

Compliance Period Extended under Schedule in Anti-Money Laundering Regulations, 2008 – Guidance Notes

Compliance Period

The 2015 amendments to the Anti-Money Laundering Regulations (AMLR) and Anti-Money Laundering Terrorist Financing Code of Practice (AMLTF COP) took effect on 1st January, 2016. This means that all relevant persons¹ should as of 1st January, 2016 take necessary steps to ensure full compliance with the new rules established in both enactments. Compliance operates at two levels.

For every BVI Business Company that is incorporated or registered as of 1st January, 2016, the relevant person must collect and maintain beneficial ownership information prior to or at the time of incorporation or registration. For companies that were incorporated or registered prior to 1st January, 2016, there is a transition period of 12 months ending on 31st December, 2016 within which the relevant person must collect and maintain beneficial ownership information. Provision is made for granting extension to the established deadline. This Paper therefore concentrates on companies that fall within the transition or compliance period and the circumstances under which extension may be granted.

Extension of Compliance Period

2. The Financial Service Commission (the “Commission”) may extend the period of compliance in circumstances where it forms the opinion that:

- (a) a relevant person has made sufficient progress to comply with its obligations to source and maintain beneficial ownership information in respect of its applicants for business or customers; and
- (b) considering the number of applicants for business or customers with which the relevant person has a business relationship, it may not be possible for the relevant person to comply with its obligations within the transition period; or
- (c) there are other relevant factors present in respect of a relevant person which makes it appropriate to grant an extension.

3. Whether or not a relevant person has made sufficient progress to comply with its obligations is determined by one of 2 factors. **First**, the relevant person should be able to

¹ (referring to persons who engage in relevant business as outlined in regulation 2 (1) of the AMLR and includes licensed and unlicensed entities)

demonstrate that it has been able to obtain beneficial ownership information in respect of at least 50% of its applicants for business or customers by 31st July, 2016. **Second**, the relevant person should be able to demonstrate that it has been able to obtain beneficial ownership information for at least 75% of its applicants for business or customers by 31st October, 2016. As a matter of practical implementation, the Commission will adopt the following processes and procedures:

- (a) Prior to submitting an application for extension, a relevant person must satisfy itself that it has accomplished the specified threshold of either 50% or 75% within the prescribed period; failure to satisfy either threshold within the prescribed period will render the application non-compliant and will, as a consequence, not qualify for an extension;***
- (b) An application for extension has to be submitted in writing by a relevant person; the application should be submitted no later than 31st August, 2016 (where reliance is placed on the 50% threshold) or 30th November, 2016 (where reliance is placed on the 75% threshold). A relevant person need not satisfy both thresholds to be eligible for an extension of time. These deadlines are designed to enable the Commission to review and arrive at decisions on applications for extension in a timely manner in advance of the stipulated compliance period;***
- (c) The application must provide information with respect to the name and address of the relevant person, the number of entities for which it acts (dividing them into active and struck-off companies), the number and percentage of entities for which beneficial ownership information has been fully obtained and is being maintained, the number and percentage of outstanding entities for which beneficial ownership remains to be obtained and maintained, the period of extension requested (not being more than 6 months after 31st December, 2016), and such other information as is comprised in the Appendix herewith;***
- (d) The application, which must be duly attested through a declaration by a director or the registered agent of the relevant person, must be in the approved form outlined in the Appendix herewith; and***
- (e) Although the Commission will base its assessment on the level of compliance with a specified threshold (i.e. 50% or 75%) in respect of active companies only for which beneficial ownership information has been obtained, all relevant persons are encouraged to obtain and maintain the same information with regard to struck-off companies with which a business relationship exists (a policy document in relation to struck-off companies is currently being discussed and is expected to result in the formulation of rules on the subject).***

4. The Commission will also grant an extension to the compliance period of 31st December, 2016 in circumstances where it forms the opinion that a relevant person has other relevant

factors (other than or in addition to those specified in paragraph 2 (a) and (b) above) applicable in its case to warrant such an extension. Since other relevant factors in respect of relevant persons are not likely to be always the same or similar, the Commission expects to consider these on a case by case basis and on individual merit. The onus is on a relevant person to outline and provide evidence of the relevant factors that, in its view, merit consideration for an extension by the Commission. A relevant person relying on such other relevant factors as a means for seeking an extension, must specify those factors in the appropriate section of the **Appendix** herewith; this will be in addition to completing the other aspects specified in the approved Form.

5. An application for an extension of the compliance date that is founded on “other relevant factors” must also be made and submitted to the Commission no later than 30th November, 2016. No application for an extension of time that is founded on “other relevant factors” shall be considered or processed before 1st November, 2016.

6. Any application for extension of the compliance period will be considered to be submitted if it is received by the Commission no later than the close of business on 31st August, 2016 (for the 50% threshold) or 30th November, 2016 (for the 75% threshold). There will not be any extension to this period and late applications will not likely be considered.

7. The above will thus serve as the Commission’s mechanism for establishing whether an extension should be granted to a request for completing the collection of beneficial ownership information beyond the established compliance period of 31st December, 2016. Where the Commission grants an extension, this may be for a period of up to but not necessarily 6 months (ending in June 2017). What specific period of extension is granted by the Commission will depend on several factors, most important of which are the efforts already made to obtain and maintain beneficial ownership information, the remaining number of entities for which beneficial ownership information needs to be obtained, the likelihood of completion of beneficial ownership information collection in a defined period, and the resources available to a relevant person to obtain the remaining beneficial ownership information.

8. The Commission will undertake a review process to establish whether and to what extent all relevant persons have complied with the obligation to obtain and maintain beneficial ownership information (within the specified timeframes, including extended times). This is expected to be carried out through a review process to be undertaken during the course of 2017.

APPENDIX

***Application and Declaration for Extension of Time Pursuant to paragraph 4
of the Schedule of the Anti-money Laundering Regulations, 2008***

1. Name of relevant person:

2. Address of relevant person (Physical or principal):

3. Number of companies the relevant person acts for, if any:

(a) Active companies (not struck from the register of companies):

(b) Companies struck-off the register of companies with which there is an existing business relationship (this is for information only and will not be used in assessing level of compliance):

4. Number of active companies for which beneficial ownership information has been obtained and currently maintained:

5. Number of struck-off companies for which beneficial ownership information has been obtained and currently maintained:

6. Number of active companies for which beneficial ownership information has yet to be obtained and maintained:

7. Number of struck-off companies for which beneficial ownership information has yet to be obtained and maintained (this is for information only and will not be used in assessing level of compliance):

8. Please indicate the percentage of the following:

(a) Active companies for which BO information has been collected and is maintained:

(b) Completed struck-off companies:

(c) Incompleted active companies:

(d) Incompleted struck-off companies (this is for information only and will not be used in assessing level of compliance):

9. Period of extension required (being not more than 6 months from 1st January, 2017):

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10. State the reason or reasons for requesting an extension:

11. Provide or list below supporting evidence, if any, for the request for extension; the evidence may be attached to or accompany this form:

(a)

(b)

(c)

(d)
(e)

Declaration

I, *(state full name of individual making the declaration)*, being a director/senior manager of *(state the name of the Applicant)* and seized of the matters provided in this Form, hereby declare that the information contained in this Form is true and accurate to the best of my knowledge and belief.

Signed:
(Declarant)

Signed:
(Name of person submitting application, if different from Declarant)

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