

1 December 2020

Circular to Licensed Corporations and Associated Entities

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

Findings from inspections of AML/CFT controls and compliance practices

This circular shares with licensed corporations (LCs) and associated entities (AEs) some key observations identified from our routine and thematic inspections of their AML/CFT policies, procedures and controls (AML/CFT systems) carried out in 2019 and 2020.

The thematic reviews took an in-depth look at, among other measures, the money laundering and terrorist financing (ML/TF) risk assessment frameworks, transaction monitoring and reporting processes, and internal controls and governance of selected firms where some critical or common deficiencies and non-compliance were identified. Our findings from both thematic and routine inspections also revealed deficiencies in the implementation of risk-based customer due diligence measures and sanctions screening controls which warrant attention by LCs and AEs.

The critical areas to which firms should pay priority attention are as follows.

1. Failure to implement comprehensive and up-to-date policies and procedures, and maintain adequate oversight and internal controls for ensuring the proper and effective performance of AML/CFT functions by staff.
2. Inadequate consideration of pertinent ML/TF risk factors when conducting institutional risk assessments¹ and customer risk assessments², as well as inadequate follow-up on the assessment results. Firms must address the assessed ML/TF risks by:
 - (a) in the case of institutional risk assessments, evaluating whether the firm's AML/CFT systems are adequate and appropriate, and making any necessary enhancements; and
 - (b) in the case of customer risk assessments, reviewing whether the overall ML/TF risk level of any of their existing customers should be elevated when any risk factor with which they are associated is assessed to pose a higher risk than before.
3. Failure to assess fund deposits by clients to ascertain whether they originate from third party payors in order to apply appropriate due diligence and transaction monitoring measures.

¹ Institutional risk assessment refers to the assessment of the ML/TF risks to which a firm is exposed, so as to facilitate the design and implementation of adequate and appropriate AML/CFT systems in order to mitigate the risks identified.

² Customer risk assessment refers to the assessment of the ML/TF risks associated with a customer or proposed business relationship so as to determine the degree, frequency or extent of customer due diligence measures and ongoing monitoring to be applied to the customer or business relationship using a risk-based approach.

4. Inadequate measures to establish source of wealth and source of funds for high-risk customers as required by the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO)³ and the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations) (AML Guideline)⁴.
5. Failure to perform screening of existing customers as soon as practicable whenever there are updates to sanctions lists; even when existing customers are screened promptly against updated sanctions lists, their beneficial owners and other relevant connected parties may be incorrectly omitted from screening.

Inspection findings in some other areas also require firms' attention. These areas as well as additional commentary on the above-mentioned priority areas are set out in the Appendix.

To facilitate compliance, expected regulatory standards and examples of good practices are provided. These examples are not meant to be exhaustive and should not be regarded as the only ways of meeting the regulatory requirements.

LCs and AEs should review their AML/CFT systems in light of this circular and take immediate actions to rectify any deficiencies and non-compliance.

Senior management, including the Manager-In-Charge of AML/CFT, bear the primary responsibility for ensuring that the firm maintains appropriate standards of conduct and adheres to proper procedures⁵. They should maintain active oversight and implement adequate internal controls to ensure proper implementation of AML/CFT systems to comply with all applicable legal and regulatory obligations as well as to manage ML/TF risks effectively. Any future or continuing deficiencies or non-compliance discussed in this circular and its Appendix may result in disciplinary action in respect of senior management of the LC for failure to put in place effective AML/CFT controls.

To properly discharge their role, senior management are reminded to check, among other actions, that:

1. appropriate mechanisms are in place to develop and continuously review the firm's AML/CFT policies and procedures to ensure that they are sufficiently comprehensive to ensure compliance with all applicable requirements;
2. adequate training tailored to their specific job functions and responsibilities is provided to staff, helping them to understand and carry out their duties in accordance with the firm's policies and procedures and enhancing their sensitivity to ML/TF red flags;
3. appropriate ongoing compliance monitoring and periodic independent reviews are in place to detect and remedy any deficiencies or non-compliance in critical AML/CFT controls in a timely manner; and

³ Sections 10 and 15 of Schedule 2 to the AMLO.

⁴ Paragraphs 4.9.2, 4.11.12 and 4.11.22 of the AML Guideline.

⁵ General principle 9 (Responsibility of senior management) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.



4. appropriate reporting mechanisms are in place for senior management to be apprised of key ML/TF risks and concerns in a timely manner and to enable them to take appropriate action to adequately manage and address them.

The SFC will continue to monitor AML/CFT compliance and will not hesitate to take action against firms and their senior management for failures to put in place effective AML/CFT controls and compliance processes.

Should you have any queries regarding the contents of this circular, please contact Ms Kiki Wong at 2231 1569 who will refer your queries to the relevant officer.

Intermediaries Supervision Department
Intermediaries Division
Securities and Futures Commission

Enclosure

End

SFO/IS/042/2020