

**Commonly raised questions by respondents and  
the Companies Registry's response**

The following is a summary of the more commonly raised questions on the proposed amendments to the Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Trust or Company Service Providers ("Guideline") and the response of the Companies Registry ("CR").

**Employee screening procedures (paragraphs 3.2(f) and 3.8 of the revised Guideline)**

- 1. In respect of the employee screening requirements, some respondents asked whether screening should be conducted on all employees and how such screening should be conducted.*

Trust or company service provider ("TCSP") licensees must assess the risk of money laundering and/or terrorist financing ("ML/TF") of their businesses, develop and implement policies, procedures and controls on employee screening procedures. TCSP licensees must also have appropriate screening procedures in order to be satisfied of the integrity of any new employees. Good ethical behaviour should be required of all levels of employees within a TCSP licensee. Employees of the licensee should act with integrity in carrying out their role and responsibilities. Recruitment and performance appraisal systems for employees should be designed so as to include integrity as a key assessment factor. The level of assessment should be proportionate to their role in the licensee and the ML/TF risks they may encounter.

- 2. There were questions on whether employee screening should be conducted at staff recruitment stage or on an on-going basis.*

Employee screening should be conducted at the recruitment stage (before the employees are appointed to their role) and on an ongoing basis.

**Independent audit function (paragraphs 3.2(h), 3.9, 3.10 and 3.11 of the revised Guideline)**

***3. Some respondents raised questions on the responsibilities of an independent audit function and the qualification required for performing the role of such a function.***

As stated in paragraph 3.10 of the revised Guideline, an independent audit function established by a TCSP licensee should regularly review the anti-money laundering and counter-terrorist financing (“AML/CTF”) systems of the licensee to ensure effectiveness. The review should include, but not limited to:

- (a) adequacy of the licensee’s AML/CTF systems, ML/TF risk assessment framework and application of risk-based approach;
- (b) effectiveness of suspicious transaction reporting systems;
- (c) effectiveness of the compliance function; and
- (d) level of awareness of staff having AML/CTF responsibilities.

The role of independent audit function can be performed by internal staff members or external third parties. The audit function should have a direct line of communication to the senior management of the TCSP licensee and be independent of the functions/parties that are subject to review. The independent audit function should have sufficient expertise and resources to enable the licensee to carry out its responsibilities, including independent reviews of the licensee’s AML/CTF systems.

***4. Some respondents expressed concerns about the frequency and extent of the audit. Some suggested that the review should only be done on TCSP licence renewals and a grace period should be allowed for implementing the change.***

The revised Guideline will take effect on 1 June 2023. The frequency and extent of the review should be commensurate with the nature, size and complexity of the licensee’s businesses and the ML/TF risks arising from those businesses.

5. *There were concerns that given most of the TCSP licensees are small and medium-sized enterprises, it is difficult to establish an independent audit function. Some respondents commented that conducting an external audit review will increase the licensees' costs and administrative burden and asked whether a compliance officer and/or money laundering reporting officer of the licensee can perform the independent audit function.*

Regardless of the size of business, a TCSP licensee must establish an independent audit function to review the effectiveness of its AML/CTF systems. The independent audit function should be independent of the functions/parties that are subject to review. The compliance officer or money laundering reporting officer cannot perform the role of independent audit function at the same time.

A review by external parties is not a mandatory requirement but TCSP licensees should seek assistance from external parties where appropriate, e.g. when the TCSP licensee lacks appropriate personnel to perform the independent audit function.

#### **Digital identification system (paragraph 5.17(d) of the revised Guideline)**

6. *Some respondents asked which digital identification system is recognized by the Registrar of Companies.*

The Registrar of Companies recognizes iAM Smart, developed and operated by the HKSAR Government, as a digital identification system that can be used for identity verification of natural persons.

#### **New definition of “beneficial owner” in relation to a trust**

7. *There are questions on the new definition of “beneficial owner” in relation to a trust and on the consequential amendments to the Guideline.*

The definition of “beneficial owner” in relation to a trust under section 1 of Part 1 of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (“the AMLO”) was amended to include trustees, beneficiaries and class(es) of beneficiaries. This is for better alignment with the definition of “controlling person” under the Inland Revenue Ordinance (Cap. 112). Consequential amendments are made to paragraph A in the text box on “Identifying and verifying customer’s beneficial owner” under paragraph 5.19 and the text box on “Definition of “beneficial owner” in relation to a trust” in Appendix D of the Guideline to reflect the legislative amendments.

The statutory definitions of “beneficial owner” in relation to a corporation and a partnership remain unchanged. Therefore, no amendments are required for the text boxes on definition of “beneficial owner” in Appendix B (in relation to a corporation) and Appendix C (in relation to a partnership) of the Guideline.

#### **Amendments relating to politically exposed person (“PEP”)**

#### ***8. Some respondents enquired about the reasons for revising the guidance relating to PEPs in the Guideline. Clarification was also sought on the definitions of different types of PEPs.***

The guidance relating to PEPs in the Guideline was revised to reflect (i) the amendment to the definition of “politically exposed person” under the AMLO, from one entrusted with a prominent public function in a place outside the People’s Republic of China to one entrusted with such a function in a place outside Hong Kong and (ii) the amended AMLO provisions which allow greater flexibility in the treatment of “former politically exposed persons” who are no longer entrusted with a prominent public function.

The definitions/meanings of different types of PEPs are set out in the text box under paragraph 5.33 of the revised Guideline, which include “non-Hong Kong PEP” (see paragraph A), “former non-Hong Kong PEP” (see paragraph B), “Hong Kong PEP” (see paragraph D) and “international organisation PEP” (see paragraphs E and F). The text box has provided some non-exhaustive examples of the types of prominent (public) functions that an individual may be or may have been entrusted with by a government, or by an international organisation.

***9. Some respondents sought guidance on the appropriate assessment of the ML/TF risk of former PEPs and whether there are any indicators for reference or objective measurement.***

To determine whether a former PEP does not present a high risk of ML/TF, the licensee should conduct an appropriate assessment on the ML/TF risk associated with the PEP status taking into account various risk factors, including the level of (informal) influence that the individual could still exercise; the seniority of the position that the individual held as a PEP; and whether the individual's previous and current function are linked in any way (e.g. formally by appointment of the PEP's successor, or informally by the fact that the PEP continues to deal with the same substantive matters). For reference, please see paragraphs 5.38 and 5.39 of the revised Guideline in relation to the treatment of former non-Hong Kong PEPs, former Hong Kong PEPs and former international organisation PEPs.

**Certifier of identity documents**

***10. Some respondents suggested that members of the Hong Kong Chartered Governance Institute ("HKCGI") be included as suitable persons for certifying the verification of identity documents.***

In light of the comments and having considered the suggestion, we have amended the list of suitable persons for certifying verification of identity documents by adding a new item "other professional person" which includes professional company secretary (see item (e) under paragraph A in the text box under paragraph 5.32 of the revised Guideline).

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