

Date : 15 Nov 2011

Prepared by : [REDACTED]

Subject : Comments on the draft AML Guideline issued by the SFC :

- 1) Are the followings apply to the client which parent company is a trust?
 - **Section 4.3.6** – measures should be put in place to facilitate the verification of the identity of these individuals when the FI becomes aware of any payment out of the trust account made to the beneficiaries.”
 - **Section 4.9.30** - identification information of settlor(s) (including initial settlors and persons subsequent settling funds into the trust) and any protector(s) or enforcers in line with the guidance for individuals/corporations

- 2) Refer to **Section 11.1** -
We are concerned about –
FIs may on occasion encounter difficulties in **name screening** of all signatories of customers such as regulated/listed companies that may have very long list of authorized signatories. In such cases, can FIs adopt risk-based approach and assume that name screening had been performed by Human Resources Department of the regulated/listed corporates ?

- 3) Refer to **Section 4.9.12** - 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.
Question 1: What is the meaning of “**all** locally incorporated private (i.e. non-listed) companies”, is this refer to the direct customer of FI **only**? For companies with multiple layers in the ownership structures, does FI need to perform the company registry search/obtain the certificate of Incumbency on the intermediate layer companies?

- 4) Refer to **Section 4.9.15**- 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.....
Questions 1 : If the Certificate of Incumbency do not have shareholder information and the director signed the written declaration to prove the shareholder information, the Certificate of Incumbency (together with the declaration) is still acceptable, am I right?
Question 2 : If the director signed the written declaration, is that means the intermediate companies do not need to provide other documentation to prove the shareholder information (e.g. Certificate of Incumbency for offshore intermediate companies)?
Question 3 : *We are concerned about* – There should be a definition of “multiple layers” to be included in this guideline. *We suggest that this be amended as follows:*: The definition of << multiple layers of ownership structure >>means with 3 or more ownership layers above (and this includes the direct off shore corporate customer).

- 5) Refer to **Section 4.9.13** – a certificate of incumbency or equivalent issued by the company’s registered agent in the place of incorporation should be obtained
Question: What is the definition of “registered agents”? Can the reputable CPAs/Lawyers instead of the registered agents in that jurisdiction issue the Certificate of Incumbency for companies incorporated in offshore (e.g. BVI, Cayman Islands).

- 6) Refer to **Section 10.7**

We are concerned about –

Section 10.7 mentioned “the correspondence address”. In the previous version of the SFC guideline, the address should be meaningful. Thus under this revision, the word meaningful is now deleted and leave it to the ordering institution to satisfy herself that the address has been verified. If this is the case, is PO Box address still acceptable?