

24 May 2023

Circular to Licensed Corporations and Associated Entities

Anti-Money Laundering / Counter-Financing of Terrorism

Amendments to Anti-Money Laundering and Counter-Financing of Terrorism

Guidelines

The Securities and Futures Commission (SFC) has revised its anti-money laundering and counter-financing of terrorism (AML/CFT) guidelines for licensed corporations¹ and associated entities², to incorporate provisions and guidance related to the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance 2022 (the Amendment Ordinance) which was enacted on 16 December 2022 and will take effect on 1 June 2023³.

Corresponding amendments have been made to the AML/CFT Guideline in the following areas:

- (a) to reflect the revised statutory definition of “politically exposed person” (PEP) (ie, from one in a place outside the People’s Republic of China to one in a place outside Hong Kong), and rename “foreign PEP” as “non-Hong Kong PEP” and “domestic PEP” as “Hong Kong PEP”;
- (b) to incorporate the definition of “former non-Hong Kong PEP” and permit the disapplication of the special requirements and additional measures for non-Hong Kong PEPs if, following an appropriate risk assessment, a former non-Hong Kong PEP no longer presents a high risk of money laundering and terrorist financing (ML/TF);
- (c) to reflect the revised statutory definition of beneficial owner of a customer that is a trust (ie, removing the 25% threshold and adding the trustee, a beneficiary and a class of beneficiaries), and provide facilitative risk-based guidance on determining the extent of reasonable measures for verifying the identities of beneficiaries and classes of beneficiaries of a customer that is a trust; and

¹ Upon gazettal, the “Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations)” will be renamed as the “Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers)” (the AML/CFT Guideline), which will be applicable to licensed corporations as well as virtual asset service providers licensed by the SFC under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (AMLO).

² Upon gazettal, the “Prevention of Money Laundering and Terrorist Financing Guideline issued by the Securities and Futures Commission for Associated Entities” will be renamed as the “Prevention of Money Laundering and Terrorist Financing Guideline issued by the Securities and Futures Commission for Associated Entities of Licensed Corporations and SFC-licensed Virtual Asset Service Providers”, which will be applicable to associated entities of licensed corporations and associated entities of virtual asset service providers licensed by the SFC under the AMLO.

³ These amendments mainly aim to ensure alignment with the latest Financial Action Task Force (FATF) standards. Please refer to the SFC’s 16 December 2022 circular in relation to the Amendment Ordinance (<https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=22EC71>).

- (d) to incorporate guidance to reflect that data or information provided by a recognised digital identification system is a reliable and independent source for identifying and verifying a customer's identity; and permit the disapplication of additional measures⁴ to a customer (or a natural person acting on behalf of a customer) who is not physically present for identification purposes if that person's identity has been verified by using a recognised digital identification system.

The SFC has also made other non-substantive amendments to enhance clarity and provided additional facilitative or elaborative guidance without altering the substance of the requirements. Other textual amendments have been made to better align with the language in the existing statutory provisions. For details, please refer to a summary of key amendments set out in Appendix.

In addition to the above amendments, a new stand-alone Chapter 12 of the AML/CFT Guideline provides guidance on the ML/TF risks in relation to virtual assets and the AML/CFT regulatory requirements and standards for addressing such risks. It also explains how some existing requirements apply to virtual asset transactions and activities, and sets out non-exhaustive illustrative risk indicators for assessing ML/TF risks and indicators of suspicious transactions and activities related to virtual assets. The guidance in Chapter 12 is applicable to licensed corporations when they carry out businesses associated with virtual assets or businesses which give rise to ML/TF risks in relation to virtual assets⁵.

The revised guidelines will be published in the Gazette on 25 May 2023 and take effect on 1 June 2023⁶. Licensed corporations and associated entities should review their existing policies and procedures in view of the revised guidelines⁷ and take any necessary steps to ensure their continued compliance with all applicable requirements.

⁴ This refers to the additional measures applicable to a customer who has not been physically present for identification purposes as set out in paragraph 4.10.2 of the AML/CFT Guideline.

⁵ For example, when a licensed corporation offers products, services or transactions involving virtual assets, or when a licensed corporation's customer derives its funds or wealth substantially from virtual assets or carries out virtual asset businesses. For details, please refer to the discussion in paragraph 67 of the Consultation Paper on the Proposed Regulatory Requirements for Virtual Asset Trading Platform Operators Licensed by the Securities and Futures Commission issued by the SFC on 20 February 2023 (<https://apps.sfc.hk/edistributionWeb/api/consultation/openFile?lang=EN&refNo=23CP1>).

⁶ For the avoidance of doubt, paragraphs 12.11.10 and 12.11.13 of the revised AML/CFT Guideline will take effect on 1 January 2024. For details, please refer to the discussion in paragraphs 88 to 98 of the Consultation Conclusions on the Proposed Regulatory Requirements for Virtual Asset Trading Platform Operators Licensed by the Securities and Futures Commission (Consultation Conclusions) issued by the SFC on 23 May 2023 (<https://apps.sfc.hk/edistributionWeb/api/consultation/conclusion?lang=EN&refNo=23CP1>).

⁷ Marked-up amendments to the guidelines are set out in Appendix B and Appendix C to the Consultation Conclusions. While the appendices set out all track-changes from the current version of the guidelines including virtual asset-specific AML/CFT requirements, marked-up amendments highlighted in yellow in the appendices refer to non-virtual asset-specific AML/CFT requirements that are applicable to all licensed corporations and associated entities.



Should you have any queries regarding the contents of this circular, please contact Ms Kiki Wong at 2231 1569 who will assist in referring your queries to the relevant officer.

Intermediaries Supervision Department
Intermediaries Division
Securities and Futures Commission

Enclosure

End

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