

# **ANTI-MONEY LAUNDERING / COUNTER-TERRORIST FINANCING**

## **Customer Due Diligence and Record-Keeping Requirements for Trust or Company Service Providers**

**Mr. Roger WONG,  
Acting Deputy Registry Manager  
Companies Registry**



### **Threats on TCSPs**

Money-laundering/terrorist-financing (“ML/TF”) threats on TCSPs

- **International typology**
  - Criminals commonly make use of shell companies and complex corporate structures to obscure beneficial ownerships, hide assets and carry out deals and transactions
- **Local context**
  - Misuse of legal persons and arrangements:
    - Shell companies
    - The use of secretarial service providers and trust accounts in money laundering schemes



## Requirements under the AMLO

- Amendments to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (“AMLO”) (Cap. 615) comes into operation on **1 March 2018**
- Extension of the statutory customer due diligence (“CDD”) and records-keeping (“RK”) requirements to four DNFBPs: legal professional, accounting professional, real estate agents and **TCSP licensees**, when they engage in specified transactions



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## Types of Activities for which CDD and RK are Required (1)

### Section 5A of the AMLO

- A TCSP licensee should conduct CDD and keep records when it prepares for or carries out for a client a transaction concerning **a trust or company service**



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## Types of Activities for which CDD and RK are Required (2)

**Trust or company service** means the provision in Hong Kong, by a person, by way of business, of one or more of the following services to another person: [s. 1, Part 1 of Sch. 1]

- a. forming corporations or other legal persons;
- b. acting or arranging for another person to act –
  - i. as a director or a secretary of a corporation;
  - ii. as a partner of a partnership; or
  - iii. in a similar position in relation to other legal person;
- c. providing a registered office, business address, correspondence or administrative address for a corporation, a partnership or any other legal person or legal arrangement;
- d. acting, or arranging for another person to act –
  - i. as a trustee of an express trust or a similar legal arrangement; or
  - ii. as a nominee shareholder for a person other than a corporation whose securities are listed on a recognized stock market.



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## What are CDD Measures

### CDD measures prescribed in Schedule 2 to AMLO:

- 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 [s.2(1)(d), Sch. 2]



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## When to Carry Out CDD (1)

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

- before establishing business relationship with the customer
- before carrying out an occasional transaction involving \$120,000 or above
- when there is a suspicion that the customer or the customer's account is involved in ML/TF
- when there are doubts on the veracity or adequacy of the information obtained during CDD process

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



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## When to Carry Out CDD (2)

- **Exceptional circumstances** where identity of customer and any beneficial owner can be verified **AFTER** establishing a business relationship [s.3 (2), Sch. 2]
  - If it is necessary not to disrupt the normal conduct of business with regard to that customer; and
  - any ML/TF risk is effectively managed
- The verification must be completed as soon as reasonably practicable [s.3 (3), Sch. 2]



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## When to Carry Out CDD (3)

For **pre-existing customers** (i.e. business relationship established before 1 March 2018) [s.6, Sch. 2]

- Conduct CDD when:
  - an unusual or suspicious transaction takes place; or
  - a transaction not consistent with the TCSP licensee's knowledge of the customer or the customer's business or risk profile, etc., takes place; or
  - a material change occurs in the way in which the customer's account is operated.
- If the TCSP licensee fails to comply with the CDD requirements in respect of pre-existing customers, it must terminate the business relationship [s.6, Schedule 2]



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## Ongoing Due Diligence Requirement

**Continuously monitor business relationships**  
[s.5, Schedule 2]

- Reviewing from time to time the 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;
- Monitoring the transactions of the customer to ensure that they are consistent with the nature of the business, the risk profile and source of funds; and
- Identifying transactions that are complex, large or unusual or patterns of transactions that have no apparent economic or lawful purpose, and examining the background and purposes of those transactions and setting out its findings in writing



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## Special Requirements – Enhanced Due Diligence (“EDD”) (1)

### **Customer not physically present for identification purposes [s. 9, Sch. 2]**

- Further verifying the customer’s identity on the basis of documents, data or information not previously used for the purposes of verification of the customer’s identity;
- Taking supplementary measures to verify all the information provided by the customer; or
- Ensuring that the first payment made into the customer’s account is received from an account in the customer’s name with an authorized institution, or a financial institution operating in an equivalent jurisdiction that has measures in place to ensure compliance with AML/CFT requirements similar to those in Schedule 2 and is supervised for compliance with those requirements by a designated authority



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## Special Requirements – EDD (2)

### **Politically Exposed Persons (“PEPs”) [s. 10, Sch. 2]**

- Before establishing a business relationship, or continuing an existing business relationship where the customer or the beneficial owner is subsequently found to be a PEP, a TCSP licensee should carry out the following EDD measures:
  - obtain approval from its senior management; and
  - take reasonable measures to establish the customer’s or the beneficial owner’s source of wealth and the source of the funds.



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## Special Requirements – EDD (3)

**A PEP means:** [S.1, Schedule 2]

- an individual who is or has been entrusted with a prominent public function in a place **outside** the People's Republic of China and—
  - a. 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
  - b. does not include a middle-ranking or more junior official of any of the categories mentioned above;
- 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
- a close associate of an individual falling within paragraph (a) [s. 1(3), Sch. 2]



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## Special Requirements – EDD (4)

**Other high risk situations** [s. 15, Sch. 2]

- The Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Trust or Company Service Providers:
  - corporate customer having issued bearer shares
  - customer from higher-risk jurisdictions
  - high-risk situation specified by Registrar of Companies
- Obtain approval from its senior management to establish or continue the business relationship; and either
  - take reasonable measures to establish the customer's or beneficial owner's source of wealth and the source of the funds that will be involved in the business relationship; or
  - take additional measures to mitigate the risk of money laundering or terrorist financing involved



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## Ongoing Customer Due Diligence under High Risk Situations

- If customer is
  - not physically present; or
  - a PEP; or
  - involved in other high risk situations
- Additional measures to compensate for ML/TF risk in monitoring business relationship



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## Simplified CDD Measures

- **Simplified CDD : no need to identify and verify the beneficial owner** when there are reasonable grounds to believe that the customer falls within the specified categories [s. 4(3), Sch. 2], or the transaction belongs to specified products [s. 4(5), Sch. 2]
- Other aspects of CDD measures must still be undertaken.
- **Simplified CDD must not be applied when there are**
  - suspicions of the customers involved in money laundering or terrorist financing; or
  - doubts on the veracity or adequacy of information obtained during the CDD process



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## Carrying out CDD by Means of Intermediaries

- TCSP licensees are allowed to carry out CDD measures by means of intermediaries [s. 18, Sch. 2]
- Intermediaries include –
  - an accounting professional;
  - an estate agent;
  - a legal professional;
  - a TCSP licensee;
  - a financial institution; and
  - intermediaries in an equivalent jurisdiction, which are regulated under the law of that jurisdiction, has measures to ensure compliance with AML/CFT requirements and is supervised for compliance
- Ultimate responsibility rests with the TCSP licensee



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## Record-Keeping Requirements (1)

### Duty to keep records [s. 20, Schedule 2]

- In relation to a **transaction**
  - records should be kept **for at least 5 years after the completion of the transaction**
- In relation to a **customer**,
  - records 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**



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## Record-Keeping Requirements (2)

### Records to be kept

- In relation to a **transaction**
  - the original or a copy of the documents, and a record of the data and information, obtained in connection with the transaction
- In relation to a **customer**
  - the original or a copy of the documents, and a record of the data and information, obtained in the course of identifying and verifying the identity of the customer or any beneficial owner of the customer; and
  - the original or a copy of the files relating to the customer's account and business correspondence with the customer and any beneficial owner of the customer



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## Sanctions

- The Registrar may take **disciplinary actions** against a TCSP licensee for contravening the CDD and RK requirements [s. 53Z]
- Disciplinary actions which may be taken by the Registrar
  - publicly reprimand a licensee;
  - order the licensee to take remedial action; and/or
  - order the licensee to pay a pecuniary penalty not exceeding HK\$500,000
- If the licensee fails to comply with an order to take remedial action, the Registrar may further order the licensee to pay a daily pecuniary penalty not exceeding \$10,000 for each day on which the failure continues



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## Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Trust or Company Service Providers

- The Registrar has published the Guideline to provide guidance in relation to the operation of the provisions of Schedule 2 to the AMLO
- “In considering whether a person has contravened a provision of Schedule 2, a relevant authority or a regulatory body must have regard to any provision in the guideline published under this section that is relevant to the requirement.” [s. 7(5)]



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# The End

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