HONG KONG MONETARY AUTHORITY
香港金融管理局

Consultation Conclusions on Proposed Amendments to Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Authorized Institutions)

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I. Introduction

1. Following the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance 2022 published in the Gazette on 16 December 2022, the Hong Kong Monetary Authority (HKMA) conducted an industry consultation between 18 January 2023 and 8 March 2023 on proposed amendments to the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Authorized Institutions) (AML/CFT Guideline).

2. Throughout the amendment exercise, the HKMA engaged closely with the other relevant authorities (RAs) under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) with a view to setting common, principles-based anti-money laundering and counter-financing of terrorism (AML/CFT) standards across different sectors. However, some AML/CFT requirements may differ across sectors given the differences in sectoral risks and context.

3. By the end of the consultation, comments were received from four industry associations. These consultation conclusions summarise the key comments received and the HKMA's responses. The revised AML/CFT Guideline (see ***Annex***) takes into account the latest international standards set by the Financial Action Task Force (FATF) as well as comments from the respondents and other RAs.

II. Major comments and HKMA's responses

1. Digital identification system

1.1. Respondents sought clarification on what was meant by "a digital identification system that is recognised by the HKMA" and whether technology solutions being used by Authorized Institutions (AIs) for remote customer on-boarding would be recognised digital identification systems. Respondents also raised questions about digital identification systems other than iAM Smart, such as those recognised outside Hong Kong, and suggested that digital identification systems recognised by other RAs should also be accepted.

1.2. The HKMA clarifies that adding digital identification systems to section 2(1)(a) of Schedule 2 to the AMLO (Schedule 2) as an alternative means for identity verification does not affect current industry practices of remote customer on-boarding. In recent years, the HKMA has provided AIs with guidance on remote on-boarding, which remains applicable. In other words, AIs can continue to deploy appropriate technology solutions [1] or use iAM Smart [2] for remote on-boarding of individual customers.

1.3. Most retail banks in Hong Kong are using technology solutions to assist them in meeting the principles of identity authentication and identity matching set out in the HKMA's circular of 1 February 2019. Having regard to their nature and operational differences, such technology solutions and iAM Smart fall under different subsections of section 2(1)(a) of Schedule 2 (see table below).

Means of identity verification	**Common technology solutions**	**iAM Smart**
Relevant provisions	Section 2(1)(a)(i) *Documents provided by a governmental body (e.g. identity cards, passports)*	Section 2(1)(a)(iiia) *Data and information provided by a recognized digital identification system*

[1] HKMA's circular – Remote on-boarding of individual customers, 1 February 2019
[2] HKMA's circular – Remote on-boarding and iAM Smart, 24 May 2021

1.4. At present, iAM Smart, developed and operated by the Hong Kong Government, is a digital identification system meeting relevant FATF requirements[3] and is recognised by RAs under section 2(1)(a)(iiia) of Schedule 2. The Hong Kong Government has not set any assurance framework nor standard for assessing digital identification systems operated and developed by private-sector companies, and at this stage has not given any indication it intends to assure, audit or certify such digital identification systems. Therefore, AIs should not regard these technology solutions as digital identification systems for the purpose of complying with section 2(1)(a) of Schedule 2.

1.5. Using digital identification systems developed and operated by governments in other jurisdictions for customer on-boarding in Hong Kong is complicated and involves wider policy considerations. The HKMA is open to discussing specific proposals from AIs through existing channels like the Fintech Supervisory Chatroom.

2. Beneficial ownership of a trust

2.1. Respondents expressed concerns over the new definition of "beneficial owner" in the AMLO in relation to trusts or other similar legal arrangements, particularly the removal of the 25% threshold for trust beneficiaries resulting in more persons needing to be verified by AIs. Respondents recommended that the HKMA should provide guidance on how execution issues could be addressed.

2.2. As explained in the Legislative Council Brief[4], the objective of amending the definition of "beneficial owner" in relation to a trust under the AMLO is to align it with that of "controlling person" under the Inland Revenue Ordinance (IRO), which implements the Common Reporting Standard (CRS)[5] promulgated by the Organisation for Economic Co-operation and Development. The amended definition of "beneficial owner" in relation to a trust under the AMLO will also be in line with the FATF Recommendations and other jurisdictions which have implemented these international requirements.

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3 FATF Guidance on Digital Identity, March 2020

4 Legislative Council Brief of the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022 (File Ref.: B&M/4/1/41C)

5 Relevant requirements in the CRS refer directly to requirements relating to "beneficial owner" under the FATF Recommendations.

2.3. The HKMA appreciates the industry's concerns on this issue. Based on the HKMA's engagement with the industry during the AMLO amendment exercise and drawing reference to the experience of other jurisdictions that have implemented the amended definition, the following additional guidance is provided in the revised AML/CFT Guideline:

(i) Class of beneficiaries

For a beneficiary of a trust designated by characteristics or by class (e.g. where trusts have no defined existing beneficiaries when they are set up, or in the case of discretionary trusts), AIs can meet the identity verification requirements for trust beneficiaries by obtaining sufficient information about the beneficiary to satisfy itself that it will be able to establish the identity of the beneficiary at the time of payout or when the beneficiary intends to exercise vested rights.

(ii) Reasonable measures to verify trust beneficiaries

A new paragraph 4.4.13 has been added allowing AIs to verify the identities of beneficiaries by reference to the information provided by the trustee following a risk-based approach.

2.4. The FATF is currently reviewing its requirements relating to beneficial ownerships of legal arrangements and will publish a guidance paper in due course. The HKMA is participating in the FATF discussion and will provide industry with more guidance on this matter where appropriate.

3. Politically exposed persons (PEPs)

3.1. Respondents welcomed the greater flexibility in the treatment of former PEPs who are no longer entrusted with a prominent public function, allowing AIs to take a risk-sensitive approach in determining if enhanced due diligence (EDD) measures need to be applied. Respondents commented that requiring senior management approval for treatment of former PEPs in all cases could be onerous.

3.2. In light of the industry comments, the HKMA has fine-tuned the proposal by removing the regulatory requirement for senior management approval when AIs decide to disapply EDD measures to former PEPs. AIs should ensure that effective internal controls, procedures and oversight are in place for the treatment of former PEPs on a risk-sensitive basis.

3.3. Another key change to the PEP requirements relates to the treatment of PEPs from other parts of China. While these changes may not have significant implications for every AI[6], the HKMA is engaging an external consultant to assist in preparing a new guidance paper on AML/CFT controls regarding PEPs (including former PEPs), and will consult the industry later this year.

4. Virtual assets (VAs) and virtual asset service providers (VASPs)

4.1. A key objective of the legislative amendment is to implement the FATF Standards on VAs and VASPs by introducing a licensing regime for, and imposing statutory AML/CFT obligations on, VASPs. Respondents referred to the *Consultation Paper on the Proposed Regulatory Requirement for Virtual Asset Trading Platform Operators Licensed by the Securities and Futures Commission* (SFC), which contained a proposed new Chapter 12 on virtual assets in the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) (SFC Guideline), and asked whether corresponding amendments would be made in the AML/CFT Guideline.

4.2. The proposed SFC Guideline applies to Licensed Corporations and SFC-licensed VASPs. AIs, including Registered Institutions (RIs), should continue to comply with the AML/CFT Guideline published by the HKMA. Footnote 1 of the AML/CFT Guideline provides that RIs and associated entities that are AIs are required to have regard to the SFC Guideline, and it has been updated to reflect the latest development.

4.3. AIs should continue to observe the guidance provided in the HKMA's circulars published on 28 January 2022 and 27 April 2023. It is worth noting that the AMLO does not prohibit AIs from carrying out virtual asset transfers on behalf of customers provided that the requirements set out in section 13A of Schedule 2 are met. AIs may approach their usual supervisory contacts in the AML & Financial Crime Risk Division of HKMA if there are any questions in this regard.

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6 "*Financial institutions that are part of international financial groups adhere to their group policy and go beyond the local legal requirements by applying the same enhanced measures to both domestic and foreign PEPs.*" (see paragraph 340, FATF Mutual Evaluation Report of Hong Kong, China, September 2019)

5. Bearer shares and nominee directors

5.1. Respondents sought clarification on the proposed amendments in relation to bearer shares, nominee directors and nominee shareholders, and how the proposed amendments would affect the way customer due diligence (CDD) is conducted if a business relationship involves bearer shares, nominee directors or nominee shareholders.

5.2. The proposed amendments in relation to bearer shares and nominee directors reflect the latest updates to FATF Recommendation 24 on transparency and beneficial ownership of legal persons. The FATF has also issued *Guidance on Beneficial Ownership of Legal Persons* in March 2023. AIs can refer to the relevant FATF Recommendations and Guidance for specific interpretations and examples.

5.3. The proposed amendments in relation to bearer shares, nominee directors and nominee shareholders are technical in nature and should not affect the way CDD is conducted. As far as nominee directors are concerned, the proposed amendment does not add an expectation for AIs to make proactive checks on whether directors are nominee directors.

6. Other comments

CDD on dealers in precious metals and stones (DPMS)

6.1. Respondents asked for more guidance how CDD should be conducted on customers who are DPMS. As a general principle, the HKMA does not provide specific guidance on how CDD measures should be conducted on customers from particular sectors. AIs are reminded that there is no one-size-fit-all methodology for conducting CDD as each customer may have different characteristics, even when they are from the same business sector. It is therefore for AIs to conduct effective customer risk assessments and take appropriate measures that are commensurate with the assessed risks of money laundering and financing of terrorism (ML/TF).

6.2. Similar to other sectors regulated for AML/CFT under the AMLO, the new registration and regulatory regime for DPMS provides additional safeguards to prevent DPMS from being misused by criminals for ML/TF. Therefore, the DPMS regime should facilitate AIs' on-boarding processes to meet the legitimate need of banking services from DPMS in relation to their regulated activities. AIs can follow their established approaches for customers from other regulated sectors and apply them to the DPMS sector.

Existing customers

6.3. Respondents sought clarification on how updated CDD requirements introduced by the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance 2022 should be applied to existing customers. The HKMA's view is that, given these updated CDD requirements are technical in nature, AIs can apply them to existing customers through ongoing CDD processes (i.e. upon periodic reviews and/or trigger event reviews) in accordance with section 5(1)(a) of Schedule 2 and Chapter 5 of the AML/CFT Guideline. In particular, AIs should apply relevant updated CDD requirements to existing customers that present high ML/TF risks (e.g. non-Hong Kong PEPs), upon or before the next CDD reviews. In applying the updated requirements, AIs should communicate clearly with the affected customers and avoid adversely affecting the customer experience as far as possible.

Other comments

6.4. This consultation conclusion only sets out the major comments received during industry consultation and the HKMA's responses. AIs are welcome to use existing channels (aml@hkma.iclnet.hk) to raise AML/CFT questions. The HKMA will consider whether any issue raised is of wider industry interest that may warrant further guidance and, if so, the appropriate channel for providing such guidance.

III. Conclusions and way forward

1. The revised AML/CFT Guideline will be published in the Gazette on 25 May 2023 and will take effect on 1 June 2023 together with the relevant provisions in the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance 2022.

2. The HKMA would like to take this opportunity to thank all respondents for their comments and suggestions. The HKMA will make preparations for related supervisory work and monitor industry implementation of the revised AML/CFT Guideline. The HKMA will continue to work closely with the banking industry and provide further guidance as appropriate in the light of changing risk landscape.