



公司註冊處
COMPANIES REGISTRY

PART 2

ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING REQUIREMENTS FOR LICENSED MONEY LENDERS

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LEGISLATION AND GUIDELINE

Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing (“AML/CTF”) Requirements for Licensed Money Lenders (“AML Guideline”)

- Last revised in June 2023
- Promulgated with reference to the requirements set out in Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (“**AMLO**”)
- Guidance to licensees for the implementation of effective measures to mitigate the risks of money laundering and terrorist financing (“**ML/TF**”)
- Non-compliance may *cast doubt* on whether the licensee is *fit and proper* to carry on business as a money lender and whether its officers are *fit and proper* to be associated with the business of money-lending

Other legislation relating to ML/TF, financial sanctions and financing of proliferation weapons of mass destruction

- Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)
- Organized and Serious Crimes Ordinance (Cap. 455)
- United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)
- United Nations Sanctions Ordinance (Cap. 537)
- Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526)



ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING (AMENDMENT) ORDINANCE 2022

Major amendments

- licensing regime for virtual asset service providers
- registration regime for dealers in precious metals and stones
- miscellaneous and technical amendments
 - amending the definition of “**beneficial owner**” in relation to a trust
 - amending the definition of “**politically exposed person**” (“**PEP**”), and the introduction of the concept of “**former PEP**”
 - allowing the engagement of **digital identification system** to assist the conduct of customer due diligence (“**CDD**”) for non-face-to-face situations

Effective dates



CUSTOMER DUE DILIGENCE (1)

- CDD MEASURES

CDD Measures

[para. 5.2 of the AML Guideline]

identifying the customer and verifying the customer's identity

identifying the beneficial owner and taking reasonable measures to verify the beneficial owner's identity

obtaining information on the purpose and intended nature of the business relationship, if a business relationship is to be established

if a person purports to act on behalf of the customer: identifying the person and taking reasonable measures to verify the person's identity and verifying the person's authority to act on behalf of the customer



CUSTOMER DUE DILIGENCE (2)

- IDENTIFICATION AND VERIFICATION OF CUSTOMER

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

- individual – Appendix A of the AML Guideline
- corporation – Appendix B of the AML Guideline
- partnership or unincorporated body – Appendix C of the AML Guideline
- trust – Appendix D of the AML Guideline



CUSTOMER DUE DILIGENCE (3)

- DEFINITION OF “BENEFICIAL OWNER” IN RELATION TO A TRUST

Section 1 of Part 1 of Schedule 2 to the AMLO defines a beneficial owner in relation to a trust as:

- (a) a beneficiary or a class of beneficiaries of the trust entitled to a vested interest in the trust property, whether the interest is in possession or in remainder or reversion and whether it is defeasible or not;
- (b) the settlor of the trust;
- (c) the trustee of the trust;
- (d) a protector or enforcer of the trust; or
- (e) an individual who has ultimate control over the trust.



CUSTOMER DUE DILIGENCE (4)

- WHEN TO CARRY OUT CDD

When to carry out CDD?

[para. 5.4 of the AML Guideline]

before establishing a business relationship with the customer

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

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

when the licensee doubts the veracity or adequacy of the information previously obtained during the 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.**



CARRYING OUT CUSTOMER DUE DILIGENCE MEASURES BY MEANS OF INTERMEDIARIES (1)

A licensee may carry out CDD measures by means of an intermediary if:

- the intermediary consents in writing to be the licensee's intermediary; and
- the licensee is satisfied that the intermediary will on request provide a copy of any document, or record of any data or information, obtained by the intermediary in the course of carrying out the CDD measures without delay.

HOWEVER, the ultimate responsibility for ensuring that CDD requirements are met remains with the licensee and the licensee remains liable for a failure to carry out CDD measures.

[para. 5.51 of the AML Guideline]



CARRYING OUT CUSTOMER DUE DILIGENCE MEASURES BY MEANS OF INTERMEDIARIES (2)

Intermediaries in Hong Kong

A. Financial Institutions

- an authorized institution
- a licensed corporation
- an authorized insurer
- a licensed individual insurance agent
- a licensed insurance agency
- a licensed insurance broker company

B. Professional Intermediaries

(provided that such intermediaries satisfy the licensee that they have adequate procedures in place to prevent ML/TF and are required to comply with the requirements set out in Schedule 2 to the AMLO with respect to customers)

- an accounting professional
- an estate agent
- a legal professional
- a TCSP licensee



ONGOING DUE DILIGENCE REQUIREMENTS (1)

A licensee must continuously monitor the business relationship with a customer by:

[para. 6.2 of the AML Guideline]

reviewing from time to time documents, data and information relating to the customer obtained for the purpose of complying with CDD requirements 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 in amount 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.



ONGOING DUE DILIGENCE REQUIREMENTS (2)

Risk-based approach to ongoing monitoring

- extent should be commensurate with the risk profile of the customer
- additional measures must be taken when monitoring business relationships which pose a higher risk (see paras. 5.24 - 5.50 of the AML Guideline)
- high-risk business relationships require more frequent and intensive monitoring

[paras. 6.5 and 6.6 of the AML Guideline]



ONGOING DUE DILIGENCE REQUIREMENTS (3)

Tipping-off

- It is an offence for a person knowing or suspecting that a disclosure has been made to Joint Financial Intelligence Unit (“**JFIU**”), if he/she discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following the disclosure (commonly referred to as “**tipping off**”).

[para. 7.3 of the AML Guideline]

- **HOWEVER**, making enquiries to customers, when conducted properly and in good faith, will not constitute tipping-off. If a licensee reasonably believes that performing the CDD process will tip off the customer, it may stop pursuing the process. The licensee should document the basis for its assessment and file a suspicious transaction report (“**STR**”) to the JFIU.

[para. 6.9 of the AML Guideline]



ADDITIONAL MEASURES / ENHANCED CUSTOMER DUE DILIGENCE

Situations for which additional measures/enhanced customer due diligence (“EDD”) apply include:

Customer not physically present for identification purposes

Customer or its beneficial owner being a PEP

Any situation specified by the Registrar of Money Lenders in a notice given to the licensee

[para. 5.25 of the AML Guideline]



ADDITIONAL MEASURES / ENHANCED CUSTOMER DUE DILIGENCE – CUSTOMER NOT PHYSICALLY PRESENT FOR IDENTIFICATION PURPOSES

If a customer has not been physically present for identification purposes, at least ONE of the following measures must be carried out [paras. 5.27 – 5.30 of the AML Guideline] :

- further verifying the customer's identity on the basis of documents, data or information referred to in para. 5.17 of the AML Guideline but not previously used for the purposes of verification of the customer's identity;
- taking supplementary measures to verify information relating to the customer that has been obtained by the licensee; or
- ensuring that the first payment made into the customer's account is carried out through an account opened in the customer's name with an authorized institution, or a bank operating in an equivalent jurisdiction that has measures in place to ensure compliance with requirements similar to those imposed under Schedule 2 to the AMLO and is supervised for compliance with those requirements by a banking regulator in that jurisdiction.

HOWEVER, if a licensee has verified the identity of the customer on the basis of data or information provided by a digital identification system that is a reliable and independent source that is recognized by the Registrar of Money Lenders (see para. 5.17 of the AML Guideline), **the licensee is not required to carry out any additional measures set out above or enhanced ongoing monitoring measures.**



ADDITIONAL MEASURES / ENHANCED CUSTOMER DUE DILIGENCE – POLITICALLY EXPOSED PERSON (1)

Definition under section 1 of Part 1 of Schedule 2 to the AMLO

Politically exposed person means—

- (a) an individual who is or has been entrusted with a prominent public function in a place outside Hong Kong and—
 - (i) includes a head of state, head of government, senior politician, senior government, judicial or military official, senior executive of a state-owned corporation and an important political party official; but
 - (ii) does not include a middle-ranking or more junior official of any of the categories mentioned in subparagraph (i);
- (b) a spouse, a partner, a child or a parent of an individual falling within paragraph (a), or a spouse or a partner of a child of such an individual; or
- (c) a close associate of an individual falling within paragraph (a).

Former politically exposed person means—

- (a) an individual who, being a politically exposed person, has been but is not currently entrusted with a prominent public function in a place outside Hong Kong;
- (b) a spouse, a partner, a child or a parent of an individual falling within paragraph (a), or a spouse or a partner of a child of such an individual; or
- (c) a close associate of an individual falling within paragraph (a).

ADDITIONAL MEASURES / ENHANCED CUSTOMER DUE DILIGENCE – POLITICALLY EXPOSED PERSON (2)

Definitions of different types of PEPs in the AML Guideline

[para. 5.31 of the AML Guideline]

- (a) A non-Hong Kong PEP
- (b) A former non-Hong Kong PEP
- (c) A Hong Kong PEP
- (d) An international organization PEP

EDD Measures for non-Hong Kong PEPs

[see paras. 5.32 and 5.33 of the AML Guideline]

EDD Measures for Hong Kong PEPs and international organization PEPs

[see para. 5.35 of the AML Guideline]



ADDITIONAL MEASURES / ENHANCED CUSTOMER DUE DILIGENCE – POLITICALLY EXPOSED PERSON (3)

Treatment of former PEPs [paras. 5.36 and 5.37 of the AML Guideline]

- Risk-based approach
- Licensee may **decide** (with the approval of the licensee's senior management for the case of former non-Hong Kong PEP) **NOT TO** apply / continue to apply the **EDD measures** (para. 5.32 of the AML Guideline) and **enhanced monitoring measures** (para. 5.33 of the AML Guideline) to a customer who is / whose beneficial owner is
 - (i) **a former PEP**; and
 - (ii) the former PEP **does not present a high risk of ML/TF** based on appropriate assessment

RECORDING-KEEPING

Recording-keeping Requirements [para. 9.3 of the AML Guideline]

	Each Customer	Each transaction
For how long should records be kept?	<p>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.</p> <p>For occasional transaction involving an amount \geq HK\$120,000, at least 5 years beginning on the date on which the occasional transaction is completed.</p>	<p>At least 5 years after the completion of a transaction regardless of whether the business relationship ends during the period.</p>
What records should be kept?	<p>(i) The original or a copy of documents and a record of the data and information obtained:</p> <ul style="list-style-type: none"> in the course of identifying and verifying the identity of the customer/ beneficial owner of the customer / person with authority to act for the customer / other connected parties; and on the purpose and intended nature of the business relationship <p>(ii) The original or a copy of files relating to the customer's business relationship and business correspondence with the customer and any beneficial owner of the customer.</p>	<p>The original or a copy of the documents, and a record of the data and information obtained in connection with the transaction:</p> <ul style="list-style-type: none"> the identity of the parties to the transaction the nature and date of the transaction the type and amount of currency involved the origin of the funds the form the funds offered or withdrawn the destination of the funds the form of instruction and authority the type and identifying number of any account involved in the transaction (where applicable)

FINANCIAL SANCTIONS AND TERRORIST FINANCING

- It is an offence under the relevant Regulations of the United Nations Sanctions Ordinance (Cap. 537) for any person to make available economic assets to 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**.
- 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.
- See Chapter 8 of the AML Guideline



PERSONS OR ENTITIES SUBJECT TO SANCTIONS AND TERRORISTS OR TERRORIST ASSOCIATES

- 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 licensee's complete customer base is a fundamental internal control to prevent terrorist financing and sanction violations and should be achieved by:
 - screening customers against current lists of terrorist and sanction designations at the establishment of the relationship, and
 - thereafter, as soon as practicable after the new lists of terrorist and sanction designations are published, screening their entire client base against the new lists.
- 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 (www.cr.gov.hk) under Compliance > Anti-Money Laundering and Counter-Terrorist Financing > United Nations Sanction Lists.



COUNTER-FINANCING OF PROLIFERATION OF WEAPONS OF MASS DESTRUCTION



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, terrorist financing, financing of proliferation of weapons of mass destruction or sanctions violations, report should be made to the **JFIU** (www.jfiu.gov.hk).
- See Chapter 7 of the AML Guideline



STAFF TRAINING

- Staff training is an important element of an effective system to prevent and detect ML/TF activities (See Chapter 10 of the AML Guideline).

Effective implementation of AML/CTF training

Staff should be trained in what they need to carry out in their particular roles with respect to AML/CTF.

Licensees should implement a clear and well-articulated policy for ensuring that relevant staff receives adequate AML/CTF training.

Training methods and assessment should be determined by the licensee according to the size and complexity of the business and the type and level of ML/TF risk.

Frequency of training should be sufficient to maintain the AML/CTF knowledge and competence of staff.

Licensees should maintain staff's training records, **including the date and type of training received** by each staff, for a minimum of **3 years** and be made available to the Companies Registry on demand.

INDEPENDENT AUDIT FUNCTION

[paras. 3.9 – 3.11 of the AML Guideline]

- Licensees should establish **an independent audit function** which:
 - should have a direct line of communication to their senior management; and
 - should have sufficient expertise and resources to enable it to carry out its responsibilities, including independent reviews of the licensee's AML/CTF systems.
- The audit function should regularly review the AML/CTF systems to ensure effectiveness. The review should include, but not limited to:
 - adequacy of the licensee's AML/CTF systems, ML/TF risk assessment framework and application of risk-based approach;
 - effectiveness of suspicious transaction reporting systems;
 - effectiveness of the compliance function; and
 - level of awareness of staff having AML/CTF responsibilities.
- Frequency and extent of the review should be commensurate with the nature, size and complexity of the licensee's businesses and the ML/TF risks arising from those businesses.



Thank you!

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MONEY LENDERS SECTION