



THE  
**LAW SOCIETY**  
OF HONG KONG  
香港律師會

Practitioners Affairs

3/F WING ON HOUSE · 71 DES VOEUX ROAD  
CENTRAL · HONG KONG DX-009100 Central 1  
香港中環德輔道中71號  
永安集團大廈3字樓

TELEPHONE (電話): (852) 2846 0500  
FACSIMILE (傳真): (852) 2845 0387  
E-MAIL (電子郵件): sg@hklawsoc.org.hk  
WEBSITE (網頁): www.hklawsoc.org.hk

Our Ref :  
Your Ref :  
Direct Line :

IPFS/11/630361

15 November 2011

**President**  
會長

Junius K.Y. Ho  
何君堯

**Vice-Presidents**  
副會長

Dieter Yih  
葉禮德  
Ambrose S.K. Lam  
林新強

**Council Members**  
理事

Huen Wong  
王桂壠  
Peter C.L. Lo  
羅志力  
Michael J. Lintern-Smith  
史密夫  
Ip Shing Hing  
葉成慶  
Billy W.Y. Ma  
馬華潤  
Sylvia W.Y. Siu  
蕭詠儀  
Cecilia K.W. Wong  
黃吳潔華  
Kenneth S.Y. Ng  
伍成業  
Stephen W.S. Hung  
熊運信  
Joseph C.W. Li  
李超華  
Amirali B. Nasir  
Melissa K. Pang  
彭韻僊  
Thomas S.T. So  
蘇紹聰  
Angela W.Y. Lee  
李慧賢  
Brian W. Gilchrist  
喬柏仁  
Gavin P. Nesbitt  
倪廣恒  
Denis G. Brock  
白樂德

**Secretary General**  
秘書長

Heidi K.P. Chu  
朱潔冰

**Deputy Secretary General**  
副秘書長

Christine W.S. Chu  
朱穎雪

Intermediaries Supervision Department  
Securities and Futures Commission  
8/F, Chater House  
8 Connaught Road Central, Hong Kong

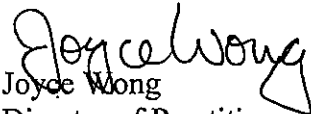
Dear Sirs,

**Re: 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**

I refer to the captioned Consultation Paper and attach the Law submissions for your consideration.

The Law Society has no objections to our submissions being posted onto your website.

Yours sincerely,

  
Joyce Wong  
Director of Practitioners Affairs  
e-mail: dpa@hklawsoc.org.hk



**SFC 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**

**Question 1**

**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.**

*Answer:*

Paragraph 4.9.19 is the only guidance that addresses the specific problems encountered in verifying potentially long lists of authorized signatories while paragraph 4.4.3 gives guidance on money transfers. Paragraph 4.9.19 introduces a risk-based approach in determining the appropriate measures to verify the identity of a person purporting to act on behalf of the customer. For example, the adoption of a signatory list where the customer of the FI is another FI or a listed company and the risk is considered to be low, in which case the identities of the account signatories verified by independent person within the FI or listed company are sufficient.

While this approach may enhance efficiency of FIs in dealing with certain customers, it is recommended that both the identities and authority (to act on behalf of the FI or the listed company) have been verified by independent persons within the FI or the listed company, and such signatory list should be updated/confirmed on an annual basis, with the customers (being FI and/or listed companies) promptly notifying the FI of any change to the signatory list.

**Question 2**

**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?**

*Answer:*

We suggest amending the third sentence in paragraph 10.1 as follows:

“... Where an FI is merely the originator or recipient/beneficiary of a wire transfer and is not acting as an ordering institution or beneficiary institution of that transaction, it is not required to comply with the requirements under section 12 of Schedule 2 or this Chapter in respect of that transaction.”

We also suggest that paragraph 10.2 is moved above 10.1, as paragraph 10.2 contains the definitions required to understand 10.1.

### **Question 3**

**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?**

*Answer:*

Where the searches can be conducted online without a time delay of a physical search or an overnight search and the charges are nil or very low (e.g. less than HK\$100 or equivalent), we agree that such searches should be done. However, in some emerging markets jurisdictions, the procedure is not straightforward and must be done by a local agent. In those circumstances, the costs can be excessive compared to the business opportunity on offer for the FI. Such costs can only be justified if there are circumstances that would put the FI on notice of a potential issue.

The issue is compounded by the fact that it is often those jurisdictions where company searches are most difficult to do, which present the highest ML/TF risk. Imposing a requirement to obtain company searches in high risk countries may have the effect of cutting off customers in those countries, as viable business partners for Hong Kong FIs. This is not the intention of the AMLO.

An additional thing to consider is whether company searches actually offer any particular value as a means of confirming a corporate customer’s current status. Aside from providing evidence of the existence of a company, they can show data which is quite out of date. Changes to directors or to the constitutional documents may not need to be filed until some days or weeks after they take place. Changes to shareholders may only need to be filed once a year. Furthermore, as the filings are made by the company itself, they do not comprise a truly independent source.

A more practical solution might be to require the company itself to provide certified copies of its constitutional documents, together with the register of members and a list of directors. The person who certified the documents should then be subject to separate verification.

**Question 4**

**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.**

*Answer:*

We suggest amending the third sentence in paragraph 4.10.6 as follows:

“ ...

Where a FI as defined in the AMLO opens an account with another FI in the name of a nominee company wholly-owned by the first-mentioned FI for holding fund units on behalf of the first-mentioned FI or its underlying customers, the first-mentioned FI shall for the purpose of this Chapter be deemed as the customer of the second-mentioned FI and the second-mentioned FI may apply SDD to the first-mentioned FI, 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.”

**Question 5**

**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?**

*Answer:*

Yes, we believe FIs should be under an obligation to ensure that staff receive adequate AML/CFT training. Many FIs will already do this.

**The Law Society of Hong Kong  
Investment Products & Financial Services Committee  
15 November 2011  
576252**

