Circulars

13 Nov 2007

Anti-Money Laundering and Terrorist Financing – Amendments to the Supplement to the Guideline on Prevention of Money Laundering

Our Ref.: B10/1C
B1/15C

13 November 2007

The Chief Executive
All authorized institutions

Dear Sir/Madam,

Anti-Money Laundering and Terrorist Financing -
Amendments to the Supplement to the Guideline on Prevention of Money Laundering

I am writing to inform you that, following consultation with the industry, the HKMA has made several amendments to the Supplement to the Guideline on Prevention of Money Laundering ("Supplement") and the Interpretative Notes ("INs") attached thereto to take into account latest developments in relation to anti-money laundering and counter terrorist financing. The major amendments are discussed below.

Jurisdictions which do not or insufficiently apply FATF Recommendations

Section 14 and some other sections of the Supplement require AIs to pay special attention to customers from Non-Cooperative Countries and Territories ("NCCTs"). However, since the delisting of Nigeria and Myanmar, there are no longer any countries or territories remaining on the NCCT list published by the Financial Action Task Force on Money Laundering ("FATF") and the FATF has recently declared an end to the NCCT exercise. Although the relevant provisions in the Supplement refer primarily to NCCTs, in practice, the HKMA expects AIs to exercise the same level of care in dealing with any jurisdiction which does not apply or insufficiently applies the FATF Recommendations.

To reflect this development, the HKMA has amended the Supplement to make it clear that AIs should be cautious in dealing with customers from jurisdictions which do not or insufficiently apply the FATF Recommendations. In addition, we have specified several key factors that should be taken into account by AIs in determining whether jurisdictions do not or insufficiently apply the FATF Recommendations or otherwise pose a higher risk to AIs. These factors are consistent with the guidance provided in the FATF's recent paper on Risk-Based Approach to Combating Money Laundering and Terrorist Financing.

Jurisdictions that are in compliance with and have effectively implemented the FATF Recommendations

Section 4.4 of the Supplement provides that a simplified customer due diligence ("CDD") process may be adopted in dealing with non-bank financial institutions which are authorized and supervised by the relevant authority in a jurisdiction that is a FATF member or an "equivalent jurisdiction". Section 6.4 of the Supplement states that AIs should, to the extent possible, rely on intermediaries which are incorporated in, or operating from a FATF member jurisdiction or an "equivalent jurisdiction" to perform CDD procedures. A list of equivalent jurisdictions is currently provided in Paragraph 14 of the INs.

The existing approach of providing a list of equivalent jurisdictions does not allow AIs to conduct their own assessment on whether or not a jurisdiction sufficiently applies FATF standards and meets the criteria for an equivalent jurisdiction. The HKMA has amended the Supplement to enable AIs to do so. The HKMA has further specified in the Supplement the key principles to be followed by AIs in making such risk assessments. The term "equivalent jurisdiction" has been replaced by "comparable jurisdiction" which better reflects the intention of the HKMA. AIs will continue to be permitted to regard those jurisdictions currently listed in Paragraph 14 of the INs as comparable jurisdictions.

Recognised stock exchanges

Section 4.2 of the Supplement states that simplified CDD measures may be applied to customers which are companies listed on a "recognised stock exchange". Paragraph 10 of the INs and Annex 1 to the INs currently provide (i) a list of recognised stock exchanges and (ii) the following definition of a "recognised stock exchange":

"Stock exchange of a country which is a member of FATF or a specified stock exchange as defined under the Securities and Futures Ordinance (but excluding those exchanges in NCCTs)."

The existing list of recognised stock exchanges in Annex 1 to the INs has become outdated following the delisting of the Philippines from the NCCT list (Philippine Stock Exchange Inc. is a specified stock exchange under the Securities and Futures Ordinance) and the admission of China as a member of FATF. To obviate the need for updating the list on an ongoing basis, the HKMA has repealed Annex 1 to the INs (thereby removing the list of recognised stock exchanges) and replaced this by providing a slightly amended definition of "recognised stock exchange" in paragraph 10 of the INs.

Requirement to obtain information on the purpose and intended nature of the business relationship with customers

The existing Supplement does not explicitly require AIs to obtain information on the purpose and intended nature of the business relationship from the customer, although it has in many places emphasised the importance for AIs to know their customers, including their nature of business, risk profile and the types of transactions to be conducted on their accounts to facilitate on-going transaction monitoring.

To reflect this more clearly in the Supplement, the HKMA has incorporated a new requirement under section 3.2 of the Supplement, requiring AIs to obtain information from the customer on the purpose and reason for opening the account or establishing the relationship, unless it is self-evident.

Management information systems

The HKMA has also made a minor change to section 13.5 of the Supplement to make it clear that AIs should take appropriate follow-up actions on any unusual activities identified in their MIS reports and that the findings and any follow-up actions taken should be properly documented and maintained for a period not less than six years following the date when the unusual activity is identified.

Please refer to Annex 1 for details of these amendments. A revised Supplement is at Annex 2. Since changes to AIs' policies and procedures may be necessary, AIs will have a 6-month grace period to implement these requirements. The revised Supplement will be published in the Gazette shortly.

If there are any questions relating to this letter, please feel free to contact Mr Ronnie Wong on 2878-1399 or Ms Sophia Lam on 2878-8281. On-line access to this letter and the annex is available under the icon "Circulars and Guidelines" in the HKMA's public (http://www.hkma.gov.hk) and private (http://www.stet.finnet.hk) websites.

Yours faithfully,

Simon Topping
Executive Director (Banking Policy)

c.c. The Chairman, The Hong Kong Association of Banks
The Chairman, The DTC Association
FSTB (Attn: Ms Angelina Kwan)
Narcotics Division (Attn: Ms Kitty Yu)

Encl. Annex 1 (PDF file, 43KB)
Annex 2 (PDF file, 193KB)

Last revision date : 01 August 2011