

## **Commonly Raised Questions by respondents and the Companies Registry's response**

The following is a summary of the commonly raised questions on the proposed revision of the Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Trust or Company Service Providers ("Guideline") (which has been renamed as Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Trust or Company Service Provider Licensees)) and the response of the Companies Registry.

### **Amendments to the Guideline**

#### ***1. Numerous respondents enquired about the objective of revising the Guideline.***

The amendments aim to:

- (a) update the Guideline in view of the latest international requirements and standards, including, among others, the Recommendations of the Financial Action Task Force ("FATF") relevant to the trust or company service provider licensees ("TCSP licensees"); and
- (b) align the format and contents with the guidelines of other regulatory authorities in Hong Kong to enhance the readability and easy referencing to facilitate TCSP licensees to combat money laundering and terrorist financing.

#### ***2. Some respondents enquired about the major amendments to the Guideline.***

The major amendments to the Guideline include:

- (a) revising the format and contents of the Guideline to align with those published by other regulatory authorities in Hong Kong;
- (b) introducing the requirement and guidance for TCSP licensees to conduct money laundering and/or terrorist financing ("ML/TF") risk assessment at an institutional level;
- (c) introducing simplified and enhanced anti-money laundering and counter-financing of terrorism ("AML/CFT") policies, procedures and controls ("AML/CFT Systems"); and

- (d) providing practical guidance to facilitate application of simplified due diligence (“SDD”) and enhanced due diligence (“EDD”) under a risk-based approach (“RBA”) and setting out examples of potentially lower/higher risk factors and examples of possible SDD and EDD measures.

The senior management, the Compliance Officer and the Money Laundering Reporting Officer of TCSP licensees are advised to read carefully the revised Guideline and enhance staff training.

- 3. *Some respondents noticed that the text boxes highlighting contents on specific areas and Appendices in the previous version of the Guideline (June 2023) can no longer be found in the revised version and asked whether the contents thereof have been deleted.*

Most of the contents in the text boxes and the four Appendices in the previous version of the Guideline (June 2023) have been incorporated into different Chapters of the revised version, for example, identification and verification of identities of different types of customers of a TCSP licensee can be found in Chapter 4 – Customer Due Diligence of the revised Guideline.

**Institutional ML/TF risk assessment (paragraphs 2.2 to 2.9 of the revised Guideline)**

- 4. *Some respondents asked why it is necessary for TCSP licensees to conduct institutional ML/TF risk assessment.*

Under an RBA to AML/CFT, TCSP licensees are expected to identify, assess and understand the ML/TF risks to which they are exposed and take AML/CFT measures commensurate with those risks in order to manage and mitigate them effectively. Institutional ML/TF risk assessment forms the basis for the RBA of a licensee’s AML/CFT system, enabling a TCSP licensee to understand how, and to what extent it is vulnerable to ML/TF, deciding the most appropriate and effective way to mitigate the identified risks, and the way to manage any resulting residual risk according to the TCSP licensee’s risk appetite. The successful implementation and effective operation of an RBA to AML/CFT hinges on strong senior management leadership and oversight of the development and implementation of the RBA across the TCSP licensee. Senior management should not only

know about the ML/TF risks to which the TCSP licensee is exposed, but should also understand how its AML/CFT control framework operates to mitigate those risks.

***5. Some respondents expressed concern about how the institutional risk assessment can be performed using an RBA.***

Given the varying natures, sizes and complexity of licensees' businesses as well as the different types and prevalence of ML/TF risk factors relevant to licensees, there is no one-size-fits-all methodology for conducting an institutional risk assessment. The nature and extent of the institutional ML/TF risk assessment procedures should be commensurate with the nature, size and complexity of the business of a TCSP licensee.

For TCSP licensees whose businesses are smaller in size or less complex in nature (for example, where the range of products and services offered by the TCSP licensee is very limited or its customers have a homogeneous risk profile), a simpler risk assessment approach might suffice. Conversely, where the TCSP licensee's products and services are more varied and complex, or its customers have more diverse risk profiles, a more sophisticated risk assessment process will be required.

**AML/CFT Systems (paragraphs 3.2 and 3.3 of the revised Guideline)**

***6. Paragraphs 3.2 and 3.3 of the revised Guideline state that AML/CFT Systems can be enhanced or simplified. Some respondents would like to know what does this mean.***

Paragraphs 3.2 and 3.3 of the revised Guideline refer to enhancing or simplifying the AML/CFT Systems, as distinct from EDD or SDD measures articulated in Chapter 4. They set out the basis for a TCSP licensee to adopt an RBA in its overall AML/CFT Systems across the TCSP licensee. The application of these two paragraphs should be based on the TCSP licensee's institutional ML/TF risk assessment. Depending on how the TCSP licensee assesses its ML/TF risks, an RBA can be applied on a specific customer segment, a specific line of business, or a specific product or service offered.

## Customer Due Diligence (Chapter 4 of the revised Guideline)

7. *Several respondents would like to know the differences among*
- (a) “a natural person holding a senior management position or having executive authority in a customer” for the purpose of paragraph 4.3.19(d);*
  - (b) “the relevant natural persons who hold the position of senior managing official” as mentioned in paragraph 4.4.9; and*
  - (c) “senior management” as mentioned in paragraph 4.9.10(a) of the revised Guideline.*

Different terms and descriptions are used in the above-mentioned paragraphs of the revised Guideline as the contexts of the individual paragraphs are different and the application and meaning of the terms are different in each context. Relevant examples are provided in the paragraphs as far as possible for illustration.

Paragraph 4.3.19(d) of the revised Guideline is regarding a connected party of a customer and only applies to customers that are not corporations, partnerships, or trust or other similar arrangements, so these customers may include, for example associations, clubs, societies, charities etc. Whether a natural person is regarded as holding a senior management position or having executive authority of these customers depends significantly on the management structure of the customers concerned. It is generally for the TCSP licensee to determine based on its understanding of the customer’s management structure obtained through the customer due diligence (“CDD”) process. Examples of a person holding a senior management position or having executive authority in a customer may include the president, vice-president, secretary or treasurer of the customer.

Paragraph 4.4.9 of the revised Guideline is about identification of the beneficial owner in relation to a customer that is a legal person. Examples of positions of senior managing official of such customer include chief executive officer, chief financial officer, managing or executive director, president, or natural person(s) who has significant authority over a legal person’s financial relationships or ongoing financial affairs or has the ability to establish material business relationships for a legal person (including relationships with financial institutions that hold accounts on behalf of a legal person). When there is no natural person who is a “beneficial owner” as defined in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (“AMLO”) (see also paragraphs 4.4.6

to 4.4.8 of the revised Guideline), TCSP licensees should identify the relevant natural persons who hold the position of senior managing official, and take reasonable measures to verify their identities. TCSP licensees can rely on the information provided by the customer during the CDD process to identify who holds these positions.

Paragraph 4.9.10(a) of the revised Guideline is about obtaining approval from the senior management of the TCSP licensee for establishing or continuing business relationship with a customer when the TCSP licensee knows that a customer or a beneficial owner is a non-Hong Kong politically exposed person (“non-Hong Kong PEP”). It is for individual TCSP licensees to determine who qualifies as “senior management” for the purposes of being able to approve establishing / continuing a business relationship with a non-Hong Kong PEP, as organisational structures vary from TCSP licensee to TCSP licensee. TCSP licensees should maintain clear and documented policies setting out the persons within the institution who are able to approve non-Hong Kong PEP customer onboarding and a continued business relationship. In any event, senior management should only include those with sufficient seniority. The number and title of such persons will vary according to the size, type and institutional risk assessment of the TCSP licensee. Senior management may also include personnel in another jurisdiction if this reflects the TCSP licensee’s organisational structure and risk management practices.

**8. *Some respondents sought clarification on who should be treated as a person purporting to act on behalf of the customer (“PPTA”).***

A person may utilise a business relationship established between a TCSP licensee and another person (natural or legal person) or legal arrangement to conduct ML/TF activities. Recommendations 10 and 22 of the FATF Recommendations require designated non-financial businesses and professions (“DNFBPs”) to identify and verify the identity of any PPTA, and the AMLO adopts the same requirement.

Neither the FATF Recommendations nor the AMLO define the scope of PPTA. The revised Guideline explains that whether the person is considered to be a PPTA should be determined based on the nature of that person’s roles and the activities which the person is authorised to conduct, as well as the ML/TF risks associated with these roles and activities.

At a minimum, a person who is authorised to act on behalf of a customer to establish a business relationship with a TCSP licensee should always be treated as a PPTA.

TCSP licensees should adopt a framework of procedures for assisting their employees in assessing who would ordinarily be considered a PPTA for each customer segment. The approach and rationale should be consistent across departments and customer segments, to the extent possible.

As a general proposition, each legal person customer should have at least one PPTA (i.e. the person acting on behalf of a customer to establish the business relationship with the TCSP licensee as mentioned above) but there may be multiple PPTAs. PPTAs may also act alone or jointly.

**9. Clarifications are sought as to which jurisdictions are subject to a call by the FATF.**

Only jurisdictions listed in the FATF statement: “High-Risk Jurisdictions subject to a Call for Action” should be regarded as “jurisdictions for which this is called for by the FATF” under paragraph 4.15.1 of the revised Guideline. EDD measures that are proportionate to the risks should be conducted on business relationships and transactions with customers from these jurisdictions.

For the avoidance of doubt, conducting EDD measure is not mandatory for customers connected to jurisdictions listed in the FATF statement: “Jurisdictions under Increased Monitoring”. However, the fact that a customer is connected to such a jurisdiction should be taken into account in determining the overall risk profile of the customer.

In addition, TCSP licensees should pay attention to the emails issued by the Registry for Trust and Company Service Providers of the Companies Registry regarding the updates on the lists of persons and entities subject to financial sanctions by the United Nations Security Council (“UNSC”), the persons designated as terrorists or terrorists associates by the UNSC and the statements and documents published by the FATF in order to comply with the relevant AML/CFT requirements.