

The Republic of the Union of Myanmar

Ministry of Planning and Finance

Microfinance Supervisory Committee

Directive No (2 /2019)

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Waning of Tazaungmon, 1381 ME

November 13, 2019

Directive on Customer Due Diligence for Anti-Money Laundering and Combating the Financing of Terrorism to be complied by The Microfinance Institutions

1. In exercising the power set out in the Section 69 (c) of the Anti-Money Laundering Law (Pyi Htaung Su Hluttaw Law No . 11/2014) and Section 68 (b) of the Microfinance Business Law (Pyi Htaung Su Hluttaw Law No. 13/2011), the Microfinance Supervisory Committee issues the directive on Customer Due Diligence for Anti-Money Laundering and Combating the Financing of Terrorism, and preventive measures and reporting duties to be complied by the microfinance institutions licensed and supervised by the Microfinance Supervisory Committee.
2. The expressions contained in this directive shall have the same meanings as defined in the Anti-Money Laundering Law and the Microfinance Business Law.
3. The microfinance institutions shall not provide financial services to, take financial support from, communicate and transact with the clients, partners, donors and members of the microfinance institution with un-identifiable, un-distinguishable, fictitious or false names or symbols.
4. The microfinance institutions shall, taking into account the information provided by the Central Body, conduct risk assessment on money laundering and terrorist financing at an appropriate time on its own account as follows:
 - a. Identifying, evaluating and understanding the risk of money laundering and terrorist financing within the microfinance institutions.
 - b. Keeping record in writing for all risk assessment.
 - c. Considering the root causes of risk before deciding the level and mitigation of risk.
 - d. Conducting risk assessments with update situation

- e. Getting timely information from the relevant authorities and reporting timely to the authorities.
 - f. Having the policy, procedures and control measures approved by senior management for risk management and mitigation.
 - g. Monitoring the implementation of risk control and enhancing the implementation for mitigation of risk.
 - h. Enhancing risk management and mitigation in the case exposed to be high risk.
 - i. Conducting simple risk mitigation mechanism for low risk. If the risk is suspicious to be related with money laundering and terrorist financing, the simple risk mitigation mechanism shall not be applied.
5. All risk assessments, any visible evidence and information shall be recorded in writing, kept up-to-date and be readily available for relevant authorities.
6. a. The microfinance institutions shall conduct due diligence at appropriate times as prescribed under the Anti- Money Laundering Law, on existing accounts and customers and new ones, based on the products, services and their risk profile as follows:
- (i) when the risk of money laundering and terrorist financing is identified as high as a result of the risk assessment, conduct enhanced due diligence measures consistent with the identified risk, and determine whether or not the transactions or other activities are unusual or suspicious;
 - (ii) conduct simplified due diligence measures consistent with the level of risk if the customer is identified as low risk according to the risk assessment of money laundering or terrorist financing;
 - (iii) terminate simplified due diligence measures on the customer under clause (ii) if the customer is suspected of money laundering or terrorist financing, or identified as high risk;

- (iv) conduct enhanced due diligence and simplified due diligence measures on the customer in accordance with the directives of the competent authority.
- b. Due diligence measures on the customer referred to in sub article (a) shall be conducted under the following times and situations:
 - (i) before carrying out transactions for a customer, or before accepting as a client or providing microfinance services or establishing a relationship;
 - (ii) before carrying out a transaction for a customer who has no established relationship with the microfinance institutions, if the transaction is equal to or above threshold amount as defined by the Central Body, whether conducted as a single transaction or several connected transactions;
 - (iii) before carrying out a domestic and international wire or electronic transfer for a customer;
 - (iv) when there is doubt about the veracity or adequacy of the customer identification data obtained previously;
 - (v) when there is suspicion that it is linked to money laundering or terrorist financing.
- c. If the value of transactions referred to in sub article (b) is unknown at the time of operation, verification and identification in accordance with the provisions of sub article (a) shall be made as soon as it is made known, or as soon as it has reached the threshold amount.
- d. Customer due diligence measures under sub article (a) shall be undertaken as follows:
 - (i) identifying and verifying the customer's identity using independent and reliable independent sources, documents, data or information;

- (ii) collecting information on and understanding the purpose and intended nature of the business relationship;
- (iii) identifying and verifying the beneficial owner, and understanding the ownership and control structure of the company formation or legal person or legal arrangement, and take all proper reasonable actions to examine the identification details of the said beneficial owner;
 - (a) For Legal Person:
 1. The identity of the natural persons if ownership interests can be so diversified that there are no natural persons, exercising control of the legal person or arrangement through ownership who ultimately have a controlling ownership interest in a legal person; and
 2. to the extent that there is doubt under (1) as to whether the person(s) with the controlling ownership interest are the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural persons (if any) exercising control of the legal person or arrangement through other means.
 3. Where no natural person is identified under (1) or (2) above, financial institutions should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.

- (b) For legal arrangements on trusts – the identity of the settlor, the trustee(s), the protector, the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust including through a chain of control/ownership;
 - (c) Other types of legal arrangements – the identity of persons in equivalent or similar positions.
- (iv) verifying if a person acting on behalf of a person, company, organization or legal person or legal arrangements is so authorized, the authenticity of his identity and the legal status of the company, organization or legal arrangement; obtain information on the customer's name, legal structure, address, details of the directors; and specify rules that will have binding on the company or legal person or legal arrangements;
- e. If the microfinance institution is unable to perform the duties under sub article (d), it shall decline to perform the functions under sub article (b) (i) (ii) and (iii), or otherwise act and terminate the relationship and consider reporting the matter to the Financial Intelligence Unit;
- f. The microfinance institutions may complete verification of the identity of the customer or beneficial owner as soon as possible after the establishment of a relationship where the microfinance institution can demonstrate the money laundering and terrorist financing risks are effectively managed, and the delayed verification is essential to avoid interrupting the normal conduct of business.
- g. The microfinance institutions have formed a suspicion of Money Laundering or Terrorist Financing, and may not pursue the Customer Due

Diligence process where they reasonably believe that performing the Customer Due Diligence process will tip-off the customer. In such cases, the microfinance institution must submit a Suspicious Transaction Report to the Financial Intelligence Unit.

7. The microfinance institution shall conduct ongoing due diligence measures on the customer in every business relationship. Furthermore, they shall verify all transactions to determine if they are consistent with their knowledge of the customer, business activities and risk profile, and source of fund, if necessary.

8. The microfinance institutions shall-

- a. pay particular attention to each of the following transactions:
 - (i) all complex, unusually large transactions, and transactions of irregular patterns that have no visible commercial or legal purpose;
 - (ii) all business relationships or transactions from a person or an organization from a country that does not sufficiently comply with anti-money laundering or countering of terrorist financing measures;
- b. examine the background and purpose of all transactions in sub article (a) as far as possible, and keep written records of the findings;
- c. conduct enhanced due diligence measures on the customer if the risk of money laundering or terrorist financing is identified to be high.
- d. enhance due diligence to the country which has high risk on anti-money laundering and financing to terrorism designated by international norms.

9. The microfinance institutions shall have appropriate risk management systems to determine whether a customer or a beneficial owner is a domestic or foreign politically exposed person or international politically exposed person, and in addition to performing customer due diligence measures specified in this directive, carry them out as follows:

- a. With respect to foreign politically exposed persons–
 - (i) seeking prior consent from senior management before establishing or continuing a business relationship;
 - (ii) taking all appropriate measures to identify the wealth and source of funds;
 - (iii) applying enhanced on-going due diligence measures on the customer and monitoring such business relationships;
- b. Applying measures contained in sub article (a) if the domestic and international politically exposed persons are determined to be high risk.
- c. Applying the requirements for all types of politically exposed persons to family members and close associates.

10. The microfinance institutions shall keep the following information related records, and take steps for such records and other important information to be readily available for the Financial Intelligence Unit and the relevant authorities. Such records shall be sufficient enough to reconstruct individual transactions.

- a. documentations, records of the customer or beneficial owner for five years after the termination of business relationship or occasional transaction, evidential documents including business correspondence, records obtained through due diligence measures on the customer, records resulting from due diligence and results of any analysis;
- b. domestic or overseas transaction records, at least five years from attempted or executed transactions;
- c. copies of suspicious transaction reports and other relevant documents at least five years after their submission to the financial intelligence unit;
- d. risk assessment exceeding five years after which it has completed or updated, and other significant information.

11. a. The microfinance institutions may rely on a third party who has the capacity to perform the following due diligence measures on the customer, as set out in this directive, article 6, sub article (b) (i), (ii) and (iii);
 - (i) promptly obtaining necessary information;
 - (ii) setting out processes that will facilitate the organization obtaining from the third party without delay, records and copies of other relevant records relating to due diligence requirements under article 6, sub article (d);
 - (iii) The microfinance institutions, having satisfied itself that the third party or organization is supervised, regulated or monitored for its compliance with the rules and regulations, and that it has measures in place to apply due diligence measures and record keeping requirements as contained in the Law.
- b. Identification and verification of the customer described in sub article (a) remains the ultimate responsibility of the relevant microfinance institutions.
12. The microfinance institutions shall identify and assess money laundering and terrorist financing risks that arise from new and existing products, services, commercial activities or technologies, including delivery channels, and take necessary action to manage and mitigate such risks. In the case of new products, services, technologies and delivery channels the risk assessment should take prior to the launch of the new products, business practices or the use of new or developing technologies.
13. The microfinance institutions shall carry out the following actions before entering

into business relationship with cross-border correspondent banks and other similar relationships, in addition to normal due diligence measures on the customer as prescribed in article 6:

- a. collecting sufficient information and in order to understand the business nature of the foreign organization with which it has business relationship, to determine its reputation if it has been investigated or sanctioned with respect of money laundering and terrorist financing, and the information on the quality of supervision.
 - b. obtaining approval from the senior management;
 - c. conducting an assessment on the quality of money laundering and terrorist financing controls of the respondent bank;
 - d. making sure to clearly understand the responsibilities of each organization;
 - e. with regard to payable through accounts, ensuring that The microfinance institutions are satisfied that the customers of the respondent bank have direct access to the respondent bank's accounts, and that the respondent bank has performed customer due diligence on its customers and is able to provide customer due diligence records upon request.
- 14.
- a. The microfinance institutions shall ensure that wire or electronic transfers contain correct information on the originator and the beneficial owner, and that such information and related messages be maintained together throughout the payment chain.
 - b. The Microfinance Supervisory Committee and Financial Regulatory Department shall supervise on the microfinance institutions to comply the directive issued by Central Bank of Myanmar on conducting electronic transfers described in Article 6, (b) (iii);
 - c. Measures taken under sub article (a) shall not apply to the following:

- (i) transactions carried out using debit cards, credit cards, prepaid cards or mobile financial services to buy products and services that require numbers on debit cards, credit cards or prepaid cards with every transaction;
 - (ii) transactions between financial organizations provided that both the originator and the beneficial owner are banks and financial organizations acting on their own behalf;
 - d. The exception described in sub article (c) (i) does not apply to the use of debit cards, credit cards or prepaid cards as a payment mechanism, if it amounts to money transfer from one person to another via electronic means. In such cases, requirements under Article 6 shall comply.
 - e. The microfinance institutions shall ensure that their foreign branches and majority-owned subsidiaries apply Anti-Money Laundering and Combating the Financing of Terrorism measures consistent with the home country requirements, where the minimum Anti-Money Laundering and Combating the Financing of Terrorism requirements of the host country are less strict than those of the home country, to the extent that host country laws and regulations permit.
 - f. If the host country does not permit the proper implementation of Anti-Money Laundering and Combating the Financing of Terrorism measures consistent with the home country requirements, financial groups are required to apply appropriate additional measures to manage the Money Laundering and Terrorist Financing risks, and inform their home supervisors.
15. The microfinance institutions shall–
- a. develop, adopt and implement internal controls, arrangements, work guidelines and supervisory systems in order to implement the provisions in this directive, and effectively manage and mitigate their money laundering

and terrorist financing risks. Furthermore, they shall monitor such policies and controls and step up measures to enhance them if necessary. In such policies and controls the following shall be included:

- (i) conduct of customer due diligence measures, ongoing due diligence, monitoring transactions, reporting and record keeping obligations;
 - (ii) procedures to ensure the integrity of their employees including screening procedures to be used at the point of hiring, and systems to evaluate their personal, employment and financial history;
 - (iii) ongoing training programs that assist the staff with regard to 'know your customer', special obligations on anti-money laundering and countering the financing of terrorism, and reporting requirements on transactions;
 - (iv) compliance management arrangements and an independent audit function to check the compliance and the effectiveness of the measures.
- b. The microfinance institutions shall designate a compliance officer at the senior management level.
- c. The microfinance institutions shall, in setting out to implement the requirements under sub article (a) and (b), take into account factors such as the size of business, customers, transactions, products and services, delivery channels and scope, geographic and country coverage of the said business, together with the money laundering and terrorist financing risks.
- d. The following processes shall be carried out strictly-

- (i) apply the specified internal procedures and programs, business guidelines and controls issued under this Law on a group-wide basis, including foreign branches and majority-owned subsidiaries;
- (ii) ensure that information sharing procedures are in place within a financial group, including secure information sharing and utilizing procedures to safeguard the confidentiality and the use of share information, in order to carry out customer due diligence measures and manage money laundering and terrorist financing risks.

16. The microfinance institutions shall confer the following powers on the officer designated in accordance with Article 15 (b):

- a. power to obtain any documents, records, registrations and bank accounts necessary to perform the tasks;
- b. power to request and obtain any information, notification, clarification or evidential documents from any staff of a reporting organization.

17. a. The microfinance institutions shall apply enhanced CDD measures proportionate to the risks, to business relationships and transactions with natural and legal persons (including financial institutions) from countries, regions with inadequate AML/CFT systems and if it is necessary, shall apply countermeasures, proportionate to the risks, when called upon by international AML/CFT organizations including the Financial Action Task Force and the Asia Pacific Group on Money Laundering or other similar regional body.

- b. The FIU may direct that reporting organizations impose enhanced CDD measures or counter-measures on to business relationships and transactions with natural and legal persons (including financial

institutions), proportionate to the risks, associated with countries or geographic regions that are identified as being a high money laundering or terrorist financing risk by the FIU or a supervisor or international organizations including the Financial Action Task Force and the Asia Pacific Group on Money Laundering or other similar regional body.

18. The Microfinance Supervisory Committee shall ensure that the microfinance institution comply with the requirements under Section 31 of Anti-Money Laundering Law.

19. The microfinance institutions, if they suspect, or have reasonable grounds to suspect that a transaction or money or property is derived from the proceeds of crime, or is involved in or linked with, or intended to be used in terrorist financing, or terrorist act, or terrorist group or organization, or of a financier of a terrorist act, shall prepare and submit a suspicious transaction report in accordance with the specified form and processes, immediately or no later than three business days after forming a suspicion and in such cases shall promptly respond to requests from the Financial Intelligence Unit for additional information. This provision shall apply to both attempted and completed transactions, regardless of the amount involved in the transaction.

20. The microfinance institutions shall report to the Financial Intelligence Unit whether or not the transaction considered to be so connected, is equal to or exceeds the threshold amount, whether it is a single transaction or several transactions.

21. Lawyers, notaries and legal professionals and accountants engaging in a transaction associated with activities for their customer or on their behalf, are required to submit to the Financial Intelligence Unit, the information upon which the suspicion is based and not given by or obtained from the customer, along with other relevant information requested by the Financial Intelligence Unit.

22. Lawyers, notaries, legal professionals and accountants, in performing their task of checking the legal status of their client, defending or representing that client in, or concerning judicial, administrative, arbitration or mediation proceedings, obtain information requiring professional secrecy or special legal rights, such information shall not be required to submit as suspicious transaction report.

23. Any microfinance institutions that do not abide by this directive shall be punished with the provision of Anti-Money Laundering Law and Microfinance Business Law.

(Soe Win)

Chairman

Microfinance Supervisory Committee

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(Zaw Naing)

Secretary

Microfinance Supervisory Committee