

ANTI-MONEY LAUNDERING / COUNTER-TERRORIST FINANCING

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

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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

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**

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.

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]*

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]

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]

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]

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

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

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.

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]

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

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

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

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**

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**

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

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

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)]



The End

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