PROPOSED AMENDMENTS TO THE MAS NOTICE 626 AND INTRODUCTION OF THE PROPOSED MAS NOTICE 626A

Posted on April 1, 2015

Category: CNPupdates

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

Date Published: 1 June 2015

Authors: Quek Li Fei and Paul Yap.

Introduction to and the Reality of Money Laundering and Terrorism Financing in Singapore

Money laundering ("**ML**") and terrorism financing ("**TF**", and collectively, "**ML/TF**") concerns are not new to the Monetary Authority of Singapore ("**MAS**") and other relevant authorities who are constantly vigilant to ensure that Singapore's legislation on anti-money laundering and countering the financing of terrorism (collectively, "**AML/CFT**") stays up to date, relevant and consistent with international best standards so as to effectively combat ML/TF as both illegal activities proliferate in volume and complexity.

ML is the process of converting money income obtained by criminal or illegitimate means to give it the appearance of having come from a legal or legitimate source. ML is thus a predicate offense, i.e., it is an offense to use funds (even for otherwise legitimate purposes) which are derived from criminal or illegitimate means. TF is the process of concealing and/or procuring such ill-gotten funds to be used to finance terrorist activities.

ML/TF Risks in Singapore

The Singapore government conducted the National Risk Assessment ("**NRA**") in 2013 (report issued on 10 January 2014) to enhance and deepen the government's collective understanding of ML/TF in Singapore. The key purpose of publishing the NRA was to help private sector stakeholders, including financial institutions, better understand the ML/TF risks in their sector, as well as those with whom they deal. In conducting the NRA, the Steering Committee comprising the Ministry of Home Affairs, the Ministry of Finance and the MAS, took reference from the Guidance on National Money Laundering and Terrorist Financing Risk Assessment published by the Financial Action Task Force ("**FATF**", an inter-governmental body established in 1989 by the relevant ministers of the FATF member jurisdictions. FATF is the global standard-setter for measures to combat ML/TF) as well as other international best practices standards.

The NRA has highlighted that "Singapore's openness as an international transport hub and financial centre exposes it to inherent cross-border ML/TF risks. The more vulnerable sectors are those that are internationally-oriented and cash-intensive". The financial sector, in particular, being ranked by the International Monetary Fund as one of 25 systemically important financial centres in the world, inevitably exposes Singapore to its share of ML/ TF risks. It was found that overall, AML/CFT controls in banks (cf. other forms of financial institutions in Singapore) are the most developed, but there is scope for improvement in the areas of trade finance and correspondent banking.

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

The MAS Notices to Financial Institutions on Prevention of Money Laundering and Countering the Financing of Terrorism

Singapore is a member of the FATF and pursuant thereto, the MAS has established a strict and rigorous AML/CFT regime. Pursuant to Section 27B(1) of the Monetary Authority of Singapore Act (Cap. 186) ("**MAS Act**"), the MAS has issued notices to financial institutions in Singapore (as defined under Section 27A(6) of the MAS Act). This article focuses on the MAS 626 Notice to Banks on the Prevention of Money Laundering and Countering the Financing of Terrorism ("**MAS 626**") as specific guidance for banks licensed under the Banking Act (Cap. 19) ("**Banks**") as to what AML/CFT efforts Banks should undertake.

The MAS 626 was first published on 2 July 2007, and it was last revised on 1 July 2014. To keep Singapore's AML/CFT regulatory framework in line with international best practices and the latest recommendations of the FATF, MAS on 15 July 2014 proposed changes to the notices to the respective financial institutions to formalise existing supervisory expectations and practices across the financial sector covering Banks, merchant banks, finance companies, money-changers, and remittance licence holders, life insurers, capital market intermediaries, financial advisers, approved trustees, trust companies, stored value facilities holders, and non-bank credit and charge card, licensees. A new AML/ CFT notice, the draft MAS 626A Notice to Credit Card or Charge Card Licensees on the Prevention of Money Laundering and Countering the Financing of Terrorism ("**MAS 626A**") has also been proposed. MAS invited interested parties to submit their views and comments on the proposals made in the consultation paper and the invitation was closed on 14 August 2014.

Proposed Amendments to MAS 626

Some of the key proposed changes to MAS 626 are highlighted below:

Assessing Risks and Applying a Risk-Based Approach

The new paragraphs 4.1 to 4.3 will include new obligations on Banks to identify and assess the overall ML/TF risks they each face as an institution and to take commensurate steps to effectively mitigate such risks.

Performing Customer Due Diligence ("CDD")

The new paragraph 6.3(c) includes new obligations on Banks to perform customer due diligence when effecting or receiving funds by domestic wire transfer or by cross-border wire transfer that exceeds S$1,500.00 for any customer who has not otherwise established business relations with the Bank.

Identification and Verification of Identity of Beneficial Owners

Paragraphs 6.19 to 6.20 will be clarified with further elaboration of the cascading measures Banks need to

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

undertake when identifying and verifying the identity of beneficial owners of legal persons and legal arrangements. For instance, when dealing with legal persons, Banks are to take reasonable measures to identify the natural person who ultimately owns the legal person. When dealing with trusts, Banks will need to identify the trustee (s), settlor, protector (where applicable), beneficiaries, and any natural person exercising ultimate ownership or control over the trust, as well as take reasonable measures to verify their identities. These additional legal due diligence obligations on the Banks will obviously have an impact on the private clients' industry, specifically, those involved in advising on wealth management for ultra-high and high net worth individuals.

Customer Screening

Paragraph 6.44 requires Banks to screen a customer, natural persons appointed to act on behalf of a customer, connected parties of a customer and beneficial owners of a customer against relevant money laundering and terrorism financing information sources, as well as lists and information provided by the MAS and any relevant authorities in Singapore for the purpose of determining if there are any ML/TF risks in relation to the customer and such other persons.

Proposed MAS 626A

Credit and charge cards in Singapore are mostly issued by the Banks, which are already subject to MAS 626. Traditionally, the focus of regulation on card issuers (whether Banks or otherwise) was on the control of spending i.e., to ensure that Singaporeans and Permanent Residents are discouraged from spending beyond their financial means.

MAS pointed out in the proposed MAS 626A that there are credit/charge card network providers that issue credit/charge cards directly and not through Banks ("**Non-Bank Issuers**"). Some examples of non-bank credit/charge cards include those issued by American Express and Diner's Club. Non-Bank Issuers are regulated under the Banking (Credit Card and Charge Card) Regulations 2013 and notices and guidelines on technology risk management (e.g., the Technology Risk Management Guidelines published in June 2013) issued by the MAS. Card issuers are also subject to regulations issued by the MAS to financial institutions on international sanctions. Non-Bank Issuers were previously regarded as less exposed to ML/TF risks relative to other financial sub-sectors in Singapore, as payments to Non-Bank Issuers are typically conducted through a customer's bank account which is already covered by existing AML/CFT measures and as such, it was then viewed that there was no need for bespoke AML/CFT regulations on Non-Bank Issuers.

However, the MAS notes that the card-issuing sub-sector as a whole is considered by international bodies to warrant closer scrutiny in light of the emerging typologies that involve the abuse of credit/charge cards for ML. MAS, therefore, sees the need to introduce MAS 626A as part of its continuous update to the AML/CFT regime in Singapore.

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

Most of the provisions in the proposed MAS 626A are similar to that in MAS 626, save for certain provisions in MAS 626 which are specific to Banks and not applicable to Non-Bank Issuers.

Conclusion

Members of the financial industry in Singapore should be cognizant of the trends of ML/TF and the critical need for them to keep abreast of the AML/CFT regime in Singapore and around the world. Not only will AML/CFT affect the legality of business transactions with customers, the AML/CFT regime will also result in changes in the internal processes of, and an increase in the compliance costs in, Banks and Non-Bank Issuers.

Under Section 27B(2) of the MAS Act, a financial institution (including a Bank) which fails or refuses to comply with any direction issued by the MAS such as MAS 626 and MAS 626A shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S$1 million, and in the case of a continuing offence, to a further fine of S$100,000.00 for every day during which the offence continues after conviction.

View the proposed amendments here:

MAS Notice 626; and MAS Notice 626A

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.