



BANGKO SENTRAL NG PILIPINAS

OFFICE OF THE DEPUTY GOVERNOR
SUPERVISION AND EXAMINATION SECTOR

CIRCULAR LETTER NO. CL-2016-075

To : **All BSP-Supervised Financial Institutions**

Subject : **Anti-Money Laundering Council (AMLC) Resolution No. 69 dated 17 August 2016**

The AMLC, in its Resolution No. 69 dated 17 August 2016, resolved to issue the attached Advisory to all covered persons relative to the proper implementation of the provisions of the Revised Implementing Rules and Regulations (RIRRs), particularly Rules 9.a.9.a (Enhanced due diligence) and 9.a.15.a (Unusual or suspicious patterns of activity), and AMLC Resolution No. 64, Series of 2014 concerning high risk clients.

For implementation and guidance.


NESTOR A. ESPENILLA, JR.
Deputy Governor

05 September 2016

Att.: A/S



Republic of the Philippines
Anti-Money Laundering Council

ADVISORY

It would be recalled that the Financial Action Task Force's (FATF), in its Public Statement dated 27 June 2014, identified Iran and North Korea as high-risk jurisdictions and required its members and other jurisdictions "to apply counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing (ML/FT) risks" emanating from these jurisdictions.

Thus, in compliance with the above requirement of the FATF and pursuant to its Recommendation 19 which requires countries "to apply countermeasures when called upon to do so by the FATF", the AMLC issued Resolution No. 64, Series of 2014.

The said AMLC Resolution directs all covered persons to apply enhanced due diligence relative to the jurisdictions identified under the FATF Public Statement dated 27 June 2014. The application of enhanced due diligence is one of the countermeasures under the Interpretative Notes of the FATF Recommendation 19 which could be resorted to by jurisdictions insofar as identified high risk countries are concerned.

However, in a recent development, the FATF, in its 24 June 2016 Public Statement against Iran, suspended the imposition of countermeasures against Iran BUT required jurisdictions to apply enhanced due diligence as follows:

The FATF welcomes Iran's adoption of, and high-level political commitment to, an Action Plan to address its strategic AML/CFT deficiencies, x x x. The FATF therefore has suspended counter-measures for twelve months in order to monitor Iran's progress in implementing the Action Plan. If the FATF determines that Iran has not demonstrated sufficient progress in implementing the Action Plan at the end of that period, FATF's call for counter-measures will be reimposed. If Iran meets its commitments under the Action Plan in that time period, the FATF will consider next steps in this regard.

Iran will remain on the FATF Public Statement until the full Action Plan has been completed. x x x. The FATF, therefore, calls on its members and urges all jurisdictions to continue to advise their financial institutions to apply enhanced due diligence to business relationships and transactions with natural and legal persons from Iran, consistent with FATF Recommendation 19. x x x.¹

¹ <http://www.fatf-gafi.org/publications/high-riskandnon-cooperativelocaljurisdictions/documents/public-statement-june-2016.html>. Accessed on 26 July 2016.

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It should be emphasized that while the FATF suspended the imposition of countermeasures against Iran, **it still requires the conduct of enhanced due diligence against business relationship and transactions with natural and legal persons from Iran, which is the least countermeasures under the FATF Recommendation 19, and is actually being required under AMLC Resolution No. 64, Series of 2014.** Thus, AMLC Resolution No. 64, Series of 2014, is still valid and relevant and should not be suspended. Covered persons should continue to apply enhance due diligence against high risk clients.

In addition to the foregoing, the following provisions of the Revised Implementing Rules and Regulations (RIRRs) of Anti-Money Laundering Act of 2001 (AMLA), as amended, would shed light in the treatment of high risk² customers:

a. **"Rule 9.a.9.a. Enhanced Due Diligence.** – Enhanced due diligence shall be applied to customers that are assessed by the covered institution or these Rules as high risk for money laundering and terrorist financing, which enhanced due diligence, at a minimum, should observe the following measures:

- i. Obtain senior management approval for establishing or continuing (for existing customers) such business relationships;
- ii. Take reasonable measures to establish the source of wealth and source of funds; and
- iii. Conduct enhanced on-going monitoring of the business relationship."

b. **"Rule 9.a.15.a. Unusual or suspicious patterns of account activity.** – A covered institution shall apply enhanced due diligence under Rule 9.a.9.a. on its customers if it acquires information in the course of its customer account or transaction monitoring that:

1. x x x;
2. Justifies re-classification of the customer from low or normal risk to high-risk pursuant to these Rules or by its own criteria;
3. x x x;

"Where additional information cannot be obtained, or any information or document provided is false or falsified, or result of the validation process is unsatisfactory, the covered institution shall terminate and refrain from further conducting business relationship with the customer

² Rule 9.a.9.b. defines high risk customer as one who is "from a country other than the Philippines that is recognized as having inadequate internationally accepted anti-money laundering standards, or does not sufficiently apply regulatory supervision or the Financial Action Task Force (FATF) recommendations, or presents greater risk for money laundering, its associated predicate offenses including corruption² and terrorism financing x x x."

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without prejudice to the reporting of a suspicious transaction to the AMLC when circumstances warrant."

Thus, it is a reasonable expectation, that once a client passes the enhanced due diligence tests under Rules 9.a.9.a. and 9.a.15.a. above, the client should be accepted, subject to some restrictions or limitation to control the risk based on the covered person's risk assessment.

It bears stressing that while a customer is considered high risk pursuant to the definition provided under Rule 9.a.9.b of the RIRRs, covered persons should not automatically impose any restriction of services or worst, close the account without the prior conduct of appropriate due diligence.

Termination of account or relationship, however, is allowed under Rule 9.a.15.a. (Unusual or suspicious patterns of account activity) of the RIRRs, i.e., only after a conduct of enhanced due diligence, and when additional information cannot be obtained, or any information or document provided is false or falsified, or result of the validation process is unsatisfactory.

Therefore, mere inclusion of one's jurisdiction in the FATF Public Statement (black list) would not justify imposition of any restriction or limitation of banking services or closure of account without performing enhanced due diligence measures. Termination of account can be resorted to only when there is a failure of enhanced due diligence.

More importantly, covered persons should be reminded of the following provision of Section 14 (g) of the AMLA, as amended:

"The provision of this law shall not be construed or implemented in a manner that will discriminate against certain customer types, such as politically-exposed persons, as well as their relatives, or against a certain religion, race or ethnic origin, or such other attributes or profiles when used as the only basis to deny these persons access to the services provided by the covered persons. Whenever a bank, or quasi-bank, financial institution or whenever any person or entity commits said discriminatory act, the person or persons responsible for such violation shall be subject to sanctions as may be deemed appropriate by their respective regulators" (emphasis supplied)

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