

## **Response to the Securities and Futures Commission’s Consultation Paper on Proposed Amendments to the (1) Guideline on Anti-Money Laundering and Counter-Terrorist Financing and (2) Prevention of Money Laundering and Terrorist Financing Guidelines issued by the Securities and Futures Commission for Associated Entities**

The Financial Services Development Council (“FSDC”) considers it is important that the amendments to the anti-money laundering (“AML”) framework proposed by the Securities and Futures Commission (“SFC”) would serve to balance the compliance cost to the financial institution (“FI”) and the threat of the FI being used in connection with money laundering or terrorist financing (“ML/TF”).

In recent years, customer experience in Hong Kong has reported to have been adversely impacted due to concerns about financial inclusion and de-risking. International media reports of legitimate customers struggling to justify their financial accounts in the face of onerous anti-money laundering and counter financing of terrorist (“AML/CFT”) practices have painted Hong Kong as overly bureaucratic and business unfriendly. To ensure that Hong Kong truly remains “open for business”, the SFC should be minded that Hong Kong’s regulatory requirements do not become disproportionate to the likely AML/CFT risks posed by customers and seek to minimise the unintended consequences of AML regulation.

### **Common approach across Hong Kong AML regulators**

The AML guidance from the regulators which underpins the implementation of common AML/CFT standards must be consistent across the Hong Kong financial sectors to avoid uncertainties or imposing more onerous requirements upon a particular type of FIs. There is a need for clear and consistent, or the consistent application of, baseline regulations to be made across the Hong Kong AML regulators.

In practice, a consistent approach is not always adopted. As an example, the Hong Kong Monetary Authority (“**HKMA**”) published FAQs on customer due diligence on 25 May 2017. Amongst other things, the HKMA clarifies that the list of suitable certifiers in the AML Guideline is non-exhaustive and that other independent and reliable certifiers are acceptable. Authorised institutions are also able to check documents provided by the customer against public sources where available. Whilst the guidance is practical and provides flexibility to authorised institutions, equivalent guidance is yet to be seen from other regulators such as the SFC. We suggest that the AML guidelines and other guidance from all relevant authorities be aligned to allow for the same risk-sensitive application of AML/CFT measures across all types of FIs.

### **Non-face-to-face onboarding**

To enable the development of FinTech solutions in Hong Kong, it is crucial for all regulators to arrive at a common solution to facilitate the on-boarding of clients on a non-face-to-face basis. This is vital, with the development of the Greater Bay Area, to ensure financial inclusion, and to ensure Hong Kong does not get left behind in the age of digital solutions for financial products and investing.

Currently the SFC’s position on the permitted non-face-to-face approaches for account opening is set out in its circulars dated 12 May 2015, 24 October 2016 and 12 July 2018 (together, the “**SFC Circulars**”). The options available to FIs using technologies to identify and assess ML/TF risks are very limited. We agree and welcome the clarification that paragraph 4.10.2(b) of the proposed revised Guideline of Anti-Money Laundering and Counter-Terrorist Financing (the “**Proposed Revised Guideline**”) allows an FI to utilise different methods to mitigate the risk of a customer not being physically present for identification purposes. An FI should be provided with the flexibility to determine and assess itself as to whether a particular measure, *or a combination of measures*, is acceptable.

Alongside the paragraph 4.10.2(b) clarification in the Proposed Revised Guideline, we believe it is also important for the SFC to review paragraph 5.1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“**Code of Conduct**”) and provide further guidance to align with the principles and flexibility offered to FIs under the Proposed Revised Guideline. If paragraph 5.1 of the Code of Conduct remains more stringent (and prescriptive) than the Proposed Revised Guideline, this could cause confusion to the FIs, contravening the spirit of the latter.

Our views are set out based on the three categories of measures under paragraph 4.10.4 of the Proposed Revised Guideline and the scope of such measures (as a single measure or part of a combination of measures) that could provide sufficient comfort to satisfy the standard required to adequately guard against impersonation risk.

***I. Certification of copy identification documents by an appropriate person:***

- (a) As a single measure to be adopted by FIs, the list of recognised certifiers under paragraph 5.1 of the Code of Conduct should be clarified to match paragraph 4.10.7 of the Proposed Revised Guideline. For example, “professional person” under paragraph 5.1 of the Code of Conduct should cover lawyer, notary public, auditor, professional accountant, trust or company service provider and tax advisor based in Hong Kong or in an equivalent jurisdiction.
- (b) As part of a combination of measures to be adopted by FIs, the list of recognised certifiers under paragraph 5.1 of the Code of Conduct and the paragraph 4.10.7 of the Proposed Revised Guideline should be expanded. Employees of unregulated entities based in an equivalent jurisdiction (as the affiliates to the FIs) should be recognised as eligible certifiers provided the relevant FI has put in place adequate systems and procedures for such

employees of its affiliate to comply with FATF standards or the relevant requirements set out in Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (e.g. through appropriate training, written policies and monitoring controls).

***II. Checking relevant data against reliable databases or registries:***

- (a) As a single measure to be adopted by FIs, currently the SFC Circulars only permit certification services that are recognised by the Electronic Transaction Ordinance (the “**ETO**”) or provided by certification authorities outside Hong Kong whose electronic signature certificates have obtained mutual recognition status in Hong Kong. Currently there is a very limited list of such recognised certification service providers (particularly with respect to overseas service providers) and such service is not widely used by the industry. The list of recognised certification service providers should be expanded.
- (b) As part of a combination of measures to be adopted by FIs, FIs should be encouraged to explore alternative methods of electronic certification of identity against reliable databases or registries so long as the alternative method ensures to a high level of confidence the identity of the client. The reliance of such method can be assessed by the FIs based on their understanding of the veracity of the certification processes subject to such certification system having adequate controls to appropriately validate the authenticity of identity. In this respect certification service providers (whether or not being recognised under the ETO or obtained mutual recognition status in Hong Kong) that have direct access to governmental / bank or other reliable databases or registries should be eligible.

### ***III. Using appropriate technology, etc:***

- (a) As a single measure to be adopted by FIs, currently the SFC Circular dated 12 July 2018 only permits online client onboarding, among other requirements, by requiring the client to transfer an initial deposit of not less than HK\$10,000 from a bank account in the client's name maintained with a licensed bank *in Hong Kong* to the intermediary's bank account. This is particularly difficult to achieve for non-local individuals. We believe the transfer of initial deposit from a bank account (in the client's name) with a licensed bank in Hong Kong or in an equivalent jurisdiction should be acceptable.
  
- (b) As part of a combination of measures to be adopted by FIs to guard against impersonation risks, FIs should also be allowed to rely on other technology/software to assist them in determining that the documentary evidence of identity is actually related to the client they are dealing with. Examples of such measures include (i) live streaming videos with real time interaction between the customer and an employee of the FI or (ii) through videos the customer being asked to perform a series of tasks/actions to ensure the FI is dealing with a living individual and at the same time using facial recognition technology to match the photo identification documentation provided by the individual.

The FSDC believes that an appropriate combination of measures to be adopted by FIs as discussed above can still adequately guard against impersonation risk. Such combination of measures, in our view, could offer equivalent (if not higher) comfort to adequately safeguard against impersonation risk than existing non-face-to-face approaches for account opening provided under the SFC Circulars.

Overall FIs should be encouraged to explore and engage alternative methods of electronic certification. SFC can also provide more guidance on engaging technology that is reliable and dependent. Factors to consider

could include the accuracy, security and privacy of the electronic identity verification tool, the method of information collection and the ownership of the data.

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