CIRCULAR LETTER

TO : All Insurance/Reinsurance Companies, Insurance and Reinsurance Brokers, Mutual Benefit Associations, Trusts for Charitable Uses, Pre-Need Companies, Health Maintenance Organizations and other Covered Persons under the Regulation of the Insurance Commission

SUBJECT : Amendments to Sections 4(J), 8, 11, 12, 21, 32, 33, 35, 36, 37, 38, 47 and 48 of CL No. 2018-48 dated 14 September 2018 on Anti-Money Laundering and Combating the Financing of Terrorism Guidelines for Insurance Commission Regulated Entities

Pursuant to the power of the Insurance Commission (IC) under Rule 18 (A) of the 2016 Revised Implementing Rules and Regulations (RIRR) of Republic Act No. 9160, also known as the “Anti-Money Laundering Act of 2001 (AMLA), As Amended”, and Rule 27 of the Implementing Rules and Regulations (IRR) of Republic Act No. 10168, otherwise known as “The Terrorism Financing Prevention and Suppression Act”, to issue and/or update its guidelines and circulars on anti-money laundering and terrorism financing prevention and suppression, respectively, the undersigned Insurance Commissioner enacts the following:

SEC. 1. Section 4(J) of CL No. 2018-48 is hereby amended to read as follows:

"Section 4. Definition of Terms. – For purposes of this Guidelines, the following terms are defined as follows:

x x x"
J. “Immediate Family Member of PEPs” refers to spouse or partner, children and their spouses, siblings, and parents and parents-in-law.”

SEC. 2. Section 8 of the same CL is hereby amended to read as follows:

“Section 8. Risk Management Policies. – The ICREs shall:

a. Develop sound risk management policies, controls and procedures, which are approved by the board of directors, to enable them to manage and mitigate the risks that have been identified in the National Risk Assessment (NRA), or by the AMLC, the IC or the ICRE itself;

b. Monitor the implementation of those controls and to enhance them if necessary; and

c. Take enhanced measures to manage and mitigate the risks where higher risks are identified.

The board of directors of the ICRE shall exercise active control and supervision in the formulation and implementation of institutional risk management. They shall be ultimately responsible for the ICRE’s compliance with the AML and CFT Laws, their respective Implementing Rules and Regulations, and other relevant IC and AMLC issuances.”

SEC. 3. Section 11 of the same CL is hereby amended to read as follows:

“Section 11. Implementation of a Money Laundering and Terrorism Financing Prevention Program (ML/TFPP). –

A. The ICRE’s Board of Directors (BOD) shall approve, and the compliance officer shall implement, a comprehensive, risk-based ML/TFPP geared towards the promotion of high ethical and professional standards and the prevention of ML and TF. The ML/TFPP shall be in writing; consistent with the AML and CFT Laws, their respective implementing rules and regulations, this Guidelines and other applicable IC and AMLC issuances; and its provisions shall reflect the ICRE’s corporate structure and risk profile. It shall be readily available in user-friendly form, whether in hard or soft copy. Moreover, it shall be well disseminated to all officers and staff who are obligated, given their position, to implement compliance measures. The ICREs shall design procedures that ensure an audit trail evidencing the dissemination of the ML/TFPP to relevant officers and staff.

Where an ICRE operates at multiple locations in the Philippines, it shall adopt an institution-wide ML/TFPP to be implemented in a consolidated manner. Where a ICRE has branches, subsidiaries, affiliates or offices located within and/or outside the Philippines, there shall be a consolidated ML/TF risk management system to ensure the coordination and
implementation of policies and procedures on a group-wide basis, taking into account local business considerations and the requirements of the host jurisdiction. Lastly, the ML/TFPP shall be updated at least once every two years or whenever necessary to reflect changes in AML/CFT obligations, ML and TF trends, detection techniques and typologies.

At a minimum, the ML/TFPP's provisions shall include internal policies, controls and procedures on the following:

1. Risk assessment and management;

2. Detailed procedures of the ICREs' compliance and implementation of customer due diligence, record-keeping and transaction reporting requirements;

3. An effective and continuous AML/CFT training program for all directors, and responsible officers and employees, to enable them to fully comply with their obligations and responsibilities under the AML and CFT Laws, their respective implementing rules and regulations, this Guidelines and other applicable IC and AMLC issuances, their own internal policies and procedures, and such other obligations as may be required by the IC and/or the AMLC;

4. An adequate risk-based screening and recruitment process to ensure that only qualified and competent personnel with no criminal record or integrity-related issues are employed or contracted by ICREs;

5. Independent audit function to test the system. The ICREs shall specify in writing the examination scope of independent audits, which shall include evaluation or examination of the following:

a. Risk assessment and management;

b. MLTFPP;

c. Accuracy and completeness of customer identification information, covered and suspicious transaction reports, and all other records and internal controls pertaining to compliance with the AML and CFT Laws, their respective implementing Rules and Regulations, this Guidelines and other relevant IC and AMLC issuances.

6. A mechanism that ensures all deficiencies noted during the audit and/or regular or special compliance checking are immediately and timely corrected and acted upon;
7. Cooperation with the IC, AMLC and other competent authorities;

8. Designation of a Compliance Officer at the management level, as the lead implementer of the ICRE’s compliance program or creation of compliance unit; and

9. The identification, assessment and mitigation of ML/TF risks that may arise from new business practices, services, technologies and products.

B. Financial groups are authorized to implement group-wide MLTFPP, which should be applicable, and appropriate to, all branches and majority-owned subsidiaries of the financial group. These shall include the measures set out above, and also:

1. Policies and procedures for sharing information required for the purposes of CDD and risk management;

2. The provision, at group-level compliance, audit, and/or AML/CTF functions, of customer, account, and transaction information from branches and subsidiaries when necessary for AML/CTF purposes. This should include information and analysis of transactions or activities which appear unusual, if such analysis was done. Similarly branches and subsidiaries should receive such information from these group-level functions when relevant and appropriate to risk management; and

3. Adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent tipping-off.

C. Within one hundred eighty (180) days from the effectivity of this Guidelines, all ICREs shall prepare and have available for inspection their new/updated and BOD-approved MLTFPP embodying the principles and provisions stated in this Guidelines.

In case of newly licensed ICRE, it shall have one hundred eighty (180) days from receipt of Certificate of Authority to formulate its MLTFPP consistent with the AML and CFT Laws, their respective implementing rules and regulations, this Guidelines and other applicable IC and AMLC issuances.

Each MLPP shall be regularly updated at least once every two (2) years to incorporate changes in AML policies and procedures, latest trends in ML and TF typologies, and latest pertinent IC and/or AMLC issuances. Any revision or update in the MLTFPP shall likewise be approved by the BOD.

The compliance officer shall submit to the IC not later than fifteen (15)
days from the approval of the Board of Director of the new/updated ML/TFPP a sworn certification that a new/updated ML/TFPP has been prepared, duly noted and approved by the ICRES' BOD."

SEC. 4. Section 12 of the same CL is hereby amended to read as follows:

"Section 12. Internal Controls and Foreign Branches and Subsidiaries. –

A. The ICRES shall establish internal controls to ensure day-to-day compliance with its AML/CFT obligations under the AML and CFT Laws, their respective implementing rules and regulations, this Guidelines and other applicable IC and AMLC issuances, taking into consideration the size and complexity of its operations.

Qualified personnel who are independent of the unit being audited shall conduct internal audits for the ICRES. The auditors shall have the support and a direct line of communication to the ICRES' Board of Directors. The ICRES' internal audit program shall include periodic and independent evaluation of the ICRES' risk management, as well as the sufficiency and degree of adherence to its compliance measures. Internal audit examination scope shall cover the accuracy of customer identification information, covered and suspicious transaction reports, and all other records and internal controls pertaining to compliance with AML/CFT obligations. Internal audits shall be conducted at least once every year or at such frequency as necessary, consistent with the risk assessment of the ICRES.

The results of the internal audit shall be timely and directly communicated to the ICRES' Board of Directors, senior management and the compliance officer. There shall also be a written procedure by which deficiencies in a compliance program are promptly remedied once identified by an internal audit. Moreover, audit results relative to AML/CFT compliance shall promptly be made available to the IC upon request during compliance checking.

B. The ICRES shall ensure that their foreign branches and majority-owned subsidiaries apply the requirements under the AML and CFT Laws, their respective Implementing Rules and Regulations, this Guidelines and other relevant IC and AMLC issuances, where the minimum AML/CFT requirements of the host country are less strict, to the extent that the laws and regulations of the host country permit.

If the host country does not permit the proper implementation of the measures under the AML and CFT Laws, their respective Implementing Rules and Regulations, this Guidelines and other relevant IC and AMLC issuances, the ICRES shall apply appropriate additional measures to manage the ML/TF risks, and inform the IC and the AMLC."

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SEC. 5. Section 21 of the same CL is hereby amended to read as follows:

"Section 21. When to Conduct CDD. –

A. The ICREs shall undertake CDD measures when:

a. Establishing business relationship;

b. Carrying out occasional transactions above the applicable designated threshold to be determined by the AMLC, in coordination with the relevant Supervising Authority, including situations where the transaction is carried out in a single operation or in several operations that appear to be linked;

c. There is any suspicion of Money Laundering or Terrorist Financing, regardless of any exemptions or thresholds that are referred to under the AML and CFT Laws, their respective Implementing Rules and Regulations, this Guidelines and other relevant AMLC and IC issuances; and

d. The ICRE has doubts about the veracity or adequacy of previously obtained customer identification data.

B. The ICREs shall apply CDD requirements to existing customers on the basis of materiality and risk, and to conduct due diligence on existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of information and document obtained."

SEC. 6. Section 32 of the same CL is hereby amended to read as follows:

"Section 32. New Technologies. The ICREs shall take reasonable measures to prevent the use of new technologies for ML/TF purposes.

The ICREs shall identify and assess the ML/TF risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products.

The ICREs shall:

a. Undertake the risk assessments prior to the launch or use of such products, practices and technologies; and
b. **Take appropriate measures to manage and mitigate the risks.**

The outcome of such assessment shall be documented and be available to the IC upon request during compliance checking.”

SEC. 7. Section 33 of the same CL is hereby amended to read as follows:

“Section 33. Life Insurance and Other Investment-Related Policies. For life or other investment-related insurance business, the ICREs shall, in addition to the customer due diligence measures required for the customer and the beneficial owner, conduct the following customer due diligence measures on the beneficiaries of life insurance and other investment related insurance policies, as soon as the beneficiary or beneficiaries are identified or designated:

a. **For a beneficiary** that is identified as specifically named natural or legal persons or legal arrangements - taking the name of the person;

b. **For a beneficiary** that is a legal arrangement or designated by characteristics or by category such as spouse or children, at the time that the insured event occurs or by other means such as under a will, obtaining sufficient information concerning the beneficiary to satisfy the financial institution that it will be able to establish the identity of the beneficiary at the time of the pay-out but before funds are disbursed.

c. **For both the above cases**, verification of the identity of the beneficiary should occur at the time of the payout.

The ICREs shall include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable. If the ICRE determines that a beneficiary who is a legal person or a legal arrangement presents a higher risk, it shall take enhanced measures which should include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of payout.

ICREs shall take reasonable measures to determine whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary, are PEPs. This should occur, at the latest, at the time of the payout. Where higher risks are identified, ICREs shall inform senior management before the payout of the policy proceeds, to conduct enhanced scrutiny on the whole business relationship with the policyholder, and to consider making a suspicious transaction report.

The information collected shall be recorded and maintained in accordance with the requirements under Title VI of this Guidelines.”
SEC. 8. Section 35 of the same CL is hereby amended to read as follows:

"Section 35. Ongoing CDD and Monitoring of Existing Customers. –

A. The ICREs shall ensure that they have established the true and full identity of their customers and shall, on the basis of materiality and risk, update, no later than once every three (3) years, all customer identification information and documents, including photo, required to be obtained this Guidelines, unless enhanced ongoing monitoring is warranted.

The ICREs shall establish a system that will enable them to understand the normal and reasonable account or business activity of customers to ensure that the customers' accounts and transactions are consistent with their knowledge of the customers, and the latter's commercial activities, risk profile, and source of funds and detect unusual or suspicious patterns of account activity. Thus, a risk-and-materiality-based on-going monitoring of customer's accounts and transactions should be part of a ICREs' customer due diligence.

The ICREs shall establish a system that will enable them to understand the normal and reasonable account or business activity of customers, and scrutinize transactions undertaken throughout the course of the business relationship to ensure that the customers’ accounts, including transactions being conducted, are consistent with the ICREs knowledge of its customer, their business and risk profile, including where necessary, the source of funds.

B. The ICREs shall examine the background and purpose of all complex, unusually large transactions, all unusual patterns of transactions, which have no apparent economic or lawful purpose, and other transactions that may be considered suspicious. The ICREs shall apply enhanced due diligence on the customer if they acquire information in the course of customer account or transaction monitoring that:

1. Raises doubt as to the accuracy of any information or document provided or the ownership of the entity;

2. Justifies reclassification of the customer from low or normal risk to high risk pursuant to this Guidelines or by their own criteria; or

3. Indicates that any of the circumstances for the filing of a suspicious transaction report exists such as but not limited to the following:

   a. Transacting without any underlying legal or trade obligation, purpose or economic justification;
b. Transacting an amount that is not commensurate with the business or financial capacity of the customer or deviates from his profile;

c. Structuring of transactions in order to avoid being the subject of covered transaction reporting; or

d. Knowing that a customer was or is engaged or engaging in any unlawful activity as herein defined.

If the ICREs fail to satisfactorily complete the enhanced due diligence procedures or reasonably believes that performing the enhanced due diligence process will tip-off the customer, it shall file a suspicious transaction report, and closely monitor the account and review the business relationship.”

SEC. 9. Section 36 of the same CL is hereby amended to read as follows:

“Section 36. Face-to-Face Contact. – The ICREs shall verify the identity of the customer, through face-to-face contact or other modes of verification, before or during the course of establishing a business relationship, or conducting transactions for occasional customers. They may complete the verification process after the establishment of the business relationship, provided that:

a. This occurs as soon as reasonably practicable;

b. This is essential not to interrupt the normal conduct of business; and

c. The ML/TF risks are effectively managed.

The use of Information and Communication Technology in the conduct of face-to-face contact may be allowed, provided that the ICRE is in possession of and has verified the identification documents submitted by the prospective customer prior to the interview and that the entire procedure is documented.

The ICREs shall adopt risk management procedures concerning the conditions under which a customer may utilize the business relationship prior to verification.”

SEC. 10. Section 37 of the same CL is hereby amended to read as follows:

“Section 37. Third Party Reliance. – The ICREs may rely on a third party in conducting customer due diligence procedures. The third party shall be:

a. A covered person; or
b. A financial institution or DNFBP operating outside the Philippines that is covered by equivalent customer due diligence and record-keeping procedures. When determining in which countries the third party that meets the conditions can be based, ICRES shall have regard to information available on the level of country risk.

Notwithstanding the foregoing, the ultimate responsibility for customer due diligence and record-keeping remains with the ICRE relying on the third party, which shall be required to:

a. Obtain immediately the necessary information received and gathered during the conduct of the different customer due diligence measures;

b. Take steps to satisfy itself that copies of record of identification information and identification documents shall be made available from the third party upon request without delay; and

c. Satisfy itself that the third party is a covered person, and has measures in place for compliance with customer due diligence and record-keeping requirements.

In cases of high-risk customers, the ICRE relying on the third person shall also conduct enhanced due diligence procedure.

The ICRES may rely on a third party that is part of the same financial, business or professional group under the following circumstances:

a. The group applies customer due diligence and record-keeping requirements, and programs against ML and TF in accordance with relevant provisions of the AML and CFT Laws, their respective implementing rules and regulations, this Guidelines and other IC and AMLC issuances;

b. The implementation of customer due diligence and record-keeping requirements, and the AML/CFT programs is supervised at a group level by a Supervising Authority; and

c. Any higher country risk is adequately mitigated by the group's AML/CFT policies."

SEC. 11. Section 38 of the same CL is hereby amended to read as follows:

"Section 38. Outsourcing. – The ICRES may outsource the conduct of customer due diligence and record-keeping, to a counter-party, intermediary or agent.

The outsource, counter-party or intermediary shall be regarded as agent of the ICRE—that is, the processes and documentation are those of the
ICRE itself.

The ultimate responsibility for customer due diligence, record-keeping and risk management shall remain with the ICRE.

The ICRE outsourcing the conduct of customer due diligence, record-keeping and risk management, shall ensure that the employees or representatives of the counter-party, intermediary or agent undergo equivalent training program as that of the ICRE's own employees undertaking similar activity.”

SEC. 12. Section 47 of the same CL is hereby amended to read as follows:

“Section 47. Record Keeping Management and Requirements. – The ICREs shall retain all records as originals or in such forms as are admissible in court, pursuant to existing laws, such as the E-Commerce Act, and its implementing rules and regulations, and the applicable rules promulgated by the Supreme Court.

The ICREs shall maintain transaction records sufficient to permit reconstruction of individual transactions so as to provide, if necessary evidence for prosecution of money laundering, unlawful activity and terrorism financing.

The ICREs shall ensure that all CDD information and transaction records are available swiftly to the IC, AMLC and other competent authorities in the exercise of their official functions or upon appropriate authority.”

SEC. 13. Section 48 of the same CL is hereby amended to read as follows:

“Section 48. Period to Keep Records. – The ICREs shall maintain and safely store for five (5) years from the dates of transactions all customer records and transaction documents. If a case has been filed in court involving the account, records must be retained and safely kept beyond the five (5) -year period, until it is officially confirmed by the AMLC Secretariat that the case has been resolved, decided or terminated with finality.

The ICREs shall keep all records obtained through CDD, account files and business correspondence, and the results of any analysis undertaken, for at least five (5) years following the closure of account, termination of the business relationship or after the date of the occasional transaction.

The ICREs shall likewise keep the electronic copies of all covered and suspicious transaction reports for at least five (5) years from the dates of submission to the AMLC.”
This Circular Letter shall take effect immediately.

For your information and strict compliance.

DENNIS B. FUNA
Insurance Commissioner