



AML/CTF Requirements for TCSPs

Ms. Christy Yiu
Senior Solicitor
8 December 2022

When to Carry Out CDD?

CDD measures must be carried out: *[s.3, Sch. 2]*

before
establishing a
business
relationship with
the customer


before carrying
out an
occasional
transaction
involving
\$120,000 or
above

when the TCSP
licensee suspects
that the
customer or the
customer's
account is
involved in
ML/TF

when the TCSP
licensee doubts
the veracity or
adequacy of
the information
obtained during
CDD process

If the requirements are not complied with, the licensee **MUST NOT** establish a business relationship or carry out an occasional transaction with that customer. If a business relationship has been established, it must be terminated as soon as reasonably practicable. *[s.3(4), Sch. 2]*

What are CDD Measures?

- 
- identifying the customer and verifying the customer's identity [s. 2(1)(a), Sch. 2]
 - identifying the beneficial owner and taking reasonable measures to verify the beneficial owner's identity [s.2(1)(b), Sch. 2]
 - obtaining information on the purpose and intended nature of the business relationship, if a business relationship is to be established [s.2(1)(c), Sch. 2]
 - identifying the person purporting to act on behalf of the customer and taking reasonable measures to verify the person's identity and verifying the person's authority to act on behalf of the customer [s.2(1)(d), Sch. 2]

The Guideline on Compliance of Anti-Money Laundering And Counter-Terrorist Financing Requirements for Trust or Company Service Providers ("AML/CTF Guideline")

For identification and verification of customer which is a/an:

- individual – Appendix A
- corporation – Appendix B
- partnership or unincorporated body – Appendix C
- trust – Appendix D

Case Example

Transaction : acting as the company secretary of Company X

- ▶ Who is the customer?
- ▶ Is the customer a new customer?
- ▶ **Company X – Appendix B of the AML/CTF Guideline**
- ▶ Section 4 of Schedule 2 to the AMLO (SDD) applies?
- ▶ The beneficial owner of Company X – Appendix A of the Guideline
- ▶ A person purports to act on behalf of Company X :
 - Appendix A of the Guideline + **verify the authority**

Carrying out customer due diligence measures by means of intermediaries

Section 18 of Schedule 2

- (1) Subject to subsection (2), a financial institution or a DNFBP may carry out any customer due diligence measure by means of an intermediary specified in subsection (3) if—
 - (a) the intermediary **consents in writing** to be the financial institution's or the DNFBP's intermediary; and
 - (b) the financial institution or the DNFBP is satisfied that the intermediary will on request provide a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out the customer due diligence measure without delay.
- (2) A financial institution or a DNFBP that carries out a customer due diligence measure by means of an intermediary remains liable under this Ordinance for a failure to carry out that customer due diligence measure.

Carrying out customer due diligence measures by means of intermediaries (Con't)

- (3) The specified intermediary is—
- (a) any of the following persons who is able to satisfy the financial institution or the DNFBP that they have adequate procedures in place to prevent money laundering and terrorist financing—
 - (i) an accounting professional;
 - (ii) an estate agent;
 - (iii) a legal professional;
 - (iv) a TCSP licensee;
 - (b) a financial institution that is an authorized institution, a licensed corporation, an authorized insurer, a licensed individual insurance agent, licensed insurance agency or licensed insurance broker company;

Carrying out customer due diligence measures by means of intermediaries (Con't)

- (c) a lawyer, a notary public, an auditor, a professional accountant, a trust or company service provider or a tax advisor practising in an equivalent jurisdiction, or a trust company carrying on trust business in an equivalent jurisdiction, or a person who carries on in an equivalent jurisdiction a business similar to that carried on by an estate agent, or an institution that carries on in an equivalent jurisdiction a business similar to that carried on by an intermediary financial institution, that—
 - (i) is required under the law of that jurisdiction to be **registered or licensed or is regulated under the law of that jurisdiction**;
 - (ii) **has measures in place to ensure compliance with requirements similar to those imposed under this Schedule**; and
 - (iii) **is supervised for compliance with those requirements by an authority in that jurisdiction** that performs functions similar to those of any of the relevant authorities or the regulatory bodies (as may be applicable); or
- (d) in the case of a financial institution, an institution that—
 - (i) is a related foreign financial institution in relation to the financial institution; and
 - (ii) satisfies the conditions in subsection (3A).

Pre-existing Customers [S.6, SCH. 2]

- (1) In relation to a pre-existing customer, a TCSP licensee must carry out the customer due diligence measures when:
 - ▶ a transaction takes place with regard to the customer that—
 - (i) is, by virtue of the amount or nature of the transaction, **unusual or suspicious**; or
 - (ii) is not consistent with the TCSP licensee's knowledge of the customer or the customer's business or risk profile, or with the TCSP licensee's knowledge of the source of the customer's funds; or
 - ▶ **a material change occurs** in the way in which the customer's account is operated;
 - ▶ when the TCSP licensee **suspects that the customer** or the customer's account **is involved in money laundering or terrorist financing**;
 - ▶ when the TCSP licensee doubts the veracity or adequacy of any information previously obtained for the purpose of identifying the customer or for the purpose of verifying the customer's identity.
- (2) If a TCSP licensee is unable to comply with subsection (1), the licensee must terminate the business relationship with the customer as soon as reasonably practicable.

Ongoing Due Diligence Requirements

Continuously monitor the business relationship with customer [s.5, Sch. 2]

Reviewing from time to time documents, data and information relating to the customer obtained for the purpose of complying with Part 2 of Schedule 2 to ensure they are up-to-date and relevant;

Scrutinizing the transactions of the customer to ensure that they are consistent with the licensee's knowledge of the customer and its business, risk profile and source of funds; and

Identifying transactions that are complex, unusually large or of an unusual pattern and have no apparent economic or lawful purpose, and examining the background and purposes of those transactions and setting out its findings in writing.

Enhanced Due Diligence (“EDD”)

High-risk situations for which EDD measures apply include

the customer is not physically present for identification purposes;

the customer or the beneficial owner of the customer is a politically exposed person (“PEP”);

any situation specified by the Registrar of Companies in a notice given to the TCSP licensee and in any situation that by its nature may present a high risk of money laundering or terrorist financing.

- ▶ corporate customer having issued bearer shares
- ▶ customer from or transaction connected with higher-risk jurisdictions
- ▶ Refer to the EDD measures required in sections 9, 10 and 15 of Schedule 2 to the AMLO

Record-Keeping Requirements

Records to be kept [s. 20, Sch. 2]

In relation to a **transaction**

- the original or a copy of the documents, and a record of the data and information should be kept **for at least 5 years after the completion of the transaction.**

In relation to a **customer**

- the original or a copy of the CDD documents, record of the data and information and files relating to the customer's account and business correspondence with the customer and any beneficial owner of the customer should be kept **throughout the continuance of the business relationship with the customer and for a period of at least 5 years after the end of the business relationship.**

Other Requirements under the AMLO

- A TCSP licensee must, in respect of each kind of customer, business relationship, product and transaction, establish and maintain effective procedures not inconsistent with the AMLO for the purpose of carrying out the duties under sections 3, 4, 5, 9, 10 and 15 of Schedule 2 of the AMLO. [s. 19(3), Sch. 2]
- A TCSP licensee must take all reasonable measures (a) to ensure that proper safeguards exist to prevent a contravention of any requirement under Part 2 or 3 of Schedule 2 of the AMLO, and (b) to mitigate money laundering and terrorist financing risk. [s. 23, Sch. 2]

Financial Sanction and Counter-Terrorist Financing

- It is an offence under the relevant Regulations of the **United Nations Sanctions Ordinance, Cap. 537** for any person to make available or deal with economic assets of individuals or entities designated by the United Nations Security Council; or those acting on behalf of, or at the direction of, or owned or controlled by such individuals or entities.
- **The United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575 (“UNATMO”)** criminalizes the provision or collection of property and making any property or financial (or related) services available to terrorists or terrorist associates.
- **TCSF licensees are reminded not to have any business relationship with any sanctioned individuals or entities, or any terrorist or terrorist associate as defined under the UNATMO.**
- Chapter 8 of the AML/CTF Guideline.



Persons and Entities subject to Sanctions and Terrorists or Terrorist Associates

- TCSP licensees should ensure that they should have an appropriate system to conduct name checks against the relevant list(s) for screening purposes and that the list(s) is/are up-to-date.
- Comprehensive ongoing screening of a TCSP licensee's complete customer base is a fundamental internal control to prevent terrorist financing and sanction violations.
- Lists of sanctioned persons and entities and list of names of persons designated as terrorists or terrorist associates specified under the UNATMO are available at the website of the Companies Registry's Trust and Company Service Providers Licensing Regime (www.tcsp.cr.gov.hk).

Counter-Financing of Proliferation of Weapons of Mass Destruction (“PF”)

United Nations Sanctions (Democratic People’s Republic of Korea) Regulation, Cap. 537AE

United Nations Sanctions (Joint Comprehensive Plan of Action—Iran) Regulation, Cap. 537BV

Under section 4 of the Weapons of Mass Destruction (Control of Provision of Services) Ordinance, Cap. 526, it is an offence for a person to provide any services where he/she believes or suspects, on reasonable grounds, that those services may be connected to weapon of mass destruction proliferation.

Reporting Suspicious Transactions

**Drug Trafficking
(Recovery of
Proceeds) Ordinance,
Cap. 405**

**Organized and
Serious Crimes
Ordinance, Cap.
455**

**United Nations
(Anti-Terrorism
Measures)
Ordinance, Cap. 575**

- ▶ In cases of suspicions of money laundering, TF, PF or sanctions violations, report should be made to **the Joint Financial Intelligence Unit ("JFIU")**
- ▶ Chapter 7 of the AML/CTF Guideline
 - TCSP licensees must establish and maintain a record of all ML/TF reports made to the MLRO and all suspicious transaction reports made to the JFIU.

Case Study

Deficiencies / non-compliances:

► CDD

- Section 2 of Schedule 2 to the AMLO and Appendix of the AML/CTF Guideline

► AML/CTF policy statement

- Paragraphs 3.2 & 3.3 of the AML/CTF Guideline and a condition of the licence

► Risk assessment

- Chapter 4 of AML/CTF Guideline

► Screening customers against lists of terrorist and sanction designations

- Paragraphs 8.12, 8.14 (the textbox thereunder) & 8.15 of the AML/CTF Guideline

► PEP

- Section 19(1) and section 10 of Schedule 2 to the AMLO

Case Study (Con't)

- ▶ Contravention of a requirement set out in Schedule 2 to the AMLO
- ▶ Contravention of a condition of the licence



Disciplinary action:

Public reprimand/ pecuniary penalty/ order to take remedial action

The End

