



Seminar for Money Service Operators – Licensing Requirements and Key Compliance Issues under the AMLO

Money Service Supervision Bureau

19 September 2014



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Part 5 of the AMLO

Regulation of Operation of Money Services



Any person who wishes to operate a remittance and / or money changing service (i.e. money service as defined under the AMLO) is required to apply for a licence from the Commissioner of Customs & Excise (CCE)



If a person operates a money service **without** a licence

- If a person operates a money service without a licence is liable on conviction to a fine of HK\$100,000 and to imprisonment for 6 months
- If a person is convicted of an offence under this section, the magistrate may order that the person is to be disqualified from holding a licence for a period specified in the order beginning on the date of the order



Licensing Requirements

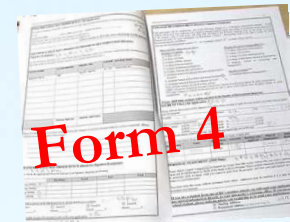


Changes that require the CCE's prior approval

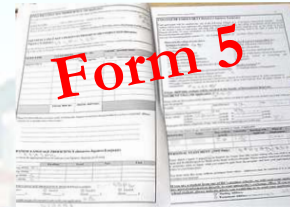


Need to **seek prior approval** from the CCE

- When there is a person proposing to become licensee's director/ultimate owner/partner
[AMLO s35(1), s36(1) and s37(1)]



- Add premises to operate a money service or operate a money service at any particular premises
[AMLO s38(1) and s39(1)]





Breach of Licensing Requirements

Criminal offences

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

Disciplinary actions

- Under section 43 of the AMLO
 - ◆ to publicly reprimand the licensee;
 - ◆ to order the licensee to take any action for the purpose of remedying the contravention; and
 - ◆ to order the licensee to pay a pecuniary penalty not exceeding HK\$1,000,000

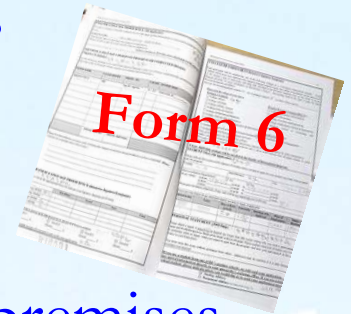


The licensee must notify the CCE **in writing of the change within one month** beginning on the date on which the change takes place



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

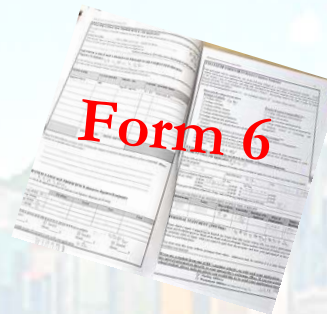




Needs to notify the CCE the following changes (II)

- 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

[AMLO s40(1)]



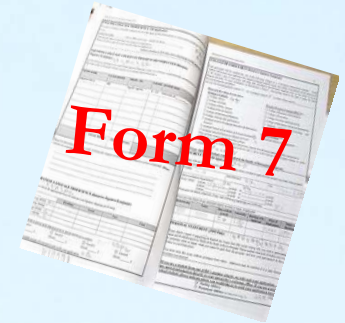


Cessation of Money Service Business



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

[AMLO s41(1)]



Breach of Licensing Requirements

Criminal offences

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

Disciplinary actions

- Under section 43 of the AMLO
 - ◆ to publicly reprimand the licensee;
 - ◆ to order the licensee to take any action for the purpose of remedying the contravention; and
 - ◆ to order the licensee to pay a pecuniary penalty not exceeding HK\$1,000,000



Licence ceases to be valid

- if the licensee is an individual, on the death of the individual;
- if the licensee is a partnership, on the dissolution of the partnership; or
- if the licensee is a corporation, on the commencement of winding up of the corporation.

[AMLO s42]

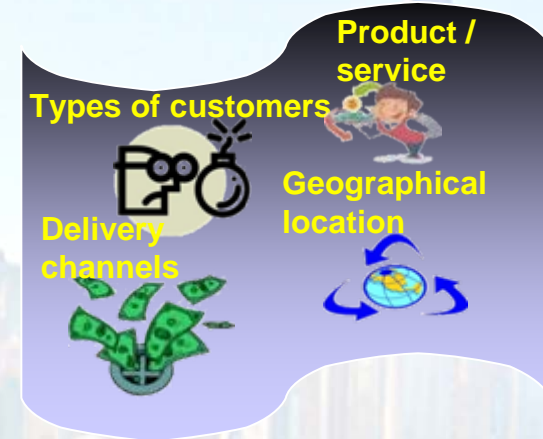


Risk-based Approach



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





Customer Due Diligence (CDD)



Carrying out CDD (I)

- Circumstances require carrying out CDD measures
 - at the outset of a business relationship
 - before performing
 - ◆ any occasional transaction \geq HK\$120,000 or
 - ◆ wire transfer \geq HK\$8,000
 - suspicion of ML/TF
 - doubt on the veracity and adequacy of the information previously obtained

[AML Guideline Chapter 4.1.9]

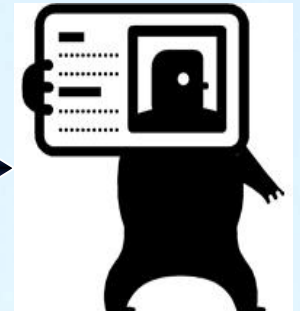


Carrying out CDD (II)

- Measures of CDD

- identify & verify identity

- ◆ customer & beneficial owner



- identify & verify identity and authority

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

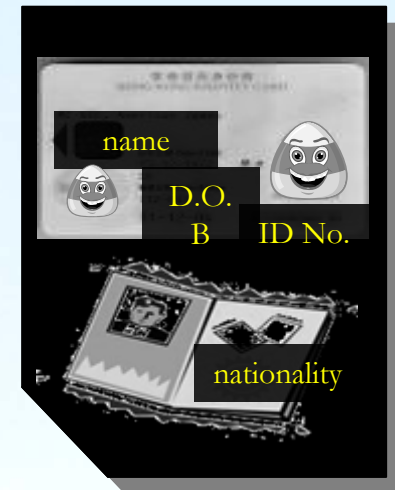
- obtaining information on the purpose & nature of the business relationship

[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
 - ◆ 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]



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
 - ◆ verify the identity of directors on a risk-based approach

[AML Guideline Chapter 4.9]



Carrying out CDD (VII)

- For a locally incorporated company
 - a search of file at the Hong Kong Companies Registry and obtain a company report
- For a company incorporated overseas
 - a similar company search enquiry of the registry in the place of incorporation and obtain a company report;
 - a certificate of incumbency or equivalent issued by the company's registered agent in the place of incorporation; or
 - a similar or comparable document to a company search report or a certificate of incumbency certified by a professional third party in the relevant jurisdiction verifying that the information is correct and accurate

[AML Guideline Chapter 4.9.10 and 4.9.11]



Carrying out CDD (VIII)

- 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 (IX)

- 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]



Remittance Transactions



Remittance Transactions

- \geq HK\$8,000 remittance transaction
- 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
 - 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]



Ongoing Monitoring



Ongoing Monitoring (I)

- Continuously monitor business relationship with a customer by
 - review from time to time CDD documents, data and information
 - scrutinize transactions with customers to ensure they are consistent with the nature of business, the risk profile and source of funds
 - identify transactions that are complex, large or unusual or patterns of transactions with no apparent economic or lawful purpose

[AML Guideline Chapter 5.1]



Ongoing Monitoring (II)

- Risk-based approach to monitoring
 - the extent of monitoring should be linked to the risk profile of the customer which has been determined through risk assessment
 - must take additional measures when monitoring business relationships that pose a higher risk
 - exception reports will help FI's stay apprised of operational activities
[AML Guideline Chapter 5.7 - 5.9]



Record-keeping



Record-keeping (I)

FIs 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 or any beneficial owner of the customer
- all documents and records should be kept throughout the business relationship with the customer and for a period of six years after the end of the business relationship

[AML Guideline Chapter 8.3 – 8.4]



Record-keeping (II)

FIs should maintain

- the original or a copy of the documents, and a record of the data and information, obtained in connection with the transaction
- all documents and records should be kept 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]



Non-compliance of CDD and Record-keeping Requirements

Criminal Sanction

- knowingly contravenes a specified provision as defined by AMLO, section 5(5) and 5(7)
- to a fine of HK\$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 HK\$1,000,000 and to imprisonment for 7 years



Non-compliance of 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; and
 - to order the licensee to pay a pecuniary penalty not exceeding the amount that is the greater of HK\$10,000,000 or 3 times the amount of the profit gained, or costs avoided, by the licensee as a result of the contravention



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



Thank you