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LEGAL ALERT

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Anti-Money Laundering Rules on Beneficial Ownership for Financial Transparency

The Philippine Anti-Money Laundering Council ("AMLC") has issued guidelines on identification of beneficial ownership for all banks, insurance companies and other covered persons[1]. The guidelines will apply to all covered persons under the Anti-Money Laundering Act ("AMLA"), as amended. The guidelines were published on 27 November 2018 and took effect on the same day.

Implications for business in the Philippines

Criminal elements and high-ranking political figures have allegedly used dummies, including non-governmental organizations ("NGO") and individuals, to hide their identities in undertaking certain activities and multiple transactions involving multiple accounts with disproportionately high values, thereby blurring the illegal source of these funds. Money launderers and terrorists routinely use the cloak of anonymity to prevent the AMLC and law enforcement agencies to track them down.

In response, the AMLC issued these guidelines to prevent circumvention of the law and to align Philippine regulations with international financial standards on customer due diligence ("CDD"), whereby covered persons are required to identify not only the customer with whom they transact, but also their beneficial owners.

Significant provisions of the Regulation

The regulation defines a beneficial owner as any natural person who (i) ultimately owns or controls the corporation; or (ii) has ultimate effective control over the corporation. In line with this, "ultimate effective control" refers to any situation in which ownership or control is exercised through actual or a chain of ownership or by means other than direct control. In other words, a beneficial owner is an individual who ultimately owns or controls the customer.

General Policy on CDD

To meet the requirements for the performance of CDD on the beneficial ownership of customers, covered persons are required to do the following, among others:

- establish and record the true and full identity of its customers, including the account holder or transactor and the beneficial owner or person on whose behalf the transaction is being conducted, based on official documents;
- maintain a system of verifying the true identity of their customers, such as their legal existence, organisational structure, authority and identification of all persons purporting to act on their behalf, and the nature of the customer's business;
- establish appropriate and adequate internal control systems and methods that comply with AMLC regulations; and
- grant immediate and full access to authorised personnel of the AMLC and appropriate government agencies with respect to all information, documents or objects pertaining to the account, transaction and/or persons subject of an investigation, subject to relevant laws including, but not limited to secrecy of bank deposits and data privacy laws.

Obligations of Covered Persons

1. Customer Risk Assessment

CDD must be conducted using the risk-based approach. This means that covered persons should assess the anti-money laundering and counter-terrorism financing ("AML/CFT") risks posed not only by the legal owners but also by the beneficial owners, depending on the type of customer. Such risk-based approach will allow the covered person some flexibility in its obligation to verify the identity of the beneficial owner(s) of the customer on a case-to-case basis. In other words, if such customer poses a high risk for money laundering or terrorism financing activities, validation of information must be performed by the covered person. Nevertheless, identification of beneficial ownership of a customer is required, regardless of the level of risk associated with that customer.

The process of assessing customer risk and deciding how to identify and verify beneficial ownership should be set out in the covered person's Money Laundering and Terrorism Financing Prevention Program ("MLTFPP"). In general, covered persons must require minimum information on beneficial ownership for low and normal-risk customers, including reliable and independent documentation and data. For high-risk customers, covered persons should require additional information on beneficial ownership and legal arrangements as may be necessary for an enhanced due diligence procedure.

2. Determination of identity of the beneficial owners of corporate vehicles and existence of legal arrangements

Covered persons are required to adopt a written procedure that is reasonably designed to identify and verify the beneficial owners of the customer and the existence of legal arrangements entered into between the customer and said beneficial owners. In determining the identity of beneficial owners, covered persons should establish the customer's ownership structure and understand the ownership at each layer. Specific examples are contained in the annexes to the guidelines to assist covered persons in determining ownership, especially for complex ownership layers.

3. Obtaining beneficial ownership information

Covered persons are required to obtain minimum information from the customer, including the beneficial owner(s) and legal arrangements as provided by law. The guidelines provide a list of such minimum information and documents from customers.

To verify the identity of beneficial owner(s), covered persons shall use reliable and independent documentation and data such as, but not limited to, original government-issued photographic identification documents. Such verification must be made at the time the customer fills out any customer identification form. If verification is not possible under special circumstances, it should be made as soon as reasonably practicable as to ensure that AML/CFT risks are effectively managed in accordance with the MLTFPP and not to interrupt the normal conduct of business.

Furthermore, covered persons are required to regularly update beneficial owner information throughout the life of relationships with their customers.

4. Record keeping

Covered persons are also required to keep records of the beneficial owner and identification processes undertaken, consistent with the requirements under the AMLA and its implementing rules issued by the AMLC. Such records should be kept in a readily auditable manner, whereby covered persons shall provide the AMLC with accurate and current information of a customer, immediately upon request in the conduct of a money laundering investigation.

The information and records should be maintained for at least five years after the date on which the customer ceases to be a customer of the covered person.

5. Updating of MLTFPP

Within six months from effectivity of these guidelines, covered persons shall update their MLTFPP to comply with the duties set forth in the guidelines and implement the same immediately upon the approval of their board or equivalent governing body.

Transition Period

As for existing customers, covered persons shall identify and record their beneficial ownership information within one year from the effectivity of the guidelines.

Conclusion

Although Philippine standards on beneficial ownership were rated medium-high in the 2017 National Risk Assessment, the AMLC adopted these guidelines to enhance these standards and guide covered persons in identifying beneficial ownership. Therefore, these guidelines further promote transparency and accountability, which effectively dissuade criminal elements from conducting illegal activities by hiding their identities.

If you have any questions or require any additional information, please contact Felix Sy, Donald Onghanseng or the ZICO Law partner you usually deal with.

This alert is for general information only and is not a substitute for legal advice.

[1] Covered persons include entities, businesses, casinos and professions subject to the authority and jurisdiction of the AMLC on anti-money laundering and counter-terrorism financing matters.