

SFC Posts June 2023 Edition of the AML/CFT Guideline

The SFC has updated its Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (“GAML”) to incorporate the changes brought about by the Anti-Money Laundering Ordinance Amendment Bill as outlined in [our client alert](#) earlier this year. Some of the changes took effect on 1 April, but the remainder take effect as of 1 June, and as such the new GAML is dated “June 2023”.

The most significant change is of course the inclusion of a new chapter (12) aimed at virtual asset service providers (“VASPs”) which will be covered by a separate update; however, that chapter broadly condenses the way the contents of the previous eleven chapters apply to VASPs, for example the VASP’s potential to also be at the placement stage unlike the general vulnerability at the layering stage faced by licensed corporations. It also includes further detail on the travel rule and the resultant controls required in that respect.

The key non-VASP amendments focus on three areas:

- Recognition of digital identification systems
- Definition of the term beneficial owner and especially in respect of the beneficial owner of trusts
- Definition of a politically exposed person (“PEP”), including the incorporation of the definition of a former PEP

Digital Identification Systems

The iAM Smart system, developed and operated the Hong Kong Government, has been recognised as a digital identification system which can be used to identify and verify the identities of customers. Note, this is the sole system recognized (for now) and the wording of the footnote suggests they are focussing on government run digital identification systems, so in the future systems like Singapore’s Singpass/MyInfo could be recognized by the SFC.

Nothing has been specifically added towards allowing the use of software solutions like facial recognition technology, although previous circulars have permitted this for the verification of overseas clients. This implies that the SFC’s preference is that Hong Kong resident customers are met in person, and the customer not physically present protocols be used instead. The guidelines do provide licensed corporations with some latitude in respect of the methods employed to mitigate impersonation risk; however, they must be able to demonstrate that such supplementary measures can adequately guard against impersonation risk.

Beneficial Ownership of Trusts

The overall definition of beneficial ownership has been moderately refined, but the main change has been to remove the 25% threshold for beneficial owners of trusts and to include the trustee as a beneficial owner by virtue of control. Now, all named beneficiaries of trusts are deemed to be beneficial owners, not just those with a greater than 25% entitlement. Further guidance is given where there is a class of beneficiary as opposed to named ones.

One further textual amendment, related to theme of beneficial ownership of trusts, is in Section 4.8 (Simplified Due Diligence) which gives guidance on the identification and verification of the beneficial ownership of unregulated investment vehicles. Previously, the GAML had given a specific threshold, but due to the change in approach detailed above, the wording has been altered to instruct the reader to refer to the requirements for the specific type of customer.

Foreign PEPs

Foreign PEPs are now classified as those individuals with a prominent public function outside of Hong Kong SAR and have been renamed non-Hong Kong PEPs (similarly domestic PEPs are now called Hong Kong PEPs).

Furthermore, PEPs who have not held a prominent public function for more than 12 months can be deemed former PEPs subject to a risk-based approach. In the event it is decided the individual in question fulfils the definition of a former PEP, there is no further requirement for Senior Management sign-off on the customer due diligence, provided there are no high-risk factors for money laundering and/or terrorism financing.

Please note that the record-keeping requirements also apply to the risk assessment on PEPs and former PEPs including all rationale for the rating.

For the complete list of non-VASP-related amendments, please see the [Appendix](#) to the SFC Circular.

Our Services

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