



Article Content

Title : Regulations Governing Anti-Money Laundering of Financial Leasing Enterprises CH

Announced Date : 2018-06-20

Category : Financial Supervisory Commission (金融監督管理委員會)

Article 1 These Regulations are enacted pursuant to Paragraph 2, Article 5 applying to the first part of Paragraph 4, Article 7, Paragraph 3 of Article 8, Paragraph 3 of Article 9 and Paragraph 3 of Article 10 of the Money Laundering Control Act (hereinafter referred to as the "Act").

Article 2 Terms used in these Regulations are defined as follows:

1. "Financial leasing enterprise" shall mean the enterprise belonging to member of leasing association established pursuant to Commercial Group Act, which conducts financial leasing transactions.
2. "Financial leasing transaction" shall mean the transaction complying with the definition of financial leasing in Standards published by International Accounting Standards Board. This does not extend to the transaction in relation to consumer products.
3. "Beneficial owner" shall mean the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted, including those persons who exercise ultimate effective control over a legal person or arrangement.
4. "Risk-based approach" (RBA) shall mean financial leasing enterprises should identify, assess and understand the money laundering and terrorist financing (ML/TF) risks to which they are exposed and take appropriate anti-money laundering and countering terrorist financing (AML/CFT) measures commensurate with those risks in order to effectively mitigate them. Based on the RBA, financial leasing enterprises should take enhanced measures for higher risk situations, and take relatively simplified measures for lower risk situations to allocate resources efficiently, and use the most appropriate and effective approach to mitigate the identified ML/TF risks. A financial leasing enterprise conducting financial leasing transactions shall undertake customer due diligence (CDD) measures, perform enhanced due diligence (EDD), ongoing transaction monitoring and keep relevant records in accordance with Article 3 to Article 11. The enterprise shall report the

transactions to the Investigation Bureau, Ministry of Justice pursuant to Article 12 and Article 13.

- Article 3 A financial leasing enterprise conducting financial leasing transactions shall comply with the following provisions in undertaking CDD measures:
1. A financial leasing enterprise shall not accept anonymous accounts or accounts in fictitious names for establishing or maintaining business relationship.
 2. A financial leasing enterprise shall undertake CDD measures when:
 - (1) Establishing business relations with any customer;
 - (2) There is a suspicion of money laundering or terrorist financing; or
 - (3) The enterprise has doubts about the veracity or adequacy of previously obtained customer identification data.
 3. The CDD measures to be taken by a financial leasing enterprise shall be as follows:
 - (1) Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information.
 - (2) Verifying that any person purporting to act on behalf of the customer is so authorized, identifying and verifying the identity of that person in accordance with the preceding item.
 - (3) Identifying the identity of the beneficial owner of a customer and taking reasonable measures to verify the identity of the beneficial owner, including using the relevant data or information from a reliable source.
 - (4) Understanding and, in view of the situation, obtaining relevant information on the purpose and intended nature of the business relationship when undertaking CDD measures.
 4. When the customer is a legal person, an organization or a trustee, a financial leasing enterprise shall, in accordance with the preceding subparagraph, understand the business nature of the customer or trust (including a legal arrangement similar to a trust) and obtain at least the following information to identify the customer or trust and verify its identity:
 - (1) Name, legal form and proof of existence of the customer or trust.
 - (2) The charter or similar power documents that regulate and bind the legal person or trust, except for any of the following circumstances:
 - A. Customers/entities provided under Item (3) of Subparagraph 6 hereof without the situations specified in the proviso of Subparagraph 3 of Article 6 herein.
 - B. The customer who is an organization is verified that it does not have a charter or similar power document.

(3) Names of relevant persons having a senior management position in the customer.

(4) The address of the registered office of the customer, and if different, the address of its principal place of business.

5. When the customer is a legal person, a financial leasing enterprise shall understand whether the customer is able to issue bearer shares and apply appropriate measures for customers who have issued bearer shares to ensure their beneficial owners are kept up-to-date.

6. When the customer is a legal person, an organization or a trustee, a financial leasing enterprise shall, in accordance with Item (3) of Subparagraph 3 hereof, understand the ownership and control structure of the customer or trust, and obtain the following information to identify the beneficial owners of the customer and take reasonable measures to verify the identity of such persons:

(1) For legal persons and organizations:

A. The identity of the natural person(s) who ultimately has a controlling ownership interest in the legal person. A controlling ownership interest refers to owning directly and/or indirectly more than 25 percent of the legal person's shares or capital; a financial leasing enterprise may ask the customer to provide its list of shareholders or other documents to assist in the identification of persons holding controlling ownership interest.

B. To the extent where no natural person exerting control through ownership interests is identified under the preceding sub-item or that there is doubt as to whether the person(s) with the controlling ownership interest are the beneficial owner(s), the identity of the natural person(s) (if any) exercising control of the customer through other means.

C. Where no natural person is identified under Sub-item A or B above, a financial leasing enterprise shall identify the identity of a natural person who holds the position of senior managing official.

(2) For trustees: the identity of the settlor(s), the trustee(s), the trust supervisor, the beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, or the identity of person(s) in equivalent or similar position.

(3) Unless otherwise provided for in the proviso of Subparagraph 3 of Article 6 or where the customer has issued bearer shares, a financial leasing enterprise is not subject to the requirements of identifying and verifying the identity of beneficial owner(s) of a customer set out under Item (3) of Subparagraph 3 hereof, provided the customer or the person having a controlling ownership interest in the customer is:

- A. a R.O.C government entity;
 - B. an enterprise owned by the R.O.C government;
 - C. a foreign government entity;
 - D. a public company and its subsidiaries;
 - E. an entity listed on a stock exchange outside R.O.C. that is subject to regulatory disclosure requirements of its principal shareholders, and the subsidiaries of such entity;
 - F. a financial institution supervised by the R.O.C. government, and an investment vehicles managed by such institution;
 - G. a financial institution established outside R.O.C. that is subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the Financial Action Task Force on Money Laundering (FATF), and an investment vehicle managed by such institution;
 - H. a fund administered by a R.O.C. government entity; or
 - I. an employee stock ownership trust or an employee savings trust.
7. A financial leasing enterprise shall not establish business relationship with a customer before completing the CDD measures. However, a financial leasing enterprise may first obtain information on the identity of the customer and its beneficial owner(s) and complete verification after the establishment of business relationship, provided that:
- (1) The ML/TF risks are effectively managed, including adopting risk management procedures with respect to the conditions under which a customer may utilize the business relationship to complete a transaction prior to verification;
 - (2) This is essential not to interrupt the normal conduct of business with the customer; and
 - (3) Verification of the identities of the customer and its beneficial owner(s) will be completed as soon as reasonably practicable after the establishment of business relationship. A financial leasing enterprise shall advise its customer in advance that the business relationship will be terminated if verification cannot be completed as soon as reasonably practicable.
8. Where a financial leasing enterprise is unable to complete the required CDD process on a customer, it should consider filing a suspicious transaction report (STR) on money laundering or terrorist financing in relation to the customer.
9. If a financial leasing enterprise forms a suspicion of money laundering or terrorist financing and reasonably believes that performing the CDD process will tip-off the customer, it is permitted not to pursue that process and file a STR instead.

Article 4 If there exists any of the following situations in the CDD process, a financial leasing enterprise should decline to

establish business relationship or carry out any transaction with the customer:

1. The customer is suspected of opening an anonymous account or using a fake name, a nominee, a shell company or legal persons/organization to establish business relationship;
2. The customer refuses to provide the required documents for identifying and verifying its identity;
3. Where any person acts on behalf of a customer to establish business relationship, it is difficult to check and verify the fact of authorization and identity-related information;
4. The customer uses forged or altered identification documents;
5. The customer only provides photocopies of the identification documents;
6. Documents provided by the customer are suspicious or unclear, the customer refuses to provide other supporting documents or documents provided by the customer cannot be verified;
7. The customer procrastinates in providing identification documents in an unusual manner;
8. The customer is an individual, a legal person or an organization sanctioned under the Terrorism Financing Prevention Act, or a terrorist or terrorist legal person or an organization identified or investigated by a foreign government or an international organization, except for payments made under Subparagraphs 2 ~ 4, Paragraph 1, Article 6 of the Terrorism Financing Prevention Act; or
9. Other unusual circumstances exist in the process of establishing business relationship or conducting transaction and the customer fails to provide reasonable explanations.

Article 5 The CDD measures of a financial leasing enterprise shall include ongoing customer due diligence and comply with the following provisions:

1. A financial leasing enterprise shall apply CDD requirements to existing customers on the basis of materiality and risk, and conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained. The aforementioned appropriate times shall include at least:
 - (1) When the customer enters new business relationships with the enterprise;
 - (2) When it is time for periodic review of the customer scheduled on the basis of materiality and risk; and
 - (3) When it becomes known that there is a material change to customer's identity and background information.
2. A financial leasing enterprise shall conduct ongoing due diligence on the business relationship to scrutinize

transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the enterprise's knowledge of the customer, its business and risk profile, including, where necessary, the source of funds.

3. A financial leasing enterprise shall periodically review the existing customer records to ensure that documents, data or information of the customer and its beneficial owner(s) collected under the CDD process are adequate and kept up-to-date, particularly for higher risk categories of customers, whose reviews shall be conducted at least once every year.

4. A financial leasing enterprise can rely on existing customer records to undertake identification and verification without the need to repeatedly identify and verify the identity of an existing customer when carrying out transactions. However, a financial leasing enterprise shall conduct CDD measures again in accordance with Article 3 when it has doubts about the veracity or adequacy of the records, where there is a suspicion of ML/TF in relation to that customer, or where there is a material change in the way that the customer's transaction is conducted or the customer's account is operated, which is not consistent with the customer's business profile.

- Article 6 A financial leasing enterprise shall determine the extent of applying CDD and ongoing due diligence measures under Subparagraph 3 of Article 3 and the preceding article based on a risk-based approach (RBA):
1. For higher risk circumstances, a financial leasing enterprise shall perform enhanced CDD or ongoing due diligence measures, including adopting at least the following additional enhanced measures:
 - (1) Obtaining the approval of senior management before establishing or entering a new business relationship;
 - (2) Taking reasonable measures to understand the sources of wealth and the source of funds of the customer. The aforementioned source of funds refers to the substantial source from which the funds generate; and
 - (3) Conducting enhanced ongoing monitoring of the business relationship.
 2. For customers from high ML/TF risk countries or regions, a financial leasing enterprise shall conduct enhanced CDD measures commensurate with the risks identified.
 3. For lower risk circumstances, a financial leasing enterprise may apply simplified CDD measures, which shall be commensurate with the lower risk factors. However simplified CDD measures are not allowed in any of the following circumstances:
 - (1) Where the customers are from or in countries and

jurisdictions which have inadequate AML/CFT regimes, including but not limited to those which are designated by international organizations on AML/CFT as countries or regions with serious deficiencies in their AML/CFT regimes, and other countries or regions that do not or insufficiently comply with the recommendations of international organizations on AML/CFT; or (2) Where there is a suspicion of ML/TF in relation to the customer or the transaction.

Article 7 A financial leasing enterprise should perform CDD measures. However, if it is otherwise permitted by laws or regulations that a financial leasing enterprise may rely on third parties to perform the identification and verification of the identities of customers, person on behalf of the customer, beneficial owners of the customer or the purpose and intended nature of the business relationship, the enterprise relying on the third party shall still bear the ultimate responsibility for CDD measures and comply with the following provisions:

1. A financial leasing enterprise relying on a third party should be able to immediately obtain the necessary CDD information.
2. A financial leasing enterprise should take adequate steps to satisfy itself that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay.
3. A financial leasing enterprise shall make sure that the third party it relies on is regulated, supervised or monitored, and has appropriate measures in place for compliance with CDD and record-keeping requirements.
4. A financial leasing enterprise shall make sure that the jurisdiction where the third party it relies on is based has AML/CFT regulations in place consistent with the standards set out by the FATF.

Article 8 A financial leasing enterprise shall establish policies and procedures for watch list filtering, based on a risk-based approach, to detect, match and filter whether customers, their beneficial owners or connected parties of the customers are individuals, legal persons or organizations sanctioned under the Terrorism Financing Prevention Act or terrorists or terrorist legal person or an organization identified or investigated by a foreign government or an international organization. A financial leasing enterprise shall document its name and account filtering operations and maintain the records for a time period in accordance with Article 11.

Article 9 A financial leasing enterprise shall establish policies and procedures for transaction monitoring and could utilize

information system to assist in the detection of suspicious ML/TF transactions. Those policies and procedures shall be updated periodically.

Those policies and procedures in the preceding paragraph shall include at least the following ML/TF monitoring indicators:

1. The customer applies for financing leasing business, and the transactions are apparently incommensurate with the identity, income, or nature of business of the customer.
2. The customer repeatedly makes a repayment which is not fitted the contract-agreed repayment amount in each period without a reasonable purpose.
3. The customer splits a leasing asset into several parts, and separately establishes business relationships with several financing leasing enterprises without a reasonable purpose.
4. After the establishment of business relationship, the financial leasing enterprise discover a customer is suspicious and reconfirm with the customer that a transaction is denied by the customer, or the identity of the customer is invalid, or names of the customer is faked with proof or evidence.
5. The financial leasing transactions conducted by an individual involved in a special and significant case that is reported by television, press, internet or other media are apparently unusual.
6. The customer is an individual, a legal person or an organization sanctioned under the Terrorism Financing Prevention Act, or a terrorist or terrorist legal person or an organization identified or investigated by a foreign government or an international organization.
7. Other suspicious ML/TF transactions discovered by the financial leasing enterprise.

- Article 10** When conducting CDD measures, a financial leasing enterprise should use risk management systems to determine whether a customer or its beneficial owner is a person who is currently or has been entrusted with a prominent public function by a foreign government or an international organization (referred to as politically exposed persons (PEPs) hereunder):
1. For a customer or the beneficial owner thereof determined to be a current PEP of a foreign government, a financial leasing enterprise shall treat the customer directly as a high-risk customer, and adopt enhanced CDD measures under Subparagraph 1of Article 6.
 2. For a customer or the beneficial owner thereof determined to be a current PEP of the domestic government or an international organization, a financial leasing enterprise shall assess the PEP's risks when establishing business relationship with the PEP and conduct annual review thereafter. In case of higher risk

business relationship with such customers, the enterprise shall adopt enhanced CDD measures under Subparagraph 1, Paragraph 1 of Article 6.

3. For a PEP who is no longer entrusted with a prominent public function by the domestic government, a foreign government or an international organization, a financial leasing enterprise shall assess the influence that the individual could still exercise by considering relevant risk factors and determine whether to apply the provisions of the preceding two subparagraphs based on the RBA.

4. The preceding three subparagraphs apply to family members and close associates of PEPs.

The scope of PEPs, their family members and close associates mentioned above will be determined by the regulations stipulated in the latter part of Paragraph 4, Article 7 of the Act.

Provisions of the preceding paragraph do not apply when the beneficial owner of a customer specified under sub-items (A) ~ (C) and (H) of Item (3), Subparagraph 6 of Article 3 is a PEP.

Article 11 A financial leasing enterprise shall keep records on all business relations and transactions with its customers in hard copy or electronical form and in accordance with the following provisions:

1. A financial leasing enterprise shall maintain all necessary records on domestic and international transactions for at least five years or a longer period as otherwise required by law.

2. A financial leasing enterprise shall keep all records obtained through CDD measures, such as document files, business correspondence and the results of any analysis undertaken, for at least five years or a longer period as otherwise required by law after the business relationship is ended.

3. Transaction records maintained by a financial leasing enterprise must be sufficient to reconstruct individual transactions so as to provide, if necessary, evidence of criminal activity.

4. A financial leasing enterprise shall ensure that transaction records and CDD information will be available swiftly to the competent authorities when such requests are made with appropriate authority.

Article 12 A financial leasing enterprise conducting financial leasing transactions is required to report any cash transactions equal to or are above NTD 500,000 (or its equivalent in foreign currencies) to the Investigation Bureau, Ministry of Justice by mail, fax, email or other mandatory methods within 5 business days upon the transactions; the format of STR is prescribed by the Bureau.

The data reported to the Investigation Bureau, Ministry of Justice and relevant transaction records above shall be kept in accordance with the preceding article.

Article 13 A financial leasing enterprise shall file a suspicious transaction report (STR) to the Investigation Bureau, Ministry of Justice by mail, fax, email or other mandatory methods within 10 business days upon discovery of a suspicious ML/TF transaction; the format of STR is prescribed by the Bureau. For obviously significant suspicious ML/TF transactions of urgent nature, a financial leasing enterprise shall file a report as soon as possible to the Investigation Bureau, Ministry of Justice by fax or other feasible means. The data reported to the Investigation Bureau, Ministry of Justice and relevant transaction records in the preceding two paragraphs shall be kept in accordance with Article 11.

Article 14 These Regulations shall be effective from the date of promulgation.

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