

FinTech and Causing Customers to Comply with Anti-Money Laundering Law

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Abstract

“Fintech” or Financial Technology emerging at the present is being rapidly developed and affecting conduct of transactions, especially those in the investment sector, and also affecting enforcement of the anti-money laundering law with respect to the duty to know the customers of reporting entities under the law, who need to adapt themselves to keep up with innovations of financial products and concurrently comply with the law and guidelines of the AMLO, whereas some issues are not in the same directions, having impact on conduct of business and transactions of the private sector and people in general. Therefore, this Article focuses on studying the law and approaches to application of financial technological innovations to business operation of the reporting entities, and proposing approaches to introduction of Electronic Know Your Customer (E-KYC) under the Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT).

Keywords: FinTech, Financial Sector, Anti-Money Laundering Law

FinTech and Impact on the Financial Sector

FinTech or Financial Technology is innovations, developed to lead to Thailand 4.0, in turn, driving the financial sector and developing the economy, which are important mechanisms for advancing the country in terms of building competitiveness and developing efficiency in provision of financial services, and the FinTech innovations satisfy 6 objectives (Chunhajinda, 2017: 4-6) as follows:

1. Enhancing the Infrastructure Efficiency: By using new forms of more convenient and simple marketing, for example Peer-to-Peer Transfers and Mobile Money are innovations, which change methods to transfer fund and transfer properties in more efficient manners, with more ability of advanced data analysis and lower transaction cost than the old-fashioned infrastructure;
2. Enhancing Efficiency of High Value Activities by Automated Systems: Advanced data analysis, whereby computer processing system, cloud computing system and inter-organizational collaborative capacity are a group of innovations, which enhance efficiency of business operations. Apart from this, the automated advice and wealth management system and retail algorithmic trading are innovations, which elevate investors' abilities;
3. Elimination of Financial Intermediaries: Competition among financial innovation service providers often attracts clients with lower service charges and higher rates of return, resulting in elimination of financial intermediaries, which is a major condition used by the service providers for reducing the cost of transactions, whereby there are 3 new payment gateways, comprising: Cryptocurrency; Peer-to-Peer Transfers; and Mobile Money, which are clear examples of financial intermediaries out of the payment gateways, being a significant structure of the economy. Apart from this, the innovations of Lean Processes and Peer-to-Peer Lending are

services, which change the processes of credit evaluation and approval, affecting the primary income of the financial institutions at the present;

4. Data Mining: Machine Accessible Data, Artificial Intelligence / Machine Learning and Big Data are innovations, which help analyzing details of the data in terms of both quantity and quality, in turn, increasing efficiency in access to opportunities, and there is a new data set, being social data beneficial to understanding the target groups, in order to better offer services for satisfying their needs. Examples of innovations serving this purpose are data collection and database development, as well as enjoyment of benefit from wearable devices, and smarter and cheaper sensors, and internet of things;

5. Offer of Niche Products and Services: Technology reduces the cost of product and service development, therefore entrepreneurs have more opportunities to create business from marketing gaps, probably because the target group and profitability are too small. As a result, the banks need to come up with new forms of banking, such as Virtual Banking 2.0, Banking as Platform and Evolution of Mobile Banking, which are innovations to serve the consumers;

6. Customers' Capacity Building: Technology helps customers accessing variety of securities and services, which used to be limited by cost effectiveness of the transactions, increasing quality of decision-making power and quantity of data, as well as efficiency of the data analysis and advice administration system.

Fintech becomes involved with conduct of financial transaction in several facets, such as with respect to the payment system. Presently, the Payment System Act, B.E. 2560, has been legislated, for the purpose of formally regulating payment systems and the payment services, as to keep up with rapidly emerging technological development, whereby payment systems and the payment services are regulated under the same law, which provides with measures for regulating payment systems and the payment services through permission or registration. Apart from this, new financial innovations, such as digital assets, are governed by the recently promulgated Royal Decree on the Digital Asset Businesses, B.E. 2561, because Cryptocurrency and Digital Token have been introduced as fundraising tools through offering sale of digital tokens to the public as medium of exchange, as well as traded or exchanged in cryptocurrency and digital token trading centers, whereas there was no law regulating or governing the said activities in Thailand. As such, Thailand need to prescribe measures for regulating and governing operations of businesses and activities related to digital assets, in order to prevent the digital assets, whose origins are unclear, from being used or exploited in any manner of public fraud or involvement with commission of crimes, or financial innovations, which accommodate foreign currency exchange without intermediaries (Peer-to-Peer Foreign Exchange), payment through mobile phones (Mobile Money), use of artificial intelligence in securities trading, big data analysis, automated data collection and analysis, etc.

FinTech and Customers to Identify Themselves under Anti-Money Laundering Law

Anti-Money Laundering Act, B.E. 2542, in Section 20, prescribes that financial institutions and practitioners of the professions under Section 16 must cause the customers to always identify themselves before conducting the transactions as stipulated in the Ministerial Regulation, and must provide with measures for eliminating obstacles to the disabled or handicapped identifying themselves, except in cases where the customers have identified themselves earlier.

Causing customers to identify themselves is the first step, when customers wish to establish business relationships, or occasional customers wish to conduct transactions on their first occasions in amounts or cases stipulated by law. Also, reporting entities, must cause the customers to provide with basic information under the Prime Minister Office Notification on Customer Identification for Financial Institutions and Businesses and Professions under Section 16. The reporting entities, must cause the clients and regular customers and occasional customers to properly identify themselves in accordance with classes of the products or services.

Guidelines for customer due diligence under anti-money laundering law of the AMLO prescribe the principle for identifying non-face-to-face customers, that, if reporting entities need to add or provide with channels to establish business relationships with the customers, which do not require the customers to contact in person with officials or personnel of the reporting entities, including agents or third parties, on whom are relied by the reporting entities as channels to establish business relationships with the customers, through any technologies or devices, the reporting entities must take risk of the services into consideration. It means the reporting entities should choose to match channels to establish non-face-to-face business relationships with classes of services, whose risk is low, in terms of money laundering and terrorist financing. However, the reporting entities may consider choosing match channels to establish non-face-to-face business relationships with classes of high-risk services, but the reporting entities must have measures for causing the customers to thoroughly identify themselves or provide with their identification as if the relationships are established on a face-to-face basis, whereby period of approval for relationship establishment may be extended until the information is fully obtained. Methods of notification or identification may be subsequently stipulated before approval for conduct of the first transactions (Boonyobhas, 2013: 10). As such, under the Ministerial Regulation on Customer Due Diligence, B.E. 2556, Article 16, financial institutions and persons engaging in professions under section 16 (1) and (9) may provide with simplified customer due diligence measures for low-risk customers, whereby the measures may be provided as follows: (1) reducing the requirements of identification information, taking into consideration types of customers, type of transactions or financial products, transaction size and movements of transaction or business relationships. And under Anti-Money Laundering Office Notification Concerning Guidelines for Prescribing Factors for Consideration for Low Risk Customer, provisions of Article 5, Paragraph Two (5) financial institutions may consider financial products or services with limited thresholds or number of transactions or possessions, which prevent collection of large amount of funds or convenience of transfers, to be low-risk financial products or services.

Customer identification criteria for transactions, whose relationships are not established on a face-to-face basis, are categorized into 2 cases as follows:

1. Identification of customers¹, who have not established relationships on a face-to-face basis, in use of services, whose money-laundering and terrorist-financing risks are low, must at least contain information items as follows:

1.1 Natural Person Customer:

1.1.1 Name and surname;

1.1.2 Personal Identification number:

¹ “customer” means a natural person or legal person or legal arrangement who has a business relationship or conducts transactions with a financial institution or business or profession under Section 16.

- In a case of a Thai, the National Identification Number as appearing in the National Identification Card;

- In a case of a foreigner, the Passport Number as appearing on the Passport, or Identification Number issued by national's respective government or agency or identification number appearing in personal document issued by the government of Thailand (if any);

1.1.3 Address:

- In a case of a Thai, the address as appearing in the Household Registration, and in case the person does not reside at the registered address.

- In case of a foreigner, address in home jurisdiction and current address in Thailand;

1.1.4 Contact information, which enable the reporting entities to contact the customer, such as telephone number and E-mail address;

1.2 Legal Person Customer or Legal Arrangement Customer:

1.2.1 Name of the legal person or the legal arrangement (as appearing in significant documents);

1.2.2 The Tax Identification Number (only of a legal person or legal arrangement, who is required by law to be subject to tax payment), or in a case of a legal person, who is exempted from tax payment, the legal person's charter or document, which certifies the tax exemption, must be produced;

1.2.3 Address and Telephone Number, including other contact information, such as E-mail address;

1.2.4 Information of "person authorized to establish business relationship or conduct the transaction and person assigned to establish business relationship or conduct the transaction", including:

1.2.4.1 Name and surname;

1.2.4.2 Date of birth;

1.2.4.3 Personal Identification number:

- In a case of a Thai, the National Identification Number as appearing in the National Identification Card;

- In a case of a foreigner, the Passport Number as appearing on the Passport, or Identification Number issued by national's respective government or agency or identification number appearing in personal document issued by the government of Thailand (if any);

1.2.4.4 Address:

- In a case of a Thai, the address as appearing in the Household Registration, and in case the person does not reside at the registered address.

- In case of a foreigner, address in home jurisdiction and current address in Thailand;

2. Identification of occasional customers², who have not established relationships on a face-to-face basis-the guidelines prescribe that reporting entities should not provide with remote services for occasional customers, because there are high risks of money laundering and terrorist financing, unless the reporting entities provide with measures for mitigating risks in rendering this class of services, such as limiting the number of amounts per occasion and per day, requiring additional information for verifying objectives of conducting the transactions and identifying the occasional customers, having a system of verifying or refusing conduct of occasional transactions, which are suspicious, etc.

² "occasional customer" means a natural person or legal person or legal arrangement who conducts occasional transaction with a financial institution or business or profession under Section 16 and has not been identified and gone through due diligence process.

Identification of non-face-to-face occasional customers or use services or conduct transactions, whose money-laundering and terrorist-financing risks are low, must at least contain information items as follows: (in comparison to identification of customers in Item 2-identification of occasional customers, who have not established relationships on a face-to-face basis)

2.1 Natural Person Customer:

2.1.1 Name and surname;

2.1.2 Personal Identification number:

- In a case of a Thai, the National Identification Number as appearing in the National Identification Card;

- In a case of a foreigner, the Passport Number as appearing on the Passport, or Identification Number issued by national's respective government or agency or identification number appearing in personal document issued by the government of Thailand (if any);

2.1.3 Address:

- In a case of a Thai, the address as appearing in the Household Registration, and in case the person does not reside at the registered address.

- In case of a foreigner, address in home jurisdiction and current address in Thailand;

2.1.4 Contact information, which enable the reporting entities to contact the customer, such as telephone number and E-mail address;

2.2 Legal Person Customer or Legal Arrangement Customer:

2.2.1 The name of the legal person or the legal arrangement (as appearing in significant documents);

2.2.2 The Tax Identification Number (only of a legal person or legal arrangement, who is required by law to be subject to tax payment), or in a case of a legal person, who is exempted from tax payment, the legal person's charter or document, which certifies the tax exemption, must be produced;

2.2.3 Address and Telephone Number, including other contact information, such as E-mail address;

2.2.4 Information of "person authorized to establish business relationship or conduct the transaction and person assigned to establish business relationship or conduct the transaction", including:

2.2.4.1 Name and surname;

2.2.4.2 Date of birth;

2.2.4.3 Personal identification number:

- In a case of a Thai, the National Identification Number as appearing in the National Identification Card;

- In a case of a foreigner, the Passport Number as appearing on the Passport, or Identification Number issued by national's respective government or agency or identification number appearing in personal document issued by the government of Thailand (if any);

2.2.4.4 Address:

- In a case of a Thai, the address as appearing in the Household Registration, and in case the person does not reside at the registered address.

- In case of a foreigner, address in home jurisdiction and current address in Thailand.

As to verify identification information and documents, reporting entities must provide with procedures for verifying identification information and documents of customers or occasional customers, whereby the personnel or officials, who perform verification procedures, must be

authorized to exercise proper discretion, and the objectives of the verification procedures must be as follows:

- 1) To know whether or not a customer or occasional customer actually is a natural person, legal person or legal arrangement, who legally exists;
- 2) To know whether or not the objective of establishment of the relationship or conduct of the occasional transaction is consistent with identification information of the customer or occasional customers;
- 3) To know whether or not the obtained identification information is sufficient for conducting risk management procedures, and for conducting customer due diligence under the Ministerial Regulation on Customer Due Diligence, B.E. 2556

Moreover, exercise of the proper discretion includes requiring additional documents, information or evidence from the customer or occasional customer, and refusing to establish the relationship or to conduct the occasional transaction, when the obtain information is not satisfactory.

As the financial institution business sector under the Financial Institution Business Act, B.E. 2551, and the Notification of the Bank of Thailand No. FPG. 7/2559 Re: Guideline on Acceptance of Deposits or Money from Customers, prescribe the general principle that a financial institution is allowed to open an account for accepting a deposit from a customer on a face-to-face basis for any type of customer in general. As to open an account for accepting a deposit from a customer through an electronic channel, whose risks are higher than opening an account on a face-to-face basis, it is allowed only in a case of a natural person customer, whereby the financial institution must have in place processes of Know Your Customer and Customer Due Diligence, whose standards are equivalent to a case of a customer on a face-to-face basis, and provide with a more robust risk management process, for example, monitoring transactions and updating the data of customers more strictly than normal practices according to the guidelines as prescribed by the Anti-Money Laundering Office and managing Information Technology risk that may have an impact on trustworthiness and stability of financial institutions. In addition, opening of accounts to accept deposits or acceptance of money from customers through electronic channels is considered a service offered through new channel, financial institutions must submit an application for approval to the Financial Institutions Applications Department, the Bank of Thailand, in order to conduct the transactions. And with respect to a process of Electronic Know Your Customer (E-KYC), the principle is prescribed that, in a case of opening accounts for accepting deposits or money from customers through an electronic channel, the financial institution must have in place an electronic system for non-face-to-face transactions, namely a video conference system, on which financial institution officers can get into conversation with and scrutinize customers in real time, whereby the quality of visual and sound system must be sufficient to ensure that the customers are those with the intention to open the accounts. And if this is unable to do so, financial institutions must require customers to open the accounts on a face-to-face basis. On this, if financial institutions wish to use any other approach or technology apart from those specified above, the financial institutions must submit an application for approval to the Financial Institution Applications Department, the Bank of Thailand, on a case-by-case basis. As for customer verification, in case of opening accounts to accept deposits or accepting money from natural persons through electronic channels using an electronic device of customers (for example personal computer or mobile phone) together with an application of financial institutions, the financial institutions must, at least, use the system for reviewing the current status of customer information and ID card as well as the

fingerprint authentication system for verifying identification information and documents of customers.

Recommendations

To use financial technologies (FinTech) as a channel to render services through an electronic channel or communication through another mean method than a face-to-face basis, such as opening securities trading accounts through the internet, trading investment units through telephone, withdrawing money from automated teller machines, transferring funds through the internet, in general principle, these forms of service channels usually incur higher risk exposures than service channels through officials of reporting entities, either at offices, branches or on-site appointment, or service provision through agents/brokers reporting entities. Service provision channels through electronic media may have in place strict measures requiring customers to contact the officials in person before conducting the first transactions, in order to mitigate risks, which arise from conducting non-face-to-face transactions, unless the reporting entities have in place efficient measures for verification and identification, and ensure that there are minimal chances for the customers to use aliases or pseudonyms, or use their names to act on behalves of others without notifying reporting entities, including introduction of a process of Electronic Know Your Customer (E-KYC) as well as customer identification and verification, such as use of password with automatic reply system (One Time Password-OTP), especially use of biometric, such as facial, voice or fingerprint recognition, etc., to cause the customers to identify themselves and have in place a process of Customer Due Diligence, whose standard is equivalent to a case of a customer on a face-to-face basis, as well as efficient process of risk management. However, the reporting entities should take into consideration risks relating to choices of service provision channels, in conjunction with risk factors of the customers, in order that discretion in risk assessment can be precisely exercised. However, the process of customer identification verification cannot be conducted by the reporting entities on their own, and relies on the civil registration database of the Department of Provincial Administration, commercial registration, tax database, and the said data are regulated by several separate agencies, and there are problems of updates on the data, access to the data and formats of data references. As such, recommendations are proposed as follows:

1. Improved and developed should be procedures for digital authentication and verification, which cover production, authentication, verification and proof of identity and evidence, and customer due diligence on the users, both in the public sector and private sector, for convenience in conducting transactions and reducing risk of operational errors and falsification of information and documents, whereby a law should be legislated for requiring a public or private agency, who is competent, to operate as an organization for digital authentication and verification, in order to solve the problems with identification of non-face-to-face customers, and bring about convenience for supporting the public infrastructure in the technological age with electronic transactions being easily and smoothly conducted, as well as to avoid burdening the users and the reporting entities under the anti-money laundering law. Legislating a specific law shall enable stipulation of rules, conditions and methods for the agency or business operator in the field of digital authentication and verification as to satisfy international standards, leading to increase of efficiency in performance of the public sector, as well as increase of capacity and potential of the country's economy and competitiveness. However, the law to be legislated must also provide with measures for protection of personal information of users, who are owners of the information;

2. The Anti-Money Laundering Act should be amended, as to provide that reporting entity can request the agency, who regulates the data, to deliver an extract of the data in an electronic format, for the purpose of identifying and verifying the customers in the process of customer identification, whereby the criteria and procedures for the request, verification and delivery must be conducted in expeditious and precise manners as prescribed in the Ministerial Regulation, in order that the process of customer identification shall keep up with development of the financial technologies, and provide that the government officials, who disclose or deliver the data under this Act in good faith, shall be exempted from civil, criminal and administrative liabilities, as well as prescribe punishments against persons, who disclose, obtain or use the data for any purpose other than identifying or identifying customers under the anti-money laundering law;
3. A bylaw must be enacted under the Anti-Money Laundering Act, B.E. 2542, Section 20, as to prescribe rules and methods for Electronic Know Your Customer (E-KYC), as well as methods for verifying customers' information exclusively through electronic channels;
4. Drafted should be guidelines for conducting report on transactions, causing customers to identify themselves, and verifying facts relating to the customers under anti-money laundering law, in order to conduct transactions through electronic channels, and conduct transactions exclusively relating to Fintech, according to the type and method of transaction according to ever-changing innovations.

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