

Compliance issues on Anti-Money Laundering and Counter-Terrorist Financing

Dickson Chui
Senior Manager (Enforcement) –
Anti-Money Laundering
9 November 2015



Office of the Commissioner of Insurance
The Government of the Hong Kong Special Administrative Region

Disclaimer

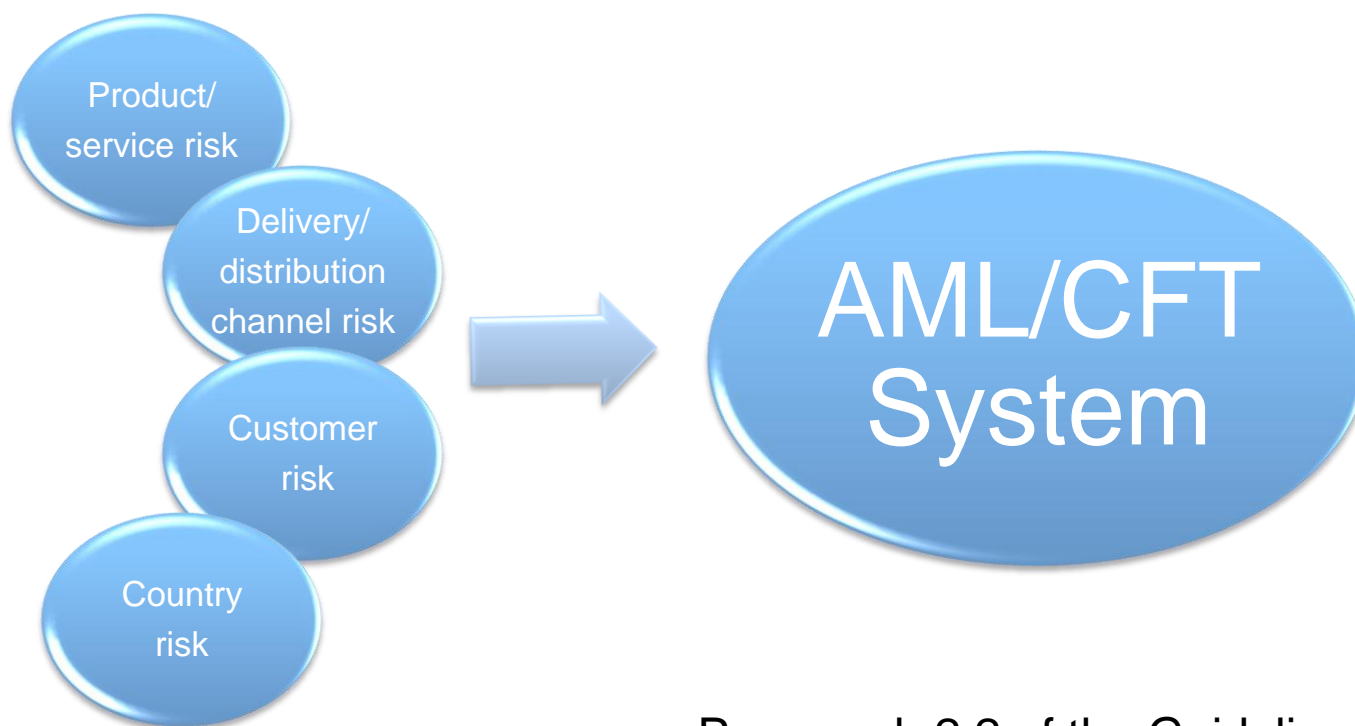
- *This part of presentation aims to enhance the audience's understanding of certain compliance issues on anti-money laundering and counter-terrorist financing. It is not intended to cover all the statutory requirements applicable to insurance institutions. Insurance institution should seek its own professional legal advice in ensuring its compliance with the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance and Guideline on Anti-Money Laundering and Counter-Terrorist Financing.*
- *The PowerPoint materials of this presentation may be used for personal viewing purposes or for use within an insurance institution. These materials may not be reproduced for or distributed to third parties, or used for commercial purposes without the OCI's prior written consent.*

Outline

- I. Money Laundering / Terrorist Financing (“ML/TF”) Risk Assessment at institutional level

- II. Politically Exposed Persons (“PEPs”)

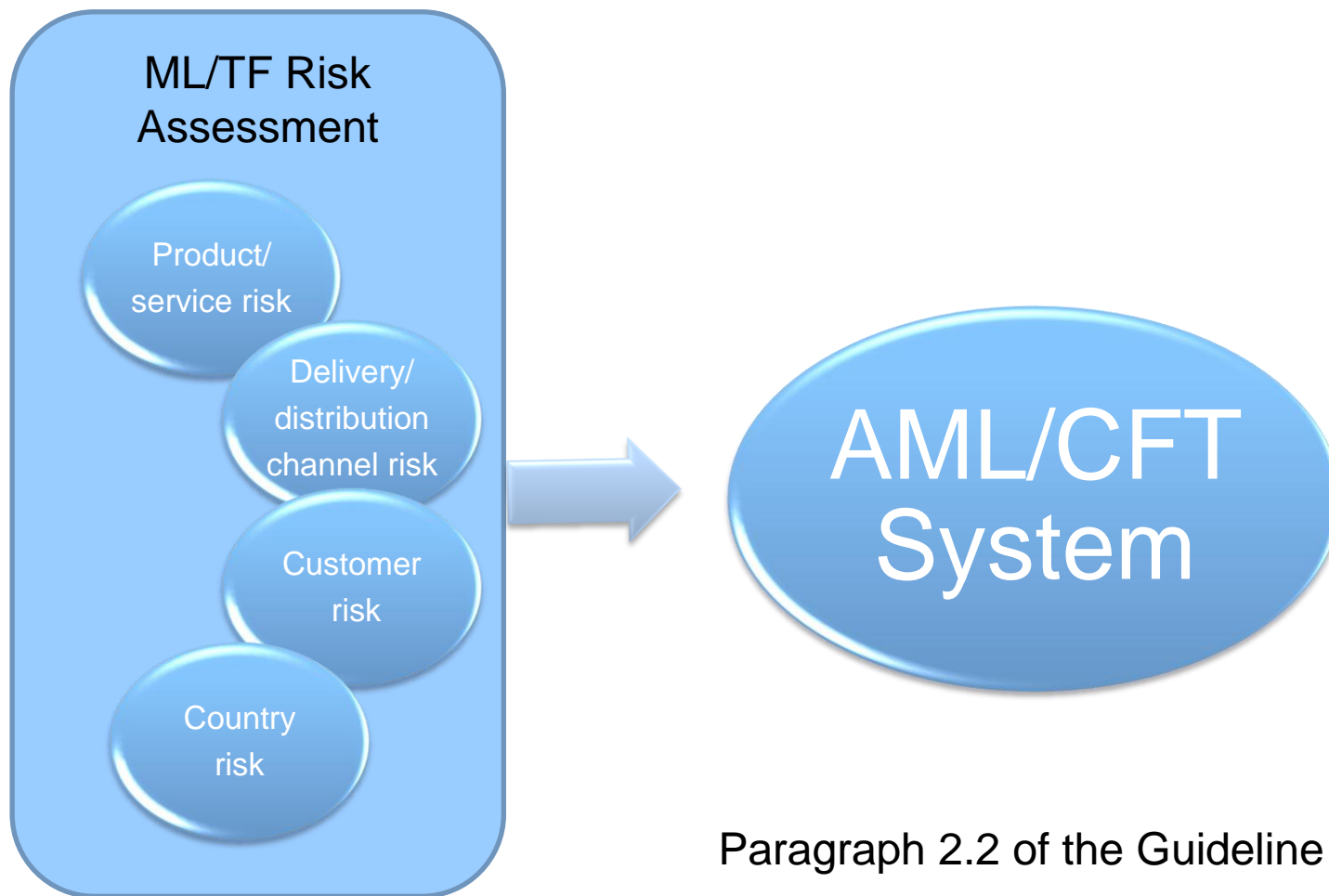
ML/TF Risk Assessment



Paragraph 2.2 of the Guideline



ML/TF Risk Assessment



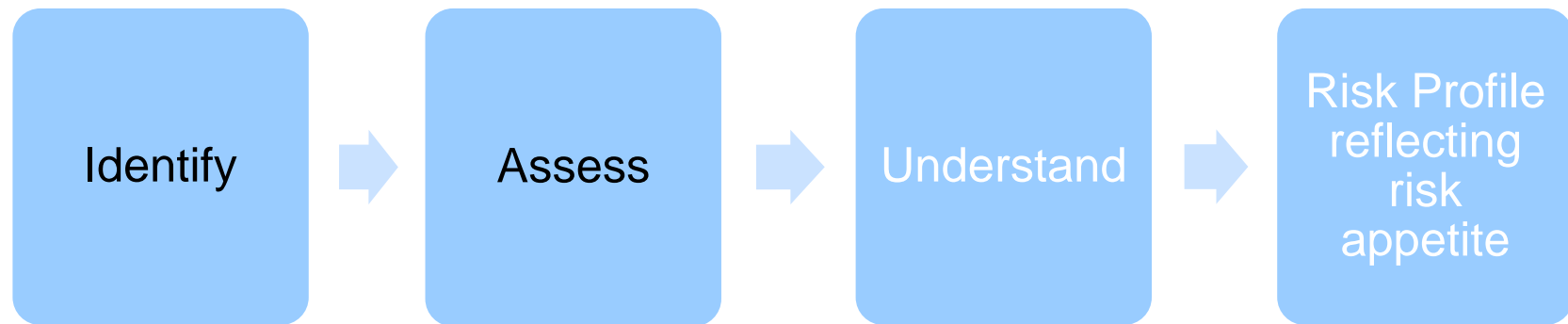
Paragraph 2.2 of the Guideline

How to conduct a ML/TF risk assessment?

- Various approaches to conduct a risk assessment
- Commensurate with nature/size/global footprint of business
- Not necessarily complex



Process of ML/TF Risk Assessment



Factors to consider



Qualitative

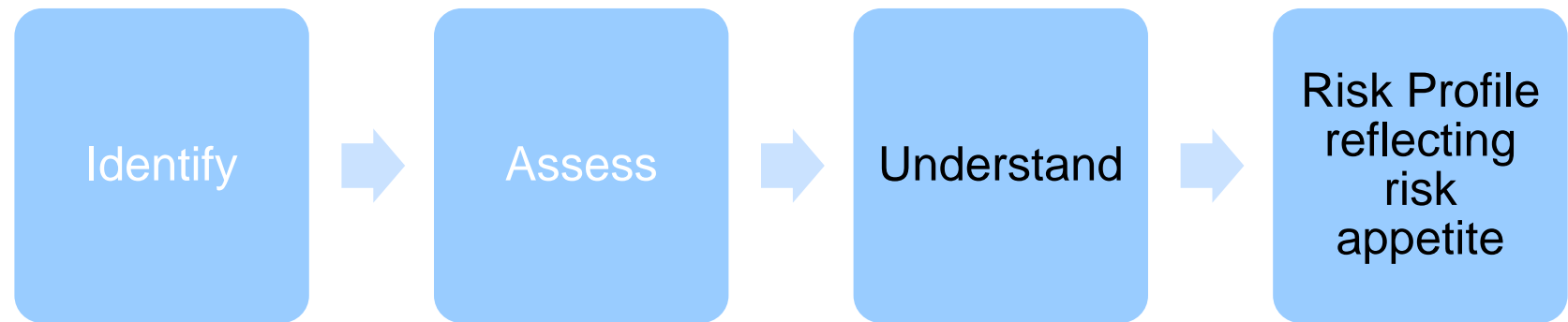
- Nature, scale, diversity and complexity of business
- Distribution channels
- Geographical location/Country
- Reliance on third party service providers
- Previous internal audit/regulatory findings



Quantitative

- Products
- Customer base
- Volume/nature of transactions
- AML compliance employee turnover
- Expected client/revenue growth

Process of ML/TF Risk Assessment



How to make use of outcome of ML/TF Risk Assessment?

AML/CFT system

- Design and implement appropriate AML/CFT system commensurate with the identified risks

Resources and Priorities

- Resources and priorities are aligned with risks
- Time
- Budget
- Manpower

Senior Management

- Ensure senior management are made aware of the key risks which assists them when making strategic commercial decisions

Politically Exposed Persons ("PEPs")

Terrorists/Sanctioned designations	PEPs
Published in the Gazette	Not published in the Gazette
Maintain a database and conduct ongoing screening against its client base (6.20 & 6.22)	Establish and maintain effective procedures for determining whether a customer / beneficial owner of a customer is a PEP (4.13.9)
Prohibit making available or dealing with any funds or economic resources for the benefit of or belonging to a designated party (6.3)	Should not stigmatize PEP as such being involved in criminal activity
Offence to make any property or financial services available to or for the benefit of a terrorist (6.13)	Need not to refuse business relationship simply because the client is PEP
Offence to collect property or solicit financial services for the benefit of a terrorist (6.13)	EDD measures required (4.13.11)

PEPs

Politically exposed person is defined in the AMLO as:

- (a) an individual **who is or has been entrusted with a prominent public function** in a place outside the People's Republic of China and
 - (i) includes a head of state, head of government, senior politician, senior government, judicial or military official, senior executive of a state-owned corporation and an important political party official;
 - (ii) but does not include a middle-ranking or more junior official of any of the categories mentioned in subparagraph (i);
- (b) a spouse, a partner, a child or a parent of an individual falling within paragraph (a) above, or a spouse or a partner of a child of such an individual; or
- (c) **a close associate** of an individual falling within paragraph (a).

PEPs

- May not have direct access to information such as what **a reasonable income** would be for a foreign public official in a particular position – more difficult to assess information
- Corrupt PEPs could circumvent AML/CFT safeguards by establishing business relationships with **use of legal entities**

PEPs

Apply all the following EDD measures:

- (a) obtaining approval from its senior management;
- (b) taking reasonable measures to establish the customer's or the beneficial owner's source of wealth and the source of the funds; and
- (c) applying enhanced monitoring to the relationship in accordance with the assessed risks.

Domestic PEPs

- (a) an individual who **is or has been entrusted with a prominent public function** in a place **within the People's Republic of China** and
 - (i) includes a head of state, head of government, senior politician, senior government, judicial or military official, senior executive of a state-owned corporation and an important political party official;
 - (ii) but does not include a middle-ranking or more junior official of any of the categories mentioned in subparagraph (i);
- (b) a spouse, a partner, a child or a parent of an individual falling within paragraph (a) above, or a spouse or a partner of a child of such an individual; or
- (c) a **close associate** of an individual falling within paragraph (a) (see paragraph 4.13.6).

Domestic PEPs

- If an individual is known to be a domestic PEP, the FI should **perform a risk assessment** to determine whether the individual poses a higher risk of ML/TF
- In any situation that the FI assesses to present a higher risk of ML/TF, it should **apply EDD and enhanced monitoring**

Domestic PEPs

Factors to consider when performing a risk assessment:

- Country risk, customer risk, product/service risk, delivery/distribution channel risks
- Understand particular **characteristics and nature of the public functions** that the PEP has been entrusted with, e.g. seniority, nature of position held, access to or control over public funds

Time limit of PEP

- Open ended approach – “once a PEP – could always remain a PEP”
- For domestic PEP, handling of a customer who is no longer entrusted with a prominent public function should be **based on an assessment of risk and not on prescribed time limit**
- Possible risk factors: level of influence the individual could still exercise, the seniority of position that the individual held as PEP

Commercial database

- Use of commercial databases should **never replace traditional CDD processes** – wrong assumption that if a name is not in such a database then the client is not a PEP
- Such databases are simply **additional sources of information**
- **Not simply outsourcing the risk assessment**
- Should **understand parameters** used to populate the database and the **technical capabilities** of the database

Self-declaration

- Provide customer with a PEP definition and ask the customer if they meet the definition
- Shift obligation to their customers – **not an acceptable practice**
- Customer may not be able to determine if they are indeed a PEP

PEPs

- When suspicious transactions/activities are identified, a suspicious transaction report (“STR”) should be filed.



Thank You



Office of the Commissioner of Insurance
The Government of the Hong Kong Special Administrative Region