

HellerEhrman^{LLP}

October 18, 2006

By hand delivery

Joseph T. McLaughlin
Joseph.McLaughlin@hellerehrman.com
Direct +1.212.847.8789
Main +1.212.832.8300
Fax +1.212.763.7600

42740-0001

Mr. Jamal El-Hindi
Associate Director for Regulatory
Policy and Programs
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Re: Banco Delta Asia S.A.R.L. (RIN 1506-A83)

Dear Mr. El-Hindi:

We appreciate the opportunity to meet with you and your colleagues to discuss the developments regarding our client, Banco Delta Asia S.A.R.L. (the "Bank"), relevant to FinCEN's notice of proposed rulemaking (the "Notice"). At our last meeting with representatives from FinCEN and the Department of Treasury in July, we had promised to provide a written summary of the key points of our presentation and to provide you with additional information necessary for the revocation of the Notice.

I. Actions Taken by the Macau Government

As we described to you, the Government of Macau has no plans to return the frozen assets to the North Korean entities. However, as we also explained, there have been reported statements by at least one of the North Korean entities whose funds are frozen, a North Korean bank (in acquisition discussions with a London-based financial advisor), to the effect that it is contemplating filing suit in Macau to obtain the return of the funds. The North Korean bank claims its funds are not the proceeds of crime. In addition, we understand that the Macau Government has not as yet found in its investigation evidence of money laundering by North Korean and/or North Korean-related account holders, and it is not currently planning on bringing any criminal proceedings for money laundering. The Macau authorities will vigorously defend a suit seeking the return of the frozen funds, but they cannot predict the outcome. Nonetheless, the government anticipates that should any lawsuit commence, a decision is more than a year away. The Government of Macau asked that we convey to you that it will keep these funds frozen as long as legally possible. In addition, although the government has expressed no view to us, recent measures taken by the United

Heller Ehrman LLP Times Square Tower 7 Times Square New York, NY 10036-6524 www.hellerehrman.com

Anchorage Beijing Hong Kong Los Angeles Madison, WI New York San Diego San Francisco Seattle
Silicon Valley Singapore Washington, D.C.

Nations likely will provide the Government of Macau with a stronger basis for continuing to hold the funds.

With respect to the continued operations of the Bank, the Government of Macau has renewed the tenure of the Administrative Committee for another six months.¹

Moreover, as more fully described in our letter to you dated April 25, 2006 (in which we also enclosed a copy of the legislation), Macau adopted, effective April 4 and 11, 2006, AML/CFT legislation along the lines suggested by the FATF. Chief Executive Edmund Ho approved regulations on April 7, 2006, to supplement this legislation and those regulations will take effect on November 12, 2006. Pursuant to these regulations, the Macau Monetary Authority ("AMCM") has adopted a series of guidelines for financial institutions operating in Macau that closely track the 40 Recommendations issued by the FATF. These sweeping guidelines, which were adopted pursuant to the AML/CFT legislation, are also scheduled to take effect on November 12. (Copies of the AMCM's guidelines for financial institutions and large cash transactions are enclosed.) Further, as we previously reported to you, the Government of Macau has formed a new entity to fight money laundering in Macau. The Financial Information Office, which was also created pursuant to the AML/CFT legislation, is scheduled to begin operating on November 12, the same date that the aforementioned regulations and guidelines will go into effect. The Financial Information Office, which will be headed by the current deputy director of the AMCM's Banking Supervision Department, will, among other things, compile and analyze information related to money laundering, assist the police in money laundering investigations, and work with outside entities seeking information about money laundering and terrorism financing pursuant to international or regional agreements signed by Macau.

As is evident, the Macau Government has accorded significant attention to FinCEN's notice of proposed rulemaking and takes FinCEN's allegations very seriously. Apart from the aggressive legislative response, the government has intervened in the management of the Bank through the appointment of the Administrative Committee (whose tenure, as noted, was extended recently) and at a significant overall cost to the government.

II. Ernst & Young's Review

As we explained previously, Ernst & Young ("E&Y") concluded its review of the Bank's activities and submitted a report to the Administrative Committee on December 16,

¹ Executive Order 284/2006 extends the term of the Administrative Committee for six months from September 29, 2006.

2005. While E&Y's report has not been made public, there are certain themes we can summarize and a few specific allegations by FinCEN that we can address.

First, the Bank is a relatively small, family-owned institution whose business largely consists of local deposit-taking and lending. Since the Bank did not have the sophisticated technology to analyze large deposits of U.S. currency, such deposits were sent to HSBC New York for analysis before being finally credited to the depositor's account. In the few instances where counterfeit bills were identified, the Bank immediately reported the counterfeits to the AMCM.

The Bank generally characterized its accounts as wholesale or retail and it sent the wholesale cash deposits to HSBC New York. Most of the North Korean accounts were considered wholesale accounts. For the smaller, retail deposits, the currency was checked with the older equipment at the Bank, which admittedly did not function as well as the equipment used at HSBC New York. The Bank identified two deposits of counterfeit currency in 1994 and reported both to the police and the AMCM, which prosecuted the accountholders. However, one of the parties fled to China and has not been located.

Second, the Bank had a dated computer system that could not produce "exception reports," an issue that is now being addressed through an update in the Bank's software system. In addition, the Bank paid insufficient attention to maintaining its own books. Consequently, money *could* have been laundered, but there is no specific evidence that the Bank was aware that it was being used for this purpose, nor that it facilitated any criminal activities.

Third, the Bank did not have adequate written AML policies, although employees had been trained to perform KYC and other pertinent procedures to prevent money laundering. However, the Bank was subject to criticism for not having comprehensive, written policies.

In terms of specific allegations in the Notice, the only two issues identified that may have any potential relevance are: the purchase of North Korea's gold bullion by the Bank; and an account held by Tanchon Commercial Bank. As to the first issue, the Bank purchased a large share of the gold bullion produced by North Korea during the years prior to the Notice. Since the Bank has terminated all accounts held by, or related to, North Korean entities, it no longer purchases any gold produced by North Korea. As to the second issue, Tanchon was a customer of the Bank, but appeared on the List of Specifically Designated Nationals and Blocked Persons on June 29, 2005 as a "weapons of mass destruction proliferator and supporter." This listing of Tanchon was initially overlooked at the Bank, primarily due to shortcomings in the information technology systems, which are being addressed, and once the oversight was discovered in September 2005 (prior to the issuance of the Notice), the Bank promptly closed the account and reported it to the AMCM.

III. Deloitte & Touche

As we described to you previously, Deloitte & Touche Forensic Services Limited ("Deloitte") submitted an AML program framework to the Bank in February 2006. They followed up with a workshop at the Bank during which Deloitte met with the heads of the Bank's departments. In response to the information generated by the workshop, Deloitte then made necessary changes to the AML framework.

The Administrative Committee accepted the framework and directed the Bank to enact the AML compliance program framework. The Administrative Committee recently signed a new engagement letter with Deloitte directing the company to monitor the progress of the implementation of the AML compliance program framework, which will involve:

- Over a five-week period, stationing a Deloitte team at the Bank, which will perform a thorough top-to-bottom review and consider each section of the framework deliverables to effectively determine which enhanced procedures are realistic for the Bank to adopt and which ones are simply not feasible for a bank of its size and sophistication to adopt;
- Reviewing and analyzing documents, and conducting interviews with relevant staff;
- Comparing policies, procedures and controls that have been implemented against the AML Risk Framework and AML Policies and Procedures Framework;
- Identifying any gaps and/or deficiencies;
- Undertaking testing, on a sample basis, of procedures and controls to determine whether they have been properly implemented; and
- Reporting on any material deficiencies in policies, procedures or controls.

IV. Compliance Officer

As we previously explained the Bank had difficulty hiring a qualified compliance officer in the Macau market, particularly given the Bank's circumstances. Recognizing the importance of a compliance officer in implementing and supervising enhanced AML policies, the Administrative Committee asked the law firm of Jorge Neto Valente to second a lawyer from their firm to serve as temporary compliance officer until the Bank retains a permanent compliance officer. The firm agreed to second Ms. Carla Jacinto to serve as the temporary

compliance officer at the Bank. Ms. Jacinto has a background in corporate law and has been focusing her work on the banking sector in the past few years. We attach her resume for your review, along with letters of confirmation regarding her appointment.

The Jorge Neto Valente law firm was established over thirty years ago and is one of the largest firms in Macau. It is a member of the Miranda Alliance, an international association of law firms in Angola, Cape Verde, Guinea Bissau, Equatorial Guinea, Macao, Mozambique, Portugal, and Sao Tome a Principe. One of the members of the Administrative Committee, Maria de Lurdes Costa, is also a member of the firm.

V. Current Status

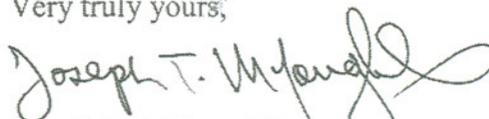
The Bank continues to make steady progress in remedying any failures in its AML policies and in implementing an effective AML program that will prevent money laundering. As we discussed, we believe that the application of the statutory factors suggests that the Notice should be withdrawn. In particular, the Bank long ago closed all of the accounts held by, or related to, North Korean entities and will continue to refrain from conducting business with entities related to North Korea. Moreover, the Bank recently signed a contract with T.A. Consultants Ltd., a Hong Kong-based consulting firm, to upgrade the Bank's computer system. The upgrade will allow the Bank to review daily exception reports and will add AML categories to each account, highlighting the AML risk for each customer.

The Bank and Macau intend to continue cooperating with FinCEN, including with regard to the future of the Bank, the disposition of the North Korea-related funds, and a new and heightened level of vigilance. At the same time, however, Macau has been extending itself financially and politically by investing human resources and political capital in the reformation of the Bank, the adoption of new AML/CFT laws, the creation of a new agency designed to combat money laundering, and obtaining the support of the Central Government.

In sum, the Bank and Macau have made significant, positive changes that, we submit, should lead to a withdrawal of the Notice. To support our request, we include a white paper, comparing the Bank's actions to those taken by Multibanka, and in contrast to VEF. Understandably, recent events in North Korea may on the surface appear related to withdrawal of the Notice. However, we reiterate that the Bank has not done any business with North Korean or North Korean-related entities for over a year and pledged not to do any in the future. In addition, revocation of the Notice will not have an impact on the North Korean funds frozen by the Government of Macau; the government will keep those funds frozen as long as legally possible. Because the Bank has made such positive changes, in line with those made by Multibanka, failing to revoke the Notice now would send the wrong signal to others who cooperate, or wish to cooperate, with FinCEN.

Finally, we request that FinCEN accept this letter in connection with its rulemaking authority.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Joseph T. McLaughlin". The signature is written in black ink and is positioned above the printed name.

Joseph T. McLaughlin



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

**ANTI-MONEY LAUNDERING (AML) AND
COMBATING FINANCING OF TERRORISM (CFT) GUIDELINE
FOR FINANCIAL INSTITUTIONS**

Pursuant to Article 2 of Administrative Regulation no. 7/2006, Article 6 of Law no. 2/2006 and Article 11 of Law no. 3/2006, the Monetary Authority of Macao (AMCM), by virtue of the powers conferred by Paragraph 1 a) of Article 9 of the Charter approved by Decree-Law no. 14/96/M of 11th March, by Paragraph 3 of Article 6 of the Financial System Act (FSA), approved by Decree-Law no. 32/93/M of 5th July, establishes the following:

1. INTRODUCTION

- 1.1 This “AML/CFT Guideline for Financial Institutions” is to supersede the one issued under Circular no. 072/B/2002-DSB/AMCM of 9th May 2002.
- 1.2 The previous guideline issued under the Circular mentioned above has incorporated the requirements of Decree-Law no. 24/98/M of 1st June for compulsory reporting of suspicious money laundering transactions, the concept of “know your customers (KYC)” of the Basel Committee on Banking Supervision and “customer due diligence (CDD)” among other essential criteria in the 40 Recommendations of the Financial Action Task Force (FATF) on anti-money laundering.
- 1.3 With the revision of the 40 Recommendations and the introduction of 9 Special Recommendations on combating terrorist financing by the FATF, it is necessary to review and strengthen our supervisory measures to ensure consistency with international development. In addition, further improvement is made according to the recommendations of the International Monetary Fund in its technical assistance mission to Macao SAR in March 2004.
- 1.4 The latest enactment of the laws and regulations in relation to prevention and repression of money laundering and terrorism crimes has introduced new requirements that also demand a proper revision of the guideline.



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

2. SCOPE OF APPLICATION

2.1 This guideline is applicable to the following financial institutions (hereinafter referred to as “institutions”) authorized under the provisions of the FSA:

2.1.1 Credit institutions with headquarters in Macao;

2.1.2 Macao branches of credit institutions with headquarters abroad;

2.1.3 Overseas establishments of credit institutions with headquarters in Macao;

2.1.4 Financial intermediaries with headquarters in Macao; and

2.1.5 Macao branches of financial intermediaries with headquarters abroad.

2.2 This guideline is also applicable to the following financial institutions (hereinafter referred to as “institutions”) authorized under the provisions of special laws and regulations other than the FSA:

2.2.1 Finance companies authorized under Decree-Law no. 15/83/M of 26th February;

2.2.2 Investment funds and investment fund management companies domiciled in Macao authorized under Decree-Law no. 83/99/M of 22nd November; and

2.2.3 Offshore financial institutions, excluding those institutions engaging in insurance activities, authorized under the Offshore Regime of Decree-Law no. 58/99/M of 18th October and precedent law.

3. BACKGROUND

3.1 The FATF defines that money laundering is the process of using financial system to legitimise funds that have been acquired illegally. The process has three stages:



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

- 3.1.1 To introduce the money into the financial system without causing suspicion, the money tends either to be broken up into smaller, less conspicuous amounts or the dirty money is used to buy other financial instruments or commodities. These are then collected, and deposited at another location.
 - 3.1.2 The funds or assets, in their various forms, are then “layered”, that is, moved around the world, and from bank to bank. They may sometimes be disguised as payments for goods and services.
 - 3.1.3 The funds, assets or commodities are reintroduced into the legitimate economy, as apparently *bona fides* financial instruments.
- 3.2 Financial crime, especially money laundering, poses a serious risk for financial institutions. The inadequacy or absence of KYC/CDD policies can subject institutions to serious customer and counter-party risks, especially **reputational, operational, legal and concentration risk**. All of these risks are interrelated and can interact upon each other. The possible adverse effects of money laundering include:
- 3.2.1 Reputational damage, which can harm a company’s share price and its relationship with customers;
 - 3.2.2 Criminal and regulatory sanctions resulting from non-compliance with laws and regulations;
 - 3.2.3 Civil litigation in connection with laundered money and related crime;
 - 3.2.4 Loss of business opportunities, where anti-money laundering procedures deter good customers or even shun certain markets altogether; and
 - 3.2.5 Higher costs of doing business; these costs include additional staffing requirements and the need to implement operational systems and procedures to deal with compliance obligations and money laundering risks.



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

- 3.3 Continuous efforts have been taken by governments and regulatory bodies worldwide to set up anti-money laundering and combating terrorism financing standards in order to pinpoint the fundamental weaknesses that leave financial institutions vulnerable to money laundering. The FATF and other international groupings have worked intensively on this aspect and the FATF's 40 Recommendations on combating money laundering have international recognition and application. The Basel Committee on Banking Supervision also introduced guidance to stipulate the basic ethical principles and to encourage institutions to put in place effective procedures to identify customers, refuse suspicious transactions and cooperate with law enforcement agencies.
- 3.4 The 9/11 event and the increasing terrorist activities threatening the public security internationally also make it necessary to include combating of terrorism financing in the anti-money laundering mission. To enhance international standards in this respect in order to cope with the recent developments, the FATF has already revised its 40 Recommendations and issued 9 Special Recommendations for combating terrorist financing.

4. APPLICABLE LEGISLATION

- 4.1 The Macao Financial System Act (FSA), approved by Decree-Law no. 32/93/M of 5th July, imposes the following control on money laundering:
- 4.1.1 Compulsory identification of all customers (Article 106);
 - 4.1.2 Personal identification of founding shareholders of institutions and their respective shareholdings (Paragraph 1 (d) of Article 22);
 - 4.1.3 Suitability of qualifying shareholders and managers should be recognized (Articles 40, 41, 47 and 48);
 - 4.1.4 Financial statements of institutions should be verified by independent external auditors (Article 53);
 - 4.1.5 Consolidated supervision of the activity of institutions (Article 9);



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

- 4.1.6 Possibility of exchange of information between the Monetary Authority of Macao (AMCM) and other supervisory authorities (Paragraph 1 (b) of Article 79); and
- 4.1.7 Possibility to be precluded from banking secrecy duty by judicial order in case of criminal proceedings (Article 80).
- 4.2 Under Articles 22 and 34 of Decree-Law no. 5/91/M of 28th January on drugs control, any assets of value, including money and other valuables deposited with institutions, which have been acquired or entered into possession arising from crimes related to drugs are subject to forfeiture. For this purpose, under judiciary order or request of police with judiciary order, provision of information cannot be refused by the public or private entities including registration and tax departments when the information requester provides sufficiently concrete evidence and references for the case.
- 4.3 Under Paragraph 2 of Article 103 of the Criminal Code, approved by Decree-Law no. 58/95/M of 14th November, all assets or gains through criminal activities shall be confiscated. If the assets were substituted by other assets, the other assets will be confiscated, and if this is not possible, an equivalent amount of money has to be paid to the Government.
- 4.4 In 1998, Decree-Law no. 24/98/M of 1st June was passed to impose mandatory requirements for reporting suspicious transactions. This Decree-Law is transitionally applicable and gradually replaced by Administrative Regulation no. 7/2006 enacted under the provisions of Article 8 of Law no. 2/2006 and Article 11 of Law no. 3/2006.
- 4.5 In April 2002, Law no. 4/2002 was passed to implement measures under the international conventions signed and ratified by the Central Government applicable to Macao Special Administrative Region (Macao SAR). Under the Law, the anti-terrorism measures under Resolution no. 1373 and other relevant resolutions of the United Nations Security Council become applicable to Macao SAR.
- 4.6 In April 2006, Law no. 2/2006 on prevention and repression of money laundering crime was promulgated. Under Article 3 of the Law, there is now a new definition of money laundering crime that includes conversion, transfer or



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

dissimulation of properties or proceeds from illicit activities punishable with maximum penalty of imprisonment of 3 years or over. Apart from strengthening the relevant sanction measures, Article 5 of the Law stipulates that legal entities committing money laundering crime have criminal responsibility. Articles 6 and 7 of the Law define a wider scope of entities that have obligation for taking customer due diligence measures and reporting suspicious transactions. At the same time, Paragraph 3 of Article 7 of the Law protects the reporting entities from any responsibility and they are not considered to have committed violation of secrecy, when providing information in good faith. Paragraph 4 of the same Article also prohibits reporting entities from disclosing any information in relation to fulfilment of the reporting obligation.

- 4.7 In late April 2006, Law no. 3/2006 on prevention and repression of terrorism crime was promulgated. Articles 4, 5 and 6 of the Law define what are terrorist organizations, other terrorist organizations and terrorism. Article 7 of the Law stipulates that any person provides or collects funds for the purpose to finance, totally or partially, terrorism activities shall be punished with a penalty of imprisonment from 1 to 8 years or even more severe penalty. As required by Article 11 of the same Law, the provisions in Articles 6, 7 and 8 of Law no. 2/2006 after adaptation are applicable to prevention and repression of terrorism financing.
- 4.8 In May 2006, Administrative Regulation no. 7/2006 on preventive measures against money laundering and terrorism financing crimes was also promulgated. As required by Article 7 of the Administrative Regulation, those entities as mentioned in Article 2 thereof should report, within 2 working days, to the entity indicated in Paragraph 2 of Article 8 of Law no. 2/2006 any transactions which indicate money laundering and/or financing of terrorism crime. In addition to the reporting obligation, Articles 3 and 4 of the same Administrative Regulation also establish obligation for taking customer due diligence measures, identifying suspicious transactions and recording relevant information of such transactions. If obligations laid down in Articles 3 and 4 cannot be carried out, Article 5 stipulates that such transactions should be refused. In accordance with Article 6, all relevant records should be retained for at least 5 years. As stipulated in Article 9, non-compliance with the relevant provisions will be considered an administrative offence and subject to a fine from ten thousand (MOP 10,000) to five hundred thousand Macao



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

patacas (MOP 500,000) for a natural person and a fine from one hundred thousand (MOP 100,000) to five million Macao patacas (MOP 5,000,000) for a legal entity.

5. CUSTOMER ACCEPTANCE POLICY

5.1 For effectively implementing the anti-money laundering (AML) and combating financing of terrorism (CFT) measures, institutions should first develop clear customer acceptance policies and procedures, including the classification of customers into categories of relative risks.

5.2 The policies should set up basic account opening requirements for customers with low risk and higher requirements with extensive due diligence for high-risk customers. The following criteria can be used in risk assessment of customers:

5.2.1 **Background of customers:** Customers with special public or high profile position opening accounts with large sum of money will have higher risk than a working individual with a small account balance.

5.2.2 **Country of origin:** foreign customers are of higher risk than local customers while customers coming from countries with lower standards of legal or judicial systems or where the political environment is unstable will have higher risk than those from advanced and stable countries. It would be helpful to obtain reference from public statements on this issue through international bodies like the FATF (www.fatf-gafi.org) and the APG (www.apgml.org).

5.2.3 **Business and profession:** Customers with normal business or profession for which the nature of activities can be easily identified will incur lower risk whereas the business or job nature is unusual and the source of income or fund movement is not clear will bring higher risk. Besides, business and profession with large cash transactions will also incur higher risk of money laundering.

5.2.4 **Source of wealth:** There will be lower risk for a regular pattern (same period and same channel) of income source.



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

- 5.3 The policies should determine proper procedures to avoid establishing business relationship with customers who are entities designated as terrorists by Macao SAR Government, or the United Nations Security Council, or other foreign governments, or other organizations or entities under interregional and international legal instruments, or are entities subject to sanctions announced by local and other foreign governments, e.g. Office of Foreign Assets Control (OFAC) of US Government, European Union, Non-Cooperative Countries or Territories (NCCT) list etc.
- 5.4 The policies should also establish that, if it is unable to obtain the required customer information on timely basis, accounts should not be opened, or business relations should not be commenced, or transactions should not be performed.

6. CUSTOMER IDENTIFICATION

- 6.1 Institutions should establish systematic procedures for verifying the identity of new customers and should not open an account until the identity of a new customer is satisfactorily established. Once having opened an account, if an institution has subsequent doubts about the customer's true identity, which it cannot resolve satisfactorily, the institution should take steps to terminate business relationship. For the purposes of this guideline, such customers include:
- 6.1.1 The person or entity that maintains account or business relationship with the institution or, when it appears that the person or entity asking for an account to be opened, or a transaction to be carried out might not be acting on his own behalf, and those on whose behalf an account or business relationship is maintained;
- 6.1.2 Beneficiaries of the transactions conducted by professional financial intermediaries or any other persons or entities;
- 6.1.3 Any person or entity connected with a financial transaction, who can pose a significant reputational or other risks to the institutions; and



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

- 6.1.4 Persons who have access to safe deposit boxes not leased by them.
- 6.2 The customer identification process should be applied at the outset of the relationship and institutions are also required to carry out regular review of existing records to ensure that the records remain up-to-date and relevant. Special attention should be exercised in the case of high-risk customers to safeguard the institution from being used for money laundering or terrorism financing. Regular review of customer records should be conducted where:
- 6.2.1 Suspicion is noted, e.g. appearance of unusual transactions or transactions not in line with the nature of business or profession stated by the customers;
- 6.2.2 There is material change, e.g. significant change in business or profession, or in other information, or in the way that the account is operated; and
- 6.2.3 Records are obsolete, e.g. information being irrelevant or outdated.
- 6.3 Institutions should never agree to establish business relationship with a customer who provides a fictitious name or insists on anonymity. Whereas a numbered account is requested to offer additional protection for the identity of the account holder, the identity should be known to a sufficient number of staff to exercise proper due diligence. Such accounts should in no circumstances be used to hide the customer identity from an institution's compliance function or from the supervisors.
- 6.4 Institutions are required to set up account opening procedures for different types of accounts including accounts in name of an individual, a commercial business, a trust, an intermediary or a personalised investment company. There should be proper segregation of duties and all new customers and new accounts should be approved by officers with appropriate seniority.
- 6.5 Institutions should identify the beneficial owners¹, and take reasonable measures to verify the identity of the beneficial owners before or during the

¹ "Beneficial owner" refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

course of establishing business relationships or conducting transactions for occasional customers. If it is not practicable to do so, institutions should complete the identification and verification procedures as soon as possible after establishment of the relationships. It is advisable to require a declaration from customers to disclose and confirm the identity of the beneficial owners if any.

- 6.6 Under all circumstances, institutions should establish as part of the account opening procedures, the purpose of the accounts or the facilities, and the intended nature of its operations.
- 6.7 There should be enhanced due diligence measures for establishing business relationship with high-risk customers, including senior level approval, extra documentation or information, and cautious verification. For instance, institutions may verify the identity and background of high-risk customers by referring to publicly available information, making additional data searches, and/or seeking third party verification like reference from other bankers of such customers.

7. MINIMUM REQUIREMENTS FOR ACCOUNT OPENING

7.1 Personal customers

7.1.1 Information to be obtained at the time of account opening:

- a) Name and/or names used;
- b) Permanent residential address;
- c) Date and place of birth;
- d) Name of employer or nature of profession or business;
- e) Specimen signature;
- f) Source of funds; and



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

g) Purpose or intended nature of account or facility.

7.1.2 Institutions should verify the above information against original documents of identity issued by an official authority (examples including identity cards and passports). Such documents should be those that are most difficult to obtain illicitly.

7.1.3 For Macao residents, the proper identification documents are the “*Bilhete de Identidade de Residente Permanente*” (Permanent Resident Identity Card), “*Bilhete de Identidade de Residente Não Permanente*” (Non-permanent Resident Identity Card) and “*Bilhete de Identidade de Residente de Macau*” (Macao Resident Identity Card), all issued by the “*Direcção dos Serviços de Identificação*” (Identification Bureau) or other equivalent identification documents.

7.1.4 Particular care should be taken in accepting documents that are easily forged or which can be easily obtained in false identities in case of non-resident customers.

7.1.5 Where there is face-to-face contact, the appearance should be verified against an official document bearing a photograph and even in non-face-to-face situations, at least one copy of an official document bearing a photograph should be gathered by the institutions.

7.1.6 Regarding information other than the identity of customers, institutions should exercise duly care to verify the truth of the information provided. For example, the address can be checked against a recent utility bill of the customers.

7.2 Corporate and other business customers

7.2.1 Information to be obtained:

- a) Incorporation or equivalent documents issued by the relevant government agencies, including company search report from the “*Conservatória dos Registos Comercial e de Bens Móveis*” (Businesses and Vehicles Registry), tax declaration for the “*Direcção dos Serviços de Finanças*” (Finance Services Bureau),



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

certificate of incorporation, business registration certificate, memorandum and articles of association, etc.;

- b) Identification document of the principal shareholders, beneficial owners, directors and other persons authorized to operate the accounts, including the resolution of the board of directors to open an account and authorization for those who will operate the account;
- c) Nature of business; and
- d) Purpose or intended nature of account or facility.

7.2.2 If possible, institutions should take reasonable measures to verify whether the corporate customer operates its stated business at the stated address. Institutions should obtain evidence for all the information specified above to verify the legal status of the companies. For large corporate customers, financial statements of the business or a description of the customers' principal lines of business should also be obtained. In addition, if significant changes to the company structure or ownership occur subsequently, further checks should be made.

7.2.3 Institutions need to be vigilant in preventing corporate business entities from being used by natural persons as a vehicle for operating anonymous accounts. Institutions should understand the structure of the companies sufficiently to determine the true identity of the ultimate owners or those beneficial owners who have control over the companies and/or the funds.

7.3 Trust, nominee and fiduciary accounts or client accounts opened by professional intermediaries

7.3.1 Institutions should establish whether the customers are acting on behalf of other persons as trustees, nominees or professional intermediaries (e.g. lawyers or accountants). If so, institutions should obtain satisfactory evidence of the identity of any intermediaries and of the persons on whose behalf they are acting, as well as details of the nature of the trust or other arrangements in place.



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

7.3.2 Whatever the nature of the customer relationship, institutions should obtain the identity of its customers, even if these are represented by professional intermediaries, such as lawyers or accountants. The procedures for identifying nominee customers are no different from those for identifying other customers. Special care should also be exercised in initiating business transactions with “shelf companies²”. Satisfactory evidence of the identity of their beneficiary owners should be obtained. In case the institutions are unable to establish the identity of the persons for whom the intermediaries are acting, or verify the identity of the beneficial owners of the accounts, the institutions should refuse to open the accounts or establish any business relationships.

7.3.3 In relation to customers that are legal arrangements (express trusts³ or similar arrangements), the institutions should also take reasonable measures to identify the settlors⁴, trustees⁵, beneficiaries⁶ and any other persons involved in the structuring of the arrangement (e.g. a protector).

7.4 Introduced business

7.4.1 In case customers are referred by other institutions or introducers, proper care should be exercised to determine whether the introducers can be relied upon and the following criteria can be used:

- a) The introducers should follow the same customer due diligence practices identified in this guideline;
- b) Institutions should satisfy themselves as to the reliability of the systems put in place by the introducers to verify the identity of the customers;

² “Shelf company” refers to a company that exists in name only.

³ “Express trust” refers to a trust clearly created by the settlor, usually in the form of a document e.g. written deed of trust.

⁴ “Settlor” is a person or company who transfers ownership of its assets to trustee by means of a trust deed.

⁵ “Trustee” refers to a person who may be paid professional or company or unpaid person, holds the assets in a trust fund separate from his/her own assets.

⁶ “Beneficiary” refers to a person whose property is administered by a trustee; in a trust, although the trustee is the legal owner of the property, the beneficiary is the equitable owner who receives the real benefit of the trust.



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

- c) For all introduced business, all relevant identification data and other documentation pertaining to the customers' identity should be immediately submitted by the introducers to the institutions, who should carefully review the documentations provided.

7.5 Non-face-to-face customers

7.5.1 For local customers, the accounts should not be opened without the physical presence of the customers for interview and the account opening procedures specified above should be exercised to ensure the verification of the identification of customers.

7.5.2 For non-resident customers, institutions should apply equally effective customer identification procedures and ongoing monitoring standards for non-face-to-face customers as for those available for interview. There should also be specific and adequate measures to mitigate the higher risk including:

- a) Certification of documents presented, e.g. the documents certified and/or verified by a respondent institution or a third party on which the institution can rely;
- b) Requisition of additional documents to complement those required for face-to-face customers, e.g. information provided by another institution subject to similar customer due diligence standards;
- c) Referral by an introducer who is subject to the identification procedures stated above;
- d) Requiring the first payment to be carried out through an account in the customer's name with another institution subject to similar customer due diligence standards.

7.6 Politically exposed persons

7.6.1 Business relationships with individuals holding important public positions and with persons or companies clearly related to them may



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

expose an institution to significant reputational and/or legal risks. Such politically exposed persons (PEPs) include heads of state, ministers, influential public officials, judges and military commanders. There is always a possibility that, especially in countries where corruption is pervasive, such persons may have abused their public powers for their own illicit enrichment through the receipt of bribes, embezzlement, etc.

- 7.6.2 Accepting and managing funds from corrupt PEPs will severely damage institutions' own reputation and can undermine public confidence in the ethical standards of the financial system, since such cases usually receive extensive media attention and strong political reaction, even if the illegal origin of the assets is often difficult to prove.
- 7.6.3 Institutions should gather sufficient information from a new customer, and check publicly available information, in order to establish whether or not the customer is a PEP. Institutions should investigate the source of funds before accepting a PEP as customer. The decision to open an account for a PEP should be taken at senior level. Where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP, senior level approval is required for continuing the business relationship.
- 7.6.4 Institutions should take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs. Where financial institutions have business relationship with a PEP, they should conduct enhanced ongoing monitoring on that relationship.

7.7 Correspondent banking

- 7.7.1 Correspondent banking is the provision of a current or other liability account and related services by one institution (the correspondent institution) to another institution (the respondent institution) to meet its cash clearing, liquidity management and short-term borrowing or investment needs. When establishing correspondent relationships, institutions should consider the following factors:



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

- a) Respondent institution's management;
- b) Major business activities;
- c) Where the institution locates (institutions should avoid establishing business relationship with respondent institutions that locate in jurisdictions with poor KYC/CDD or AML/CFT controls or are included in the NCCT list published by the FATF);
- d) Purpose or intended nature of accounts or facilities; and
- e) The identity of any other third parties that may have access to the correspondent services.

7.7.2 Institutions should gather sufficient information on their respondent institutions to understand their business nature, reputation and supervision, and to see whether there are any money laundering or terrorism financing investigations or regulatory actions against the respondent institutions.

7.7.3 Institutions should also assess and ascertain if the respondent institutions' AML/CFT controls are adequate and effective. Top management approval should be required before establishing any new correspondent relationships. The respective responsibilities of each institution in AML/CFT should also be documented.

7.7.4 Where a correspondent relationship involves the maintenance of "payable-through accounts"⁷, institutions should be satisfied that:

- a) Their customers (the respondent institutions) have performed all normal customer due diligence obligations on those customers that have direct access to the accounts of the correspondent institutions; and
- b) The respondent institutions are able to provide relevant customer identification data upon request to the correspondent institutions.

⁷ "Payable-through accounts" refers to correspondent accounts that are used directly by third parties to transact business on their own behalf.



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

8. ONGOING MONITORING OF HIGH-RISK ACCOUNTS

- 8.1 Institutions should have reasonable understanding of the normal account activity of their customers so as to identify transactions falling outside the regular pattern of an account's activity.
- 8.2 For all accounts, institutions should have systems in place to detect unusual or suspicious patterns of account activity. This can be done by establishing certain parameters for a particular class or category of accounts to detect unusual or irregular transactions that require particular attention. Any such transactions or transactions not consistent with the normal activities of the customers should be recorded for review of the senior officers or AML/CFT Compliance Officers of the institutions for their further follow-up. Reference can be made to the examples of suspicious transactions annexed to this guideline.
- 8.3 For those higher risk accounts classified according to their customer acceptance policies, institutions should establish control systems for monitoring these accounts:
- 8.3.1 Senior officers and/or AML/CFT Compliance Officers of institutions should be provided with periodic reports with adequate information of the higher risk accounts, including unusual transactions and aggregate total of business relationship with the institutions;
- 8.3.2 Management in charge of private banking should be aware of the personal profiles of the high-risk customers and be alert to sources of third party information. Transactions in large amount done by these customers should require senior level approval.

9. RISK MANAGEMENT

- 9.1 The board of directors of institutions should be fully committed to an effective KYC/CDD programme by establishing appropriate procedures and ensuring their effective implementation. Institutions should nominate at least one AML/CFT Compliance Officer to coordinate and follow up all internal reports on high-risk customers and suspicious transactions. The AML/CFT



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

Compliance Officers should have adequate competence and experience to decide the necessary actions to be taken and whether it is necessary to report the suspicious transactions under legal requirements. The channels for reporting suspicious transactions should be clearly specified in writing and communicated to all personnel.

- 9.2 There should be internal procedures to assess whether institutions' KYC/CDD policies and legal requirements for reporting suspicious transactions are complied with. Institutions' internal audit plays an important role in independently evaluating risk management and controls. The compliance check for KYC/CDD policies and procedures should be included in the audit programme to ensure the effectiveness of the control systems.
- 9.3 All institutions should have an ongoing employee training programme so that staff members are adequately trained in KYC/CDD measures and other relevant procedures. The training programme should be designed according to different needs of staff, in particular, new staff, front line staff or supervisory staff. For instance, new staff members should be educated the importance of KYC/CDD policies and other basic requirements of the institutions. Front line staff members who deal directly with the public should be trained to use reasonable means to verify the identity of customers, to exercise ongoing due diligence measures in handling accounts of existing customers, and to detect pattern of suspicious transactions. Supervisory staff members should be trained in skills in monitoring proper execution of the policies and procedures. Regular refresher training should be provided to ensure that all staff members are reminded of their responsibilities and are kept informed of new developments.

10. AML/CFT COMPLIANCE OFFICER

- 10.1 Institutions should designate at least a staff member as a Compliance Officer responsible for AML/CFT compliance. The designation of the AML/CFT Compliance Officers requires prior approval from AMCM. In addition to appropriate competence and experience, the following criteria should also be considered:



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

- 10.1.1 The AML/CFT Compliance Officers should have an appropriate senior position within the institution's organizational structure;
- 10.1.2 The reporting lines should be such that the AML/CFT Compliance Officers' role will not be compromised by undue influence from line management; and
- 10.1.3 The AML/CFT Compliance Officers should have timely access to all customer files, transaction records and other relevant information.

11. RETENTION OF RECORDS

- 11.1 Institutions should keep all records of customer information, including entries of the accounts and details of transactions involving fund transfer for at least 5 years (without prejudice to the stipulations in other laws and regulations)⁸ from the date of the transaction notwithstanding that the customers may have terminated the account relationship with the institutions subsequent to the transactions. Institutions should also keep records of the identification data obtained through the customer due diligence process for at least 5 years (without prejudice to the stipulations in other laws and regulations)⁹ after termination of business relationships.
- 11.2 The above records should be retained by way in accordance with Article 6 of Administrative Regulation no. 7/2006. In addition, the records should be readily available to the competent authorities in Macao for investigation when necessary.

12. REPORTING OF SUSPICIOUS TRANSACTIONS

- 12.1 Transactions indicating signs of money laundering crime and/or financing of terrorism crime as prescribed in Law no. 2/2006 and Law no. 3/2006, or transactions involving converting, transferring or dissimulating illegally obtained funds or properties in order to conceal the true ownership and origin

⁸ For example, article 49 of the Commercial Code imposes a minimum period of 10 years for the keeping of all the books, correspondence and other documentation related to the activity of financial institutions and other companies.



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

of the funds or properties to make them appear to have originated from a legitimate source, are considered suspicious money laundering and/or terrorism financing transactions, or in abbreviation, suspicious transactions.

- 12.2 As required by Article 7 of Administrative Regulation no. 7/2006, the institutions covered in this guideline should report any suspicious transactions to the entity stipulated in Paragraph 2 of Article 8 of Law no. 2/2006 within 2 working days after realization of the transactions (please also refer to point 13 – Transitional and Final Provisions).
- 12.3 Institutions should have properly documented procedures with respect to the detection and reporting of the suspicious transactions, which should cover the following:
- 12.3.1 There should be a clearly defined channel for reporting suspicious transactions detected by staff at all levels to the AML/CFT Compliance Officer;
- 12.3.2 The AML/CFT Compliance Officer should maintain a register of all such reports submitted by the staff, which should include full details of the suspicious transactions, evidence of analysis of the transactions undertaken, and the reasons for decision to report or not to report the transactions to the entity indicated in 12.2 above; and
- 12.3.3 When decision is made to report the suspicious transactions detected by the relevant staff, the AML/CFT Compliance Officer is required to report the transactions to the entity indicated in 12.2 above, within 2 working days after realization of the transactions. It is essential that the report of the suspicious transactions should be swift and not subject to undue delay of bureaucracy.
- 12.4 The report of suspicious transactions should include all relevant information for the identification of the customers specified in this guideline and indicate the transactions detected as falling outside the normal pattern of activity of the customers.

⁹ As footnote 8 above.



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

- 12.5 The shareholders, directors, officers and any employees of the institutions covered in this guideline cannot disclose any information contained in the report to any third parties including the customers connected with the suspicious transactions, pursuant to Paragraph 4 of Article 7 of Law no. 2/2006.
- 12.6 Non-compliance with the reporting requirement stipulated in Article 7 of Administrative Regulation no. 7/2006 is considered an administrative offence, which shall be punishable with a fine from ten thousand (MOP 10,000) to five hundred thousand Macao patacas (MOP 500,000) for a natural person and a fine from one hundred thousand (MOP 100,000) to five million Macao patacas (MOP 5,000,000) for a legal entity. On the other hand, any non-compliance with the requirements laid down in this guideline will also be considered administrative offence and subject to penalty measures under Chapter II of Part IV of the Financial System Act.

13. TRANSITIONAL AND FINAL PROVISIONS

- 13.1 This new guideline will come into effect on 12th November 2006, which is in line with the effective date of Administrative Regulation no. 7/2006.
- 13.2 As stipulated in Paragraph 1 of Article 10 of Law no. 2/2006, Decree-Law no. 24/98/M of 1st June is transitionally applicable up to the effective date of Administrative Regulation no. 7/2006. Therefore, report of suspicious transactions should be sent to the Judiciary Police under advice to the AMCM during the transitional period.
- 13.3 Article 12 of the aforementioned Administrative Regulation stipulates that, before the entity as stipulated in Paragraph 2 of Article 8 of Law no. 2/2006 comes into effect, report of suspicious transactions should still be sent to the Judiciary Police after the transitional period, but no longer under advice to the AMCM. Proper instructions will be issued opportunely to financial institutions for submitting to the AMCM certain periodic statistics in respect of their reporting of suspicious transactions.
- 13.4 Institutions should implement the measures stipulated in this guideline on all new accounts or new business relationships from the effective date. For



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

existing accounts or business relationships, institutions should take a risk-based approach to identify higher risk customers who should be subject to review on a priority basis, and to establish criteria for triggering review of the lower risk accounts or business relationships (e.g. unusual transactions, transactions in large amount or transaction patterns not commensurate with background).

- 13.5 Within a month from the issuance date of the guideline, institutions should submit application to AMCM for prior approval for designation of at least one AML/CFT Compliance Officer.
- 13.6 Any queries about the implementation of the guideline should be directed to the Banking Supervision Department of the AMCM.



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

ANNEX I EXAMPLES OF SUSPICIOUS TRANSACTIONS

1. Cash Transactions

- a) Transactions where large deposits and withdrawals (including trading in securities, remittance and exchanges; the same hereinafter) are made in cash (including foreign currencies; the same hereinafter) or by cheques, unless they are found rational by institutions in view of customers' occupations, business patterns and other factors.
- b) Transactions that are made frequently in short periods of time and accompanied by large deposits and withdrawals made in cash or by cheques, unless they are found rational by institutions in view of customers' occupations, business patterns and other factors.
- c) Transactions where large amounts of small-denomination coins or bills (including foreign currencies) are deposited or exchanged, unless they are found rational by institutions in view of customers' occupations, business patterns and other factors.
- d) Transactions involving large cash deposits into night safe facilities or rapid increases of amount, unless they are found rational by institutions in view of customers' occupations, business patterns and other factors.
- e) Branches that have a great deal more cash transactions than usual. (Head Office statistics should detect abnormal cash transactions in branches)
- f) Customers whose deposits contain counterfeit notes or forged instruments.

2. Opening of New Accounts

- a) Transactions involving customers who are suspected of having attempted to open accounts in fictitious names or in the names of other persons (including cases where accounts failed to be opened due to the absence of identification or any other reason).



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

- b) Cases where customers refuse to present their personal identification documents (including cases where customers desire to establish their identity through means other than their personal identification documents without any rational reasons).
- c) Cases where customers submit copies of their personal identification documents while refusing to present the originals without any rational reasons.
- d) Cases where customers provide doubtful or unclear information.
- e) Cases where customers take procedures to open accounts in the names of other persons (including cases where institutions in the personal identification process find that the customers taking procedures to open accounts are different from the persons whose names are to be used for the accounts).
- f) Transactions involving accounts that are suspected of having been opened in fictitious names or in the names of other persons. Especially, cases where institutions, during contact with customers after their accounts have been opened, suspect frauds in their personal identification information (addresses, telephone numbers, etc.) provided when opening the accounts.
- g) Transactions involving accounts bearing the names of corporations that are suspected of never having existed. Especially, cases where institutions, during contact with such corporations after their accounts have been opened, suspect frauds in their identification information (addresses, telephone numbers, etc.) provided when opening the accounts.
- h) Transactions involving customers who wish to have statements sent to destinations other than their addresses or refuse to have any notice sent to their addresses, unless they are found rational by institutions.
- i) Transactions involving customers who attempt to open multiple accounts, unless they are found rational by institutions.
- j) Transactions involving customers who have been found to have multiple accounts, unless they are found rational by institutions.



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

- k) Customers who wish to open a number of trustee or clients' accounts which do not appear consistent with their type of business, including transactions which involve nominee names.
- l) An account opened in the name of a moneychanger that receives structured deposits afterwards.
- m) An account opened in the name of an offshore company with structured movement of funds.

3. Transactions Through Existing Accounts

- a) Transactions involving accounts that have been used for large deposits and withdrawals during a short period of time after opening and have then been closed or discontinued for any other transactions, unless they are found rational by institutions in view of customers' occupations, business patterns and other factors.
- b) Transactions where large deposits and withdrawals are made frequently, unless they are found rational by institutions in view of customers' occupations, business patterns and other factors.
- c) Transactions involving accounts that customers use for frequent remittances to a large number of people. Especially, cases where customers make large deposits into their accounts just before remittances, unless they are found rational by institutions in view of customers' occupations, business patterns and other factors.
- d) Transactions involving accounts that customers use for receiving frequent remittances from a large number of people (especially, when customers make large remittances or withdrawals from their accounts just after receiving remittances), unless they are found rational by institutions in view of customers' occupations, business patterns and other factors.
- e) Transactions involving accounts that have not been active for a long time and suddenly experiences large deposits and withdrawals, unless they are found rational by institutions in view of customers' occupations, business patterns and other factors.



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

- f) Customers who appear to have accounts with several institutions within the same locality, especially when the institution is aware of a regular consolidation process from such accounts prior to a request for onward transmission of the funds.
- g) Customers who together, and simultaneously, use separate tellers to conduct large cash transactions or foreign exchange transactions.
- h) More frequent use of safe deposit facilities by individuals. The use of sealed packets deposited and withdrawn.
- i) Companies' representatives avoid contact with the institutions.
- j) Substantial increases in deposits of cash or negotiable instruments by a professional firm or company, using client accounts or in-house company or trust accounts, especially when the deposits are promptly transferred between other client companies and trust accounts.

4. Investment related transactions

- a) Purchase of securities to be held by the institution in safe custody, where this does not appear appropriate given the customer's apparent standing.
- b) Transactions where customers settle trading in securities by remittances or cheques from third parties, unless they are found rational by institutions.
- c) Buying and selling of a security with no discernible purpose or in circumstances which appear unusual.
- d) Back to back deposit/ loan transactions with subsidiaries of, or affiliates of, overseas financial institutions in known drug trafficking areas.
- e) Requests by customers for investment management services (either foreign currency or securities) where the source of the funds is unclear or not consistent with the customer's apparent standing.



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

5. Cross-border Transactions

- a) Transactions involving customers who provide information which is suspected of being falsified or ambiguous information with regard to their overseas remittances. Especially, cases involving customers who provide information lacking rational reasons for remittance destinations, purposes of remittances, use of certain bank branches for remittances, or the like.
- b) Transactions where customers make frequent large overseas remittances within short periods of time, unless they are found rational by institutions in view of customers' occupations, business patterns and other factors.
- c) Transactions where customers send or receive large overseas remittances for economically unreasonable reasons.
- d) Transactions where customers frequently order or encash large amounts of traveller's or remittance cheques (including those denominated in foreign currencies), unless they are found rational by institutions.
- e) Transactions involving customers who are based in jurisdictions which do not cooperate with international anti-money laundering efforts "Non-cooperative countries and territories (NCCTs)" or are shipping illegal drugs, unless those transactions are found rational by institutions.
- f) Transactions that customers carry out with parties (including corporations) based in NCCTs or jurisdictions which are shipping illegal drugs, unless they are found rational by institutions.
- g) Transactions involving customers introduced by parties (including corporations) based in NCCTs or jurisdictions which are shipping illegal drugs, unless they are found rational by institutions in view of customers' occupations, business patterns and other factors.



澳門金融管理局
AUTORIDADE MONETÁRIA DE MACAU

6. Loan Transactions

- a) Transactions where customers unexpectedly make repayments of overdue loan, unless they are found rational by institutions in view of customers' occupations, business patterns and other factors.
- b) Request to borrow against assets held by the institution or a third party, where the origin of the assets is not known or the assets are inconsistent with the customer's standing.
- c) Request by a customer for an institution to provide or arrange finance where the source of the customer's financial contribution to the deal is unclear, particularly where property is involved.
- d) A customer who is reluctant or refuses to state a purpose of a loan or the source of repayment, or provides a questionable purpose and/ or source.

7. Other Transactions

- a) Transactions involving customers who refuse to explain reasons or submit information when requested to verify the intended beneficiary and clear the suspicion regarding whether or not the customer is acting on its own behalf. These transactions include those that are made by representatives of customers and are expected to benefit others than the customers.
- b) Transactions that are made by employees of institutions or their relatives to benefit parties that are unknown.
- c) Transactions involving customers who unusually emphasize the secrecy of the deals, and customers who attempt to ask, force or bribe staff of institutions not to report the deals to authorities.

In Light of Its Recent Actions With Respect to Multibanka and VEF, FinCEN Should Withdraw the Finding of Primary Money Laundering Concern and the Notice of Proposed Rulemaking against Banco Delta Asia

I. Introduction

On April 21, 2005, FinCEN designated Multibanka and VEF, two Latvian banks, as “of primary money laundering concern” and proposed implementing the fifth special measure against each of them. On July 12, 2006, FinCEN withdrew the finding and the notice of proposed rulemaking against Multibanka. On the same date, FinCEN issued a final rule imposing the fifth special measure against VEF. In light of these recent actions, the steps taken by Banco Delta Asia (“BDA”) in response to its designation by FinCEN as of primary money laundering concern should result in the withdrawal of FinCEN’s earlier finding and the related notice of proposed rulemaking against BDA. In short, BDA’s approach compares favorably to the course taken by Multibanka in dealing with the concerns raised by FinCEN and stands in stark contrast to the tactics adopted by VEF, which clearly frustrated FinCEN and raised doubts about VEF’s level of commitment to compliance.

II. Jurisdictional Developments

Although it is not specifically enumerated as a factor in Section 311, the strength of the governing jurisdiction’s anti-money laundering (“AML”) laws is repeatedly cited by FinCEN in considering whether to issue or withdraw a notice of proposed rulemaking against a financial institution found to be of primary money laundering concern. Not surprisingly, in withdrawing the finding and notice of proposed rulemaking against Multibanka, FinCEN discussed at length the recent strengthening of Latvia’s AML laws. Similarly, the recent adoption of strict AML laws and implementing regulations and guidelines in Macau supports the withdrawal of the finding and notice against BDA.

A. New Latvian Legislation

Following FinCEN’s designation of Multibanka and VEF as “of primary money laundering concern” in April 2005, Latvia has taken several steps to strengthen its AML laws. In its withdrawal of the notice of proposed rulemaking against Multibanka, FinCEN focused on the following major changes:

- The Parliament of Latvia passed a new law, *On the Declaration of Cash on the State Border*, effective July 1, 2006, aimed at preventing money laundering consistent with the United Nations Convention Against Transnational Organized Crime and the European Union draft regulation on the control of cash leaving and entering the European Community;

- In 2005, Latvia amended its laws to broaden the supervisory authority to revoke banking licenses and to allow enforcement agencies greater access to bank account information;
- The amendments provide for (i) fines against banks for violating the AML laws, and (ii) criminal liability for providing false information to banks; and
- The amendments clarified the authority of Latvian financial institutions to demand customer disclosure regarding the source of funds and allow for information-sharing between financial institutions on suspicious activities.

B. New Macau Legislation

Just as Latvia did, Macau passed new AML legislation shortly after BDA was designated “of primary money laundering concern.” Entitled “Prevention and Repression of Money Laundering,” Macau’s new AML law creates strong criminal penalties for money laundering. Moving one step beyond Latvia, however, Macau also passed combating-the-financing-of-terrorism (“CFT”) legislation. (It does not appear that Latvia has enacted CFT laws.) Macau’s AML and CFT laws became effective in April 2006, and the Chief Executive of Macau has already approved administrative regulations that will take effect on November 12, 2006. In addition, pursuant to the aforementioned AML/CFT legislation and regulations, the Macau Monetary Authority has issued detailed guidelines for financial institutions operating in Macau that are closely patterned after the FATF’s 40 Recommendations.

Like the legislation in Latvia, Macau’s new AML legislation includes the following key provisions:

- The AML law establishes a new agency in Macau with broad supervisory authority to request, collect and analyze information from covered institutions. This agency, the Financial Information Office, is scheduled to begin operating on November 12, 2006;
- The AML law, regulations and guidelines require covered institutions (i) to obtain extensive disclosures and identification information from customers before undertaking certain transactions, (ii) to refuse to conduct those transactions if the required information is not provided, and (iii) to report suspicious activities to the new agency, the Financial Information Office;
- The new AML and CFT laws set out fines and criminal penalties for money laundering and terrorist financing, and the regulations and

guidelines include penalties for non-compliance with the duties established therein for covered financial institutions. The regulations even provide for penalties where the non-compliance was based on the negligence of the financial institution; and

- The AML law provides for cooperation between Macau and entities in other countries vested with the authority to prevent and repress money laundering, which will be overseen and facilitated by the Financial Information Office.

An additional element common to the legislation in both countries is that they apply broadly to a variety of different organizations. Significantly, the legislation in Macau and Latvia does not apply only to financial institutions. Such broad coverage is particularly important in Macau where the gaming industry is developing rapidly.¹ By including casinos within the definition of covered entities, the Legislative Assembly of Macau demonstrated that it is serious about preventing money laundering within its jurisdiction.

III. Comparison to Multibanka

Although the enactment of new legislation by the governing jurisdictions has been cited by FinCEN as an important factor in withdrawing a notice of proposed rulemaking, it appears that the actions of the targeted financial institution are far more significant. Thus, in announcing the withdrawal of the notice against Multibanka, FinCEN emphasized that, through its actions, Multibanka had demonstrated a commitment to preventing money laundering from occurring at its institution. In this regard, FinCEN discussed five specific actions taken by Multibanka that supported the withdrawal of the notice. BDA has shown itself to be every bit the equal of Multibanka, as it has taken, or is in the process of taking, these very same actions, as explained in detail below.

A. Revise AML policies

First, FinCEN described how Multibanka had revised its anti-money laundering policies, procedures, and internal controls, and established an AML Manual to address previously identified weaknesses, including lax practices in identification and verification of accountholders and insufficient internal controls. Similarly, BDA is actively in the process of revising its AML policies and procedures, a process that had begun even before FinCEN issued its initial finding against BDA in September 2005. Further

¹ Indeed, gross revenues from the gaming industry in Macau totaled almost \$6 billion in 2005, constituting nearly half of Macau's GDP for that year. See World Trade Center Macau Newsletter, Issue No. 30, May 2006.

revisions in these policies and procedures were suggested by an independent international accounting firm hired to evaluate and assist in implementing BDA's AML program. BDA is also moving forward to create an AML manual with the help of the independent accounting firm.

B. Review of accounts

In support of its finding that Multibanka was "of primary money laundering concern," FinCEN explained that Multibanka offered confidential banking services and numbered accounts for non-Latvian customers. Accordingly, a significant factor in the withdrawal of the notice was that Multibanka committed to review, and has since reviewed, its entire portfolio of accounts with the aim of verifying the identities of all accountholders. In the process, Multibanka terminated its relationship with more than 2,600 customers unwilling or unable to comply with new and enhanced verification standards.

BDA took much the same approach with respect to its North Korean accounts, which were the focus of FinCEN's most serious allegations against BDA. Indeed, if anything, compared to Multibanka, BDA adopted a more sweeping approach to its questionable accounts. First, BDA internally identified the accounts held by or related to North Korean entities and immediately closed all such accounts. Next, BDA's Administrative Committee hired an independent, international accounting firm (not the same firm that was retained to revise its AML program) to conduct an investigation into the allegations made by FinCEN. As part of this investigation, this independent accounting firm conducted its own review of the accounts at BDA to ensure that all accounts held by or related to North Korean entities had been identified and closed. As part of its review, this firm identified one additional suspect account, which BDA subsequently and promptly closed.

C. Hired an accounting firm to identify weaknesses

FinCEN also highlighted the fact that Multibanka retained "an independent, international accounting firm" to identify weaknesses in its AML program and to assist the bank in its goal of reaching a best international practices standard for its AML program and internal controls. FinCEN noted that the firm created an action plan to address deficiencies, with targeted compliance dates. FinCEN also indicated that the implementation of the action plan is not yet completed.

As indicated above, BDA hired one "independent, international accounting firm" to conduct an investigation into the allegations made by FinCEN, and to identify deficiencies and weaknesses in BDA's then-existing AML program. Moreover, BDA hired a second "independent, international accounting firm" to conduct a risk assessment for BDA and to design and assist BDA in implementing a revised AML program that meets with best international practices. The second firm has already provided BDA with

a framework for an AML program and will shortly begin creating an action plan for the implementation of the framework, which will include targeted compliance dates and plans for periodic re-evaluation.

D. Organizational Changes

In withdrawing the notice against Multibanka, FinCEN explained that Multibanka had made numerous organizational changes, which included the creation of a Compliance Committee, a Finance Monitoring Department, a Corporate Customer Department, and a Customer Management Division. FinCEN also noted that Multibanka hired “additional employees” to assist with compliance and had enhanced its training opportunities for employees with key AML responsibilities. Likewise, BDA has made organizational changes, including the creation of a compliance and internal audit department. BDA is currently in the process of hiring a compliance officer who will be based in Macau. Until the Bank can retain a permanent compliance officer, the law firm of Jorge Neto Valente will second a lawyer to serve as the Bank’s compliance officer on an interim basis.

E. Information Technology

Finally, FinCEN identified Multibanka’s enhancement of its information technology systems as a factor in withdrawing the notice of proposed rulemaking. Specifically, Multibanka has enhanced and continues to enhance information technology systems that assist in the automated screening of accountholders, beneficial owners, and other persons and transactions that should be scrutinized and/or reported. Similarly, BDA recently retained T.A. Consultants Ltd., a Hong Kong consulting firm, to enhance its information technology systems. The upgrade will allow the Bank to run daily exception reports that will enable BDA to identify and report all manner of suspicious transactions or unusual activities in its accounts. These reports will identify accounts based on both an exceptional number of transactions and amounts of money being transacted. The reports will also increase the categories of account information to include fields entitled “AML risk class,” “NCCT indicator,” and “Country/Territories.”

IV. Comparison to VEF Bank

On the same day that FinCEN withdrew its finding and notice of proposed rulemaking against Multibanka, it issued a final rule implementing the fifth special measure against VEF. While it appears that VEF made some attempts to address FinCEN’s concerns, FinCEN nonetheless identified significant factors that established that VEF was not fully committed to the prevention of money laundering. These factors do not exist with respect to BDA.

Like Multibanka (and BDA), VEF sought to strengthen its AML regime by (1) revising its policies and procedures, including training procedures; (2) creating an Anti-Money Laundering Manual; (3) closing approximately 600 questionable accounts; (4)

changing some of its management personnel; and (5) retaining the services of an independent international accounting firm to identify weaknesses in its anti-money laundering program and to assist the bank in its goal of reaching a best practices standard for its AML controls. Absent from the list of actions taken by VEF, however, are a comprehensive review of its accounts and an upgrade of its information technology systems.

Notwithstanding these changes, FinCEN imposed the fifth special measure against VEF, concluding that any legitimate use of VEF is significantly outweighed by its use to promote and facilitate money laundering. FinCEN's decision rested largely on its finding (based in part on classified information) that VEF's ownership had links to organized crime groups that reportedly facilitate money laundering. The ownership issue appears to have manifested itself in the comments made to FinCEN by VEF, in which VEF continued to take issue with the evidence of misconduct on which FinCEN relied, as well as the application and fairness of the rulemaking process itself. FinCEN was not impressed with VEF's comments, noting that they were "unrelated to our request for comment on the proposed imposition of the fifth special measure." No such concerns have been raised with respect to BDA.

In particular, BDA's ownership situation shares none of the problems plaguing VEF. As an initial matter, at no point has FinCEN alleged that the owners of BDA were in any way linked to the criminal element. Moreover, following the issuance of the notice of proposed rulemaking against BDA and the Macau government's decision to appoint a three-person Administrative Committee to run the bank, the directors and shareholders of BDA voluntarily turned over management control of the bank to the committee. In the months since the Administrative Committee has overseen BDA's operations, neither the directors nor the shareholders of the bank have objected to or attempted to obstruct the moves to reform BDA, as appears to have been the case at VEF. Indeed, the directors and shareholders of BDA have endorsed the changes made by the Administrative Committee and have renounced any possibility of resuming business with North Korea. Further, in light of the many reforms instituted by the Administrative Committee, which include the adoption of an enhanced AML program, the hiring of a dedicated compliance officer, and the upgrading of its information technology systems, it would be impossible for BDA to return to its past practices. Similarly, the passage of strong AML and CFT legislation in Macau, which will of course govern the conduct of whoever runs BDA, will also prevent history from repeating itself at the bank. In the end, BDA is a changed institution operating in a new regulatory environment, with no chance of reverting to its old ways of doing business.

In sum, the level of commitment to compliance, as well as serious doubts about the ownership of VEF, seem to have been the determining factors resulting in the different treatment of Multibanka and VEF. As described above, BDA's commitment to

compliance is as strong as Multibanka's. Moreover, unlike VEF, BDA has shown itself to be forward-looking and fully committed to the prevention of money laundering.

V. Conclusion

The above analysis demonstrates that, like Multibanka, BDA has taken concrete steps to remedy any past failures in its AML program. BDA has taken or is in the process of taking the following measures: (1) enhancing its AML policies and drafting a revised AML manual, (2) reviewing accounts and closing those of concern; (3) working with two international, independent accounting firms to identify the weaknesses in its AML program and implement an effective new program; (4) making organizational changes and hiring new employees in key positions; and (5) upgrading its information technology systems. These actions, along with its comments to FinCEN, demonstrate that BDA is committed to meaningful change that will prevent the use of its institution for purposes contrary to the spirit of the USA PATRIOT Act.

11/1/06 1:24 PM ()

JORGE NETO VALENTE
MARIA DE LURDES COSTA
RUI SOUSA

Advogados e Notários Privados

SANDRA CARRILHO
LUÍS PINTO
LEE KAM IUT
JOANA DURÃO
PEDRO QUINTELA BORGES
MARTA TABORDA
RICARDO MORGADO IGREJA
LEONG WENG PUN
CARLA JACINTO
RENATA BRITO

Advogados

KONG SUT MUI
HUI FUNG KUN
CHAN KA WENG
HELENA KOK

Advogadas Estagiárias

華年達
高美莉
蘇美雷
大律師、公證員
簡羨婷
彭立文
李金月
杜婫能
布秉道
戴美琦
于永澤
梁嘉本
周嘉莉
任碧桃
大律師
江雪梅
許鳳娟
陳嘉詠
郭逸熙
見答律師

To the
Administrative Committee of
BANCO DELTA ÁSIA, S.A.R.L.
Rua do Campo, no. 39-41
Macau

Macau, 5th of October, 2006

Subject: BDA – Temporary Compliance Officer

Dear Sirs,

We refer to the subject matter and we would like to inform you that, pursuant to the engagement of our services, we hereby appoint our Colleague Ms. Carla Jacinto to serve as the temporary compliance officer at the BANCO DELTA ÁSIA, S.A.R.L.

Yours faithfully,

J. Neto Valente

Jorge Neto Valente



滙業銀行有限公司
Banco Delta Asia S.A.R.L.

79 Avenida Conselheiro Ferreira de Almeida, Macau
Administrative Committee
Banco Delta Ásia, S.A.R.L.
Rua do Campo, No 39-41
Macau SAR of The Peoples' Republic of China

Date: 5-10-2006

Heller Ehrman
35th Floor, One Exchange Square
8 Connaught Place
Central, Hong Kong

Dear Mr. Phillips,

We are writing to confirm that Banco Delta Ásia, S.A.R.L. (BDA) has engaged the services of Jorge Neto Valente, a firm of lawyers and notaries in Macau and that pursuant to the engagement, Jorge Neto Valente will second to BDA one of its attorneys, Ms. Carla Jacinto, to serve as the temporary compliance officer at the BDA.

In addition to overseeing all compliance issues at BDA, Ms. Jacinto will work closely with Deloitte & Touche Forensic Services Limited in connection with its engagement to assist BDA to implement the AML compliance programme framework that Deloitte previously submitted to BDA earlier this year.

BDA will, in the interim, continue its search for a permanent compliance officer.

Yours faithfully,

Signed
(Authorised Signatory)

Name: Lei Chin Cheng (李展程)

Signed
(Authorised Signatory)

Name: Maria de Lurdes Costa