



BUREAU OF CUSTOMS

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Date JUN 29 2020

CUSTOMS MEMORANDUM ORDER (CMO)
NO. 15-2020

SUBJECT: GUIDELINES ON THE ACCREDITATION AND SUPERVISION OF VALUE ADDED SERVICE PROVIDERS FOR THE E2M (E2M-VASPs)

Introduction. This Order implements Customs Administrative Order (CAO) No. 10-2019 in relation to Section 109, Chapter 2, Title I, Section 1200, Chapter 1, Title XII, Section 1513, Title XV and other relevant provisions of Republic Act No. 10863 otherwise known as the Customs Modernization and Tariff Act (CMTA).

Section 1. Scope. This Order shall cover the accreditation and monitoring of Value Added Service Providers (VASPs) to provide front-end services for the E2M customs system.

Section 2. Objectives.

- 2.1. To establish the administrative and operational guidelines for the accreditation and supervision of VASPs;
- 2.2. To harness the technical expertise and maximize the participation of the private sector in the delivery of world-class-quality front-end customs ICT services of the Bureau;
- 2.3. To implement customs best practices towards the achievement of the Bureau's key result areas in trade facilitation, revenue generation, enforcement, and professionalization of personnel; and
- 2.4. To manage the use of third-party systems by customs stakeholders in the processing of import and export entries, registration, and other value added services offered to the transacting public.

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Section 3. Definition of Terms.

- 3.1. Bureau** – shall refer to the Bureau of Customs.
- 3.2. Confidential Business Information** — shall refer to information which concerns or relates to the operations, production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, expenditures¹.
- 3.3. E2M-Value Added Service Provider (VASP)** — shall refer to any Bureau-accredited ICT company who may provide the services enumerated in the scope of this Order and collect transaction fees as authorized by the Bureau.
- 3.4. Non-Disclosure Agreement (NDA)** — shall refer to an agreement that protects organizational/stakeholder information and informs signatories of their responsibility to protect, use and disclose information in a responsible and authorized manner. This agreement addresses the requirement to protect confidential and/or personal information using legally enforceable terms.²
- 3.5. Personal Information** — shall refer to any information, whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual or an organization. For the purpose of this CAO and in order to comply with Republic Act No. 10173 (Data Privacy Act), all information stated herein is treated as having personal information.³
- 3.6. Service Level Agreement (SLA)** — shall refer to the documented agreement between the VASP and the Bureau that identifies the services to be provided and service targets⁴ which

¹ cf. R.A. 10667, "Philippine Competition Act", Chapter 1, Section 4.

² cf. International Organization for Standardization (2013), Information technology, Security techniques, Code of practice for information security controls (ISO/IEC Standard No. 27002) Section 13.2.4.

³ cf. I.R.R. of R.A. 10173, Rule 1, Section 3(l)

⁴ cf. International Organization for Standardization (2015), Information technology, Service Management, Part 10: Concepts and terminology (ISO/IEC Standard No. 20000-10) Section 2.29

define the parameters for evaluating the delivery and performance of a service.

- 3.7. VASP Accreditation Committee (VAC)** — shall refer to the BOC body responsible for the accreditation, supervision, and control of VASPs.

Section 4. General Provisions.

- 4.1.** The E2M-VASPs to be accredited under this Order shall provide front-end services for the receipt and transmission of electronic data or documents required by the E2M customs system.
- 4.2.** Electronic data or documents collected by a VASP which are not yet accepted by the customs automated system (E2M) shall be considered as private information between the E2M-VASP and its client. However, once the customs automated system (E2M) accepts the data, the E2M-VASP shall now be considered as an agent or service provider for and in behalf of the Bureau of Customs. As such, the protection and security of the accepted data shall be of paramount importance on the part of the E2M-VASP.
- 4.3.** The E2M-VASP shall be fully compliant with the requirements under the Data Privacy Act, particularly the appointment of a regular data protection officer and the personal information processing system to the National Privacy Commission.
- 4.4.** The E2M-VASP shall likewise be fully compliant with the guidelines issued by the Philippine Competition Commission in so far as processing of confidential business information are concerned.
- 4.5.** Any information or by-products of said information collected by the E2M-VASP from the Bureau shall be the exclusive property of the Bureau.
- 4.6.** The E2M-VASP shall not disclose or share any personal information or confidential business information including its by-products relating to the importer, exporter or any of its client without the prior written consent of the Bureau.
- 4.7.** The E2M-VASP shall provide the Bureau any and all information upon latter's request. The VASP shall likewise make available its

technical expert to testify on matters involving the processing of personal or confidential business information.

- 4.8. The E2M-VASP is prohibited from outsourcing any function or component of their system to third parties without the written consent of the Bureau.
- 4.9. The Bureau may change or modify any of the accreditation criteria as may be deemed necessary by the Commissioner to address a particular system requirement arising from the issuance of new rules and regulations.

Section 5. Accreditation Committee. The accreditation of E2M-VASPs shall be the responsibility of the VASP Accreditation Committee (VAC) which shall be headed by a Chairman, who must be a Deputy Commissioner. The members shall be composed of representatives from the various concerned groups of the Bureau.

5.1. The VAC shall perform the following functions:

- 5.1.1. Facilitate and fast-track the accreditation process;
- 5.1.2. Recommend relevant policies, responsibilities and liabilities of VASPs, rules and processes related to all issues surrounding the accreditation of VASPs;
- 5.1.3. Recommend evaluation criteria and timeframes for accreditation of VASPs for approval of the Commissioner;
- 5.1.4. Conduct review and make recommendations on VASP fees; and
- 5.1.5. Receive and act on complaints by VASP clients.
- 5.1.6. Perform other functions necessary for the effective and efficient implementation of this Order.

5.2. The VAC may establish a Technical Working Group (TWG) to provide the guidelines on the technical and operational standards to be complied with by the E2M-VASP, as well as make recommendations to the VAC on other related matters.

5.3. The VAC shall have a Secretariat which shall perform the following functions:

- 5.3.1. Keep a record of the minutes of the meetings and the attendance;
- 5.3.2. Ensure that proper notice of the date and agenda of the meetings are given in advance to the members;

- 5.3.3. Receive formally the documents in behalf of the VAC; and
- 5.3.4. Perform other functions that may be assigned by the VAC.

Section 6. Accreditation Requirements.

6.1. Eligibility Requirements. Entities shall be eligible to be accredited as an E2M-VASP if they conform to the following minimum eligibility criteria:

- 6.1.1. It shall be comprised of Filipino individuals, or duly organized corporations under the laws of the Republic of the Philippines, provided that the corporation complies with the sixty percent (60%) - forty percent (40%) Filipino-foreign ownership rule under existing laws.
- 6.1.2. Joint venture companies are eligible provided that at least sixty percent (60%) of the legal and beneficial ownership or interest of the joint venture belongs to citizens of the Philippines in accordance with the prevailing nationality rules.
- 6.1.3. Has been operational in the Philippines for the immediately preceding five (5) consecutive years. In case of a joint venture, all member companies should have been operational for the immediately preceding five (5) consecutive years.
- 6.1.4. Any further requirements shall be defined in the Terms of Reference (ToR).

6.2. Documentary Requirements. The following documents shall be submitted to support the application for accreditation:

- a. Letter of intent
- b. Certificate of Registration (corporation/partnership) or DTI Business registration (sole proprietorship)
- c. Articles of Incorporation/Partnership and By-laws for Corporations
- d. Latest General Information Sheet (stamped received by SEC)
- e. BIR Certificate of Registration (Form 2303)
- f. Latest Tax Clearance Certificate (per Executive Order No. 398, series of 2005)

- g. Latest Audited Financial Statement (stamped received by BIR and SEC)
- h. Annual Income Tax Return for the immediately preceding 3 years
- i. Value-added tax (VAT) or percentage tax returns covering the Immediately preceding year
- j. Official Receipt and Billing Statement copy
- k. Proof of payment of application fee

Certified true copies of the above requirements shall be submitted, as may be required.

Section 7. Accreditation Process.

- 7.1. Through the VAC, the Bureau shall publish an Invitation to Apply for Accreditation, simultaneously in a newspaper of general circulation and in the Bureau's official website for two (2) consecutive weeks.
- 7.2. The E2M-VASP applicant shall submit its Letter of Intent (LOI) together with other eligibility documents and the application fee as stated in the Invitation to Apply for Accreditation.
- 7.3. All requirements shall be personally-delivered and submitted by the E2M-VASP applicant on or before the date and time specified in the Apply for Accreditation, to the VAC Secretariat. LATE AND INCOMPLETE SUBMISSIONS WILL NOT BE ACCEPTED. Since documentary requirements have to be signed, certified and/or notarized, documents submitted by email, facsimile transmission, or any other forms of electronic submission will not be entertained and allowed.
- 7.4. Within seven (7) working days from the date of submission of the complete documentary requirements, the VAC shall determine whether the company is eligible for application for accreditation as E2M-VASP. If the company is not qualified, the VAC shall issue a written notice, stating the reasons therefor.
- 7.5. Companies that pass the eligibility requirements are qualified to proceed to the next stage.
- 7.6. The Bureau shall release the Term of Reference (ToR), along with the Non-Disclosure Undertaking (NDU) to be signed by the

candidate E2M-VASP. The ToR shall include, among others, the system and other functional requirements for the technical proposal, and the financial requirements for the financial proposal.

- 7.7.** Candidate VASPs prepare and submit their technical and financial proposals within the time provided.
- 7.8.** The Bureau releases its Testing Criteria that will be used as guide for testing the E2M-VASP System. Using the agreed Testing Criteria as reference, the Bureau shall organize a Quality Assurance Team (QAT) which shall determine the compliance of the candidate E2M-VASP to the system requirements. The testing shall also include, among others, checks for user-friendliness of the system.
- 7.9.** The VAC, with the assistance of the TWG and the QAT, shall conduct an evaluation and ranking of the system and other related services of the E2M-VASP applicants.
- 7.10.** Based on the results of the evaluation and ranking, the VAC shall submit a recommendation for accreditation to the Commissioner for approval. The Bureau shall accredit not more than three E2M-VASPs.
- 7.11.** Upon approval of the Commissioner, VAC shall issue a Notice of Accreditation to the selected qualified E2M-VASPs.
- 7.12.** Accredited E2M-VASPs shall sign a Service Level Agreement (SLA) prepared by the Bureau.
- 7.13.** Accredited E2M-VASPs cannot implement or commence with any VASP services until it has passed QAT and has been granted the notice to commence/implement by the VAC.
- 7.14.** The E2M-VASPs shall submit to the VAC the schedule of fees/charges for approval. A public consultation may be conducted if deemed appropriate under the circumstances.
- 7.15.** The Bureau reserves the right to change any of the accreditation criteria as may be deemed necessary by the Commissioner.

Section 8. Conditions for Accreditation.

- 8.1. Signing of a Service Level Agreement (SLA);
- 8.2. Signing of a Non-Disclosure Agreement (NDA);
- 8.3. Payment of the accreditation fee of Two Hundred Thousand Pesos (PhP 200,000.00) for the first year, and Fifty Thousand Pesos (PhP 50,000.00) for the succeeding years, shall be imposed. Provided that renewed accreditation shall only pay Fifty Thousand Pesos (PhP 50,000.00) per annum. Provided, further that the rate may be adjusted by the Commissioner, subject to the Approval of the Secretary of Finance; and
- 8.4. The posting of a Performance Bond, issued by a Bureau accredited surety company, amounting to Five Million Pesos (Php 5,000,000.00), which shall be forfeited in favor of the Bureau in the event that the selected VASP is established to be in default of any of its obligations as provided under the SLA or NDA, without prejudice to other legal remedies that may be instituted to protect the interest of the government.

Section 9. Period and Renewal of Accreditation.

- 9.1. The selected E2M-VASPs shall be given accreditation status for a period of three (3) years and will be renewable thereafter subject to the payment of annual fee set by the VAC, evaluation of the quality of their performance as measured by the SLA, and continued compliance with eligibility requirements.
- 9.2. The Bureau may carry out further accreditation processes after three (3) years of operation of the initially accredited E2M-VASPs.

Section 10. Pre-termination. The Bureau may pre-terminate the accreditation of an E2M-VASP for any of the following:

- 10.1. Violation of the provisions of this Order and related rules and regulations, including SLA and NDA;
- 10.2. Violation of the Customs Modernization and Tariff Act (CMTA), Data Privacy Act, Philippine Competition Act, and other related laws;

- 10.3. Actions inimical to the security and integrity of the Bureau operations; and
- 10.4. Other violations as may be determined by the Commissioner.

Section 11. Fees Payable to the E2M-VASP by the Transacting Public.

- 11.1. The E2M-VASPs shall determine its fee structure based on several factors such as market conditions and systems sustainability requirements, among others. A maximum fee may be set per type of transaction. The fee structure shall form part of the requirement for accreditation pursuant to Section 7.14 of this Order.
- 11.2. The Bureau shall not collect those fees on behalf of the E2M-VASPs.
- 11.3. Any changes to the fee structure shall be subject to the approval of the Commissioner upon the recommendation of the VAC, and a maximum fee may be set per type of transaction.

Section 12. Monitoring and Supervision Fee. The Bureau may collect from the E2M-VASPs a service fee for monitoring and supervision of the E2M-VASPs system. Unless otherwise provided in the TOR, the same shall be equivalent to ten (10%) percent of the fees collected in accordance with the published rate. The monitoring and supervision shall be subject to periodic adjustment by the Commissioner, upon the recommendation of the VAC.

Section 13. E2M-VASP System.

- 13.1. The technical requirements and specifications for the E2M-VASP Systems shall be detailed in the TOR to be approved by the Commissioner.
- 13.2. The E2M-VASP Systems shall be capable of handling the receipt and transmission of electronic data or documents required by the E2M customs system, which includes but shall not be limited to:
 - 13.2.1. Transmission of BOC Stakeholders Information Profile
 - 13.2.2. Transmission of Import and Export Declarations
 - 13.2.3. Transmission of Raw Materials Liquidation Information
 - 13.2.4. Transmission of Surety Bonds Information

- 13.2.5. Transmission of Payment Information
- 13.2.6. Transmission of Online Release Information
- 13.2.7. Transmission of Advance Manifest; and
- 13.2.8. Other services as may be determined by the Commissioner.

13.3. The E2M-VASP Systems shall have the following minimum-security features:

- 13.3.1. The system and data should be secured against unauthorized access or tampering;
- 13.3.2. The system shall be compliant with the data privacy and security standards of the Bureau; and
- 13.3.3. The system shall provide an audit trail.

Section 14. Treatment of Electronic Data coming from E2M-VASPs. For purposes of customs procedures, electronic data coming from E2M-VASPs such as documents, permits, licenses or certificates shall be acceptable and shall have the legal effect, validity or enforceability as any other document or legal writing. Upon compliance by the E2M-VASP of the requirements, the Bureau shall recognize the authenticity and reliability of electronic documents by transmitting the acceptance or approval of the same in the form of electronic data messages or electronic documents.

Section 15. Notification on Customs Systems Updates. The Bureau shall give prior notice to E2M-VASPs on changes in customs procedures to enable the E2M-VASPs to make the necessary changes in their systems in order to ensure compliance to said new procedural and data requirements.

Section 16. Sanctions and Penalties.

- 16.1. An E2M-VASP that is not able to meet its SLA targets shall be subject to the penalties stated in the SLA, without prejudice to the right of the Bureau to exercise its right to revoke or pre-terminate the accreditation status.
- 16.2. Any person or entity who obstructs, or attempts to obstruct, the implementation of this Order and its related rules and issuances, or who assists in the same, or allows himself/herself to be used in the commission of the same, shall be subject to the appropriate civil, criminal and/or administrative penalties.
- 16.3. In addition to the sanctions under the CMTA, and Civil Service laws, rules and regulations, any Bureau official and/or employee

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found to have violated any of the provisions of this Order or commit acts prejudicial to the effective implementation of this Order, shall be immediately relieved, transferred to another office, or assigned to a less sensitive position in the Bureau.

16.4. The penalties as prescribed under Section 1430 of the CMTA, as may be pertinent or applicable, shall be imposed for violations of this Order and its related rules and issuances.

Section 17. Repealing Clause. All orders, memoranda, circulars and issuances inconsistent herewith are hereby repealed and/or deemed modified accordingly.

Section 18. Separability Clause. If any part or provision of this Order is later declared invalid or illegal, the remaining portion shall remain valid and enforceable.

Section 19. Effectivity. This Order shall take effect on JUN 17 2020.



REY LEONARDO B. GUERRERO

Commissioner
JUN 29 2020



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