

Guidelines on third party deposit and payment from the SFC

On 31st May 2019, the Securities and Futures Commission (the “**SFC**”) published a circular titled “Third-Party Deposits and Payments” (the “**Circular**”), reiterating the importance of mitigating the risks associated with third-party deposit to, or third-party payment from, accounts maintained by clients with licensed corporations (“**LC**”) and associated entities. The Circular was issued following the recent disciplinary actions against several LCs which demonstrated that the relevant LC’s policies, procedures and control measures on anti-money laundering were deficient. In the said premises, the SFC published the Circular to provide guidance to LCs with regard to effective policies, procedures and control measures when handling third-party deposits and payments.

➤ Third-party Deposit



LCs should adopt the following three approaches when handling third-party deposits:

1. Policies and procedures in place
 - (a) LCs should clearly define, in policies and procedures approved by senior management, the exceptional and legitimate circumstances under which third-party deposits may be accepted.
 - (b) LCs should set out the control measures to be carried out in order to identify the third-party deposit in their bank accounts and comply with the policies and procedures in handling the third-party deposit.
 - (c) Any rejected third-party deposit should be returned to their payment sources as soon as practicable. In this regard, LCs should always obtain clients’ standing authority or direction.

2. Due diligence, evaluation and dual approval process

LCs are required to carry out due diligence on any third-party deposit in order to determine three respects as follows:-

- (a) the identity of the third-party payor;
- (b) the relationship between the client and the third-party payor; and
- (c) the reason for receiving the deposit from the third-party.

In determining the identity of a third-party payor and the relationship between the client and third-party payor (i.e. 2(a) and 2(b) as above), LCs should adopt a risk-based approach to verify the third-party payor. Third-party payors that generally considered to pose relatively low risks include immediate family members (e.g. a spouse, parent or child), beneficial owners and affiliated companies of corporate clients and regulated custodians and lending institutions (the “**group of low-risk third-party payors**”).

If the third-party payor does not fall within the category of the group of low-risk third-party payors, the relevant deposit (including third-party payment) should then be processed under a dual approval process. Dual approval process means that the third-party deposit (including third-party payment) must be approved by an officer holding the position of Manager-In Charge of AML/CFT or Money Laundering Reporting Officer and another member of senior management.

3. Ongoing monitoring

- (a) LCs should enhance their ongoing monitoring of client accounts involving third-party deposits.
- (b) Relevant staff of an LC should file a suspicious transaction report to the JFIU when there are grounds of any suspicion of money laundering or terrorist financing.

➤ Third-Party Payment



In general, requests from clients for third-party payment should be refused. It is rare for a third-party, and not the client, to receive funds for the client. However, should the LC decide to accept the third-party payment, the LC should adopt the measures applicable to third-party deposit.

➤ Designated Bank Accounts

The SFC encourages LCs to require their clients to designate bank accounts held in their own names or the names of acceptable third parties for the making of all deposits and withdrawals. This could help LCs complete the necessary due diligence in a more straightforward manner.



➤ Staff training, Record Keeping and Client Communication

1. LCs should provide clear and adequate guidelines to clerk responsible for the evaluation of a third-party deposit or payment (the “**Clerk-in-Charge**”).
2. The Clerk-in-Charge should properly document and record any findings of inquiries made and corroborative evidence obtained during the evaluation and approval of a third-party deposit or payment.
3. LCs should inform their clients in writing about their policies for handling third-party deposit and payment. The relevant policies should include the following three areas:-
 - (a) policies for rejecting third-party deposits or accepting them under exceptional and legitimate circumstances;
 - (b) requirements for clients to provide supporting documents to verify third-party payor or payee information;
 - (c) procedures for returning third-party deposits which are rejected by LCs.

This explanatory summary is not, and should not be regarded as, a legal advice. Should you have any enquires, please seek specific advice from legal advisers.

13th June 2019