on possible activities or transactions that are suspected to be related to the money laundering and terrorist financing (“ML/TF”), and to reiterate the importance of institutional risk assessment (“IRA”) conducted by MSOs, particularly on their delivery channel risks outside Hong Kong.^{Note 1}



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“Merchants should provide consumers with accurate and practical information, promote consumer rights and consolidate consumer confidence.” - Mr. Algernon Yau, Secretary for Commerce and Economic Development



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Questions & Answers

THANK YOU!



3742 7742



msoenquiry@customs.gov.hk



<https://eservices.customs.gov.hk/MSOS/>



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