

Frequently Asked Questions on Customer Due Diligence

(Updated on 25 May 2017)

Q1: The Guideline on Anti-Money Laundering and Counter-Terrorist Financing (“AML Guideline”) requires Authorized Institutions (“AIs”) to obtain information on the business address of a corporate customer if its business address is different from the registered office address. What does business address generally refer to? Is there any requirement to have a Hong Kong business address? Does the HKMA mandate any specific type of address proof for verifying business address (e.g. a stamped tenancy agreement)?

A1: Business address means the location where a corporation operates or the principal place of a corporation’s activities, which can be in Hong Kong or overseas. Corporations, depending on their business nature, may operate in various kinds of location. For example, rather than occupying a physical office in a commercial building, start-ups and small and medium-sized enterprises (“SMEs”) increasingly use “hot desks” at service centres as their offices or operate from residential premises. There may also be occasions where it is not possible to produce a business address, for perfectly legitimate reasons, such as a company set up primarily for holding shares or assets without substantive business.

The HKMA requirements do not mandate a business address in Hong Kong. Business address is one aspect of customer due diligence (“CDD”) information of a legal person that assists AIs in constructing the risk profile of a customer. In addition to collecting the information, AIs should also seek to understand the rationale why a particular type of business address is provided or considered not applicable, taking into account the customer’s business model or mode of operation.

It is also important to note that the AML Guideline does not specify particular methods for verifying a customer’s business address. AIs are expected to take reasonable measures to verify the business address of a customer and in doing so may make reference to some of the generic examples in the guidance provided in

paragraph 4.8.10 of the AML Guideline which provides risk-based, non-exhaustive options in relation to verification of residential address of an individual customer, or adopt other possible arrangements depending on the circumstances of each case. AIs should provide options to customers, and not apply narrow requirements which will act as a potential barrier to account opening, such as accepting only one form of address proof (e.g. a stamped tenancy agreement) to verify the business address.

Q2a: Why are some corporate customers unable to provide a Hong Kong business registration certificate?

A2a: In the Hong Kong context, business registration refers to a business or corporation registered under the Business Registration Ordinance, Cap. 310. Business registration certificates contain useful CDD information, such as nature of business, address of the business or its branch, etc., and can help ascertain the existence of the business or corporation, and provide an indication that they may be subject to local tax.

However, AIs should be aware that a business registration certificate may not be applicable to every customer and some customers may therefore be unable to produce one. For example, since the Inland Revenue Department (“IRD”) will not accept any application for registration of businesses which have yet to commence operation, start-ups may not possess a business registration certificate at the time of account application. Moreover, some overseas corporations may not be required to register under the Business Registration Ordinance. AIs may make reference to IRD’s website for more information relating to business registration in Hong Kong¹.

Q2b: Do all corporate customers need to provide a business registration certificate for the purpose of verifying their identities?

A2b: Paragraph 4.9.8 of the AML Guideline indicates that a business registration certificate may not be applicable to every customer. For instance, for a Hong Kong incorporated company, AIs can generally rely on its certificate of

¹ <http://www.ird.gov.hk/eng/tax/bre.htm>

incorporation and company record filed at the Hong Kong Company Registry² to verify the identity of the customer without the need to obtain its business registration (e.g. business registration certificate). However, business registration is usually regarded as the primary document to verify the identity of a corporate customer that is not required to register with the Company Registry or similar authorities, such as a sole proprietorship, partnership and unincorporated bodies etc..

Q3: Are there any specific CDD requirements for start-ups and SMEs?

A3: Similar to AML requirements in other jurisdictions, the HKMA's requirements are generic to all corporates and comparatively high level in order to provide flexibility to AIs to apply them to different types of customers. There are no specific or special requirements for, or mention of, start-ups or SMEs. However, AIs should not adopt a one-size-fit-all approach in the application of CDD requirements. AIs should ensure that design and implementation of their CDD requirements reflect both the operation and profile of these companies, the risk level as assessed by the AI concerned and any other relevant considerations.

Q4: Do AIs need to establish source of wealth for every customer?

A4: No. The requirement to collect source of wealth information ordinarily applies to higher risk situations and therefore the HKMA does not require AIs to establish source of wealth for each and every customer.

For most customers (i.e. non-high risk customers), certain information obtained as to understand the purpose and intended nature of the business relationship (unless it is obvious), e.g. occupation or employment of individual customers, or business nature of corporate customers, etc., should in general be sufficient for AIs to have a basic understanding of the customer's profile.

Even if a customer is regarded as high risk and certain source of wealth information may be required or in practice collected, there is no expectation to apply the same source of wealth procedures to all customers in the same manner, or collect evidence dating back decades when the risk does not justify doing so,

² For the avoidance of doubt, the requirement to understand the powers that regulate and bind the company remains unchanged.

as it is often impractical. The HKMA has conducted training and issued guidance in this area in January 2016, which may be referred to understand our expectations³.

Q5: What is the requirement on who should be present at account opening for a corporate and is it a requirement to have all directors and beneficial owners be present at account opening?

A5: Generally, a corporate account is opened in the name of the corporate by a single individual who acts on behalf of that corporate. The basic requirement is for AIs to identify and verify the identity of that individual as well as obtain written authority to verify that the individual has the authorization of the corporate to establish a business relationship with the AI concerned.

While information on connected parties of the corporate, where appropriate (e.g. identities of beneficial owners, names of directors, etc.), may be required during the CDD process, the presence of two or more, or all directors or beneficial owners at the time of account opening is not required by the HKMA.

Q6: Are AIs required to understand the rationale for an overseas company to seek to establish a business relationship in Hong Kong? Are AIs required to take additional CDD measures if a company is incorporated offshore or has foreign directors or beneficial owners?

A6: Obtaining information on the purpose and intended nature of the banking relationship being established, including the reason for establishing the relationship, is a standard CDD measure applicable to all types of customers and cascades from international standards which Hong Kong is required to apply. In some cases the purpose and intended nature will be obvious or self-evident and therefore may not need to be provided by the customer, having regard to the types of accounts to be established or services/products to be used.

Applications for account opening should not be rejected merely because the customer is incorporated or established offshore, or because the beneficial owners or directors of a corporate customer are non-residents. AIs'

³ http://www.hkma.gov.hk/media/eng/doc/key-functions/banking-stability/aml-cft/Understanding_Source_of_Wealth_Requirements.pdf

on-boarding process should recognise that offshore establishment and non-resident directors, etc. are common profiles for many corporates seeking banking services in an international financial centre, like Hong Kong. Similarly, in addition to collecting the information, AIs should view residence of connected parties as only one part of the CDD and risk profiling exercise, and understand the rationale why a particular type of business relationship is sought, taking into account the customer's business model or mode of operation.

Q7: Why is certification of documents required as part of the CDD process?

A7: AIs should identify and verify the identity of a customer by reference to documents, data or information provided by a reliable and independent source. To ensure reliability, an AI should generally have sight of the original identification documents by its staff and retain a copy of the identification document. However, where the customer is unable to produce an original document (e.g. a customer is not physically present), AIs may consider accepting a copy of the identification document which is certified to be a true copy by a suitable certifier.

A list of suitable certifiers is provided in paragraph 4.12.4 of the AML Guideline, which is non-exhaustive, allowing AIs to accept other independent and reliable certifiers (e.g. a professional third party or a bank staff) where appropriate to do so, having consideration to paragraph 4.12.6 of the AML Guideline. Furthermore, there is no requirement that a certifier must be located in Hong Kong.

Certification can be time consuming and costly, so there is no need or expectation to require certification for all other CDD information or documents provided by the customer, or require certification at all if the AI is able to check the documents against public sources. Moreover, as a general rule, customers should always be provided with the opportunity, if they wish to do so, to present their original documents to bank staff.

Q8: Who should be treated as a person purporting to act ("PPTA") on behalf of a corporate customer pursuant to section 2(1)(d) of Schedule 2 to the AMLO?

A8: A corporate customer often has a number of individuals who are authorized to give instructions to the AI concerned on various activities that may be conducted through the account or the business relationship. Whether the individual is considered to be a PPTA on behalf of a corporate customer should be determined based on the nature of that person's roles and the activities which he or she is authorized to conduct, as well as the ML/TF risks associated with these roles and activities. For example, authorized dealers and traders in an investment bank or asset managers would not ordinarily be considered to be a PPTA. For the avoidance of doubt, the person who is authorized to act on behalf of a customer to establish a business relationship with an AI should always be treated as a PPTA.

Irrespective of whether an individual is considered to be a PPTA for AML/CFT purposes, AIs should continue to ensure that operational risk and / or fraud controls are in place.

Q9: Can the HKMA provide more examples of identification documents that can be used for verifying a customer's identity in addition to those already specified in Chapter 4 of the AML Guideline?

A9: Since the AMLO came into effect in April 2012, the HKMA has made it very clear that the contents of the AML Guideline are not the exhaustive means by which the legal requirements can be met. AIs are afforded flexibility, based on professional judgement to determine whether alternative measures can meet those requirements.

In respect of identification documents that can be used for verifying a customer's identity, the legal requirement refers to documents provided by a reliable and independent source (e.g. documents issued by a government body). The HKMA has illustrated this with a number of examples in paragraphs 4.8.2 to 4.8.6 of the AML Guideline, which are not exhaustive and do not preclude AIs from accepting alternatives provided by other reliable and independent sources. Guidance or training should be provided to frontline staff on how to handle uncommon identification documents provided by customers, and escalation or advice should be sought rather than rejecting the application upfront.

Q10: What should AIs do where identification documents of customers are in a

foreign language? Does the translation need to be performed by professional third party (e.g. solicitor)?

A10: Guidance on identification documents in a foreign language is provided in paragraph 4.5.1 of the AML Guideline and two examples are provided. These examples are non-exhaustive which means that AIs can adopt other alternative means so long as it is reasonably satisfied that the documents provide evidence of the customer's identity. There is no requirement that the translation has to be performed by a professional third party (e.g. solicitor) or someone who is qualified; AIs may obtain a translation from a reliable source, which may include technology solutions and commonly used translation tools.

Q11: Can AIs make the purchase of an insurance policy or an investment product a condition for opening a bank account?

A11: No, it is unacceptable for an AI's decision to open a bank account to be conditional on the customer's agreement to purchase wealth management products or services such as an insurance policy.