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**HONG KONG TRUSTEES' ASSOCIATION**

**SAMPLE CLIENT DUE DILIGENCE FORM**

**FOR CORPORATE TRUSTEES**

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## 1. INTRODUCTION

The Hong Kong Trustees' Association ("HKTA") issued Best Practice Guides ("the Guides") covering corporate trusts, pension scheme, private trusts and charitable trusts in November 2012. The Guides set out the best practices which aim to educate and raise industry standards of members in relation to their trustee activities. The Guides consist of 3 parts, namely Guiding Principles, Guidance Notes and Practice Guidelines. Practice Guidelines, which are for reference only, will be more detailed than the Guidance Notes and cover more practical issues may be issued from time to time.

This Sample Client Due Diligence Form ("Sample CDD") serves as a Practice Guideline to provide members with ideas on how the Guiding Principles and Guidance Note may be met by Trustees of Corporate Trusts. The Sample CDD is for reference only and, as such, should not be treated in any way as a definitive guide to the relevant practice area. It is also not intended to be the only way to address any particular area of practice. In particular, as there are different ways to meet the Guiding Principles and Guidance Notes as well as the requirements of the relevant laws and regulations, to the extent that the practices stated in the Sample CDD differ from the existing practices of trustees, especially those with established AML frameworks developed taking into account the special characteristics and features of their industries, the Sample CDD is not intended to compel, suggest or advise changes to those existing practices.

Also, in the event of any conflict between the Guides and any laws, regulations, codes or guidelines (including codes of conduct) (collectively "Other Codes") issued by a regulatory or professional statutory body to which a trustee may be subject, the Other Codes will take precedence.

## BACKGROUND

Trustees should determine the extent of Client Due Diligence ("CDD") measures and ongoing monitoring, using a risk-based approach ("RBA") depending upon the background of their clients (each a "Client" and, collectively, "Clients") and the product, transaction or service used by that Client, so that preventive or mitigating measures are commensurate to the risks identified.

A RBA will enable Trustees to subject their Clients to proportionate controls and oversight by determining the following:-

- (a) the extent of the CDD to be performed on the direct Client; and the extent of the measures to be undertaken to verify the identity of any beneficial owner and any person giving instructions or otherwise purporting to act on behalf of the Client;
- (b) the level of ongoing monitoring to be applied to the relationship; and
- (c) measures to mitigate any risks identified.

For example, the RBA may require extensive CDD for high risk Clients, such as an individual (or corporate entity) whose source of wealth and funds is unclear or who requires the setting up of complex structures whose purpose is not immediately evident.

An effective RBA involves identifying and categorizing money-laundering risks at the Client level and establishing reasonable measures based on the risks which have been identified. An effective RBA will allow Trustees to exercise reasonable business judgment with respect to their Clients.

- 1.1 This CDD Form is recommended to be completed in full in the following circumstances:-
- 1.1.1 when establishing [or restructuring] a trust (“**Trust**”); or
  - 1.1.2 prior to any distribution of trust funds to a beneficiary of such Trust if deemed appropriate to do so by the Trustee, on a RBA; or
  - 1.1.3 before performing any occasional transaction:
    - (i) equal to, or exceeding, an aggregate value of HK\$120,000 (whether carried out in a single operation or several operations) that appear to the Trustee to be linked; or
    - (ii) a wire transfer equal to, or exceeding, an aggregate value of HK\$8,000 (whether carried out in a single operation or several operations) that appear to the Trustee to be linked; or
  - 1.1.4 when the Trustee suspects that the Client or the Client’s account is involved in any money laundering or terrorist financing, or
  - 1.1.5 when the Trustee doubts the veracity or adequacy of any information previously obtained for the purpose of identifying the Client or for the purpose of verifying the Client’s identity.

**2. RISK ASSESSMENT**

The Risk Assessment Form (substantially in the form set out in Appendix II hereto) has been completed for the Client and, for the reasons set out therein, this Client has been assessed as **\*low / medium / high risk**.

**3. CLIENT IDENTITY VERIFICATION**

**3.1 Client Details**

- 3.1.1 Name / Trading name: \_\_\_\_\_
- 3.1.2 Identity Card / Passport / Corporate Registration number: \_\_\_\_\_
- 3.1.3 Nationality: \_\_\_\_\_
- 3.1.4 Address / Registered office address: \_\_\_\_\_

\_\_\_\_\_

3.1.5 Address for correspondence (if different to the above address): \_\_\_\_\_

\_\_\_\_\_

3.1.6 Date of Birth / Date of Incorporation: \_\_\_\_\_

3.1.7 Occupation / Nature of Business: \_\_\_\_\_

### **3.2 Regulated / Listed Entities**

3.2.1 Details of regulated status / licence: \_\_\_\_\_

3.2.2 Details of listing (if any – name of stock exchange and stock code): \_\_\_\_\_

### **3.3 Agency** *(Note 1 of Appendix I)*

3.3.1 Is the Client acting as agent for another person? Yes / No<sup>\*</sup>

3.3.2 If yes, CDD must be conducted, and a separate CDD Form completed, on such principal.

### **3.4 Beneficial Owner(s)** *(Notes 2 & 4 of Appendix I)*

3.4.1 A Beneficial Owner in relation to a Trust includes :-

- (i) an individual who is entitled to a vested interest in not less than 10% of the capital of the Trust assets, whether the interest is in possession or in remainder or reversion and whether or not it is defeasible;
- (ii) the settler of the Trust;
- (iii) the protector or enforcer of the Trust
- (iv) any individual who has ultimate control over the Trust

3.4.2 We have made enquires as to whether any individual has effective control or beneficial ownership of the Client, and no person / the person(s)<sup>\*</sup> *(please delete \* as appropriate)* listed in Appendix III is/are the beneficial owner(s) of 10% *(Note 2 of Appendix I)* or more of the Client.

3.4.3 A CDD Form has been /shall be<sup>\*</sup> completed in respect of any Beneficial Owner who:-

- (i) in non-high risk situations *(Note 2 of Appendix I)*, holds not less than 25% interest in the Client.
- (ii) In high risk situations *(Note 2 of Appendix I)*, holds not less than 10% interest in the Client.

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<sup>\*</sup> *(please delete as appropriate)*

3.4.4 I have no / the following\* reason to believe that any individual otherwise exercises control  (Note 2 of Appendix I) over the management of the Client: \_\_\_\_\_

**3.5 Client Documentation**

We have obtained certified true copies/ sighted originals\* of the information / copies of documentation relating to Client identity verification from a reliable independent source (Note 3 of Appendix I) as set out in Appendix IV.

**4. BENEFICIARIES UNDER THE TRUST** (Note 10 of Appendix I)

4.1 Name of Beneficiary / Beneficiaries: \_\_\_\_\_

4.2 Identity Card / Passport / Corporate Registration number: \_\_\_\_\_

4.3 Nationality: \_\_\_\_\_

4.4 Details of Bank Account for payment of funds: \_\_\_\_\_

4.5 Beneficiary's Address: \_\_\_\_\_

4.6 Date of Birth: \_\_\_\_\_

4.7 Place of Birth: \_\_\_\_\_

A separate CDD Form is recommended to be completed in respect of each Beneficiary prior to the distribution of any part of the Trust assets to such Beneficiary if deemed appropriate to do so by the Trustee, on a RBA's.

We have obtained certified true copies/ sighted originals of the information / copies of documentation relating to Client identity verification from a reliable independent source (Note 3 of Appendix I) as set out in Appendix IV.

**5. PERSON GIVING INSTRUCTIONS ON BEHALF OF THE CLIENT** (Note 5 of Appendix I)

5.1 Name: \_\_\_\_\_

5.2 Designation: \_\_\_\_\_

5.3 Basis of authority to give instructions:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5.4 In order to verify the identity of the person giving instructions and the basis of his/her authority to give those instructions, we have obtained a certified true copy of the following (*please tick as appropriate*):-

- 5.4.1 the person's Passport / Identity Card
- 5.4.2 the Power of Attorney, Board Resolution or other similar written authority (e.g. a list of authorised signatories of the Client which is a corporate entity) authorising the person to give such instructions and, in a high risk situation, the confirmation of identity of the person by an independent party (*please see Appendix VII*).
- 5.4.3 written confirmation of a specified intermediary (*Note 6 of Appendix I*) that it (i) consents to be the Trustee's intermediary; and (ii) will provide, on request by the Trustee, a copy of any document or a record of any data or information obtained by such specified intermediary when conducting CDD on the person giving instructions.

## 6. NATURE AND PURPOSE OF TRUST

6.1 Please state the nature and purpose of establishing the Trust :

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6.2 Value of the Trust Fund : [USD/HKD] \_\_\_\_\_

## 7. CLIENT DUE DILIGENCE – source of funds, and the purpose and intended nature of the business relationship (*Note 7 of Appendix I*)

7.1 We have taken all reasonable steps to ensure that the Client's transactions are consistent with our knowledge of the Client, its business (if any) and risk profile, including understanding:-

- 7.1.1 the source of the Client's funds;
- 7.1.2 the likely types of transaction for the Client (e.g. industry sectors), and the size of transactions so that, when future instructions are received, the Trustee is able to check whether this is what was expected for the Client. If they are not, this may indicate a change in size/direction of the business or may be suspicious;
- 7.1.3 the nature and intended purpose of the Trust which has been established;
- 7.1.4 the business relationship between the Client and any other partners to the Trust.

7.2 Where appropriate, the new Client's name should be checked against the published list of terrorist suspects.

### 7.3 **Simplified CDD**

Simplified CDD may be applied to the following Clients without the need to conduct CDD on its beneficial owners or other controllers:

- 7.3.1 a financial institution (“**Financial Institution**”) as defined in the AMLO;
  - 7.3.2 an institution that –
    - (i) is incorporated or established in an equivalent jurisdiction;
    - (ii) carries on a business similar to that carried on by a Financial Institution;
    - (iii) has measures in place to ensure compliance with requirements similar to those imposed under Schedule 2 of the AMLO; and
    - (iv) is supervised for compliance with those requirements by an authority in that jurisdiction that performs functions similar to those of any of the RAs;
  - 7.3.3 a corporation listed on any stock exchange (“**listed company**”)
  - 7.3.4 an investment vehicle where the person responsible for carrying out measures that are similar to the CDD measures in relation to all the investors of the investment vehicle is-
    - (i) a Financial Institution
    - (ii) an institution incorporated or established in Hong Kong, or in an equivalent jurisdiction that-
      - i. has measures in place to ensure compliance with requirements similar to those imposed under Schedule 2 of the AMLO; and
      - ii. is supervised for compliance with those requirements.
  - 7.3.5 the Government or any public body in Hong Kong; or
  - 7.3.6 the government of an equivalent jurisdiction or a body in an equivalent jurisdiction that performs functions similar to those of a public body.
- 7.4 **Enhanced CDD** *(Note 8 of Appendix I)*
- 7.3.1 In situations where enhanced CDD is required *(see Note 8 of Appendix I)*, further enquiry or investigation and/or such further steps as are considered appropriate, should be taken to ensure that there is no suspicion of money laundering or terrorist financing (e.g. by obtaining and verifying further details on the transactions to be undertaken and their underlying purposes and the parties involved).
  - 7.3.2 *(please tick as appropriate):-*



- (i) We have obtained a declaration from the local registered agent of the overseas corporation regarding, or other satisfactory third party evidence of its beneficial ownership and management structure
- (ii) We have taken reasonable measures to establish the source of wealth and source of funds of such persons (e.g. by obtaining and verifying further details on the transactions to be undertaken and their underlying purposes and the parties involved) – please state details

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**8. ON GOING MONITORING (Please tick as appropriate)**

- 8.1  **High-risk Clients** (excluding Dormant Accounts)*(please see Appendix I)*

We will conduct enhanced on-going monitoring of the business relationship with such persons at least annually (or more frequently if deemed necessary) during our engagement and will file a written note detailing the results of such monitoring.

- 8.2  **All other Clients**

We shall undertake periodic reviews of existing Client records to ensure that the information obtained for CDD purpose is up-to-date and relevant, including upon, but not limited to, the occurrence of any of the following trigger events:-

- (i) when a significant transaction is to take place;
- (ii) when a material change occurs in the way the Client’s account is operated;
- (iii) when there is a change in the controller or Beneficial Owner of the Client;
- (iv) when a Dormant Account is re-activated;
- (v) when the Trustee’s Client documentation standards change substantially; or
- (vi) when the Trustee is aware that it lacks sufficient information about the Client concerned.

**9. ANY OTHER MATTERS TO BE TAKEN INTO ACCOUNT IN MAKING THE CONFIRMATION UNDER SECTION 10 BELOW:**

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**10. CONFIRMATION** *(To be completed by the relevant staff of the trustee. Please see Appendix I – Explanatory Notes for Completion of Declaration below)*

- The information in this Form is not inconsistent with any other information of which I am aware.
- I am satisfied that adequate Client identity verification and due diligence measures have been taken.
- Whilst working for this Client, I will consider whether the transactions in which I am involved are consistent with my knowledge of the Client, its business and its risk profile, which was assessed as **[low/medium/high]\*** risk. *(please delete as appropriate)*

\_\_\_\_\_  
Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Position:

## APPENDIX I

### EXPLANATORY NOTES FOR COMPLETION OF CDD FORM

**1. Is the Client an agent?**

Where a Client is an agent, you will need to identify both the agent and its principal(s). A separate Client Due Diligence Form should be completed for each.

Examples of agents:- insurer, law firm, accountant, lead firm in a syndicate, representative of a number of claimants or defendants.

Where we expect to receive payments from a third party on behalf of the Client, we must have a reasonable understanding of the source of the third party's funds and why they are involved.

**2. Beneficial owner**

Reasonable measures must be taken to identify the persons who have effective control or beneficial ownership of a company or legal entity. A risk-based approach should be adopted. Therefore we have decided that we need to identify all beneficial owners who own more than a 10% interest in the Client. The objective is to identify the natural person or persons (as opposed to companies) that own a company. It is therefore necessary to look up through the corporate chain to the top parent company to see which individuals are the beneficial owners. It is recognised this is an onerous requirement and so it has been limited, to only those owning more than 10%.

Therefore, a company which is owned equally by 11 other companies has no relevant beneficial owners since all own less than 10%. However, if we understood that, in effect, the Client was a vehicle for a high net worth individual, we may be required to then investigate the corporate structure. If that investigation showed each of those companies are owned by one individual, it would then be the relevant beneficial owner. That the beneficial ownership was potentially disguised in this way may be a ground for suspicion and would affect our risk assessment of the Client.

In high-risk circumstances, we need to identify all beneficial owners who own more than 10% of the voting rights or share capital. High-risk circumstances include the following:-

1. Clients or beneficial owners with connections with high risk countries (e.g. incorporation place, business place, nationality, permanent address and residential address)
2. Clients with unduly complex ownership structure
3. Clients with a significant portion of capital in the form of bearer shares
4. Clients whose overseas corporate information is not readily accessible
5. Clients with nominee shareholders/directors without a clear and legitimate commercial purpose or reasonable justification
6. Clients or beneficial owners who are PEPs and persons, companies and government organizations related to them
7. Clients who conduct cash intensive business (e.g. money services business, casino)
8. Clients who/ which engage in high risk businesses (e.g. military related business, energy / resource business)
9. Clients with business activities generating the funds/ assets which have connection with high risk countries / high risk businesses
10. Non face-to-face account opening
11. Services that inherently have provided more anonymity
12. the Client's source of wealth and funds is unclear
13. Clients are persons or entities from or in non-cooperative countries and territories ("NCCT") identified by the Financial Action Task Force ("FATF") or such other jurisdictions (e.g. Iran) known to have insufficiently complied with FATF Recommendations
14. the Client is otherwise considered as "high-risk" per the results of the Risk Assessment Form and the Clients'

risk assessment score

In any case it is not necessary to identify all the companies in the chain; instead the focus is upon the natural person, who is the beneficial owner.

**3. Identification Documentation**

Evidence of identity must be obtained including in the case of existing Clients, and particularly if there is reason to doubt the veracity or adequacy of information or documents previously obtained, or to suspect money laundering, or if beneficial owners may have changed.

**4. Exercise of control**

We need to identify any individual who exercises control over the management of the body corporate. For example, such control may rest with those who have the power to manage funds or transactions without requiring specific authority to do so and who would be in a position to override internal procedures and control mechanisms. Where, for example, a corporate vehicle is controlled by an individual even though they do not appear as the legal or beneficial owner, they will need to be identified as the beneficial owner.

Please indicate in the CDD Form if you have reason to believe that control is vested in someone other than the directors or shareholders of a corporate vehicle.

**5. Person Giving Instructions**

For corporate Clients reasonable measures must be taken to identify the person purporting to give instructions on behalf of the Client and we should verify that such person is duly authorised e.g. obtaining a copy of the company's board resolution or power of attorney which evidence the conferring of authority on the person concerned. Other methods of verification are indicated on the form.

**6. Specified Intermediaries**

A specified intermediary is—

(a) any of the following persons who is able to satisfy the Trustee that they have adequate procedures in place to prevent money laundering and terrorist financing—

- (i) a solicitor practising in Hong Kong;
- (ii) a certified public accountant practising in Hong Kong;
- (iii) a current member of The Hong Kong Institute of Chartered Secretaries practising in Hong Kong;
- (iv) a trust company registered under Part 8 of the Trustee Ordinance (Cap 29, Laws of Hong Kong) carrying on trust business in Hong Kong;

(b) a financial institution that is an authorized institution, a licensed corporation, an authorized insurer, an appointed insurance agent or an authorized insurance broker; or

(c) a lawyer, a notary public, an auditor, a professional accountant, a trust or company service provider or a tax advisor practising in an equivalent jurisdiction, or a trust company carrying on trust business in an equivalent jurisdiction, or an institution that carries on in an equivalent jurisdiction a business similar to that carried on by a financial institution mentioned in paragraph (b), that—

- (i) is required under the law of that jurisdiction to be registered or licensed or is regulated under the law of that jurisdiction;
- (ii) has measures in place to ensure compliance with requirements similar to those imposed under Schedule 2 to the AMLO; and
- (iii) is supervised for compliance with those requirements by an authority in that jurisdiction that performs functions similar to those of any of the relevant authorities.

**7. Due diligence / Source of wealth / Source of incoming funds**

We do not need to be able to verify the source of wealth/source of funds to complete the CDD Form. You should make enquiries as to the source of funds for the transaction and consider whether the explanation is plausible.

For individuals, the risk is that funds acquired from questionable activities are then being invested in legitimate investments e.g. property. Understanding the source of funds and level of a person's net worth will assist in understanding the level of future investments expected. These are also considerations which must be made to comply with our duties to report suspicious transactions to the Joint Financial Intelligence Unit ("JFIU") pursuant

to Drug Trafficking (Recovery of Proceeds) Ordinance, Organised and Serious Crimes Ordinance and United Nation (Anti-Terrorism) Ordinance. **For further guidance, please refer to Appendix VIII – Guidelines for Suspicious Transactions.**

**8. Enhanced Due Diligence**

Enhanced due diligence is required:-

- 8.1 when handling complex, unusually large transactions, or an unusual patterns of transactions, which have no apparent economic or lawful purpose; or
- 8.2 when acting for Clients considered as “high risk” (see Note 2 above)
- 8.3 when a preliminary meeting leads to:-
  - suspicion of money laundering; or
  - doubt about the veracity or adequacy of previously obtained Client identification data.
- 8.4 where there has been no face to face meetings with the Client.

The current list of NCCTs can be found on the FATF website at [www.fatf-gafi.org](http://www.fatf-gafi.org). Currently FATF has not identified any NCCT.

The FATF was established in 1989 in an effort to thwart attempts by criminals to launder the proceeds of crime through the financial system. Hong Kong has been a full member of FATF since March 1991 and has the obligation to implement the FATF Recommendations.

**9. Politically exposed persons**

There are additional risks posed by PEPs due to the risk of corruption and misappropriation of state assets.

PEPs are individuals entrusted with prominent public functions, such as heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of public organisations and senior political party officials. The concern is that they may abuse their public powers for their own illicit enrichment through the receipt of bribes particularly in countries where corruption is widespread.

If a PEP is involved, this should be taken into account in the risk assessment. Where a 51% shareholder or 51% beneficial owner is a PEP, the Client is likely to be higher risk.

**10. Distribution of Funds**

In relation to a distribution of funds to a Beneficiary, the CDD measures shall be carried out before any distribution of fund is made or transferred. If any of the below circumstances occur, the business relationship with the Client [or the investor account] shall be terminated as soon as reasonably practicable, unless a proper explanation could be provided and accepted:-

- (a) a transaction takes place with regard to the Client that:-
  - (i) is, by virtue of the amount or nature of the transaction, unusual or suspicious; or
  - (ii) is not consistent with the information or knowledge previously provided by the Client of the Beneficiary or the Client’s business or risk profile, or with its knowledge of the source of the Client’s funds; or
- (b) a material change occurs in the way in which the Client’s account is operated; or
- (c) the investor source account and redemption account name or account number is inconsistent.

Before carrying out any distribution of funds to a Beneficiary, the following must be recorded and kept:-

- (a) the Beneficiary’s name;
- (b) the number of the recipient’s account maintained and from which the money for the distribution is made, in the absence of such an account, a unique reference number assigned to the distribution;
- (c) the Beneficiary’s address or, in the absence of an address, the Beneficiary’s Client identification number or identification document number or, if the Beneficiary is an individual, the Beneficiary’s date and place of birth;
- (d) the original or a copy of the documents or transaction, together with a record of the data and information, obtained in the course of identifying and verifying the identity of the Beneficiary or any beneficial owner of the Client; and
- (e) the original or a copy of the files relating to the Client’s account and business correspondence with the Client and any beneficial owner of the Client.

**11. Dormant Account**

[An account which has not experienced any payments of funds into, or withdrawals of funds out of, it for a period of [●] consecutive weeks/months\* (*please delete as appropriate*).]

**APPENDIX II**  
**RISK ASSESSMENT FORM**

**Factors for Risk Assessment**

When determining the risk profile of a Client, the following factors should be taken into account:-

1. background and origin of the Client;
2. nature of the Client's business;
3. for corporate Clients, the structure of ultimate beneficial ownership and control;
4. purpose of the transaction to be undertaken;
5. source of funding; and
6. other information that may suggest that the Client is of high money laundering or terrorist financing risk.

**Please tick all applicable boxes (there may be more than one applicable box in each section):**

**1. Client Background**

- The name of the beneficial owner or connected party of the Client is a PEP<sup>1</sup>
- The Client or beneficial owner matches with a person named in World Check
- The Client's business is in a high-risk / medium-risk industry
- The ownership structure of the Client cannot be verified

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<sup>1</sup> "Foreign PEP" is defined 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, including Mainland China, Hong Kong, Macau and Taiwan, 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) his spouse, partner, child, or parent
- (c) his child's spouse or partner; or
- (d) his close associate where close associate refers to an individual who has close business relations with him, including the following situations
  - Both individuals are beneficial owners of the same legal person or trust, or
  - an individual who is the beneficial owner of a legal person or trust that is set up for the benefit of him.

Note: the partner defined in (b) and (c) above refers to an individual if the person is considered by the law of the place where the person and the individual live together as equivalent to a spouse of the individual.

"Domestic PEP" is defined as

- (a) in the same manner as the above (a) under Foreign PEP, except the individual will have been entrusted with a prominent public function within the People's Republic of China
- (b) similar to (b) above under Foreign PEP
- (c) similar to (c) above under Foreign PEP
- (d) similar to (d) above under Foreign PEP

- The Client has trusts or nominee shareholders in its ownership structure where there appears to be no legitimate rationale for such arrangement
- The Client or its corporate shareholder has shares in bearer form
- The Client has a complex shareholding structure
- The Client is incorporated in a jurisdiction which is on the FATF black or grey list
- The Client is a shell company / a private investment company with nominal capital / an offshore company and is without an obvious commercial purpose
- The Client is, or claims to be, a charitable organization that is not exempt from tax under section 88 of the Inland Revenue Ordinance (Cap 112, Laws of Hong Kong)
- The Client is, or claims to be, a non-profit organization (but not a charity) that is registered outside Hong Kong
- The Client is :
  - A financial institution (**FI**) (including an authorized institution, a licensed corporation, an authorized insurer, an appointed insurance agent, an authorized insurance broker or the Postmaster General) supervised by the Hong Kong Monetary Authority, Securities and Futures Commission, Insurance Authority or an authority in an Equivalent jurisdiction or a foreign jurisdiction that carries functions similar to any of the above Hong Kong authorities;
  - A corporation listed on any stock exchange;
  - An investment vehicle where the CDD on the underlying investors is carried out by a financial institution supervised by the Hong Kong Monetary Authority, Securities and Futures Commission, Insurance Authority or an authority in an equivalent jurisdiction or a foreign jurisdiction that carries functions similar to any of the above Hong Kong authorities;
  - A Government or public body or undertaking in Hong Kong, or any equivalent jurisdiction; or
  - A wholly-owned subsidiary of any of the above entities.

## **2. Country and Location**

- The Client or its beneficial owner is connected to a [High-Risk / Medium-Risk Jurisdiction] in any of the above listed aspects

## **3. Product and Service**

- The Client has Client accounts where its Clients' funds are co-mingled, except for a solicitor's Client account
- The account is a solicitor's Client account
- The transaction conducted by the Client only relates to one of the following products:
  - A provident, pension, retirement or superannuation scheme that provides retirement benefits to employees, where contributions to the scheme are made by way of deduction



from income from employment and the scheme rules do not permit the assignment of a member's interest under the scheme;

- An insurance policy for the purpose of a provident, pension, retirement or superannuation scheme that does not contain a surrender clause and cannot be used as a collateral;
- A life insurance policy whose annual premium is no more than HKD8,000 (or the equivalent in any other currency); or
- A life insurance policy whose single premium is no more than HKD20,000 (or the equivalent of any other currency)

#### **4. Delivery and Distribution Channel**

- The Client relationship is established through online, postal or telephone channel where a non-face-to-face account opening approach is used
- The Client is contacted solely via an approved intermediary

#### **5. Account Activities**

- The Client frequently transacts large amounts in cash
- The Client previously requested undue levels of secrecy with certain transactions
- Negative information on the Client has been received from other reliable sources
- The Client had suspicious transaction activities (e.g. temporary repository of funds, structured/turn transactions etc)
- The Client or the Client's account has been suspected of being involved in money laundering or terrorist financing
- The Client has insisted to provide "Hold Mail" services, but mail was not collected and the Client has not visited Hong Kong for an extended period of time
- There is returned mail due to an incorrect correspondence address and the Client has not been contactable even though the transaction activities have continued in the account

#### **Assessment Scores**

[ ]

*[Note: Trustees may adopt their own risk assessment methodology in accordance with their company/group policy for scoring procedures]*

## APPENDIX III

### BENEFICIAL OWNER IDENTIFICATION

#### 1. Beneficial Owner Details

1.1 Name / Trading name: \_\_\_\_\_

1.2 Identity Card / Passport / Corporate Registration number: \_\_\_\_\_

1.3 Nationality: \_\_\_\_\_

1.4 Address / Registered office address: \_\_\_\_\_

1.5 Address for correspondence (if different to the above address): \_\_\_\_\_

1.6 Date of Birth / Date of Incorporation: \_\_\_\_\_

1.7 Occupation / Nature of Business: \_\_\_\_\_

#### 2. Beneficial Owner Details

2.1 Name / Trading name: \_\_\_\_\_

2.2 Identity Card / Passport / Corporate Registration number: \_\_\_\_\_

2.3 Nationality: \_\_\_\_\_

2.4 Address / Registered office address: \_\_\_\_\_

2.5 Address for correspondence (if different to the above address): \_\_\_\_\_

2.6 Date of Birth / Date of Incorporation: \_\_\_\_\_

2.7 Occupation / Nature of Business: \_\_\_\_\_

#### 3. Beneficial Owner Details

3.1 Name / Trading name: \_\_\_\_\_

3.2 Identity Card / Passport / Corporate Registration number: \_\_\_\_\_

3.3 Nationality: \_\_\_\_\_

3.4 Address / Registered office address: \_\_\_\_\_

3.5 Address for correspondence (if different to the above address): \_\_\_\_\_

3.6 Date of Birth / Date of Incorporation: \_\_\_\_\_

3.7 Occupation / Nature of Business: \_\_\_\_\_

**4. Beneficial Owner Details**

4.1 Name / Trading name: \_\_\_\_\_

4.2 Identity Card / Passport / Corporate Registration number: \_\_\_\_\_

4.3 Nationality: \_\_\_\_\_

4.4 Address / Registered office address: \_\_\_\_\_

4.5 Address for correspondence (if different to the above address): \_\_\_\_\_

4.6 Date of Birth / Date of Incorporation: \_\_\_\_\_

4.7 Occupation / Nature of Business: \_\_\_\_\_

## APPENDIX IV

### CLIENT IDENTITY VERIFICATION DOCUMENTS

Depending on which category the Client falls into, the following Client identity verification documents have been obtained. The items in each category appearing under the Sub-heading “**Enhanced CDD**” are required only if enhanced CDD is deemed to be necessary on the particular Client(s).

*Please tick and complete as applicable*

#### 1. Individual

- personal identification documents (HKID/ Passport) bearing the Client’s photograph
- proof of permanent residential address (a recent utility bill or bank or credit card statement or bank reference to establish a residential address dated within the preceding 3 months)
- information on occupation
- Client’s source of wealth
- Any reasonable proof of the Client’s source of wealth (documentation such as personal tax assessment note will be helpful).

#### Non-resident

- Where the individual Client is not resident in Hong Kong, a valid travel documentation

#### Enhanced CDD

- Where the Client has ties to a high-risk jurisdiction or is a PEP, a reference letter issued by an international bank, a Chartered Secretary, a notary public, a lawyer, or an accountant stating:-
  - a. Length of the business relationship
  - b. If the relationship has been continuous or occasional
  - c. Types of services provided
  - d. If the relationship has been satisfactory

- e. Any facts or circumstances that should be brought to the attention of a new service provider

Where any of the above is not applicable, please state why below:-

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**2. Corporations**

**2.1 Corporation listed or regulated [in an approved country]**

- Certificate of Incorporation and Memorandum & Articles of Association (or equivalent)
- Proof of Company's current registered office address
- Business Registration Certificate
- Register/List of directors
- Signed board resolution authorising the establishment of the trust
- Signed board resolutions authorizing person giving instructions
- Authorised signatory list (including signatory powers)
- Latest audited financial statements
- Evidence of listed or regulated status
- Others (specify): \_\_\_\_\_

Where any of the above is not applicable, please state why below:-

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**2.2 Non-regulated Private Limited Company [in an approved country]**

- Certificate of Incorporation and Memorandum & Articles of Association (or equivalent)
  - Proof of Company's current registered office address
  - Business Registration Certificate
  - Group ownership and structure chart
  - Register/List of directors
  - Signed board resolution authorising the establishment of the trust
  - Signed board resolutions authorizing person giving instructions
  - Authorised signatory list (including signatory powers)
  - Certificate of Good Standing
  - Corporate organisation chart including a share register (or equivalent official documents to identify the shareholding structure and ultimate beneficial owner(s) of the Company)
  - Latest audited financial statements (or, for newly incorporated companies, an opening balance sheet signed by the Directors)
- Enhanced CDD***
- For any ultimate beneficial owners (who are individuals) with (in high risk situations) not less than 10% interest in the corporate entity or (in non-high risk situations) not less than 25% interest in the corporate entity: identification verification documents as for Individuals (above)
  - Others (specify): \_\_\_\_\_

Where any of the above is not applicable, please state why below:-

\_\_\_\_\_

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### 2.3 Partnership

- Evidence of registration of partnership
- Partnership Agreement
- Resolution of the partners authorising the establishment of the trust
- Register of partners and their respective holdings in the Partnership
- Authorised signatory list (including signatory powers)

#### *Enhanced CDD*

- For each partner holding an interest of not less than 25% (where the partnership is established in an approved country) or 10% (where the partnership is viewed as [high risk]) in the partnership: personal identification verification documents as required for individuals (as set out in paragraph 1 above)
- Others (specify): \_\_\_\_\_

Where any of the above is not applicable, please state why below:-

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### 2.4 Trust

- Trust Deed
- Evidence of registration of Trust
- Board resolution of the Trustee of the Trust authorising the establishment of the trust
- Authorised signatory list (including signatory powers)

- Register of Directors of the Trustee of the Trust

***Enhanced CDD***

- For each person holding an interest of not less than 25% (where the Trust is established in an approved country) or 10% (where the Trust is viewed as high risk) in the Trust: personal identification verification documents as required for individuals (as set out in paragraph 1 above)
- Others (specify): \_\_\_\_\_

Where any of the above is not applicable, please state why below:-

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## APPENDIX V

### RISK-BASED APPROACH (“RBA”)<sup>2</sup>

1. The risk-based approach **RBA** to CDD and ongoing monitoring is recognized as an effective way to combat money laundering and/or terrorist financing (“**ML/TF**”). The general principle of an RBA is that where Clients are assessed to be of higher ML/TF risks, FIs should take enhanced measures to manage and mitigate those risks, and that correspondingly where the risks are lower, simplified measures may be applied. The use of an RBA has the advantage of allowing resources to be allocated in the most efficient way directed in accordance with priorities so that the greatest risks receive the highest attention.
2. The extent of CDD measures and ongoing monitoring using an RBA shall depend upon the background of the Client and the product, transaction or service used by that Client, so that preventive or mitigating measures are commensurate to the risks identified. The extent of CDD and ongoing monitoring shall be appropriate in view of the Client’s ML/TF risks. An effective RBA involves identifying and categorizing ML/TF risks at the Client level and establishing reasonable measures based on risks identified.

The RBA will help to subject Clients to proportionate controls and oversight by determining:-

- (a) The extent of the due diligence to be performed on the direct Client; the extent of the measures to be undertaken to verify the identity of any beneficial owner and any person purporting to act on behalf of the Clients;
  - (b) The level of ongoing monitoring to be applied to the relationship; and
  - (c) Measures to mitigate any risks identified.
3. The ML/TF risks of individual Clients may be assessed by assigning a ML/TF risk rating to Clients and relevant factors shall be considered including:-
    - (a) Country risk;
    - (b) Client risk;
    - (c) Product/ service risk; and
    - (d) Delivery/ distribution channel risk.
  4. Records and relevant documents of the risk assessment shall be kept so that it can demonstrate to the RAs, among others:-
    - (a) How it assesses the Client’s ML/TF risk; and
    - (b) The extent of CDD and ongoing monitoring is appropriate based on that Client’s ML/TF risk.
  5. A Risk Assessment Form (substantially in the form set out in Appendix II above) must be completed and assessed in respect of each Client.

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<sup>2</sup> For further details, please refer to the chapters 3 of the Hong Kong Monetary Authority Guideline on Anti-Money Laundering and Counter-Terrorist Financing.

## APPENDIX VI

*The information set out below in Appendices V, Vi and VII are for your reference only and has been extracted from sources including the Financial Action Task Force Recommendations, the Hong Kong Institute of Chartered Secretaries Guidance Note, the Hong Kong Monetary Authority Guideline on Anti-Money Laundering (“AML”) and Counter-Terrorist Financing (“CTF”), the Hong Kong Trustees’ Association Best Practice Guide for Trustees of Corporate Trusts (August 2012), the Joint Financial Intelligence Unit AML and CTF Guidelines, and the Securities and Futures Commission Guideline on AML and CTF. Policies and procedures should be in place for compliance with the principles set out in the applicable laws and regulations.*

### ANTI-MONEY LAUNDERING / COUNTER-TERRORIST FINANCING CLIENT IDENTIFICATION CHECKLIST

1. Face-to-face interview should be performed whenever possible in order to better understand the Client, his or her affairs and business.
2. Originals of the supporting documents should always be requested in the first instance. Such documents should be inspected, photocopied and returned to the Client.
3. Where originals are not available, photocopies of the supporting documents may be accepted provided they are certified as a true copy of the original document by a Chartered Secretary, a lawyer or an accountant with membership in The Hong Kong Institute of Chartered Secretaries, The Law Society of Hong Kong or the Hong Kong Institute of Certified Public Accountants or a notary public, an embassy, consulate or high commission of the country of issue of the identity document.
4. For multi-layer ownership structures, information and supporting documents should be obtained for the first layer. An organisation chart showing the individuals who are the ultimate principal beneficial owners holding at least 10% interest) should also be obtained. The identity of these individuals should be verified (as to those holding an interest of not less than 10% in a high-risk situation, and as to those holding an interest of not less than 25% in a non-high risk situation).
5. In circumstances where an existing Client is reclassified as high-risk, delaying taking reasonable measures shall be considered to verify the beneficial owner’s identity according to the enhanced threshold (i.e. remediate from 25% to 10%) where a risk of tipping-off exists. All high-risk Clients (excluding Dormant Accounts) should be subject to a minimum of an annual review, and more frequently (if deemed necessary), of their profiles to ensure the CDD information retained remains up-to-date and relevant.
6. For companies: the directors and each beneficial owner must be identified and with their identities verified as described in Note 4 above. Where there are a large number of directors and shareholders, only the principal directors and controlling shareholders need be identified and verified.
7. For a reference letter, the preference is to obtain a reference letter from an international banker. If that is not possible, a professional reference letter from a Chartered Secretary, a notary public, a

lawyer or an accountant with membership in The Hong Kong Institute of Chartered Secretaries, The Law Society of Hong Kong or the Hong Kong Institute of Certified Public Accountants is acceptable.

8. Try to obtain all documents on the checklist. Any exception to the checklist should be approved by an officer of suitable seniority such as a director or the legal or compliance officer.
9. If a person purports to act on behalf of the Client, the following must be conducted:- (i) verify the person's authority to act on behalf of the Client and (ii) identify the person and take reasonable measures to verify the person's identity on the basis of documents, data or information provided by:-
  - (a) a governmental body;
  - (b) the relevant authority or any other relevant authority;
  - (c) an authority in a place outside Hong Kong that performs functions similar to those of the relevant authority or any other relevant authority; or
  - (d) any other reliable and independent source that is recognised by the relevant authority.
10. The general requirement is to obtain the same identification information as the Client and not to open, or maintain, any anonymous account or account in a fictitious name for any Client. As a general rule, the identity of those authorized to give instructions for the movement of funds or assets shall be identified and verified. On occasion encounter difficulties in identifying and verifying signatories of Clients that may have long lists of account signatories, particularly if such Clients are based outside Hong Kong. In such cases, a risk-based approach may be adopted in determining the appropriate measures to comply with these requirements (e.g. in respect of verification of account signatories related to a Client, such as a financial institution or a listed company), a more streamlined approach could be adopted. The provision of a signatory list, recording the names of the account signatories, whose identities and authority to act have been confirmed by a department or person within that Client which is independent to the persons whose identities are being verified (e.g. compliance, audit or human resources), may be sufficient to demonstrate compliance with these requirements.
11. Records must be kept throughout the continuance of the business relationship with the Client and for a period of 6 years beginning on the date on which the business relationship ends.

## APPENDIX VII

### EXAMPLES OF RELIABLE AND INDEPENDENT SOURCES FOR CLIENT IDENTIFICATION PURPOSES

1. The identity of an individual physically present in Hong Kong should be verified by reference to their Hong Kong identify card or travel document. A Hong Kong resident's identity should always be identified and/or verified by reference to his/her Hong Kong identity card, certificate of identity or document of identity. The identity of a non-resident should be verified by reference to their valid travel document.
2. For non-resident individuals who are not physically present in Hong Kong, who may be identified and/or verified their identity by reference to the following documents:-
  - (a) a valid international passport or other travel document; or
  - (b) a current national (i.e. Government or State-issued) identity card bearing the photograph of the individual; or
  - (c) current valid national (i.e. Government or State-issued) driving license<sup>3</sup> incorporating photographic evidence of the identity of the applicant, issued by a competent national or state authority.
3. "Travel document" means a passport or some other document furnished with a photograph of the holder establishing the identity and nationality, domicile or place of permanent residence of the holder. The following documents constitute travel documents for the purpose of identity verification:-
  - (a) Permanent Resident Identity Card of Macau Special Administrative Region;
  - (b) Mainland Travel Permit for Taiwan Residents;
  - (c) Seaman's Identity Document (issued under and in accordance with the International Labour Organisation Convention/Seafarers Identity Document Convention 1958);
  - (d) Taiwan Travel Permit for Mainland Residents;
  - (e) Permit for residents of Macau issued by Director of Immigration;
  - (f) Exit-entry Permit for Travelling to and from Hong Kong and Macau for Official Purposes; and
  - (g) Exit-entry Permit for Travelling to and from Hong Kong and Macau.
4. For minors born in Hong Kong who are not in possession of a valid travel document or Hong Kong identity card<sup>4</sup>, their identity should be verified by reference to the minor's Hong Kong birth certificate. Whenever establishing relations with a minor, the identity of the minor's parent or guardian representing or accompanying the minor should also be recorded and verified in accordance with the above requirements.

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3 The identity of an individual physically present in Hong Kong should be verified by reference to their Hong Kong identify card or travel document. FIs should always identify and/or verify a Hong Kong resident's identity by reference to their Hong Kong identity card, certificate of identity or document of identity. The identity of a non-resident should be verified by reference to their valid travel document.

4 For jurisdictions that do not have national ID cards and where clients do not have a travel document or driving licence with a photograph, FIs may, exceptionally and applying a risk-based approach, accept other documents as evidence of identity. Wherever possible such documents should have a photograph of the individual.

5. A corporate Client may be identified and/or verified by performing a company registry search in the place of incorporation and obtaining a full company search report, which confirms the current reference to a full company particulars search (or overseas equivalent).
6. For jurisdictions that do not have national ID cards and where Clients do not have a travel document or driving licence with a photograph, may, exceptionally and applying a risk-based approach, accept other documents as evidence of identity. Wherever possible such documents should have a photograph of the individual. **For further details on a risk-based approach, please refer to Appendix V – Risk-based Approach (“RBA”) – and Appendix VI – Risk Assessment Form.**

## APPENDIX VIII

### GUIDELINES FOR SUSPICIOUS TRANSACTIONS

1. Follow JFIU's recommended 'SAFE' approach to identify suspicious transactions:
  - 1.1 Screen the Client and account for suspicious indicators: recognition of a suspicious activity indicator or indicators;
  - 1.2 Ask the Client appropriate questions to clarify suspicious circumstances;
  - 1.3 Find out from the Client's records: review information already known when deciding if the apparently suspicious activity is to be expected; and
  - 1.4 Evaluate all the above information and decide whether the transaction relating to the Client is genuinely suspicious.
2. The obligation to report is on the individual who becomes suspicious of a transaction. If a designated person, such as a compliance officer, has been appointed to co-ordinate the reporting of suspicious transactions, once an employee has made a report to that person in accordance with the relevant internal procedures, the employee's obligation to report is considered to have been fulfilled. It is then up to the designated person to decide if a report should be made to JFIU.
3. Suspicion in its ordinary meaning means a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove.'
4. Keep a register to record all reports made to JFIU (with date on which the report is made, the person who makes the report and the reasons for making the report).
5. After filing the report, do not carry out or continue the transactions unless authorised by JFIU.
6. Do not disclose to the person the subject of the report or to any party which may prejudice the investigation that a report has been made to JFIU.
7. For further details, please refer to Part III: Reporting Suspicious Transactions/Terrorist Property of the Anti-Money Laundering and Counter-Terrorist Financing Guidelines 7 or JFIU (at <http://www.jfiu.gov.hk/en/str.html> and <http://www.jfiu.gov.hk/en/faq.html> or Tel: (+852) 2866-3366).
8. Below are some of the common red-flag indicators as suggested by JFIU for reference:-
  - 8.1 Unusual large cash transactions made by an individual or company whose ostensible business activities would normally be conducted through cheques and other financial instruments.
  - 8.2 Substantial increases in transactions of an individual or business without apparent cause, especially if such transactions involve transfers within a short period out of the account and/or to a destination not normally associated with the Client.

- 8.3 Clients who exchange or remit cash by means of numerous smaller transactions so that each transaction is unremarkable, but the total of all the transactions will exceed the threshold.
- 8.4 Clients who seek to exchange large quantities of low denomination notes for those of higher denominations.
- 8.5 Reluctant to provide normal information when conducting transactions, or just provides minimal or apparently fictitious information.
- 8.6 A number of Clients transferring funds to the same beneficiary without an adequate explanation.
- 8.7 Structured transfers – transfers broken up into a series of smaller transfers to avoid record keeping and Client identification requirements.
- 8.8 Transactions in the name of an offshore company with structured movement of funds.
- 8.9 Transactions inconsistent with the Client's usual business or apparent means without good explanation.
- 8.10 Clients who make regular and/or large payments that cannot be clearly identified as bona fide transactions to, or receive regular and/or large payments from, countries which are commonly associated with the production, processing or marketing of drugs; or where the risk of terrorist financing activities is high.
- 8.11 Frequent exchange of travellers' cheques, foreign currency drafts by the same Client.
- 8.12 Clients receipt of numerous transfers but each transfer is below the reporting or identification requirement in the remitting country.
- 8.13 Clients sending and receiving transfers to/from tax havens, particularly if there are no apparent business reasons for such transfers or such transfers are not consistent with the Clients' business or apparent background.