



Consultation conclusions on proposed amendments to the AML Guidelines of the Securities and Futures Commission (“SFC”)

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Introduction

In order to align with the Financial Action Task Force (“FATF”) standards as amplified by the FATF’s Guidance for a Risk-Based Approach for the Securities Sector (issued in October 2018) and to uplift the Anti-Money Laundering (“AML”) control environment to address the improvement points observed from the latest FATF Mutual Evaluation Report of Hong Kong (issued in September 2019), the Securities and Futures Commission (“SFC”) issued a consultation paper on 18 September 2020 for the proposed amendments to (1) the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations) (the “AML/CFT Guideline”) and (2) the Prevention of Money Laundering and Terrorist Financing Guideline issued by the SFC for Associated Entities (the “Guideline for AEs”), collectively the “SFC AML Guidelines”. On 15 September 2021, the SFC published the consultation conclusions with the details of the proposed amendments in the SFC AML Guidelines.

This publication provides a high level summary of the proposed amendments of the regulatory requirements of Anti-Money Laundering and Counter-Financing of Terrorism (“AML/CFT”) for Licensed Corporations (“LCs”) in Hong Kong.

Key takeaways

The key amendments under the revised SFC AML Guidelines are summarized as follows:

A. Institutional risk assessment
B. Risk indicators for institutional and customer risk assessments
C. Due diligence for cross-border correspondent relationships
D. Simplified and enhanced measures under a risk-based approach
E. Red-flag indicators of suspicious transactions and activities
F. Third-party deposits and payments
G. Person purporting to act on behalf of the customer
H. Responsibilities of the MIC of AML/CFT

A. Institutional risk assessment

An LC should keep risk assessment up-to-date and review the institutional risk assessment **at least every two years**, or more frequently upon trigger events with material impact on the firm's business and risk exposure.

B. Risk indicators for institutional and customer risk assessments

When conducting risk assessments, an LC should holistically take into account **all relevant risk factors**, rather than any single risk factor in isolation. While non-exhaustive examples are set out in Appendix A of the Revised AML/CFT Guideline, LCs should refer to other relevant guidance published by the FATF or industry bodies for sector or product-specific risk indicators from time to time and include those indicators in the holistic assessments as appropriate.

Key takeaways

C. Due diligence for cross-border correspondent relationships

Cross-border correspondent relationship refers to the provision of services for dealing in securities, dealing in futures contracts, or leveraged foreign exchange trading by a financial institution (referred as corresponding institution) to another financial institution located in a place outside Hong Kong (referred as respondent institution) where transactions effected on a principle or agency basis under the business relationships are initiated by the respondent institution.

The correspondent institution is required to apply **additional due diligence** and **risk mitigating measures** to address the specific risks arising from absence or incomplete information about the respondent institution's underlying customers and transactions. These additional measures are also applicable to cross-border correspondent relationships with affiliated companies as the transactions conducted for a respondent institution which is an overseas affiliated company do not necessarily pose lower Money Laundering and Terrorist Financing ("ML/TF") risks.

The cross-border correspondent relationships provisions do not require LCs to conduct Customer Due Diligence ("CDD") on a respondent institution's underlying customers. For direct access arrangements, LCs are only required to take further steps and be satisfied that the respondent institution has conducted CDD on its underlying customers and would provide the required customer information to LCs upon request.

Senior management approval is required for establishing cross-border correspondent relationships. An in-depth review of a respondent institution's AML/CFT controls is only required when a cross-border correspondent relationship poses a higher risk.

D. Simplified and enhanced measures under a risk-based approach

An **expanded list of illustrative examples** of possible simplified and enhanced measures under a risk-based approach are indicated in Appendix C of the Revised AML/CFT guideline. Specifically, it includes guidance of possible measures in related to the customer identification and verification of legal person, corporate, trust or other similar legal arrangements.

E. Red-flag indicators of suspicious transactions and activities

An **enhanced list of illustrative red-flag indicators** of suspicious transactions and activities are indicated in Appendix B of the Revised AML/CFT guideline. A transaction or activity displaying a red-flag indicator should not automatically be deemed suspicious. The LC should evaluate all the information before concluding whether there are grounds for suspicion.

Key takeaways

F. Third-party deposits and payments

The **facilitative guidance permitting delayed third-party deposit** due diligence was newly introduced to address the industry's concerns about practical difficulties in completing the due diligence process prior to settling transactions with deposited funds. LCs are only permitted to do so under exceptional situations where there is no suspicion of ML/TF and where appropriate risk management policies and procedures are in place. In any event, LCs are expected to perform the third-party deposit due diligence as soon as possible after settling transactions with the deposited funds.

G. Person purporting to act on behalf of the customer

Whether the person is considered to be a **person purporting to act on behalf of the customer** ("PPTA") should be determined based on the ML/TF risks associated with that person's roles and the activities which the person is authorised to conduct, as well as the ML/TF risks associated with the business relationship. A person authorised to conduct the same roles and activities could be a PPTA of one customer but not the other due to varying ML/TF risk levels posed by different customers.

H. Responsibilities of the MIC of AML/CFT

The revised SFC AML Guidelines expressly states that the Manger-In-Charge of the core function responsible for managing the AML/CFT function of an LC ("MIC of AML/CFT") can be its AML compliance officer. It also states that the MIC of AML/CFT can take on more responsibilities on third-party deposits and payments of the LC.





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Mazars is here to assist you in complying with the relevant regulatory requirements. Depending on the scope, coverage and specifics of your needs, our services with regard to AML compliance would typically involve one or more of the following:

How can Mazars help?

A. Regulatory reviews and advice

1. Review and provide compliance advisory on your firm's
 - policies and procedures,
 - processes and controls, and/or
 - governance and supervision.
2. Provide observations and recommendations to assist you in complying with the SFC's AML requirements and expectations, as well as common industry practice.
3. Provide pre-inspection advice or reviews.

B. Design and implementation of policies and procedures

1. Provide advice / assistance in designing and implementing enhancements to the compliance manual, including governance framework, as well as your policies, procedures and controls.

C. Training and insights

1. Provide training and education for staff, the board, senior management and compliance team.
2. Provide ongoing insights into how peer firms are dealing with the regulatory requirements and any common challenges encountered along the way.

We also take on special projects and ad-hoc mandates. We are flexible in our approach and offerings. Please feel free to contact us with any enquiries.

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