



CUSTOMS AND EXCISE DEPARTMENT

Supplementary Guideline on Criteria for Determining Fitness and Propriety

January 2020

Supplementary Guideline for Determining Whether an Applicant for a Licence to Operate a Money Service or a Licensee is a Fit and Proper Person

Section 30(4), in Part 5, of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, Chapter 615 ('AMLO') details the matters, in addition to any other matter that the Commissioner of Customs and Excise ('CCE') considers relevant, the CCE must have regard to in determining whether an applicant for a licence to operate a money service ('applicant') or a licensee is a fit and proper person in considering the grant of a licence to operate a money service ('licence'). Notwithstanding that the authority to have regard to any other matter that the CCE considers relevant has all along been exercised, this Supplementary Guideline aims to provide examples to further understanding of any applicant in this respect.

This Supplementary Guideline must be read in conjunction with the Guideline on Criteria for Determining Fitness and Propriety for determining whether an applicant for a licence to operate a money service or a licensee is a fit and proper person.

Introduction

1. Section 30(3)(a), in Part 5, of the AMLO provides that the CCE may grant a licence to an applicant only if he is satisfied that the individual/each partner/each director/ultimate owner is a fit and proper person to operate a money service/to be associated with the business of operating a money service.
2. Section 30(4), in Part 5, of the AMLO details the matters the CCE must have regard to in determining whether an applicant is a fit and proper person. In addition to the matters he must have regard to, the CCE may take into account any other matter he considers relevant.
3. Whilst an applicant falling within section 30(4) will be subject to scrutiny as to his fitness and propriety to operate a money service, the

CCE will have regard to the facts and circumstances of each individual applicant before determining whether he/she is a fit and proper person.

4. Section 34, in Part 5, of the AMLO provides that the CCE may suspend or revoke a licence where the CCE is of the opinion that any of the individual/partner/director/ultimate owner in relation to the licence is no longer a fit and proper person to operate a money service/to be associated with the business of operating a money service.

Application of the Guideline

5. The Guideline applies to every applicant for a licence under section 30 and renewal of a licence under section 31 of the AMLO, as well as licensed money service operators (i.e. licensees) which or who must satisfy and continue to satisfy after the grant of licence that they are fit and proper persons to be so licensed. It follows that failure of any licensees to meet the fit and proper criteria may reflect adversely on the fit and proper person status and would be a ground for suspension or revocation of the licence by virtue of section 34, in Part 5, of the AMLO. For the purpose of this Guideline, unless otherwise specified, a reference to the “person” herein may mean an applicant for the grant or renewal of a licence or a licensee which includes an individual and a corporation as the case may be.

Examples of matters the CCE considers relevant

6. The CCE takes into account the following matters which are examples regarded as any other matter that the CCE considers relevant in determining whether an applicant or a licensee is a fit and proper person in considering the grant of a licence:
 - a. Whether the person has failed to comply with any conditions imposed by the CCE on the licence.
 - b. Whether the person has any record of non-compliance with the AMLO or relevant regulation, which resulted in the taking of

administrative action, prosecution, issue of written warning or has been disciplined by the CCE for the non-compliance.

- c. Whether the person is in compliance with guidelines promulgated for money service operators in the regulatory regime, such as the Licensing Guide and the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism issued for Money Service Operators.
- d. Whether the person has the ability to carry out the money service business competently, honestly and fairly and, in a manner which is not detrimental, or likely to be detrimental, to the interests of the customers or members of the public. Examples are the contravention of any law designed for consumer protection, or the licensee has been the subject of any complaint made reasonably and in good faith relating to the licensee's conduct of carrying on the business.
- e. Whether the person has been the subject of any proceedings of a criminal or disciplinary nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings under any law in any jurisdiction.
- f. Whether the person has genuine intention and readiness to carry on the money service business to which it was proposed in the licence application. Examples are the person provided nil money service for a prolonged period after the grant of licence.
- g. Whether the person has established effective anti-money laundering and counter-financing of terrorism ('AML/CFT') systems to ensure compliance with all applicable requirements under the money service operator regulatory regime. Examples are the person must have a competent compliance officer of a sufficient level of seniority and authority within the licensee to oversee the establishment and maintenance of the company's AML/CFT systems.
- h. Whether the person is equipped with the skills, knowledge,

experience and professionalism necessary to perform the business's functions efficiently and effectively. In making such an assessment, the person is generally expected to be able to display an understanding of the statutory and regulatory requirements that apply to the business. Examples are a person who did not take or failed to pass the relevant test if any conducted by the Customs and Excise Department ('C&ED') in the course of processing licence application.

- i. Whether the person has been untruthful or provided false or misleading information or omitted material information to the CCE or been uncooperative with the C&ED in the performance of a function under the AMLO.
- j. Whether the person has failed to establish organizational structure and personnel that comply with the relevant legislative or regulatory requirements.
- k. Whether the person has failed to provide the necessary infrastructure and internal control systems to manage risk effectively, avoid conflict of interest and provide proper audit trail.
- l. Whether the person has been convicted of a criminal offence which is not listed in section 30(4)(a) and (b), in Part 5, of the AMLO, but which has a significant and negative bearing on his/her honesty, integrity and reliability. Examples are offences relating to fraud, dishonesty and malpractice.
- m. Whether the person is the subject of unresolved criminal charges in Hong Kong or elsewhere.
- n. Whether the person has been censured, disciplined or publicly criticized by any regulatory authority or professional body in Hong Kong or elsewhere.
- o. Whether the person has been refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law in

Hong Kong or elsewhere.

- p. Whether the person has been disqualified by a court of competent jurisdiction from being a director.
 - q. Whether the person has financial integrity to ensure that the person has adequate financial resources for the nature and scale of its operations, and the financial position or solvency of the person would not undermine the interest of the customers and the members of the public. Examples are the person has failed to satisfy any judgment debt under a court order or made any compromise or arrangement with his creditors.
 - r. The state of affairs of any other business which the person carries on, proposes to carry on or has any business relationship. Examples are the other business which exposes the person to the potential risk of money laundering or affects adversely the person's financial integrity.
7. The Supplementary Guideline provides additional guidance in general and are not intended to be exhaustive or comprehensive. Without limiting the generality of section 30(4), in Part 5, of the AMLO, the criteria set out in paragraph 6 above are likely to give rise to concerns about the fitness and properness of a person to be licensed or who has been licensed. Failure to comply with individual elements may not result in the CCE not being satisfied that a person is fit and proper. In assessing the fitness and propriety of a person, each case will be considered on its own merits, taking into account all relevant factors including, but not limited to, the criteria set out in the AMLO and paragraph 6 above.
8. For avoidance of doubt, the Supplementary Guideline is advisory. An applicant for a licence to operate a money service or a licensee should seek legal advice where necessary if he/she has concerns about the AMLO and the application of its provisions to him/her.

Review of the Supplementary Guideline

9. The Supplementary Guideline will be kept under review and may be updated from time to time as considered appropriate.

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Commissioner of Customs and Excise