

KELVIN CHIA YANGON

LOCAL KNOW-HOW WITH INTERNATIONAL EXPERTISE

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Kelvin Chia Yangon Ltd. (KCY) has been in active operation in Myanmar since 1995, currently with offices in Yangon and Mandalay. KCY is the firm of choice for those seeking to navigate Myanmar's fast-changing and complex regulatory landscape, a jurisdiction in which KCY has gained in-depth legal expertise from the numerous transactions it has handled.

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PRESIDENT'S OFFICE ISSUES ORDER ON ANTI-MONEY LAUNDERING

President's Office had issued Order No. 45-2019 on 14 November 2019, detailing the procedures and requirements for the implementation of the Anti-Money Laundering Law. The Order 45-2019 specifies the powers and responsibilities of the Financial Intelligence Unit, and the Bureau of Special Investigations in carrying out the investigation duties related to the implementation of the Anti-Money Laundering Law, and the responsibilities of the reporting organizations related to the compliance requirements for the Anti-Money Laundering Law.

The Order No. 45-2019 specifies that reporting organizations conduct the customer due diligence measures in accordance with the following criteria:

- When there's a deemed to be high risk of money laundering and terrorism financing as well as enhanced customer due diligence measures based on the identified risks, and determine whether the transactions or activities are suspicious or unusual;
- When there's deemed low risk of money laundering, conduct simplified due diligence measures in accordance with the identified risks, and terminating simplified due diligence measures when there's suspicion or high risk of money laundering or terrorism financing;

The Order No. 45-2019 also requires that the due diligence measures are to be conducted under the following circumstances:

- Prior to carrying out transactions for a customer, or before opening an account or establishing a relationship;
- Before carrying out a transaction with a customer who had no established relationship with the reporting organization, where the volume of transaction exceeds the equivalent of US\$ 15,000, or exceeds the threshold as specified by the Central Body for Combating Anti-Money Laundering, whether conducted in a single transaction or multiple transactions;
- Before carrying out a domestic or international wire transfer or electronic transfer;
- Where there's doubt of the veracity or adequacy of the customer identification data obtained previously; or

- When there's suspicion that it is linked to money laundering or terrorism financing.

The Order No. 45-2019 also stipulates that reporting organizations are required to conduct due diligence on the beneficial owners of the customers, and take reasonable measures to verify the identity of such entities based on the following:

- In the case of legal persons, identity of the natural persons that are beneficial owners, if any, and if there are any legal persons or legal arrangements having ultimate controlling interests in a legal person;
- Identifying beneficial owner having controlling interest;
- Where there's no identifiable beneficial owners, designating an individual in the relevant organization acting as senior management officer for the purpose of conducting due diligence matters.
- For legal arrangements in case of trusts, identification of settlors, trustees, and beneficiaries or class of beneficiaries, and any other natural persons exercising ultimate control over the trust, including through a chain of control or ownership.

The Reporting Organizations are defined under the Anti-Money Laundering Law as banks and financial institutions, non-financial enterprises and professions required by the Anti-Money Laundering Law to file reports under the Anti-Money Laundering Law. The Anti-Money Laundering Law also specified designated non-financial business and professions as Reporting Organizations which includes casinos, real estate agents, precious metal and precious stones dealers, lawyers, notaries, accountants or other legal professionals. The reporting organizations are also required to have risk management systems to determine whether a customer or beneficial owner is a foreign or domestic politically exposed person or international politically exposed person, seeking consent of senior management prior to establishing or continuing business relationship with such individuals, identification of wealth and source of funds, and applying enhanced on-going due diligence measures on the customer, and monitoring such business relationships.

The reporting organizations are also required to identify money laundering and terrorism financing risks that could potentially arise from new and existing products, services, commercial activities, or technologies, and take necessary actions to manage and mitigate such risks. Failure to abide by the provisions under the Anti-Money Laundering Law may result in the following penalties being imposed on the reporting organizations by relevant authorities:

- Warning,
- Imposing specific restrictions,
- Compelling reporting of identified violations,
- Administrative penalties including temporary suspension, or revocation of license,
- For failure to abide by the Anti-Money Laundering Law, monetary fine of Kyats 5 million to Kyats 500 million

In combating money laundering and terrorism financing, the Financial Intelligence Unit is also allowed by Order 45-2019 to conduct investigations including controlled delivery, accessing bank accounts, computer systems, networks and servers, placing surveillance of telephone lines, and other communication facilities, and seizing information relating to money laundering and terrorism financing for 3 months at a time with the approval of the Central Body for Combating Money Laundering.

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