

Briefing Session: Guideline on Anti-Money Laundering & Counter Terrorist Financing

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Disclaimer

- *This presentation provides a general overview of the Guideline on Anti-Money Laundering and Counter-Terrorist Financing. It does not cover all requirements applicable to insurance institutions. It should be read in conjunction with the full details of the Guideline. Insurance institutions should seek their own professional legal advice in ensuring their compliance with the Guideline and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance.*
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1. General introduction

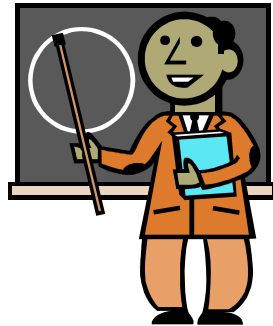
2. Overview of the key areas* by chapters

*Factors considered:

- Revised guidance
- New guidance
- Questions and enquiries received



General Introduction: Guideline on AML/CTF



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Guideline on AML/CTF

- Issued pursuant to s7 of AMLO & s4A of ICO
- Gazetted on 27 January 2012
- **Effective on 1 April 2012**
- Will replace “Guidance Note on Prevention of ML and TF”
- **Applicable to** Insurers, Reinsurers, Insurance Agents and Insurance Brokers carrying on or advising on long term business

1 April 2012



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Guideline - purposes

1.4: Purposes –

- a. General background on ML/TF and the applicable legislation
- b. Guidance in designing and implementing AML/CTF systems (FIs have regards to own circumstances)

so as to meet statutory & regulatory requirements



Guideline – consideration of individual & special circumstances

1.6 – 1.7:

- **Not exhaustive** list of means
- But if departure from the Guideline, FIs will have to stand **prepared to justify** such to IA with documented rationale

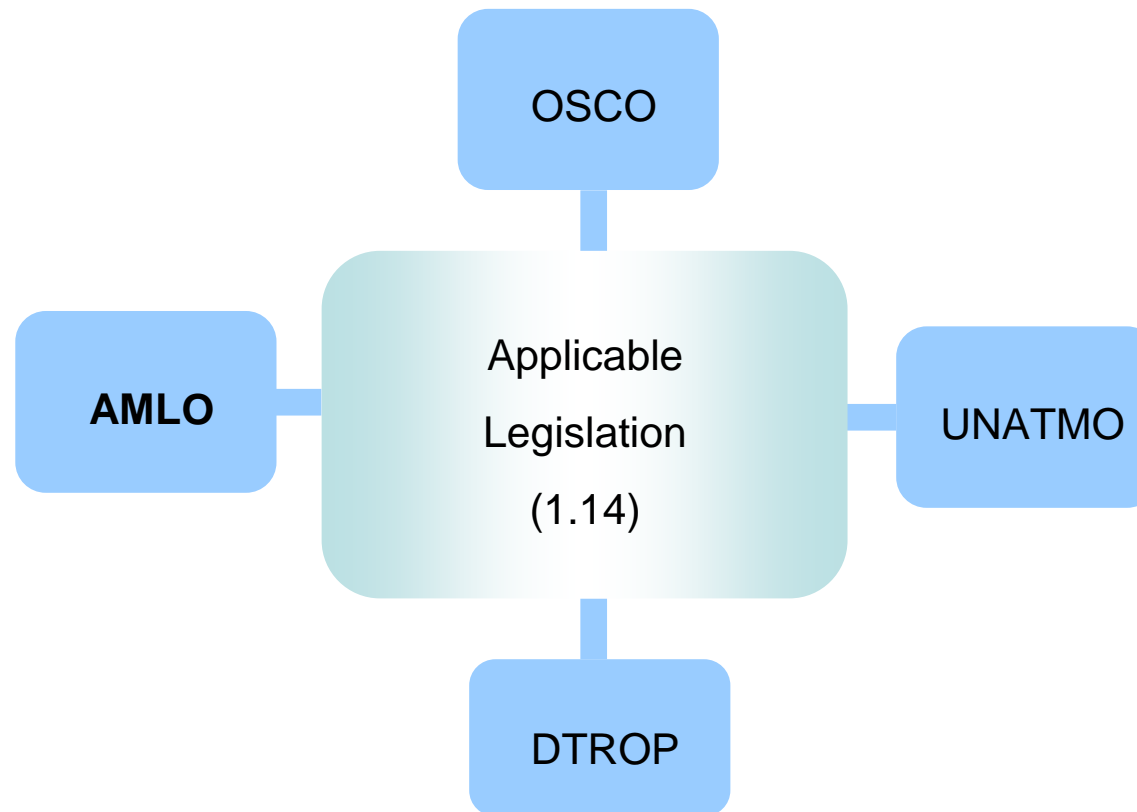


Chapter One: ***Relevant legislation, Liabilities***



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Chapter 1 – legislation



Chapter 1 - liabilities

1.8a: Fitness & Properness (ICO)

1.15 – 1.18: max. 7 yrs imprisonment &
\$10m fine (AMLO)

1.22 – 1.25: max. 14 yrs imprisonment &
a fine (DTROP, OSCO,
UNATMO)



Chapter Two: AML/CFT systems & Business conducted outside HK



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Chapter 2 – AML/CFT systems

2.2: **establish & implement** AML/CFT systems,
taking into account risk factors (2.3-2.8)

2.1 & 2.9:

AML/CFT systems = internal P&P + Controls*

- * senior management oversight
- * appointing CO and MLRO
- * compliance & audit function
- * staff screening & training



Chapter 2 – Business conducted outside HK

2.19: HK incorporated FI with overseas branches or subsidiary undertakings; group AML/CFT policy

2.20: If unable to comply because not permitted by local laws...





Chapter Three: Risk-Based Approach



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Chapter 3 – RBA at customer level

RBA: **identify & categorize** ML/TF risks at customer level and apply **corresponding measures**

- 3.2: - **determine** the extent of CDD measures & ongoing monitoring, using RBA
- measures **must** comply with the AMLO requirements

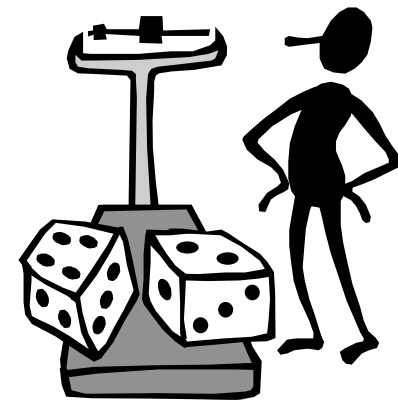


Chapter 3 – Risk rating on customer

3.4, 3.6: assess ML/TF risks of customers by assigning a **risk rating** to the customers; **adjust** risk assessment from time to time

3.5: consider risks factors:

- country
- customer
- product/service
- delivery/distribution channel



3.8: record keeping and **justification**



Chapter Four: Customer Due Diligence



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Chapter 4 – CDD measures

4.1.3: CDD measures

- a. customer ▶
- b. beneficial owner (BO) ▶
- c. purpose & intended nature of the business relationship (unless obvious) ▶
- d. persons purports to act on behalf of the customer ▶
- e. beneficiary (4.4a.1) ▶



Appendix A: reliable and independent source documents



Chapter 4 – CDD on natural persons

4.8.1

- a. Full name
- b. DOB
- c. Nationality
- d. Identity document type and number
- e. Residential address (4.8.8)

Methods of verification : 4.8.2 – 4.8.6 & 4.8.10



Chapter 4 – CDD on corporations

4.9.7

- a. Full name
- b. Date & place of incorporation
- c. Registration or incorporation number
- d. Registered office address in place of incorporation
- e. Business address (if different, to verify as far as practicable)
- f. Names of all directors (verification on RBA) (4.9.9)



Chapter 4 – CDD on corporations

4.9.8

- a. COI & BR
- b. M&A
- c. Ownership chart (for intermediate layers, record company name and place of incorporation) (4.9.15)
- d. Company registry search report etc. (4.9.11)

N/A to companies falling within s4(3) of Schedule 2



Chapter 4 – CDD on BO

4.3.5:

- Identify **ALL**
- Verification:
 - a. 25% threshold (for normal risk)
 - b. 10% threshold (for **high** risk)



4.3.6:

- Obtain residential address
- Verify it by taking reasonable measures



Chapter 4 – Purpose & intended nature of business relationship (unless obvious)

4.6.2:

- **Record** on the policy application document
- Relevant info eg. nature of the business, expected source & origin of the funds



Chapter 4 – Person purports to act on behalf of the customer

4.4.1:

- Identify & take reasonable measures to verify the person
- **Verify the person's authority to act** eg. board resolution or similar written authority (footnote 14)



Chapter 4 – Person purports to act on behalf of the customer

4.4.4: for long lists of a/c signatories & low risk cases

- Signatory list with **names** (independent verification by HR, Head of Compliance etc)
- **Still need to verify** the authority to act



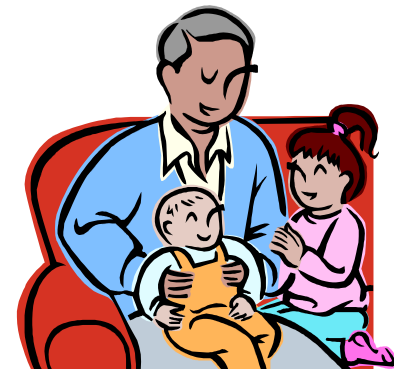
Chapter 4 – CDD on beneficiary

4.4a.1:

- **Record** the name(s) or **obtain** sufficient information (if designated by description)
- Verify at the time of (first) **payout** (4.4a.2)

4.4a.4:

- Identify the BO
- Verify the BO for **high** ML/TF risks



Chapter 4 – CDD measures

4.1.3: CDD measures

- a. customer
- b. beneficial owner (BO)
- c. purpose & intended nature of the business relationship (unless obvious)
- d. persons purports to act on behalf of the customer
- e. beneficiary (4.4a.1)



Appendix A: reliable and independent source documents



Chapter 4 – Timing of identification & verification of identity

4.7.3: Complete CDD before establishing any business relationship, except:

- 4.7.4 & 4.7.5a – conditions *including* ML/TF risks are effectively managed etc.
- 4.7.8 – **complete verification** within the specified timeframe
 - » 30 working days
 - » 90 working days
 - » 120 working days



Chapter 4 – Keeping customer info up-to-date & relevant

4.7.12, 4.7.12a:

- on *triggering events*
- **Annual review** for all high risk customers



Chapter Four:

Simplified Due Diligence, Enhanced Due Diligence, Special Requirements



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Chapter 4 – SDD

4.10.1: SDD=**CDD** except not required to identify & verify BO; **but** ongoing monitoring is **still required**.

Applicable to specific customers (4.10.3) & specific products (4.10.15)

4.10.2: **No SDD when** –

- suspicion of ML/TF
- doubts about the veracity & adequacy of info previously obtained



Chapter 4 – Enhanced due diligence (EDD)

4.11.1: Any **high** ML/TF risk situations, apply EDD –

- Additional customer info; regular profile updates
- Additional info on the intended nature of the business relationship, source of wealth and funds
- Senior management's approval
- Enhanced monitoring



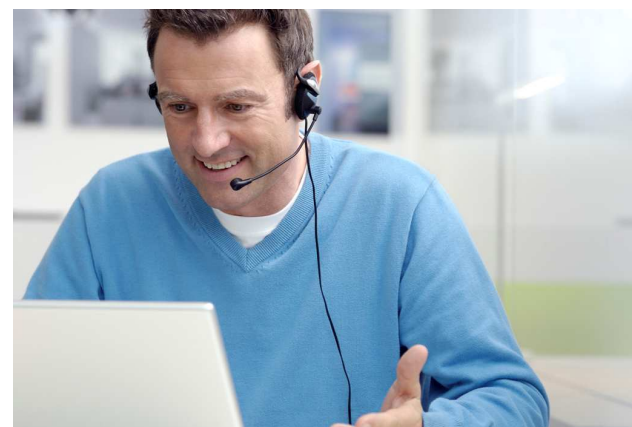
Chapter 4 – Customers not physically present for identification purposes

4.12.2: At least one additional measure –

- further verify customer's identity on documents not previously used
- take supplementary measures to verify
- customer's first premium to come from a bank a/c in the customer's name

4.12.4: Suitable **certifiers**

4.12.5: Certification **procedures**



Chapter 4 – Politically Exposed Persons (PEP)

Definition of PEP - 4.13.5:

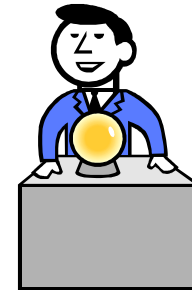
- individual entrusted with a prominent public function outside China;
- spouse, partner, child or parent of such individual; spouse or partner of a child of such individual; or
- close associate of such individual (4.13.6)

4.13.9: Screening

4.13.11: Apply EDD

Domestic PEP - 4.13.16:

- conduct risk assessment; **retain record** of assessment (4.13.17)
- if posing higher ML/TF risks, apply EDD



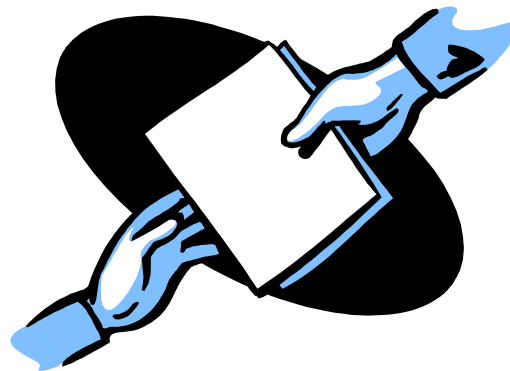
*Minimum **annual reviews** for both PEPs and domestic PEPs
(higher risks)*



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Chapter Four:

Reliance on CDD performed by intermediaries



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Chapter 4 – Reliance on intermediaries

- 4.17.1 - FIs may rely on an intermediary to perform CDD measures;
- The reliance provisions do not apply to principal-agent relationship. The agent is regarded as **synonymous** with the FI as the processes and documentation are those of the FI itself.
 - **Reliance on broker** requires at least the following:
 - 4.17.2 – **written confirmation** (the broker's role and ability to provide a copy of document etc without delay upon request by the insurer);
 - 4.17.4 – after the broker has carried out a CDD measure, the insurer **must immediately obtain** from the broker the customer data or info;
 - 4.17.11 – reviewing the broker's P&P or making suitable enquiries; and
 - 4.17.7 – *if the reliance relationship ends*, insurer must obtain all customer info from the broker immediately.
- 4.17.8 – 4.17.11: **qualified intermediaries**



Chapter Four:

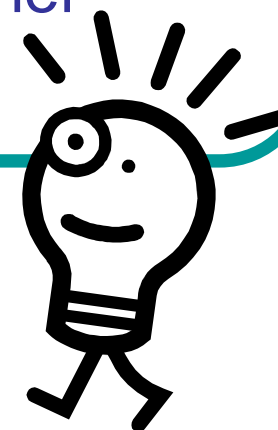
Jurisdictions that do not or insufficiently apply the FATF recommendations & Jurisdictional equivalence



Chapter 4 – Jurisdictions that do not or insufficiently apply the FATF recommendations

4.15.2: consider –

- a. ***circulars*** issued by IA;
- b. being subjected to ***sanctions, embargoes***;
- c. ***lacking*** AML/CTF laws, regulations etc?
- d. ***supporting*** terrorist activities?
- e. having significant levels of ***corruption*** or other ***crimes***?



Chapter 4 – Equivalent jurisdictions (EJ)

4.20.2: definition of EJ –


- a. *members* of FATF, other than HK; or
- b. a jurisdiction that imposes requirements *similar to* Schedule 2 of AMLO.

4.20.3: consider –

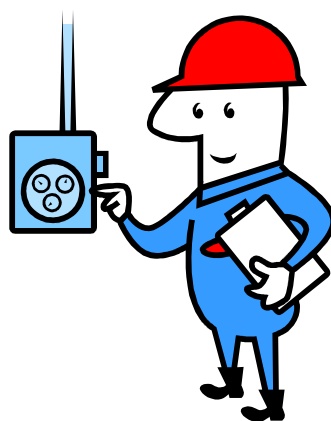
- a. *membership* of a regional group on AML/CTF;
- b. FATF's *mutual evaluation reports*;
- c. FATF's *published lists*; and
- d. guidance provided under 4.15

4.20.4: record of assessment





Chapter Five: Ongoing Monitoring



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Chapter 5 – Ongoing Monitoring

5.1: Continuously monitor business relationship with a customer by:

- Review from time to time CDD documents, data and information to ensure **up-to-date** and **relevant**
- **Scrutinize transactions** with customers to ensure they are consistent with the customer's risk profile
- **Identify transactions** that are complex, unusually large amount or unusual pattern, or no economic or lawful purpose

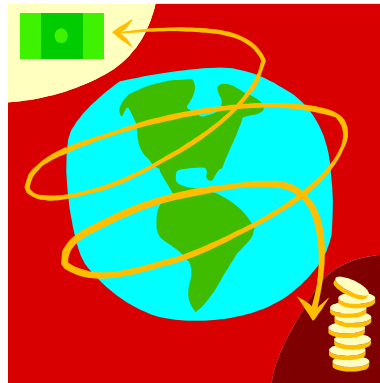


Chapter 5 – Ongoing Monitoring

Requirements	How to achieve this?
Review from time to time CDD documents, data and information to ensure up-to-date and relevant	To achieve this, an FI should undertake periodic reviews of existing records of customers. An appropriate time to do is upon certain trigger events . (4.7.12) All high-risk customers should be subject to an annual review . (4.7.13)
Scrutinize transactions with customers to ensure they are consistent with the customer's risk profile	Various methods to achieve it, including exception reports (e.g. large transactions exception report) and transaction monitoring systems . (5.9)
Identify transactions that are complex, unusually large amount or unusual pattern, or no economic or lawful purpose	



Chapter Six: Financial Sanctions & Terrorist Financing



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Chapter 6 – Screening

- Prohibitions - UNSO(6.3), UNATMO(6.13,6.14), WMDO(6.17)
- 6.4, 6.16: IA's circulars to FIs on designated persons & entities
- 6.18: required "Screening" against up-to-date list
- 6.20: database
- 6.21: accessibility by staff
- 6.22: when to perform screening
- 6.25: screening results documented & recorded
- 6.26: file STR



Chapter Seven: STR



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Chapter 7 – STR

7.7: Sufficient guidance for staff (including agents); ref annexes I & II for e.g. of suspicious transactions

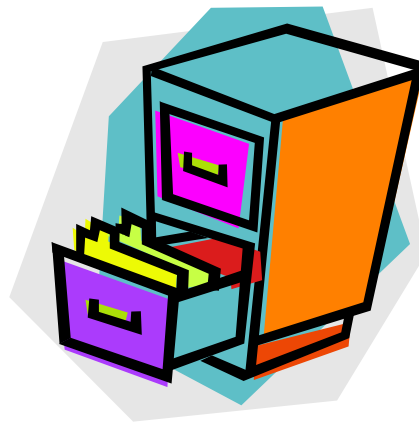
7.19: MLRO; its roles (7.19-7.30, 7.33, 7.36)

- Central reference point for reporting suspicious transactions
- Sufficient status & adequate resources
- Active role
- Take reasonable steps to consider all relevant information

7.25, 7.31, 7.32: reports made to MLRO and JFIU must be documented



Chapter Eight: Record Keeping



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Chapter 8 – Record Keeping

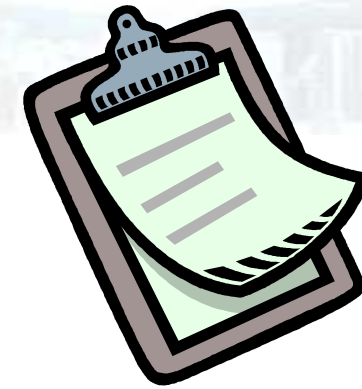
Documents/information obtained during CDD



- 8.3a: **Original/copy of the documents**, and a record of data and information, obtained in the course of identifying and verifying the identity of customer/beneficial owner/beneficiary/persons who purport to act on behalf of the customer/connected parties
- 8.3b: For the purposes of EDD or ongoing monitoring
- 8.3c: On the purpose and intended nature of the business relationship
- 8.3d: In relation to the **customer's account and business correspondence** (e.g. insurance application form)



Chapter 8 – Record Keeping



8.4: CDD records should be kept

- **throughout the business relationship** with the customer
- for a period of **6 years** after the end of the business relationship.



Chapter 8 – Record Keeping

8.5: Transaction records should be sufficient to

- **permit reconstruction** of individual transactions
- **establish a financial profile** of any suspect account or customer



Chapter 8 – Record Keeping

8.6: Transaction records should be kept

- for a period of **6 years** after the completion of a transaction
- **regardless of whether the business relationship ends** during the period





Chapter Nine: Staff Training



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Chapter 9 – Staff training

9.7: training packages tailored to different groups of staff
(including agents)

9.9: training records

9.10: monitoring the training effectiveness



Chapter Ten: Wire Transfer



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Chapter 10 – Wire Transfer

10.1: applicable to FIs which act as an ordering institution or beneficiary institution;

not applicable to FIs which are the *originator* or *recipient* of a wire transfer.

primarily applies to **authorized institutions** and **money service operators**





Thank You



**For further enquiries,
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