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

Q1. Do you think paras 4.4.1, 4.4.3 and 4.9.19 together provide sufficient guidance to assist FIs to comply with the requirement of taking reasonable measures to verify the identity of persons purporting to act on behalf of customers? If not, please suggest further examples or alternative measures with reasons.

ipac HK: We agree paras 4.4.1, 4.4.3 and 4.9.19 together provide sufficient guidance to assist FIs to comply with the requirement of taking reasonable measures to verify the identity of persons purporting to act on behalf of customers. We agree to the risk-based approach in determining the appropriate measures to verify the person's identity.

Q2 Do you think Chapter 10, particularly para. 10.1, is sufficiently clear as to when the wire transfer provisions do not apply to an LC? If not, what further guidance may be useful in this respect?

ipac HK: We do not think para. 10.1 is sufficiently clear as to when the wire transfer provisions do not apply to an LC. It should clearly state that if the LCs do not facilitate the wire transfer operation just as the authorized institutions and money service operators, they are not considered as an ordering institution or beneficiary institution, and thus are not required to comply with the requirements under section 12 of Schedule 2 or Chapter 10.

Q3 Do you agree that the benefits of performing a company registry search as an independent, effective means of confirming a corporate customer's current status and verifying the names of its directors and shareholders outweigh the costs?

ipac HK: We believe the company search report is a reliable source for the due diligence. However, it will create additional cost for the FIs. We believe the identity documents and director's registration lists provided by the corporate clients would be sufficient enough to identify the identity of the company. We suggest conducting the company search on high-risk clients only.

Q4 Para. 4.10.6 covers fund distribution activities involving the holding of fund units by nominee companies. Do you think that there are other types of business relationships involving nominee companies controlled by an FI distributor that should also be covered by this provision? If so, please provide details with reasons.

ipac HK: We are not able to think of other types of business relationships involving nominee companies controlled by an FI distributor that should also be covered by this provision.

Q5 Do you agree that FIs should implement a clear and well articulated policy for ensuring that relevant staff receive adequate AML/CFT training and monitor its effectiveness?

ipac HK: We agree to the suggestions in para. 9.10 in relation to a clear and well articulated AML/CFT training policy since ipac HK has already been implementing a similar policy.

Appendix

Question	Para.	Content
Q1	4.4.1	<p>If a person purports to act on behalf of the customer, FIs must:</p> <p>(i) identify the person and take reasonable measures to verify the person's identity on the basis of documents, data or information provided by-</p> <p>(A) a governmental body;</p> <p>(B) the relevant authority or any other relevant authority;</p> <p>(C) an authority in a place outside Hong Kong that performs functions similar to those of the relevant authority or any other relevant authority; or</p> <p>(D) any other reliable and independent source that is recognised by the relevant authority; and</p> <p>(ii) verify the person's authority to act on behalf of the customer.</p>
Q1	4.4.3	<p>In taking reasonable measures to verify the identity of persons purporting to act on behalf of customers (e.g. authorized account signatories and attorneys), the FI should refer to the documents and other means listed in Appendix A wherever possible. As a general rule FIs should verify the identity of those authorized to give instructions for the movement of funds or assets.</p>
Q1	4.9.19	<p>Section 2(1)(d) of Schedule 2 requires FIs to identify and take reasonable measures to verify the identity of persons purporting to act on behalf of customers (e.g. authorized account signatories). The basic requirement is therefore to verify the identity of such persons by reference to the documents and other means listed in Appendix A wherever possible.</p> <p>According to section 2(1)(d)(i) of Schedule 2, FIs should identify the person and take reasonable measures to verify the person's identity based on documents, data or information provided for in section 2(1)(d)(i)(A) to (C) of Schedule 2, or any other reliable and independent source that is recognized by the RA. FIs may on occasion encounter difficulties in verifying all signatories of customers such as listed companies that may have very long lists of authorized signatories, particularly if such customers are based outside Hong Kong. In such cases, FIs may adopt a risk-based approach in determining the appropriate measures to verify the person's identity. For example, in respect of verification of account signatories related to a customer which is an FI or a listed company, and the risk is considered as low, FIs could adopt a more streamlined approach in verifying the identities of the account signatories. The adoption of a signatory list, in which the identities of the account signatories have been verified by a department or person within that FI or listed company, which is independent to the persons whose identities are being verified (e.g. compliance, audit or human resources) may be sufficient to demonstrate reasonable measures.</p> <p>Another option, mainly relevant to overseas customers and which may be considered in conjunction with or separately from reducing the signatories list, is the use of intermediaries in accordance with section 18 of Schedule 2.</p>
Q2	10.1	<p>This chapter primarily applies to authorized institutions and money service operators. Other FIs should also comply with section 12 of Schedule 2 and the guidelines provided in this Chapter if they act as an ordering institution or beneficiary institution as defined under the AMLO. Where an FI is the originator or recipient/beneficiary of a wire transfer, it is not acting as an ordering institution or beneficiary institution and thus is not required to</p>

		comply with the requirements under section 12 of Schedule 2 or this Chapter in respect of that transaction.
Q3	4.9.12	<p>FIs should perform a company registry search and obtain a full company search report in respect of all locally incorporated private (i.e. non-listed) companies and companies incorporated in jurisdictions which have a public company registry to:</p> <p>(a) confirm the company is still registered and has not been dissolved, wound up, suspended or struck off;</p> <p>(b) independently identify and verify the names of the directors and shareholders recorded in the company registry in the place of incorporation; and</p> <p>(c) verify the company's registered office address in the place of incorporation.</p>
Q4	4.10.6	<p>FIs may apply SDD to a customer that is an FI as defined in the AMLO, or an institution that carries on a business similar to that carried on by an FI and meets the criteria set out in section 4(3)(b) of Schedule 2. If the customer does not meet the criteria, the FI must carry out all the CDD measures set out in section 2 of Schedule 2.</p> <p>FIs may apply SDD to a customer that is an FI as defined in the AMLO that opens an account in the name of a nominee company for holding fund units on behalf of the second-mentioned FI or the underlying customers of the fund, provided that the second-mentioned FI has conducted CDD on the underlying customers and is authorised to operate the account, as evidenced by contractual document or agreement.</p>
Q5	9.10	<p>FIs should monitor the effectiveness of the training. This may be achieved by:</p> <p>(a) testing staff's understanding of the FI's policies and procedures to combat ML/TF, the understanding of their statutory and regulatory obligations, and also their ability to recognise suspicious transactions; and</p> <p>(b) monitoring the compliance of staff with the FI's AML/CFT systems as well as the quality and quantity of internal reports so that further training needs may be identified and appropriate action can be taken.</p>

Glossary

AMLO	Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615)
AML/CFT	Anti-money laundering and counter financing of terrorism
CDD	Customer due diligence
FI(s)	Financial institution(s)
LC	Licensed Corporation
RA(s)	Relevant authority (authorities)
Schedule 2	Schedule 2 to the AMLO
SDD	Simplified customer due diligence

