

SFC Consultation Conclusions on Proposed Amendments to (1) the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations) and (2) the Prevention of Money Laundering and Terrorist Financing Guideline issued by the Securities and Futures Commission for Associated Entities

In September 2021, SFC released its [Consultation Conclusions on Proposed Amendments to \(1\) the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism \(For Licensed Corporations\) and \(2\) the Prevention of Money Laundering and Terrorist Financing Guideline issued by the Securities and Futures Commission for Associated Entities](#) (“Consultation Conclusions”). The updates and amendments set out in the Consultation Conclusions aims to bring the update the SFC’s AML/CFT framework with the objective of aligning with Financial Action Task Force (“FATF”) standards and addressing some areas for improvement identified in the latest FATF Mutual Evaluation Report of Hong Kong in addition to providing additional practical guideline.

Implementation

The revised AML/CFT guidelines will become effective upon gazettal on 30 September 2021, with the exception of the new cross-border correspondent relationships requirements, which will take effect on 30 March 2022.

Summary of Key Amendments

Formal implementation of the Institutional Risk Assessment (“IRA”)

- Requirement to consider relevant risk factors
- Risk assessments should be updated on a periodic basis (at least every 2 years)
- Institutional Risk Assessment should be formally documented
- Senior management approval of assessment is required

Risk indicators for institutional and customer risk assessments

- Updated list of non-exhaustive illustrative risk indicators

Due diligence for cross-border correspondent relationships

- Requirement to demonstrate due diligence measures for cross-border correspondent relationships
- Guidance provided on how to monitor cross-border correspondent relationships

Simplified and enhanced measures under a risk-based approach

- Illustrative guidance on the applicability of simplified and enhanced measures

Red-flag indicators of suspicious transactions and activities

- Updated list of non-exhaustive illustrative risk indicators

Third-party deposits and payments

- New policies and procedures of accepting third-party deposits or payments
- Elaboration on due diligence process for accessing third-party deposits and payments

Person purporting to act on behalf of the customer (PPTA)

- Illustrative examples of PPTA have been fleshed out by way of an [FAQ](#) released by the SFC in connection with the revised AML Guidelines.

Guidelines on Anti-Money Laundering and counter-Financing of Terrorism - Key Amendments

Topic	2018 Guidelines	Amendments
<p>Institutional Risk Assessment</p>	<p>N/A, this is a new addition in the revised AML/CFT Guideline.</p>	<p>The IRA enables an FI (the “Financial Institution”) to understand how, and to what extent, it is vulnerable to ML/TF. The requirements in relation to complying with the IRA requirement are as follows:</p> <ol style="list-style-type: none"> 1. All relevant risk factors must be considered before determining the overall risk level <ul style="list-style-type: none"> - Take all relevant risk factor (shown in Appendix 1) into account - Identify and evaluate the ML/TF risks regarding to new products, business practices and technologies 2. IRA must be periodically reviewed <ul style="list-style-type: none"> - Revisit and conduct assessment every 2 years (as a baseline); or - More frequently upon trigger events that have a material impact on the firm’s business & risk exposure. 3. Formal documentation <ul style="list-style-type: none"> - Maintain records and relevant documents in relation to the IRA 4. Obtaining the approval of senior management of IRA results <ul style="list-style-type: none"> - The IRA should be communicated to, reviewed, and approved by senior management (ROs/MIC of Compliance) 5. Implement and maintain appropriate mechanisms to provide risk assessment information to relevant authorities upon request

		<p>For FIs whose business are smaller in size or less complex in nature, they can apply a simpler risk assessment. While the FIs whose business are more complex, they should apply a more sophisticated risk assessment.</p> <p>The group-wide ML/TF risk assessment would be conducted by HK incorporated FI with overseas branches and subsidiary undertakings that carry on same business.</p> <p><u>Customer risk assessment</u> FIs are required to assess the customer’s ML/TF risk with the information obtained in the initial stage of the CDD process with the objective of determining the level and type of ongoing monitoring and support the FI’s decision on whether to enter into, continue or terminate the business relationship. The customer risk assessment should also take into account relevant risk factors as described in Appendix A of the revised AML/CFT Guideline.</p>
<p>Risk indicators for institutional and customer risk assessments</p>	<p>Risk indicators spread out in different sections of AML Guideline (2018).</p>	<p>All risk indicators consolidated in one Appendix (please refer to Appendix 1 of this document for key changes).</p>
<p>Due diligence for cross-border correspondent relationships</p>	<p>N/A, this is a new addition in the revised AML/CFT Guideline.</p>	<p>There are some amendments including policies, procedures, due diligence measures, however, it is less relevant to clients solely conducting asset management activities.</p>
<p>Simplified and enhanced measures under a risk-based approach</p>	<p>Requirement to implement risk-based approach to AML Systems. No universally accepted methodologies are prescribed.</p>	<p>FIs should have AML/CFT Systems for managing and mitigating the risk, then FI should monitor the implementation of the AML/CFT System and implement the enhanced AML/CFT System once higher risks are identified. FIs must not implement simplified AML/CFT System but enhanced AML/CFT System whenever there is any suspicion of ML/TF.</p>

Red-flag indicators of suspicious transactions and activities	Red-flag indicators spread out in different sections of AML Guideline (2018).	All red-flag indicators consolidated in one Appendix (please refer to Appendix 2 of this document for key changes).
Third-party deposits and payments	N/A, this is the new section in AML/CFT Guideline.	Before FIs accepts any third-party payments, it should ensure that adequate policies and procedures are put in place to mitigate the ML/TF risks. There are some amendments including policies, procedures, due diligence process, however, it is generally not applicable to Hong Kong asset managers.
Person purporting to act on behalf of the customer (PPTA)	General broad guidance on information required for PPTA.	SFC implemented a new FAQ (question 8) providing for additional guidance on whether account signatories of a customer will be considered as PPTA.

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Appendix 1: Risk indicators for institutional and customer risk assessments

Indicators	Higher ML/TF risk	Lower ML/TF risk
Country risk	Countries/Jurisdictions that are: <ul style="list-style-type: none"> - identified by FATF with strategic AML/CFT deficiencies; - subject to sanction, embargos; - vulnerable to corruption; and - believed to have strong links to terrorist activities. 	Countries/Jurisdictions identified by credible sources: <ul style="list-style-type: none"> - as having effective AML/CFT Systems; and - as having a low level of corruption or other criminal activity.
Customer risk	<ul style="list-style-type: none"> - customers that have sanction exposure; - customers that have been mentioned in negative news reports from credible media; and - the business relationships established in unusual circumstances, etc. 	<ul style="list-style-type: none"> - customers who are employment-based or with a regular source of income from a known legitimate source; and - specific types of customers that may be eligible for SDD, etc.
Product/service/transaction risk	<ul style="list-style-type: none"> - the purchase of securities using physical cash; and - securities-related products or services funded by payments from or instructions given by unexpected third parties, particularly from jurisdictions posing a higher risk, etc. 	<ul style="list-style-type: none"> - specific types of products that may be eligible for SDD, etc.
Delivery/distribution channel risk	<ul style="list-style-type: none"> - business relationships established using a non-face-to face approach or transactions conducted by customer through non-face-to-face channels; and - products or services distributed or sold through intermediaries if they are suspicious, etc. 	<ul style="list-style-type: none"> - business relationships established or transactions conducted by customers through channels that are less susceptible to risk situations, etc.

Appendix 2: Red-flag indicators of suspicious transactions and activities

	Indicators
Customer-related	<ul style="list-style-type: none"> - A legal person customer with bearer shares constituting a large part of its issued capital; - A customer who exhibits unusual concern with the FI's AML/CFT Systems; and - A customer's legal or mailing address is associated with other apparently unrelated accounts, etc.
Trading-related	<ul style="list-style-type: none"> - Securities intended to be held-to-maturity are unwound before maturity in the absence of volatile market conditions or other logical or apparent reason; and - Suspected front-running of other pending customer Orders, etc.
Selected indicators of market manipulation and insider dealing	<ul style="list-style-type: none"> - Making a large purchase or sale of a security, or option on a security, shortly before news or a significant announcement is issued (potential insider trading or market manipulation); and - Placing multiple buy or sell orders and cancelling some or all of them before execution regularly, etc.
Related to deposits of securities	<ul style="list-style-type: none"> - A customer has a pattern of depositing physical share certificates or receiving incoming share transfers, forthwith selling the shares and transferring out the proceeds; - A customer with limited or no other assets at the FI receives a transfer of large amounts of thinly-traded securities; and - A customer deposits securities and requests to credit them to multiple accounts that do not appear to be related, and to sell or otherwise transfer ownership of the securities, etc.
Related to settlement and movement of funds and securities	<ul style="list-style-type: none"> - Transfers of funds or securities to the same person from different parties, or to different persons from the same party without reasonable explanation; - Funds are transferred to other FIs in different jurisdictions from the FI where the funds were initially received; and - Frequent changes of bank account details or information for receiving investment sale proceeds, etc.
Employee-related	<ul style="list-style-type: none"> - Unusual or unexpected increase in the sales performance of an employee; - The employee's supporting documentation for customers' accounts or orders is incomplete or missing; and - The use of an address which is not the customer's home or office address, etc.