



Republic of the Philippines
Department of Finance
INSURANCE COMMISSION
1071 United Nations Avenue
Manila



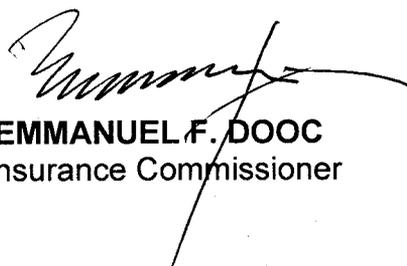
Circular Letter No:	2016-49
Date:	01 September 2016
Amending:	None

CIRCULAR LETTER

TO : All Insurance/Reinsurance Companies, Mutual Benefit Associations, Trusts for Charitable Uses, Insurance and Reinsurance Brokers and Pre-need Companies

SUBJECT : Dissemination of Anti-Money Laundering Council's Resolution No. 69, Series of 2016, dated 17 August 2016 and Advisory

Attached herewith is a copy of the **Anti-Money Laundering Council's Resolution No. 69, Series of 2016, dated 17 August 2016 and Advisory**, for your information and guidance.


EMMANUEL F. DOOC
Insurance Commissioner



Republic of the Philippines
Anti-Money Laundering Council
Bangko Sentral ng Pilipinas Complex
Manila, Philippines

RESOLUTION NO. 69
Series of 2016

The AMLC Secretariat in its Memorandum to the Council dated 12 August 2016 reported that:

The Embassy of the Islamic Republic of Iran ("Embassy of Iran"), in its Note Verbale No. 200/9928 dated 14 July 2016 to the Office Middle East and African Affairs (OMEAA), Department of Foreign Affairs, request the lifting of "all limitations, sanctions and banking restrictions" against the Embassy of Iran, the Embassy staff, the Iranian Companies, and Iranian nationals and to have full rights to do banking activities in the Philippines.

I. Background

A. Complaint Against BDO Unibank (BDO) and Philippine National Bank (PNB)

1. On 28 March 2016, Iranian Ambassador to the Philippines Mohammad Tanhei met with the BSP Governor and AMLC Chairman while First Counsellor Mojtaba Nadali of the Embassy of Iran discussed with the AMLC Secretariat Executive Director the alleged closure by BDO of the bank accounts of some of its Iranian customers.

2. The International Operations Department (IOD) of the Bangko Sentral ng Pilipinas (BSP), in its letter to the AMLC Secretariat dated 31 March 2016, transmitted the letter of the Embassy of Iran referring to the BSP the alleged closure by BDO of bank accounts of some Iranian nationals relative to the implementation of BSP Circular No. 706, Series of 2011.

3. On 4 April 2016, the AMLC Secretariat requested BDO to explain: (a) the report that some BDO officers have acted inappropriately in dealing with some Iranian clients during the closure of their bank accounts; and (b) the complaint that while some of their accounts were maintained, the services extended to Iranian account holders were limited to over-the-counter deposit and withdrawal while on-line banking and ATM services are not available.

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4. BDO, in its letter dated 18 April 2016, explained that the conduct of enhanced due diligence over high risk accounts is in compliance with BSP Circular No. 706 which requires covered institution to take extreme caution and vigilance when dealing with high risk customers. BDO further justified that **"In compliance with the x x x regulatory requirements of the BSP, the Bank has allowed the retention of banking relationship with nationals of sanctioned countries such as those from Iran considered as high risk but subject to enhanced due diligence policies e.g. over the counter transactions allowed, no electronic banking facility or acceptance of inward and outward remittances). Deviations may be allowed on a case to case basis."** (emphasis supplied)

5. On 10 June 2016, Ambassador Tanhei of the Embassy of Iran discussed with the Executive Director of the AMLC Secretariat the alleged practices of BDO towards some Iranian customers. **He complained that such practices are discriminatory and unjust and against the basic rights of the Iranian nationals in the Philippines. Some Iranians have been living in the Philippines for three decades now, some have been married to Filipinos, established their families here and have legitimate businesses, such as trading in carpet, and some are students studying in big universities.**

6. Ambassador Tanhei admitted though, that Iran still has some AML/CFT deficiencies which they are currently addressing. **He also pointed out there is no money laundering (ML) and terrorist financing (TF) risks on these Iranian nationals in the Philippines as there is not even a single ML and TF case that has ever been filed involving an Iranian in the Philippines. Further, he complained that even the Iranian Embassy and the Ambassador himself were not allowed to open bank accounts. The request of the Ambassador to open account with the Philippine National Bank (PNB) has not been responded to by PNB for quite some time now. The peso bank accounts are intended for the operations of the Embassy of Iran and payment of the salaries of its Filipino employees.**

7. **Ambassador Tanhei also expressed strong disagreement on the practice of allowing maintaining the bank accounts but the services are limited to over-the-counter deposit and withdrawal while on-line banking and ATM services are not available. He also stressed that it is only in the Philippines where Iranians experienced this unfortunate dealings with banks. He also said there are around four (4) million Iranians in the US and they had not experienced such a practice.**

8. **He added that even Filipinos had not experienced this treatment in Iran. Furthermore, he also stated that the number of Iranian students**

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in the Philippines declined due to this practice of banks since their parents in Iran find it difficult to send money directly to the Philippines.

9. *He then sought the assistance of the AMLC on how to address the unfortunate situation of Iranian nationals in the Philippines, without compromising the latter's compliance with International AML/CFT standards or obligations.*

B. Complaint Against Security Bank

10. *In a separate incident, the Embassy of Iran, in its Note Verbale dated 4 July 2016 addressed to the DFA's OMEAA, brought to the latter's attention its discontentment and displeasure on the Security Bank's closure of the bank accounts of NPC Alliance Corporation (NPCA).*

11. *The AMLC Secretariat, in its letter to Security Bank dated 5 July 2016, informed the latter of the concern of Embassy of Iran. The AMLC Secretariat also requested Security Bank to comment thereon.*

12. *Security Bank, in its letter dated 21 July 2016, clarified that, "as explained to NPC Alliance, the closure of their account is pursuant to US Executive Order 13599 (Blocking Property of the Government of Iran and Iranian Financial Institutions)."*

13. *Security Bank also attached in its letter an Office of Foreign Assets Control (OFAC) Sanctions List Search dated 7 July 2016. Security Bank further stated that:*

"The property and interests of NPC International Limited (NPCL) which is the majority owner of NPC Alliance Corporation remain to be blocked. As such, Security Bank is bound to comply with said directive. Likewise, our Bank's Manual on Money Laundering and Terrorist Financing Prevention Program prohibits us from doing business from NPCL or any other entity where it exercises majority ownership or significant control."

II. Discussion

14. *The complaint against BDO and PNB, and Security Bank are separately discussed as follows:*

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A. Complaint against BDO and PNB

15. While BDO cites the provision of BSP Circular 706 concerning high risk customers as the basis of its action on its Iranian customers, it was gathered from our discussion with Ambassador Tanhei that banks (including BDO) usually give as the reason for their action and practices the directives contained in AMLC Resolution No. 64, Series of 2014.

16. 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.

17. 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.

18. 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.

19. 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,

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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

20. 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 enhanced due diligence against high risk clients.

B. Complaint Against Security Bank

21. The decision of Security Bank to close the bank account of NPC Alliance is based on the sanctions imposed pursuant to US Executive Order 13599 (Blocking Property of the Government of Iran and Iranian Financial Institutions). Thus, we find the closure of the account with basis and not arbitrary.

C. Practices of the Jurisdictions in Dealing with Iranian Transactions:

22. The AMLC Secretariat conducted a research on select jurisdictions on their practice in dealing with high risk jurisdictions as follows:

United States of America (US)

a. The Financial Crimes Enforcement Network (FinCEN) of the US Department of the Treasury, in its Advisory (FIN-2016-A002) dated 21 March 2016², provides as follows:

“Jurisdictions in this section (Iran and DPRK) are subject to the FATF’s call on its members and other countries to apply countermeasures to protect the international financial system from AML/CFT risks. U.S. financial institutions should continue to consult existing FinCEN and U.S.

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

² https://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2016-A002.pdf. Accessed on 29 July 2016.

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Department of the Treasury (Treasury) guidance on engaging in financial transactions with Iran and DPRK. Previous FinCEN advisories and guidance on DPRK remain in effect.

"With respect to Iran, U.S. financial institutions are subject to a broad range of restrictions and prohibitions due to a number of illicit financing risks, including money laundering, terrorist financing, and the financing of Iran's ballistic missile program. Financial institutions are reminded of the existing U.S. sanctions that are administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC), including but not limited to sanctions against Iranian banks and other entities, as well as Iranian entities that have links to terrorist activity and Iran's ballistic missile program. x x x"

b. **Our inquiry with the Department of the Treasury indicated that, in general, US financial institutions are not allowed to provide goods and services to Iranian nationals and customers due to the sanctions imposed by the US. However, if the Iranian national is present in the US (i.e., resident of the US or student) then the US financial institution can provide services. There is also no restriction on the banking services that could be provided to the Iranian national present in the US. Meaning, once the Iranian national present in the US is allowed to open an account, the said Iranian national could avail himself of ATM, on-line banking and other services.**

c. **There is no updated Advisory yet issued by FinCEN on the implementation of the FATF Public Statement dated 24 June 2016 imposing enhanced due diligence against Iran. This notwithstanding, it is more important to note that Iranian nationals in the US are not subject to any sanctions or restrictions.**

Singapore

a. **According to Singapore Transaction Reporting Office, the Financial Intelligence Unit of Singapore, "financial institutions (FIs) are required to perform appropriate enhanced customer due diligence on customers who present higher risk from money laundering or terrorism financing that have been identified by the FIs or notified to them by Monetary Authority of Singapore (MAS) or other relevant authorities in Singapore"**

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b. The MAS, in implementing the FATF Public Statement dated 24 June 2016, advised financial institutions "to accord due consideration to the (above) FATF Statement and take the appropriate action(s) and level of due-diligence measures, as specified in the MAS AML/CFT Notices and regulations"³.

c. As regards the MAS' **Prohibition on Transactions with the Iranian Government and with Iranian Financial Institutions issued on 18 June 2012**, the same was cancelled effective 28 January 2016⁴.

Canada

a. To implement the FATF's Public Statement dated 24 June 2016, on 28 July 2016, the Financial Transaction and Reports Analysis Centre (FINTRAC) of Canada, issued an advisory "reiterating to all reporting entities subject to the requirements of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) the risks of doing business with individuals and entities based in, or connected to, the DPRK and Iran"⁵. FINTRAC is also "advising that reporting entities should consider (the above) in determining whether they are required to file a suspicious transaction report in respect of one or more financial transaction(s) or attempted financial transaction(s) emanating from, or destined to, the DPRK or Iran where there are reasonable grounds to suspect that the transactions are related to the commission or attempted commission of a money laundering offence or a terrorist activity financing offence. Reporting entities are also encouraged to undertake enhanced customer due diligence with respect to clients and beneficiaries involved in such financial transactions or attempted financial transactions."⁶ (emphasis supplied)

b. Our inquiry with FINTRAC indicated that it "does not issue prescriptive policy to reporting entities regarding customer due diligence and customer's acceptance policy". It also provided that "the centre does not prohibit specific individuals from transacting with financial institutions." It further added that, "however, based on the risk assessments and internal policies and procedures, reporting entities may refuse to do business with certain individuals, and are expected to

³<http://www.mas.gov.sg/Regulations-and-Financial-Stability/Anti-Money-Laundering-Countering-The-Financing-Of-Terrorism-And-Targeted-Financial-Sanctions/Anti-Money-Laundering-and-Countering-the-Financing-of-Terrorism/AMLCFT-Announcements/2016/June-2016-FATF-Statement.aspx>. Accessed on 29 July 2016.

⁴http://www.mas.gov.sg/~media/MAS/Regulations_and_Financial_Stability/Regulatory_and_Supervisory_Framework/Anti_Money_Laundering_Countering_the_Financing_of_Terrorism/MANEXT_1_2012_Cancellation_Notice.pdf. Accessed on 29 July 2016

⁵ <http://www.fintrac-canafe.gc.ca/new-neuf/avs/2016-07-28-eng.asp>. Accessed on 29 July 2016

⁶ *Ibid.*

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submit Suspicious Transaction Reports (STRs) on any completed or attempted transaction they deem to be suspicious, or that conducted or attempted by individuals on such watch lists.”

III. Conclusion

23. It is observed that the conduct of enhanced due diligence involving high risk jurisdictions is a common and ordinary procedure as it is based on the FATF Recommendation 19.

24. However, the practice of handling clients from high risk jurisdictions differs across jurisdictions. In the US, as long as the Iranian client/national is not subject to US sanction and provided he is in the US, there is no restriction or limitation of services to be provided. In Singapore, the prohibition in dealing with Iran and Iranian financial institutions has been cancelled. However, in Canada, it does not prohibit specific individuals from transacting with financial institutions, however, based on the risk assessments and internal policies and procedures, reporting entities may refuse to do business with certain individuals.

25. The following provisions of the RIRRs would shed light in the treatment of high risk⁷ customers:

a. **“Rule 9.a.9.a. Enhanced Due Diligence.** – Enhance 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

⁷ 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 corruption and terrorism financing x x x.”

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

26. 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.

27. 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.

28. Termination of account or relationship 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.

29. 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.

30. 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

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AMLC Secretary

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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)

The Council resolved to:

1. Issue the attached advisory to all covered persons relative to the proper implementation of the provisions of the RIRRs and AMLC Resolution No. 64, Series of 2014 concerning high risk clients;
2. Request the Supervisory Authorities (the Bangko Sentral ng Pilipinas, the Securities and Exchange Commission and the Insurance Commission) to disseminate the advisory to covered persons under their respective jurisdictions; and
3. Authorize the Secretariat to post the said advisory on the AMLC website and to inform the Embassy of Iran and the Department of Foreign Affairs accordingly.

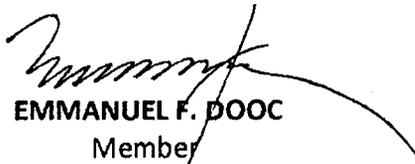
17 August 2016, Manila, Philippines.


AMANDO M. TETANGCO, JR.
Chairman

(Governor, Bangko Sentral ng Pilipinas)


TERESITA J. HERBOSA
Member

(Chairperson, Securities and Exchange Commission)


EMMANUEL F. DOOC
Member

(Commissioner, Insurance Commission)

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AMLIC Secretary
22 August 2016



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-cooperativejurisdictions/documents/public-statement-june-2016.html>. Accessed on 26 July 2016.

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AMLC Secretary

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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 corruption and terrorism financing x x x.”

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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MA. RHEA SANTOS-MENDOZA

AMLIC Secretary

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