



Submission to the SFC Consultation Paper on Proposed Amendments to the (1) Guideline on Anti-Money Laundering and Counter-Terrorist Financing and (2) Prevention of Money Laundering and Terrorist Financing Guideline issued by the Securities and Futures Commission for Associated Entities

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Introduction

This submission responds to the questions raised by the Consultation Paper (“the Consultation Paper”) issued by the Securities and Futures Commission on the Proposed Amendments to the Guideline on Anti-Money Laundering and Counter-Terrorist Financing and Prevention of Money Laundering and Terrorist Financing Guideline issued by the Securities and Futures Commission for Associated Entities

Unless stated the otherwise, terms used in this submission are same as those terms as defined in the Consultation Paper.

Consultation Questions

1. *Do you have any views on the proposal to expand the types of PEPs to include international organisation PEPs and extend the special requirements for foreign PEPs to high risk business relationships with domestic PEPs and international organisation PEPs? Please explain.*

In view of the recent corruption and money laundering cases involving international organizations, we agree with the SFC to expand the types of PEPs to include international organization PEPs as they are equally vulnerable to corruption. In practice, it may be difficult for small firms to further verify the spouse, partner, child, parent or close associate of an individual as defined in 4.11.19(a), given that the disclosure requirements for an international organization may not be as strict as that of a government of a State. Their total number of client and new clients each year may not justify the subscription of commercial database for name-screening or other similar services while online searches conducted through general search engines may not be effective in further verifying these associated entities. These firms may only be able to rely on the declaration of the potential customer.

We agree with the SFC’s extension of special requirements for foreign PEPs to high risk business relationships with domestic PEPs and international organization PEPs.

2. Do you have any views on the proposal to require Hong Kong-incorporated LCs to implement group-wide AML/CFT systems in all of their overseas branches and subsidiary undertakings that carry on the same business as financial institutions? Please explain.

In general, we agree with the SFC's proposal to require Hong Kong – incorporated LCs to implement group-wide AML/CFT systems in all of their overseas branches and subsidiary undertakings that carry on the same business as financial institutions, in adherence to the internationally agreed standards and in avoidance of potential regulatory arbitrage activities within the group.

The SFC proposes that the branch or subsidiary undertaking should apply the higher standard of the host jurisdiction and the local jurisdiction, to the extent that the host jurisdiction's laws and regulations permit. In the long run, we believe that the SFC should consider further requiring that the highest standard among all jurisdictions the group operates in should be adopted by all entities within the group. This will ensure consistent practice within the group for more effective and efficient internal control and management. This can also further avoid the risk of regulatory arbitrage activities.

3. Do you foresee any challenges for LCs if they are required to identify and assess the ML/TF risks that may arise from the use of new technologies for both new and pre-existing products prior to the use of these technologies? Please explain.

We do not foresee a very difficult challenge for LCs to identify and assess the ML/TF risks that may arise from the use of new technologies for both new and pre-existing products prior to the use of these technologies as LCs should evaluate product/service risk and delivery/distribution channel risk under the current requirements.

We expect LCs to rely largely on data and information provided by the technology's developer or service provider in identifying and assessing the relevant ML/TF risks. The SFC may consider issuing further guidance, such as a non-exhaustive list of factors for consideration, to assist the communication between LCs and service providers in evaluating the ML/TF risks.

The SFC can also require LCs to submit their AML risk assessment on use of these new technologies for the SFC to comment and to assess any AML issues.

4. Do you agree that an LC should be allowed to stop pursuing the CDD process if it reasonably believes that the process will tip-off the customer? If not, why?

We agree with the alignment with FATF standards that LCs should be allowed to stop pursuing the CDD process if it reasonably believes that the process will tip-off the customer.

5. Do you have any views on the requirement that LCs should keep all records obtained throughout the CDD and ongoing monitoring processes, including the results of any analysis undertaken? Please explain.

We agree with the requirement that LCs should keep all records obtained throughout the CDD and ongoing monitoring process, including the results of any analysis undertaken.

6. Do you have any concerns about the proposal to allow LCs not to verify every piece of identification information collected from natural person customers? Please explain.

We believe that the proposal would not make much difference as most information in paragraph 4.2.2 of the Proposed Revised Guideline can be effectively verified by collecting the identity card or passport copy of the client. We do however welcome the SFC's proposal in not mandating the verification of nationalities as this may be unnecessarily troublesome for customers with right of abode in multiple countries. We also agree with the SFC's approach to standardize the identity verification requirements for all types of natural person customers regardless of residency status.

7. Do you have any concerns about the proposal to allow LCs to determine the types of documents to be obtained for the purpose of verifying the requisite information about a legal person customer? Please explain.

We welcome the SFC's approach in permitting LCs flexibility in determining the types of documents to be obtained for the purpose of verifying the requisite information about a legal person customer. It will be very helpful if the SFC can issue FAQ to industry to provide them more examples for reference of the industry.

8. Do you agree with the proposed amendments relating to PPTA? If not, what other criteria do you think LCs should take into account when determining whether a person is a PPTA?

We agree with the SFC's proposal to remove the general rule of identifying those persons authorised to give instructions for the movement of funds or assets as PPTA and verify their identities.

9. Do you have any views on the proposed additional types of supplementary measures that LCs may take to mitigate the risks associated with customers who are not physically present for identification purposes or similar situations? Please state your views.

We agree with the SFC's proposed additional types of supplementary measures that LCs may take to mitigate the risks associated with customers who are not physically present for identification purposes or similar situations. We believe that this proposal, together with the SFC Circular to intermediaries - Online client onboarding issued on 12 July 2018 will provide clear guidance to firms that intend to provide online non face-to-face account opening.

10. Do you have any views on the lists of illustrative, non-exhaustive examples of possible simplified and enhanced measures under a risk-based approach? Please explain.

We welcome the SFC's provision of list of illustrative, non-exhaustive examples of possible simplified and enhanced measures under a risk-based approach.

11. Do you have any views on the list of non-exhaustive examples of risk factors that an LC should take into account to determine whether a domestic PEP or an international organisation PEP should continue to be treated as a domestic PEP or an international organisation PEP if the person is no longer entrusted with a prominent public or prominent function? Please explain.

While we agree the principles behind the list of non-exhaustive examples of risk factors that an LC should take into account to determine whether a domestic PEP or an international organisation PEP should continue to be treated as a domestic PEP or an international organisation PEP if the person is no longer entrusted with a prominent public or prominent function, it may be difficult in practice for licensed corporations to gather empirical data to determine these factors.

12. Do you have any views on the proposal that LCs should identify the senior managing official of a legal person where no natural person ultimately owns or controls the legal person customer? Please explain.

We have reservations about the proposal that LCs should identify the senior managing official of a legal person where no natural person ultimately owns or controls the legal person customer. The SFC should allow the LCs to use a risk-based approach to identify and verify the major shareholders (despite not being beneficial owners as defined under the Proposed Revised Guideline. LCs should have fulfilled its CDD requirements if it has used reasonable efforts in identifying and verifying related shareholders (e.g. same family origin or related companies not within the same group) in checking the ultimate beneficial owner or up to an aggregate percentage of shares of / interests in the client.

In general, the changes in “persons holding the position of senior managing official in the legal person” should occur more frequently than that of major shareholders in a company. This may create huge burdens on LCs to frequently update the client’s profile and identify and verify all new senior managing officials onboard.

The SFC should also consider defining more clearly the definition of “persons holding the position of senior managing official in the legal person” by providing a list of criteria in defining the phrase.

13. Do you have any views on the additional guidance on the areas which should be covered in regular review of AML/CFT systems by an audit function to ensure their effectiveness? Please explain.

We agree with the additional guidance on the areas which should be covered in regular review of AML/CFT systems by an independent audit function to ensure their effectiveness.

14. Do you have any concerns about the additional guidance regarding the handling of requests from law enforcement agencies? Please explain.

We have no further comments on the additional guidance regarding the handling of requests from law enforcement agencies.

Conclusion

We appreciate the SFC's efforts in proposing amendments to the Guideline on Anti-Money Laundering and Counter-Terrorist Financing. We believe that the adherence to the international AML/CFT standards would safeguard Hong Kong's position as a financial international center.

The SFC proposes that the revised AML/CFT Guideline to become effective on 1 November 2018 as the nature of the proposed amendments to the AML/CFT Guideline does not require substantial adjustments to the LCs' existing AML/CFT systems. We are quite concerned with the suggested tight schedule and the grounds provided by the SFC. The formulation and implementation of group-wide AML/CFT systems is very likely to be a time-consuming practice which involves major changes to the current systems.

LCs should also be given sufficient time to liaise with agencies and third-party service providers in ensuring compliance with the revised Guideline. For instance, asset managers may need to liaise with the respective fund administrators in ensuring that the update the definition of treatment of PEPs, PPTAs, tipping-off issues and the record keeping and provision upon request of all results of any analysis taken during the CDD process.

LCs may also need to liaise with auditors to ensure compliance with the additional specific requirements of areas to be covered in regular review of AML/CFT systems by the independent audit function to ensure their effectiveness. This may involve a renewal of service contracts and other substantial changes to the LCs' existing AML/CFT systems. Considering that a large number of firms may have their financial year ends at 31 December, it would be a reasonable timeframe to allow for at least 3 months of transition period for LCs to adapt to the new rules to be confirmed in the consultation conclusion and allow the Revised Guideline to become effective early next year (i.e. 1st April 2019).

While we understand that the FATF on-site mutual evaluation assessment is scheduled for later this year, allowing for sufficient time for LCs to comply with the new rules is equally important in ensuring the effectiveness of the implementation of FATF standards in Hong Kong.

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