

Ref	Section	Guideline	Comments
Chapter 4 - CUSTOMER DUE DILIGENCE			
4.1 Introduction to CDD			
	4.1.4a	<p><i>For the securities sector, the term “customer” refers to a person who is a client of an LC and the term “client” is as defined in section 1 of Part 1 of Schedule 1 to the SFO.</i></p>	Suggest SFC to provide more guidance on the definition of “customer”.
4.3 - Identification and verification of a beneficial owner			
s.1 & s.2(2), Sch. 2	4.3.5	<p>FIs should identify all beneficial owners of a customer. In relation to verification of beneficial owners’ identities, except where a situation referred to in section 15 of Schedule 2 exists (“high risk”), the AMLO requires FIs to take reasonable measures to verify the identity of any beneficial owners owning or controlling 25% or more of the voting rights or shares, etc. of a corporation, partnership or trust. In high risk situations referred to in section 15 of Schedule 2, the threshold for the requirement is 10%.¹²</p> <p>¹² In circumstances where an existing customer is reclassified as high-risk under section 15 of Schedule 2, FIs may consider delaying taking reasonable measures to verify the beneficial owner’s identity according to the enhanced threshold (i.e. remediate from 25% to 10%) where a risk of tipping-off exists.</p>	<p>Paragraph 4.3.5:</p> <p>Setting two thresholds for verification of beneficial owner will be potentially confusing for clients. Different FIs may have a different classification on the risk classification of clients. We strongly propose that 25% be adopted across the board as this is largely in line with international standards.</p>
4.8 Natural Persons			
Identification			
s.2 & 3, Sch. 2	4.8.1	FIs should collect the following identification information in respect of personal customers and other natural persons, including connected parties of a legal person, who need to be identified:	<p>Paragraph 4.8.1:</p> <p>In existing guideline, recording and verification of address is required only for direct customers.</p>

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		(a) legal name, any former names and any other names used; (b) residential address (and permanent address if different); (c) date of birth; (d) nationality; and (e) identity document type and number.	<p>Address information on connected persons should be considered on the basis of risk and materiality.</p> <p>We also recommend clarification that the application of the address requirement on connected persons to be on a risk basis. Also per current guidelines, we recommend a common sense approach in verification of address. This can include substituting the residential address with a verified business address where obtaining proof of a residential address is impractical.</p>
Address verification			
	4.8.11	<p>Methods for verifying residential addresses may include obtaining:</p> (a) a recent utility bill (except mobile telephone bills, as such service has no connection to the registered address) issued within the last 3 months; (b) recent correspondence from a Government department or agency (i.e. issued within the last 3 months); (c) bank statements, issued by an authorised institution within the last 3 months; (d) a record of a personal visit to the residential address by a staff member of the FI; (e) a letter from an immediate family member at which the individual resides confirming that the applicant lives at that address in Hong Kong, setting out the relationship between the applicant and the immediate family member, together with evidence that the immediate family member resides at the same address (for persons such as students and housewives who are unable to provide proof of address of their own name); (f) a letter from a Hong Kong nursing or residential home for the elderly or	<p>Paragraph 4.8.11:</p> <p>With reference to the “Industry Working Group on Prevention of Money Laundering and Terrorist Financing on Address Proof for Personal Customers” issued by HKMA, we asked that the following existing acceptable methods be included in the AML Guideline:</p> <ul style="list-style-type: none"> • Management fee bills • Mobile phone or pay TV statements (mobile phone operators ask for address proof) • Correspondence (e.g. trade advice, not only bank statements) issued by an authorized institutions, MPF providers, insurance companies, professional bodies (and also advice/statements/ other correspondence issued by licensed corporations). • Up-to-date annual returns which contain the customer’s residential

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	<p>disabled, which an FI is satisfied that it can place reliance on, confirming the residence of the applicant;</p> <p>(g) a letter from a Hong Kong university or college, which an FI is satisfied that it can place reliance on, that confirms residence at a stated address;</p> <p>(h) a Hong Kong tenancy agreement which has been duly stamped by the Inland Revenue Department;</p> <p>(i) a current Hong Kong domestic helper employment contract (I.D 407) stamped by an appropriate Consulate and the name of the employer should correspond with the applicant's visa endorsement in their passport;</p> <p>(j) a letter from a Hong Kong employer together with proof of employment, which an FI is satisfied that it can place reliance on, that confirms residence at a stated address in Hong Kong, and indicates the expected duration of employment. In the case of a migrant worker, details of the worker's principal residential address in their country of origin should also be recorded;</p> <p>(k) a lawyer's confirmation of property purchase, or legal document recognising title to property;</p> <p>(l) for non-Hong Kong residents, a government-issued photographic driving license or national identity card containing the current residential address or bank statements issued by a bank in an equivalent jurisdiction where the FI is satisfied that the address has been verified; and</p> <p>(m) for non-Hong Kong residents, independent overseas electronic data sources, e.g. a search of the relevant electoral register (for high-risk relationships and transactions, performing (m) alone is not sufficient).</p>	<p>address</p> <ul style="list-style-type: none"> • An acknowledgement of receipt duly signed by the customer in response to a letter sent by the FI to the address provided by the customers. • A land search report on the address provided by the customer which confirms that the customer is the owner of the property. • A copy of the statement which is sent by the FI to the address provided by the customer and is returned by the customer during his/her visit to the FI.
4.9 Legal Persons		

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Corporation			
Identification information			
	4.9.8	<p>The information below should be obtained as a standard requirement; thereafter, on the basis of the ML/TF risk, an FI should decide whether further verification of identity is required and if so the extent of that further verification. The FI should also decide whether additional information in respect of the corporation, its operation and the individuals behind it should be obtained. An FI should obtain and verify the following information in relation to a customer which is a corporation:</p> <p>(a) full name; (b) date and place of incorporation; (c) registration or incorporation number; and (d) registered office address in the place of incorporation and address of principal place of business/operations (if different from registered office).</p>	<p>Paragraph 4.9.8 (d): For corporate, current requirement does not stipulate the verification of both registered office address and address of place of business/ operations; the new requirement exceeds the current requirements.</p>
	4.9.9	<p>In the course of verifying the customer’s information mentioned in paragraph 4.9.8, an FI should also obtain the following information¹⁸ :</p> <p>(a) a copy of the certificate of incorporation or registration issued by the company registry in the jurisdiction of incorporation; (b) a copy of the company’s memorandum and articles of association which evidence the powers that regulate and bind the company; and (c) details of the ownership and structure control of the company, e.g. an ownership chart.</p> <p>¹⁸ Examples given are not exhaustive.</p>	<p>Paragraph 4.9.8 – 4.9.9: Current requirement does not explicitly require an ownership chart to contain detailed information like place of incorporation, date of incorporation of the intermediate layers. Such information is “nice to have” information rather than being interpreted as mandatory information since the aim should be for identifying all BO >= 10%.</p>
	4.9.11	An FI should also:	Paragraph 4.9.11 (b)(i):

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		<p>(a) identify and record the identity of all directors and verify the identity of at least one director. Following the FI's assessment of the ML/TF risks presented by the company, it may decide to verify the identity of additional directors as appropriate, in accordance with the guidance for individuals; and</p> <p>(b) identify and record the identity of all beneficial owners, and take reasonable measures to verify the identity of:</p> <ul style="list-style-type: none"> (i) all shareholders holding 25% (for normal risk circumstances) / 10% (for high risk circumstances) or more of the voting rights or share capital; (ii) any individual who exercises ultimate control over the management of the corporation; and (iii) any person on whose behalf the customer is acting. 	<p>Setting two thresholds for verification of beneficial owner will be potentially confusing for clients. Different FIs may have a different classification on the risk classification of clients. We strongly propose that 25% be adopted across the board as this is largely in line with international standards.</p>
Beneficial owners			
	4.9.15	<p>For companies with multiple layers in their ownership structures, an FI may demonstrate that it has an understanding of the ownership and control structure of the company and has fully identified the intermediate layers by obtaining a director's declaration incorporating or annexing an ownership chart describing the intermediate layers (e.g. company name, place of incorporation, incorporation number, date of incorporation, etc.). The director's declaration should also fully identify the beneficial owners and detail the rationale behind the particular structure employed.</p>	<p>Paragraph 4.9.15 to 4.9.17:</p> <p>Requiring the provision of information on each intermediate layer up to the ultimate beneficial owner will increase substantially the compliance burden on the FI and will present significant increased requirements for HK onboarding, which will affect competitiveness of HK as a booking location.</p> <p>Also specific to 4.9.15, we ask that existing provision in IN15 to the AML Supplement issued by HKMA be incorporated: In the case of offshore investment vehicles owned by high net worth individuals who use such vehicles</p>
	4.9.16	While FIs need not, as a matter of routine,	

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	4.9.17	<p>verify the details of the intermediate companies in the ownership structure of a company, complex ownership structures (structures involving multiple layers, different jurisdictions, trusts, etc.) without an obvious commercial purpose pose an increased risk and may require further steps to ensure that the FI is satisfied on reasonable grounds as to the identity of the beneficial owners.</p> <p>The need to verify the intermediate corporate layers of the ownership structure of a company will therefore depend upon the FI's overall understanding of the structure, its assessment of the risks and whether the information available is adequate in the circumstances for the FI to consider if it has taken adequate measures to identify the beneficial owners.</p>	<p>as the contractual party to establish a private banking relationship with AIs, exception to the requirement to identify the intermediate layers may be made. A self-declaration in writing about the identity of, and the relationship with, the ultimate layer should suffice, provided there is no suspicion of money laundering.</p>
Persons purporting to act on behalf of the customer			
s.2(1)(d), Sch. 2	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 customers²¹ (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</p>	<p>Paragraph 4.9.19:</p> <p>Suggest that we add "company directors" and "company secretaries" as examples, regarding verification of identities of account signatories.</p> <p>For authorized signatory, the existing guideline allows taking a risk based approach for verifying the identity of such authorized signatories for customer not listed in recognized stock exchange or unregulated.</p> <p>The proposed guideline is silent on this risk based approach and it is unsure if this is still available.</p>

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		<p>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 company²², 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> <p>²¹ This only applies to persons who are able to give instructions concerning transfer of funds or assets belonging to the customer.</p> <p>²² Having regard to the advice provided at paragraphs 4.15.</p>	
Verifying the trust and placing reliance on the trustees			
	4.9.31	<p>An FI must verify the name and date of establishment of a trust and should obtain appropriate evidence to verify the existence, legal form and parties to it, i.e. trustee, settlor, protector, beneficiary, etc. The beneficiaries should be identified as far as possible where defined and measures should be put in place to facilitate the verification of their identity at the time when the FI becomes aware of</p>	<p>Paragraph 4.9.31:</p> <p>In practice, the industry has been largely relying on declaration from professional trustee.</p> <p>Besides, in general, an extract of relevant pages of the trust instrument, rather than the full document, is obtained for verification purpose.</p>

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		<p>the distribution of trust property. If the beneficiaries are yet to be determined, the FI should concentrate on the identification of the settlor and/or the class of persons in whose interest the trust is set up. The most direct method of satisfying this requirement is to review the appropriate parts of the trust deed.</p> <p>Verification of the existence, legal form and parties to a trust should therefore, wherever possible, be conducted by means of reviewing a copy of the trust instrument. In such circumstances, a redacted copy should be retained on file to evidence the existence and parties to the trust. Where this is not reasonably available, reasonable measures to verify this information, having regard to the ML/TF risk, may include :</p> <p>(a) a written declaration/confirmation from a trustee acting in a professional capacity²³; or</p> <p>(b) a written declaration/confirmation from a lawyer who has reviewed the relevant instrument.</p> <p>The person mentioned in (a) and (b) above should fulfil the requirements of section 18(3) of Schedule 2.</p> <p>For the avoidance of doubt, reasonable measures are still required to be taken to verify the actual identity of the individual parties (i.e. trustee, settlor, protector, beneficiary, etc.).</p> <p>²³ “Trustees acting in their professional capacity” in this context means that they act in the course of a profession or business which consists of or includes the provision of services in connection with the administration or management of trusts (or a particular aspect of the administration or management of trusts).</p>	<p>Reviewing of copy trust instrument should not be put as the primary source. Rather, written declaration/ confirmation from a trustee acting in a professional capacity should be equally acceptable.</p>

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4.10 Simplified customer due diligence (SDD)			
General			
Local and foreign financial institution			
s.4(3)(a) & (b), Sch. 2	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>	<p>Paragraph 4.10.6 – 4.10.7:</p> <p>Current requirement does not require the provision of contractual document or agreement.</p> <p>Obtaining proof of contractual relationship between the second-mentioned FI and its customers may not be practical particularly where there are many customers.</p> <p>We should be able to rely on the FI being regulated by a FATF member as assurance of that proper customer relationship had been established.</p>
	4.10.7	For ascertaining whether the institution meets the criteria set out in section 4(3)(a) & (b) of Schedule 2, it will generally be sufficient for an FI to verify that the institution is on the list of authorized (and supervised) FIs in the jurisdiction concerned.	
Listed company			
s.4(3)(c), Sch. 2	4.10.8	FIs may perform SDD in respect of a corporate customer listed on a stock exchange ²⁴ . This means FIs need not identify the beneficial owners of the listed company. In all other cases, FIs should follow the CDD requirements for a legal person set out in paragraphs 4.9 of this Guideline.	For company listed in recognised stock exchange, information on director's background is available via public information sources including annual reports. For these individuals, obtaining personal identity information does not aid significantly in understanding their background and reducing AML risks.
	4.10.9		

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		<p>FIs should identify and record the identities of all directors. FIs may adopt a risk-based approach in determining whether it is necessary to verify the identity of any of the directors of a listed company.</p> <p>²⁴ Reference should be made to paragraphs 4.15.</p>	
Investment vehicle			
	4.10.12	<p>An investment vehicle whether or not responsible for carrying out CDD measures on the underlying investors under governing law of the jurisdiction in which the investment vehicle is established may, where permitted by law, appoint another institution (“appointed institution”), such as a trustee, an administrator, a transfer agent, a registrar or a custodian, to perform the CDD. Where the person responsible for carrying out the CDD measures (the investment vehicle or the appointed institution) falls within any of the categories of institution set out in section 4(3)(d) of Schedule 2, an FI may apply SDD to that investment vehicle provided that it is satisfied that the investment vehicle has ensured that there are reliable systems and controls in place to conduct the CDD (including identification and verification of the identity) on the underlying investors in accordance with the requirements set out in the Schedule 2.</p>	<p>Paragraph 4.10.12: Suggest to change the words “in accordance with the requirement set out in the schedule 2” to “similar to the requirement set out in Schedule 2” since though the CDD requirement of other FATF or equivalent country is using similar standard, such requirement may not be exactly the same as those mentioned in Schedule 2.</p>
	4.10.13	<p>For the avoidance of doubt, if neither the investment vehicle nor appointed institution fall within any of the categories of institution set out in section 4(3)(d) of Schedule 2, the FI must identify any investor owning or controlling not less than 10% interest of the investment vehicle. Except where the investment vehicle is being operated for “private” use by a specific group of</p>	<p>Paragraph 4.10.13: For 4.10.13, it substantially limits the ability of Funds (in particular unregulated funds such as hedge funds and private equity funds) to open account in HK as most of these funds are not willing to provide the CDD information of their underlying investors to the FI and damages the</p>

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		<p>persons, the FI may, if it considers it appropriate to do so under its risk-based approach, rely on a written representation from the investment vehicle or appointed institution (as the case may be) responsible for carrying out the CDD stating, to its actual knowledge, the identities of such investors or (where applicable) there is no such investor in the investment vehicle. Where the FI accepts such a representation, this should be documented, retained, and subject to periodic review. Where investors owning or controlling more than 25% interest are identified, the FI must take reasonable measures to verify their identity itself.</p>	<p>competitiveness of HK. Current requirements focus on making assessment to satisfy that the Fund has put in place reliable system to verify the underlying customer identity rather than requiring identification and verification of identity of underlying customers.</p> <p>CDD should be limited in such situations. Where CDD is required, FIs should be allowed to rely on the customer, no matter whether it is a specified intermediary under AMLO, to have CDD completed.</p>
Government and public body			
s.4(3)(e) & (f), Sch. 2	4.10.14	<p>FIs may apply SDD to a customer that is the Hong Kong government, any public bodies in Hong Kong, the government of an equivalent jurisdiction or a body in an equivalent jurisdiction that performs functions similar to those of a public body.</p>	<p>Current AML guideline explicitly allows simplified due diligence for state owned enterprises. The AMLO should also make it explicit that state owned enterprise can enjoy SDD (in particular when SOE is a majority owned by the State rather than wholly owned by the State).</p>
s.1, Sch. 2	4.10.15	<p>Public body includes:</p> <ul style="list-style-type: none"> (a) any executive, legislative, municipal or urban council; (b) any Government department or undertaking; (c) any local or public authority or undertaking; (d) any board, commission, committee or other body, whether paid or unpaid, appointed by the Chief Executive or the Government; and (e) any board, commission, committee or other body that has power to act in a public capacity under or for the purposes of any enactment. <p>■</p>	

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4.11 High-risk situations		
s.15, Sch. 2	<p>4.11.1 Section 15 of Schedule 2 specifies that an FI must, in any situation that by its nature presents a higher risk of ML/TF, take additional measures to mitigate the risk of ML/TF. Examples of higher risk customers may include, having regard to the identified ML/TF risks:</p> <ul style="list-style-type: none"> (a) non-resident customers; (b) private banking; (c) legal persons or arrangements such as trusts that are personal assets holding vehicles; and (d) companies that have nominee shareholders or shares in bearer form. <p>Additional measures²⁵ or EDD should be taken to mitigate the ML/TF risk involved, which for illustration purposes, may include:</p> <ul style="list-style-type: none"> (a) obtaining additional information on the customer (e.g. connected accounts or relationships) and updating more regularly the customer profile including the identification data; (b) obtaining additional information on the intended nature of the business relationship (e.g. anticipated account activity), the source of wealth and source of funds; (c) obtaining the approval of senior management to commence or continue the relationship; and (d) conducting enhanced monitoring of the business relationship, by increasing the number and timing of the controls applied and selecting patterns of transactions that need further examination. <p>²⁵ Additional measures should be documented in the FI's policy and procedures.</p>	<p>Paragraph 4.11.1:</p> <p>Not all private banking clients are necessarily of higher risk from AML perspective. An example is a senior manager working for a reputable listed company where source of wealth is published in annual reports and where, for example, only an individual account or a wholly owned private investment company account is being held. Suggest deleting the example of private banking.</p>

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4.12 Customer not physically present for identification purposes			
Suitable certifiers and the certification procedure			
	4.12.5	<p>The certifier must sign and date the copy document (printing his/her name clearly in capitals underneath) and clearly indicate his/her position or capacity on it and provide his/her contact details. The certifier must state that it is a true copy of the original (or words to similar effect).</p>	<p>Paragraph 4.12.5: While the certifier needs to identify himself/herself as having a capacity qualifying to be a suitable certifier, current requirement does not require providing the contact details in the certification and so it goes beyond current requirement.</p>
APPENDIX A			
Other reliable and independent sources for customer identification purposes			
	5	<p>An FI may identify and or verify a corporate customer by performing a company registry search in the place of incorporation and obtaining a full company search report, which confirms the current reference to a full company particulars search (or overseas equivalent) which, in addition to confirming the company's continued registration, contains:</p> <p>(a) the current basic information of the company; (b) a list of the name(s) (with identification information) of current director(s) and reserve director (if any); (c) particulars of the secretary; (d) address of registered office (for local companies); (e) address of principal place of business in Hong Kong; (f) particulars of authorized representatives (for non-Hong Kong companies); (g) share capital; and (h) particulars of receiver, manager and liquidators (if any).</p>	<p>Paragraph 5: Regarding the particular of information required under the search, the public records may not include some of the items and certain items do not seem to be relevant for AML purpose (e.g. secretary). Besides, not all overseas customers would have an address in HK and so item (e) address of principal place of business in HK is not relevant. In addition, search in an overseas country may not contain address of the principal place of business.</p>