

BUREAU OF CUSTOMS

Professionalism Integrity Accountability



CUSTOMS ADMINISTRATIVE ORDER (CAO)

NO. 14-2020

SUBJECT: ACCREDITATION AND REGULATION OF BUREAU OF CUSTOMS VALUE ADDED SERVICE PROVIDERS (VASP)

Introduction. This CAO implements 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 CAO shall cover the accreditation and supervision of Value Added Service Providers (VASP).

Section 2. Objectives.

- 2.1. To establish the administrative and operational guidelines for the accreditation and supervision of VASP;
- 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 Information and Communications Technology (ICT) services of the Bureau; and
- 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.

Section 3. Definition of Terms. For purposes of this CAO, the following terms are defined as follows:

- 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, expenditures.¹

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

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3.3. 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

3.4. 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 purposes of this CAO and in order to comply with Republic Act No. 10173 (Data Privacy Act), all information stated herein is presumed to contain personal information.³

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

3.6. Value Added Service Provider (VASP) — shall refer to any Bureau-accredited ICT company who may provide the services enumerated under Section 4.1 of this CAO and collect transaction fees as authorized by the Bureau.

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. VASP services include, but are not limited to, the following:

4.1.1. Providing technical solutions to supplement the capabilities of the Bureau e-Customs System;

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.

³ cf. R.A. 10173, "Data Privacy Act of 2012", Chapter 1, Section 3(g)

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

- 4.1.2. Providing available VASP technical assistance nationwide;
- 4.1.3. Providing support to the Bureau in prosecuting violations of tariff and customs laws;
- 4.1.4. Receiving and transmitting of electronic data to concerned Bureau offices and stakeholders;
- 4.1.5. Acting on the responses and messages returned by the Bureau Gateway/system; and
- 4.1.6. Other services as may be defined and determined by the Commissioner.

4.2. Electronic data or documents collected by a VASP which are not yet accepted by the Bureau automated system shall be considered as private information between the VASP and its client. However, once the Bureau automated system accepts the data, the VASP shall now be considered as an agent or service provider for and in behalf of the Bureau. As such, the protection and security of the accepted data shall be of paramount importance on the part of the VASP as the processor of information for and in behalf of the Bureau.

- 4.3. The VASP shall be fully compliant with the requirements under the Data Privacy Act, particularly on the appointment of a Data Protection Officer⁵ and the registration of personal data processing systems with the National Privacy Commission.⁶
- 4.4. The VASP shall likewise be fully compliant with the guidelines issued by the Philippine Competition Commission in so far as processing of confidential business information is concerned.
- 4.5. Any information or by-products of said information collected by the VASP from the Bureau shall be the exclusive property of the Bureau.
- 4.6. The 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 clients without the prior written consent of the Bureau.

⁵ cf. Implementing Rules and Regulations of Data Privacy Act of 2012, Rule VI, Section 26.

⁶ cf. Implementing Rules and Regulations of Data Privacy Act of 2012, Rule XI.



- 4.7. The VASP shall provide, upon request by the Bureau, any and all information related to its function as authorized agent or service provider for and in behalf of the Bureau. The VASP shall likewise make available its assigned technical expert to testify on matters involving the processing of personal or confidential business information.
- 4.8. The VASP is prohibited from outsourcing any function or component of their system to third parties without the written consent and approval of the BOC.
- 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 VASP Accreditation Committee (VAC) shall be constituted by the Commissioner of Customs through a separate Customs Special Order (CSO).

5.1. Functions of the VAC. The VAC shall perform the following:

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

The VAC may create a Technical Working Group (TWG) for each service accreditation, subject to the approval of the Commissioner.

5.2. Eligibility Requirements.

5.2.1. General Requirements. An entity shall be eligible to participate in the accreditation if it conforms with the following minimum eligibility criteria:



- a. 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.
- b. 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 prevailing nationality rules.
- c. It should be operating in the Philippines for five (5) consecutive years immediately preceding the date of application. The same requirement applies to all member companies in case of a joint venture.
- d. Any further requirements shall be defined in the Terms of Reference.

5.2.2. 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 5 years;
- i. Value-added tax (VAT) or percentage tax returns covering the Immediately preceding year;
- j. Official Receipt and Billing Statement copy; and
- k. Proof of payment of application fee.

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

Section 6. Accreditation Process. The following accreditation procedure shall be undertaken by the Bureau:

- 6.1. Through the VAC, the Bureau shall publish an Invitation to Apply for Accreditation (Invitation) simultaneously in a newspaper of general circulation and the Bureau's official website for two (2) consecutive weeks.
- 6.2. The VASP applicant shall submit its Letter of Intent (LOI) together with the documentary requirements and proof of payment of the application fee, as stated in the Invitation..
- 6.3. All requirements shall be personally delivered and submitted by the applicant VASP to the VAC Secretariat on or before the date and time specified in the Invitation . Late and incomplete submissions will not be accepted.

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 accepted.
- 6.4. Within seven (7) working days from the date of submission of the complete documentary requirements, the VAC shall determine whether the company is eligible to apply for accreditation. If the company is not qualified, the VAC shall issue a written notice stating the reasons therefor.
- 6.5. Companies that pass the eligibility requirements are qualified to proceed to the next stage.
- 6.6. The Bureau shall release the Terms of Reference (ToR) which shall include, among others, the system and the functional and financial requirements for VASP's respective technical and financial proposals.
- 6.7. Candidate VASPs shall prepare and submit their technical and financial proposals within the time provided in the ToR. It shall also submit a notarized Non-Disclosure Undertaking to protect against unauthorized disclosure and processing of confidential business or personal information.

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- 6.8. The Bureau shall release its Testing Criteria that will serve as guidance for testing the VASP System. Using the agreed Testing Criteria as a reference, BOC shall organize a Quality Assurance Team (QAT) to determine the compliance of the candidate VASP to the system requirements. The testing shall also include, among others, checks for the user-friendliness of the system.
- 6.9. VAC shall evaluate and rank the applicants with the assistance of the TWG, as may be created.
- 6.10. VAC shall submit a recommendation for VASP accreditation to the Commissioner for approval.
- 6.11. Upon approval of the Commissioner, VAC shall issue a Notice of Accreditation to the VASP/s.
- 6.12. Accredited VASP/s shall sign a Service Level Agreement (SLA) with the Bureau.
- 6.13. Accredited VASP cannot implement or commence any VASP service until it has passed QAT and been granted with a Notice to Commence/Implement by the VAC.
- 6.14. The VASP shall submit to the VAC the schedule of fees/charges for approval. A public consultation may be conducted if deemed appropriate under the circumstances.

Section 7. Conditions for Accreditation. The VASP/s who complied with the requirement for accreditation shall also comply with the following conditions:

- 7.1. Signing of a Service Level Agreement (SLA);
- 7.2. Signing of a Non-Disclosure Agreement (NDA);
- 7.3. 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
- 7.4. 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

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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 8. Validity Period of Accreditation. The accreditation of VASP/s shall be valid for a period of three (3) years.

The Bureau may carry out further accreditation process for new applicants after three (3) years of operation of the initially accredited VASP/s.

Section 9. Renewal of Accreditation. The accreditation may be renewed after due evaluation of the quality of their performance as measured by the SLA and continued compliance with the eligibility requirements, provided that, the validity of the renewed accreditation shall be for a period of one (1) year. Provided further that, the application for renewal shall be filed at least one (1) month prior to the expiration of the original period. Provided finally, that if the Bureau fails to act thereon, the accreditation shall automatically be extended on a daily basis.⁷

Section 10. Pre-termination. The Bureau may, subject to prior notice, pre-terminate the accreditation of any VASP for any of the following grounds:

- 10.1. Violation of the provisions of this CAO and related rules and regulations, including the 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 grounds as provided under Section 14 of this CAO or as may be determined by the Bureau.

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

- 11.1. The VASP 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 6.14 of this CAO.

⁷ cf. Republic Act No. 11032, Section 10.



11.2. The Bureau shall not collect those fees on behalf of the VASP.

11.3. Any changes to the fee structure shall be subject to the approval of the Commissioner upon the recommendation of the VAC.

Section 12. Monitoring and Supervision Fee. The Bureau may collect from the VASP a service fee for monitoring and supervision of the VASP system. Unless otherwise provided in the TOR, the same shall be equivalent to ten percent (10%) 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. Treatment of Electronic Data coming from VASPs. For purposes of customs procedures, electronic data transmitted by 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 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 14. Notification on Customs Systems Updates. The Bureau shall give prior notice to VASPs on changes in Customs procedures to enable VASPs to make the necessary changes in their systems to ensure compliance with the new procedural and data requirements.

The Bureau shall also notify the VASP/s in case of pre-termination of the accreditation on account of obsolescence or incompatibility of the VASP system with the new customs processing system.

Section 15. Penalties. VASPs that are not able to meet their SLA targets for Service Availability, Incident Response Time, Incident Resolution Time, and Root Cause Analysis 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 of the said VASPs.

Section 16. Periodic Review. Unless otherwise provided, this CAO shall be reviewed every three (3) years and can be amended or revised at any time, if necessary.

Section 17. Repealing Clause. This CAO specifically repeals CAO No. 2-2007 and other previously issued CAOs and Customs Memorandum Orders which are inconsistent with the provisions here stated.

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Section 18. Effectivity. This CAO shall take effect after thirty (30) days following the completion of its publication at the Official Gazette or a newspaper of general circulation.

The Office of National Administrative Register (ONAR) of the UP Law Center shall be provided three (3) certified copies of this CAO.



REY LEONARDO B. GUERRERO
↓ Commissioner of Customs
OCT 08 2020



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APPROVED:



CARLOS G DOMINGUEZ
Secretary of Finance

OCT 20 2020



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