

Practice Circular on Guidelines on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for the Estate Agency Sector

Questions and Answers (Q&As)

Notes:

1. All references to:
 - a. “AMLO” shall mean the Anti-Money Laundering and Counter-Terrorist Financing Ordinance.
 - b. “EAA” shall mean the Estate Agents Authority.
 - c. “EAO” shall mean the Estate Agents Ordinance.
 - d. “Guidelines” shall mean Guidelines on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for the Estate Agency Sector.
 - e. “Practice Circular” shall mean Circular No. 23-01 (CR) issued by the EAA on Guidelines on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for the Estate Agency Sector.
 - f. “Practice Regulation” shall mean the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.

The words and expressions used in these Q&As shall have, unless the context otherwise requires, the same meaning as those words and expressions have in the Practice Circular.

2. These Q&As are for general reference only. The answers/solutions suggested in the Q&As are not exhaustive and they do not constitute legal or professional advice. In considering whether a licensee has breached the Practice Circular, the EAA will consider each case on its own merits. You should seek legal or professional advice as and when necessary, especially on the interpretation of relevant legal provisions and specific advice on any individual case. The EAA makes no warranty as to the completeness of the information set out in these Q&As, or the appropriateness for its use in any particular circumstances. The EAA will not accept any liability or responsibility whatsoever for any loss or damage caused to any person howsoever arising from any use, misuse of, or reliance on the contents of these Q&As.



Q&As

Scope of application

Q1. Are the guidelines set out in the Practice Circular applicable to the leasing of properties?

Answer: No.

The guidelines set out in the Practice Circular are applicable to those licensees who and when they are involved, in Hong Kong, in a transaction concerning the buying or selling of real estate for a client.

Please refer to footnote 4 of the Guidelines.

Q2. Are the AML/CTF requirements under the AMLO applicable to the sale and purchase of properties outside Hong Kong?

Answer: Yes.

Section 5A(6) of the AMLO provides that it is immaterial whether the subject matter of a transaction is in Hong Kong or elsewhere. Hence, if a licensee is involved, in Hong Kong, in a transaction concerning the buying or selling of real estate for a client, even though the property is situated outside Hong Kong, he has to comply with the AML/CTF requirements under the AMLO.

Please refer to footnote 4 of the Guidelines.



- Q3. (a) Is a licensee required to carry out CDD on a purchaser of a property situated outside Hong Kong before the purchaser enters into a booking form or reservation agreement whether or not a non-refundable administration fee is payable to the licensee?**
(b) If the answer to question (a) above is “No”, is it necessary for the licensee to carry out CDD on the purchaser if the purchaser enters into an agreement for sale and purchase with the vendor thereafter directly?

Answer: “No” to the first question (a), unless the booking form or reservation agreement amounts to an agreement for sale and purchase of a property.

The answer to the second question (b) depends on the circumstances of the case. If the sale and purchase agreement is entered into between the vendor and the purchaser thereafter directly without involving the licensee any further, it is not necessary for the licensee to carry out CDD on the purchaser. However, if the purchaser continues to use the services of the licensee thereafter through whom the transaction is concluded with the vendor, he will be regarded as the licensee’s client and the licensee has to carry out CDD on the purchaser.

- Q4. Referring to the answer in Q3, would there be any difference if the purchaser has given a written statement confirming that the licensee does not act for him in the purchase?**

Answer: It depends. The written statement that the licensee did not act for the purchaser is not conclusive evidence. If the purchaser, despite such a written statement, has in fact used the services



of the licensee in circumstances described in the answer to Q3, he will be regarded as the licensee's client and so the licensee is required to carry out CDD on the purchaser.

Q5. Does a licensee have to carry out CDD on his client if the property involved is the sale of a first-hand property?

Answer: Yes, if the vendor and/or the purchaser retains or otherwise uses the services of or otherwise engages or employs the licensee because they will then be regarded as the licensee's clients. A licensee has to carry out CDD on his client regardless of the type of property and whether or not it is a first-hand or second-hand property.

Q6. Is a licensee who is a sub-agent appointed by the principal agent of the vendor required to carry out CDD on the vendor of a property?

Answer: Generally, if the vendor is not the sub-agent's client (e.g. it is stated in the appointment letter by the principal agent that the sub-agent does not act for the vendor), the sub-agent is not required to carry out CDD on the vendor. However, the aforesaid is not conclusive. If, despite the aforesaid, the vendor in fact uses the services of the sub-agent (e.g. the sub-agent prepares the provisional agreement for sale and purchase (PASP) and attends the execution of the PASP for the vendor), then he may be regarded as the sub-agent's client under the AMLO and the sub-agent is required to carry out CDD on the vendor. Moreover, if the vendor is the principal agent's client, the principal agent who is also a licensee is required to carry out CDD on the vendor.



Q7. Referring to Q6 above, if the purchaser has given the sub-agent a written statement confirming that the sub-agent does not act for him in the purchase, is it necessary for the sub-agent to carry out CDD on the purchaser?

Answer: It depends. The written statement that the sub-agent did not act for the purchaser is not conclusive evidence. If the purchaser, despite such a written statement, has in fact used the services of the sub-agent, he will be regarded as the sub-agent's client and so the sub-agent is required to carry out CDD on the purchaser.

Q8. Is it necessary for a licensee to carry out CDD on a potential purchaser upon submission of the registration of intent in the sale of first-hand property?

Answer: No, so long as the submission of the registration of intent does not amount to an agreement for sale and purchase.

Q9. If a licensee acts for one party only but not the other party who is not represented by another licensee (i.e. unrepresented), does the licensee have to carry out CDD for that unrepresented party?

Answer: In general "No", but if the unrepresented party uses the services of the licensee, he will then be regarded as the licensee's client in which case the CDD requirements are applicable to him.

Q10. Are there any exemptions from the requirement of



carrying out CDD measures under the AMLO?

Answer: No, unless the transaction is only an “occasional transaction” which is defined to mean a transaction between a licensee and a customer who does not have a business relationship with the licensee and the amount involved in that “occasional transaction” does not exceed an aggregate value of \$120,000. Though there are basically no exemptions, a licensee may carry out simplified customer due diligence (SCDD) in certain situations in which case the licensee is only required to identify the customer and verify his identity but not to identify the beneficial owner or verify his identity. Examples of customers to whom SCDD may be applied include a financial institution and a corporation listed on any stock exchange.

Please refer to paragraphs 4.6, 4.7, 4.20 and 4.22 of the Guidelines.

Q11. If a licensee acts for a client on one occasion only but not again, can that single transaction be regarded as an “occasional transaction” so that there is no need to carry out any CDD?

Answer: No.

Under section 1 of Schedule 2 to the AMLO, “occasional transaction” is defined as a transaction between a licensee and a customer who does not have a business relationship with the licensee. In most cases, a sale and purchase of a property involves an element of duration and so a business relationship is formed between a licensee and his customer. Pursuant to section 3(1) of Schedule 2 to the AMLO,



licensees must carry out CDD before establishing a business relationship with the customer, and must carry out CDD before carrying out for the customer any occasional transaction that involves an amount equal to or above \$120,000 or an equivalent amount in any other currency, whether the transaction is carried out in a single operation or in several operations that appear to the licensee to be linked. It should be noted that the value of the transaction here means the gross value of the property transaction, not the value of the deposit payable under the property transaction or the licensee's commission. In any event, since property prices in Hong Kong are high, it is unlikely that the amount of a transaction would fall below \$120,000.

Please refer to paragraphs 4.6 and 4.7 of the Guidelines.

Q12. Is it necessary to carry out CDD on a vendor who is only a recipient of the purchase price?

Answer: So long as the vendor is the licensee's client, CDD has to be carried out on the vendor.

Q13. Are the CDD requirements applicable to the sale and purchase of shares of a property holding company handled by a licensee?

Answer: No.

The CDD requirements under the AMLO are only applicable when a licensee is involved, in Hong Kong, in a transaction concerning the buying or selling of real estate for a client. Since the transaction in the above case concerns the buying



or selling of shares of a company but not the real estate by the company, the CDD requirements therefore do not apply to the licensee.

Timing of carrying out CDD

Q14. Does a licensee have to carry out CDD before arranging for his clients to inspect a property?

Answer: No.

Despite the fact that a licensee is, pursuant to section 6 of the Practice Regulation, required to enter into an estate agency agreement with his purchaser client prior to arranging an inspection of the residential property concerned, a property inspection arranged by a licensee and attended by a prospective purchaser does not, for the purpose of the AMLO, constitute a business relationship. In other words, CDD is only applicable when an agreement for sale and purchase is entered into.

Please refer to paragraph 4.6 and footnote 12 of the Guidelines.

Q15. Must the CDD process be completed by a licensee before arranging for his client to enter into a provisional agreement for sale and purchase?

Answer: Yes, as section 3 of Schedule 2 to the AMLO so provides and it is prudent to do so.

However, a licensee may complete the CDD process after arranging for his client to enter into a provisional agreement



for sale and purchase if (a) this is necessary not to interrupt the normal conduct of business with regard to the client; and (b) any risk of ML/TF arising from the delayed verification of the client's or beneficial owner's identity is effectively managed. In any case, he must complete the CDD process as soon as reasonably practicable thereafter.

Please refer to paragraph 4.12 of the Guidelines.

Q16. Referring to the answer in Q15 above, what is the meaning of “as soon as reasonably practicable”?

Answer: It depends on the particular facts of each case. Generally speaking, licensees should use their best endeavours to complete the verification and in any event, no later than the date of completion of the sale and purchase.

Q17. A representative has produced a vendor's power of attorney but not a copy of the identity documents of the vendor client who has not been physically present for identification. Since the power of attorney is duly attested by a solicitor, can it be argued that the identity of the vendor must have been duly verified by the solicitor beforehand in which case the licensee needs not carry out CDD on the vendor?

Answer: No.

If the power of attorney is properly executed by the vendor and attested by a solicitor, it may reasonably be considered that the ML/TF risk does not seem to be high even though the vendor has not been physically present for identification and



his attorney had not produced the vendor's identity documents for the licensee's verification. However, the licensee should be mindful that unless he has verified the vendor's identity by reference to documents, data or information provided by a recognised digital identification system, if the vendor has not been physically present for identification, additional measures have to be taken such as further verifying the vendor's identity by using additional documents not previously used. In this connection, the attorney must be advised to produce two different types of identity documents of the vendor as soon as possible and if the licensee is unable to complete the CDD process, he must terminate the business relationship as soon as reasonably practicable if he has established a business relationship with that customer.

Please refer to Q61 to Q63 of the Q&As for further information in relation to recognised digital identification system.

CDD

Q18. How should licensees explain to individual client about their obligation to keep a copy of the identity document as required by the AMLO?

Answer: Licensees should explain to individual client that it is a statutory requirement under the AMLO for them to verify the client's identity against his/her identity document (e.g. Hong Kong identity card, passport or travel document), and obtain a copy thereof for record-keeping.

To assure the individual client that there will be proper use



and handling of his personal data, licensees should explain to the client that collection of the personal data is only for the performance of estate agency work for the client on that particular occasion and they will not use the personal data for any other purpose nor transfer the personal data to third party without the client's consent. Licensees should also explain that they are required to comply with the Personal Data (Privacy) Ordinance and the EAA's relevant guidelines on collection, use and handling of client's personal data.

If necessary, licensees may refer the individual client to the e-leaflet jointly issued by the EAA and the Narcotics Division of the Security Bureau which explains to customers about the AMLO requirement of obtaining customer's identity document and keeping a copy for record (www.eaa.org.hk/Portals/0/Sections/CC/AML_en.pdf).

Q19. What should a licensee do if his client refuses to produce his identification documents for completing the CDD process?

Answer: In this case, the licensee will not be able to complete the CDD process. According to section 3(4) of Schedule 2 to the AMLO, the licensee must not establish a business relationship or carry out any occasional transaction with that client, and he must terminate the business relationship as soon as reasonably practicable if he has already established a business relationship with that client. The licensee should also assess whether failure to complete the CDD process provides grounds for knowledge of suspicion of ML/TF and for filing a STR with the JFIU.

Please refer to paragraph 4.15 of the Guidelines.



Q20. What are the legal consequences if a licensee does not comply with the AML/CTF requirements under the AMLO?

Answer: If a licensee contravenes or fails to comply with an AML/CTF requirement as defined in the EAO, the EAA may take disciplinary action against the relevant licensee under section 29 and exercise the disciplinary powers under section 30 of the EAO; and may suspend or revoke his/her licence under section 27 of the EAO.

Q21. Who should a licensee identify as beneficial owner in relation to a trust and what should he do to verify the beneficial owner's identity?

Answer: According to section 1(1) of Schedule 2 to the AMLO, a beneficial owner in relation to a trust is:

- (a) a beneficiary or a class of beneficiaries of the trust entitled to a vested interest in the trust property;
- (b) the settlor of the trust;
- (c) the trustee of the trust;
- (d) a protector or enforcer of the trust; or
- (e) an individual who has ultimate control over the trust.

A licensee should take reasonable measures to verify the beneficial owner's identity, based on his assessment of the ML/TF risk, so that he is satisfied that he knows who the beneficial owner in relation to a trust is, including measures to enable him to understand the ownership and control structure of the customer.

Please refer to paragraph 4.18(e) and (f) of the Guidelines.



Q22. What is the difference between customary CDD, SCDD and ECDD?

Answer: The main difference lies in the need and extent of the identification and verification of the identity of the customer and his beneficial owner. Under the customary CDD, both the customer and his/her beneficial owner have to be identified and their identities have to be verified. Under SCDD, only the customer has to be identified and his identity verified, and there is no need to identify the beneficial owner or to verify his identity. Under ECDD, apart from identifying the customer and his beneficial owner and verifying their identities, a licensee must take reasonable measures to establish the customer's or the beneficial owner's source of wealth and the source of the funds involved in the business relationship.

Q23. If the client is a corporation with 49 shareholders, is it necessary to identify all of them and verify all their identities?

Answer: No, unless the shareholder is an individual who owns or controls, directly or indirectly, more than 25% of the issued share capital or voting rights, or who exercises ultimate control over the management of the corporation.

In the above case, if none of the 49 shareholders owns or controls, directly or indirectly, more than 25% of the issued share capital or voting rights, then there is no need to identify any of them or verify their identities.

Where the ownership is dispersed, the licensee should concentrate on identifying and taking reasonable measures to verify the identity of those who exercise ultimate control over the management of the company.



Q24. A listed company often uses a shelf company to hold a property. Should SCDD be conducted on the shelf company?

Answer: If the customer not falling within section 4(3) of Schedule 2 to the AMLO has in its ownership chain an entity that falls within that section, licensees are not required to identify or verify the beneficial owners of that entity in that chain when establishing a business relationship with the customer.

In the above case, if the shareholder of the shelf company is a corporation listed on any stock exchange, then the licensee is not required to identify and verify the beneficial owners of the listed company. Nonetheless, SCDD must not be applied when the licensee suspects that the customer, the customer's account or the transaction is involved in ML/TF, or when the licensee doubts the veracity or adequacy of any information previously obtained for the purpose of identifying the customer or verifying the customer's identity, notwithstanding that the type of customers falls within section 4(3) of Schedule 2 to the AMLO.

Q25. Is it necessary to carry out CDD on a father-in-law who has assisted the purchaser client to pay part of the deposit for the purchase of a property?

Answer: In general "No", unless the father-in-law is the beneficial owner. If the father-in-law simply lends or gives money as a gift to the purchaser client without the intention of retaining any beneficial interest and/or controlling the purchaser client, the father-in-law is unlikely a beneficial owner. However, the licensee should make appropriate enquiries where there are indications that the client is not acting on his own behalf so

as to ascertain whether the client is also the beneficial owner.

Please refer to paragraph 4.18 of the Guidelines.

Q26. To complete the CDD measures for companies with multiple layers, what should licensees do after they have identified the ownership structure of the intermediate layers of the companies (e.g. by obtaining a director's declaration annexing an ownership chart describing the intermediate layers)?

Answer: After identification of the ownership structure of the intermediate layers of the companies, licensees should verify the accuracy of information in respect of every layer of the companies.

The method or document to be used for verification of information in relation to the companies may vary depending on the place of incorporation of the companies. Please refer to paragraph 8 of Appendix D of the Guidelines for details.

Once the information in respect of every layer of companies is verified, licensees should then verify the identity of the individuals who are the beneficial owners of the customer.

Identity Verification Form

Q27. What is the purpose of the Identity Verification Form? Where can the form be obtained?

Answer: The purpose of the Identity Verification Form is to facilitate licensees to carry out CDD for compliance with the AMLO. Although licensees are free to make their own forms, they are



strongly encouraged to use the appropriate Identity Verification Form which is available for download from the EAA website.

Q28. If a licensee has entered into a Form 3/Form 4 pursuant to the Practice Regulation, is it nonetheless necessary for him to complete the Identity Verification Form for carrying out CDD?

Answer: It depends. If a licensee has obtained all the information necessary for identifying the client and verifying the identity of the client and also for identifying the beneficial owner (if any) and verifying the identity of the beneficial owner in relation to the client in accordance with section 2 of Schedule 2 to the AMLO, and such information has been duly included in the Form 3/Form 4, there is no need for him to complete the Identity Verification Form in so far as carrying out CDD is concerned. In fact, while the EAA has designed a standard Identity Verification Form to facilitate licensees to carry out CDD, licensees are free to make their own forms in such manner as they may think fit.

Licensees are, however, strongly encouraged to use the Identity Verification Form or adopt it with modifications to suit their particular needs as the form is comprehensive and specially designed to assist licensees to comply with the statutory CDD requirements.

Q29. Is a client required to sign the Identity Verification Form?

Answer: No.



Though the client concerned may be asked by the licensee to answer certain questions or produce certain information as requested on the Identity Verification Form, the client is not required to sign the form. The form should be signed by the licensee who serves the client concerned and has seen the original/certified copy of the documentary evidence in the CDD process.

It should, however, be noted that a director's declaration obtained pursuant to section 3 of the Identity Verification Form (for use where the customer is a corporation) is required to be signed by a director.

Q30. For the purpose of complying with the Guidelines for carrying out CDD, can licensees, when acting for both the vendor and the purchaser clients, fill out only one Identity Verification Form?

Answer: There is no requirement in the Guidelines on the number of Identity Verification Forms that licensees must fill out, so long as licensees can obtain all the information necessary for identifying the client and verifying the identity of the client, and also for identifying the beneficial owner (if any) and verifying the identity of the beneficial owner in relation to the client in accordance with section 2 of Schedule 2 to the AMLO; and such information has been duly included in the relevant Identity Verification Form.

However, for the sake of clarity and avoiding omission of obtaining information necessary for identifying the client and verifying the identity of the client in compliance with section 2 of Schedule 2 to the AMLO, the EAA strongly



recommends licensees to fill out separate Identity Verification Forms for their vendor and purchaser clients respectively.

Q31. For the completion of the customer's address on the Identity Verification Form, must it be the customer's residential address?

Answer: The address can be a residential address or any other permanent address of contact.

In general, the residential address (or permanent address of contact, if different) of the customer is required to be obtained. Moreover, a hotel address is not sufficient for persons residing in Hong Kong or corporate customers registered and/or operating in Hong Kong; and a post office address is not acceptable in any circumstances.

Q32. If (a) the vendor client is married and the land search shows that only the vendor client is the current registered owner of the property; or (b) the purchaser is married, would it be necessary for licensees to state the name of their client's spouse as the beneficial owner in the Identity Verification Form and then conduct CDD on the spouse?

Answer: In the above cases, if the licensee believes that the spouse of his vendor/purchaser client is the beneficial owner or one of the beneficial owners of the property (e.g. the spouse provides the funds for the relevant transaction), the licensee shall identify the beneficial owner and take reasonable measures to verify the beneficial owner's identity.

Q33. **Section 1 of the Identity Verification Form (for use where customer is an individual) says: “(but if the customer has never been physically present for identification or if the customer has not been present and the licensee has not identified or verified the customer’s identity on the basis of documents, data or information provided by a recognised digital identification system, please tick “✓” at least two) of the relevant boxes...”. What does that mean? Why is it necessary?**

Answer: This means that a licensee has to give at least two different boxes a tick, that is one for each box. The idea is to further verify the customer’s identity by using at least two different identity documents, e.g. a Hong Kong Identity Card and a passport.

The above additional measure is recommended to mitigate the ML/TF risk because if a customer is not physically present for identification purposes or if the customer has not been present and the licensee has not identified or verified the customer’s identity on the basis of documents, data or information provided by a recognised digital identification system, the licensee will generally not be able to determine that the documentary evidence of identity produced actually relates to the customer they are dealing with. Consequently, the risk in respect of the customer increases.

Q34. **Is it sufficient to set out any one but not all of the names of the shareholders in the ownership chart in the enclosure to Annex of the Identity Verification Form (for use where the customer is a corporation)?**

Answer: No.

It is necessary to set out each and every one of them so long



as he owns or controls, directly or indirectly, more than 25% of the issued share capital or voting rights, or who exercises ultimate control over the management of the corporation.

Q35. In the Identity Verification Form (for use where the customer is a corporation), is it necessary to “tick” both boxes at “Section 3: Ascertaining the Beneficial Owner” if one of the two shareholders is an individual holding 50% of the issued share capital of the company and the other shareholder is a corporation holding the other 50%? For the shareholder which is a corporation, is it necessary to obtain the director’s declaration and the ownership chart?

Answer: Yes.

In the above case, “Section 4: Identification and Verification of Customer’s Beneficial Owner” should be completed as soon as the shareholder who is an individual is ascertained. However, the name(s) of the beneficial owner(s) of the corporate shareholder can only be ascertained after making enquiries with the director of the company and obtaining from him the necessary director’s declaration and ownership chart. Thereafter, Section 4 should also be completed in respect of the beneficial owner(s) of the corporate shareholder.

Q36. If none of the shareholders of the company client owns or controls, directly or indirectly, more than 25% of the issued share capital or voting rights, is it sufficient just to identify anyone of them and verify his identity?

Answer: If none of the shareholders owns or controls, directly or



indirectly, more than 25% of the issued share capital or voting rights, then there is no need to identify any of them or verify his identity. However, the licensee should concentrate on identifying and taking reasonable measures to verify the identity of those who exercise ultimate control over the management of the company.

Please refer to paragraph 4.18(c) of the Guidelines.

Q37. If there are ten directors in the company and each of them holds 10% of the issued share capital, how should the blank for the names of the directors in the Identity Verification Form (for use where the customer is a corporation) be completed?

Answer: The names of all the ten directors should be put down in the relevant box asking for the name(s) of director(s) on the form, irrespective of their shareholding. If there is insufficient space, the names should be continued on a continuation sheet.

Q38. If the client is company A and its shareholder is company B, which director (i.e. director of company A or company B) should sign the director's declaration?

Answer: The director of company A should sign the director's declaration. He is supposed to know the intermediate layers of the company and the ultimate beneficial owners of the company.

Q39. In "Section 5: General Risk Assessment" of the Identity Verification Form (for use where the customer is an

individual), how many ticks in the boxes under the column marked “Yes” are needed for a licensee to assess his customer as high-risk? Are there any guidelines on this?

Answer: As stated in paragraph 3.8 of the Guidelines, licensees, in assessing ML/TF risks, should consider all relevant risk factors before determining what the level of overall risk is and the appropriate level and the type of mitigation to be applied and document their risk assessment.

To this end, licensees may assess the ML/TF risks of individual customers by assigning a ML/TF risk rating to their customers. While there is neither an agreed set of risk factors nor a single methodology to apply these risk factors in determining the ML/TF risk rating of customers, the following factors may be considered:

- (a) customer risk;
- (b) country/geographic risk
- (c) service risk; and
- (d) delivery channel risk

For detailed guidelines on risk assessment, licensees may refer to paragraphs 3.5 to 3.10 of the Guidelines. Some examples of the specific factors in relation to the assessment of ML/TF risk rating of customers are set out in Appendix B of the Guidelines for licensees’ consideration.

With a view to facilitating licensees to assess the ML/TF risk rating of their customers, some of the specific factors are also set out in Section 5 (or Section 6) of the relevant Identity Verification Form for licensees’ reference.



AML/CTF obligations

Q40. Must there be a Compliance Officer and a Money Laundering Reporting Officer; and do the Compliance Officer and the Money Laundering Reporting Officer have to be different persons?

Answer: On the first question: it is not a must but for the proper implementation of AML/CTF systems, it is a good practice to have them for overseeing the establishment and maintenance of AML/CTF systems.

On the second question: No. Depending on the operation and risk profile of an estate agency company, the same person may be appointed as its Compliance Officer and Money Laundering Reporting Officer.

Please refer to paragraph 2.9 of the Guidelines.

Q41. Is it a must for an estate agency company and senior management to establish an AML/CTF system as mentioned in Chapter 2 of the Guidelines?

Answer: No, but it is a good practice to do so.

According to section 23 of Schedule 2 to the AMLO, licensees are required to take all reasonable measures to (a) ensure that proper safeguards exist to prevent a contravention of any requirement under Part 2 or 3 of Schedule 2 to the AMLO; and (b) mitigate the risk of ML/TF. To fulfil such obligations, estate agency companies and senior management should, on a risk-based approach having regard to the size of their operation and risk profile, develop and implement policies, procedures and controls



(“AML/CTF systems”) on various aspects of their businesses and practices. The AML/CTF systems should cover areas such as risk assessment; CDD measures; continuous monitoring of customers; suspicious transactions reporting; record keeping and staff training.

It should be noted that where the word “should” appear in a guideline, a licensee is expected to follow the standard therein set out as a matter of good practice. A licensee is also expected to be able to explain the reasons for any departure from that standard.

Please refer to paragraphs 2.2 to 2.4 of the Guidelines.

Q42. How does an estate agency company incorporated in Hong Kong having a branch office in Chinese Mainland comply with the requirement regarding duties extended to branches and subsidiary undertaking outside Hong Kong under the AMLO?

Answer: An estate agency company which is incorporated in Hong Kong with branches or subsidiary undertakings outside Hong Kong must ensure that its branches and subsidiary undertakings that carry on the same business as the estate agency company in a place outside Hong Kong have procedures in place to ensure compliance with, to the extent permitted by the law of that place, imposed under Parts 2 and 3 of Schedule 2 to the AMLO. The estate agency company should have in place a group AML/CTF policy and communicate the group policy to its branches and subsidiary undertakings outside Hong Kong.

Please refer to paragraphs 2.15 to 2.17 of the Guidelines.



Q43. Is it necessary to provide clients with a Personal Information Collection Statement in order to collect or make a copy of the client's Identity card or passport?

Answer: Yes.

On or before collecting personal data of a client pursuant to the AMLO, licensees should provide to the client a Personal Information Collection Statement stating clearly the purpose of collecting the data, the classes of persons to whom the data may be transferred, and the consequences of failing to provide the data and right of access to the data.

Please refer to paragraphs 2 to 4 of the Circular No. 13-05(CR) and the sample Personal Information Collection Statement thereunder.

Q44. Regarding “certified copies” of identification documents, who are the suitable certifiers?

Answer: Suitable persons for making certified copies of identification documents may include:

- (a) a professional third party, such as solicitor, notary public or accountant etc.;
- (b) an officer of an embassy or consulate of the Country of issue of the identity document; and
- (c) a Justice of the Peace.

ECDD

Q45. Is it necessary for a licensee to ask his client to provide information on the source of wealth and source of the funds that will be involved in the business relationship

whenever CDD is carried out?

- Answer: No, unless there is a high-risk situation, for example,
- (a) customer not physically present for identification purposes;
 - (b) customer or his beneficial owner being a PEP;
 - (c) customer from or transaction connected with a jurisdiction that does not adopt or insufficiently adopts the FATF Recommendations;
 - (d) any situation that by its nature may present a higher risk of ML/TF; and
 - (e) any situation specified by the EAA in a notice given to the licensee.

Please refer to paragraph 4.26 of the Guidelines. With respect to a customer not physically present for identification, if the licensee has identified the customer and verified his identity by reference to information provided by a recognised digital identification system, the requirements under paragraph 4.28 of the Guidelines will not apply.

Q46. One of the ECDD measures is to obtain approval from the senior management. What does “senior management” mean?

- Answer: The term “senior management” means a chief executive officer, managing director, sole proprietor, managing partner, directors (or board), senior managers or other operating management personnel (as the case may be) who is/are a licensed estate agent(s) under the EAO and who is/are responsible, either individually or collectively, for the control, management and/or supervision of an estate agency company’s business.



Please refer to Appendix A of the Guidelines.

Q47. What is meant by a Non Hong-Kong PEP? Where can such information be found?

Answer: A (non-Hong Kong) PEP (i.e. politically exposed person) is defined in section 1 of Schedule 2 to the AMLO as:

- (a) an individual who is or has been entrusted with a prominent public function in a place outside Hong Kong 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; but
 - (ii) does not include a middle-ranking or more junior official of any of the categories mentioned in subparagraph (i);
- (b) a spouse, a partner, a child or a parent of an individual falling within paragraph (a), or a spouse or a partner of a child of such an individual; or
- (c) a close associate of an individual falling within paragraph (a).

Section 1(3) of Schedule 2 to the AMLO defines a close associate as:

- (a) an individual who has close business relations with a person falling under paragraph (a), including an individual who is a beneficial owner of a legal person or trust of which the person falling under paragraph (a) is also a beneficial owner; or
- (b) an individual who is the beneficial owner of a legal person or trust that is set up for the benefit of a person falling under paragraph (a).



Licensees may make reference to publicly available information and/or screening against commercially available databases for determining whether a customer or a beneficial owner of a customer is a PEP. Licensees may also use publicly available information or refer to relevant reports and databases on corruption risk published by specialised national, international, non-governmental and commercial organisations to assess which countries are most vulnerable to corruption (an example of which is Transparency International's "Corruption Perceptions Index", which ranks countries according to their perceived level of corruption).

Please refer to paragraphs 4.30 to 4.35 of the Guidelines.

Q48. Is an individual who is entrusted with a prominent public function within Hong Kong considered to be a PEP under the Guidelines?

Answer: Yes.

Such individual would be considered a Hong Kong PEP. For the purposes of the Guidelines, a Hong Kong PEP means:

- (a) an individual who is or has been entrusted with a prominent public function in Hong Kong: (i) including a head of government, senior politician, senior government or judicial official, senior executive of a government-owned corporation and an important political party official; (ii) but not including a middle-ranking or more junior official of any of the categories mentioned in subparagraph (i);
- (b) a spouse, a partner, a child or a parent of an individual

- falling within paragraph (a), or a spouse or a partner of a child of such an individual; or
- (c) a close associate of an individual falling within paragraph (a).

Although there is not a published list of Hong Kong PEPs, licensees should note that the definition does not cover middle-ranking or relatively junior officials.

Licensees should apply the ECDD measures if an individual is known to be a Hong Kong PEP. However, if after taking reasonable measures, licensees could still not determine whether an individual is a Hong Kong PEP, they should conduct ECDD as a precautionary measure.

Q49. Where the customer or the beneficial owner is found to be a Hong Kong PEP or Non-Hong Kong PEP, one of the ECDD measures to be applied is to take reasonable measures to establish the customer's or the beneficial owner's source of wealth and the source of the funds that will be / are involved in the business relationship. How may a licensee establish the source of funds and source of wealth?

Answer: A licensee should adopt reasonable measures, in accordance with his assessment of the risk, for establishing the source of funds and source of wealth. In practical terms, this will often amount to obtaining information from the Hong Kong PEP or Non-Hong Kong PEP and verifying it against publicly available information sources such as asset and income declarations, which some jurisdictions expect certain senior public officials to file and which often include information about an official's source of wealth and current business interests.



Please refer to paragraph 4.36 of the Guidelines.

Q50. Should a licensee apply the ECDD measures on Former PEPs who are no longer entrusted with a prominent public function?

Answer: It depends.

If a Former PEP is no longer entrusted with a prominent public function, a licensee may not need to apply the ECDD measures and only need to carry out the customary CDD measures if he is satisfied that the Former PEP does not present a high risk of ML or TF based on appropriate risk assessment which should take into account various risk factors such as:

- (a) the level of (informal) influence that the Former PEP could still exercise;
- (b) the seniority of the position that the Former PEP held; or
- (c) whether the Former PEP's previous and current function are linked in any way (e.g. formally by appointment of the Former PEP's successor, or informally by the fact that the Former PEP continues to deal with the same substantive matters).

Please refer to paragraphs 4.38 and 4.39 of the Guidelines.

Q51. Referring to the answer in Q50, what should a licensee do if he is still not sure if the Former PEP presents a high risk of ML or TF after appropriate risk assessment?

Answer: If the licensee, after making appropriate risk assessment, is

still unsure or still has doubt as to whether the Former PEP presents a high risk of ML or TF, he should conduct ECDD as a precautionary measure.

Record-keeping

Q52. If a client only agrees to let a licensee verify his identity against his Hong Kong identity card but refuses to let the licensee keep a copy, what should he do?

Answer: In so far as the identification and verification of the identity of the customer is concerned, the licensee has complied with the relevant requirement in the AMLO. However, if he does not obtain a copy of the identification document for record-keeping, he would not be able to comply with the record-keeping requirement under the AMLO. In this case, he should explain to his client about his obligation to keep a copy of the identification document as required by the AMLO.

Licensees may also, in the presence of their clients, mark (or chop) the word “COPY” or “FOR AML PURPOSE ONLY” across the photo on the copy identification document to enhance clients’ confidence of licensees’ keeping his copy identification document for record as such. If the client is adamant, the licensee should consider whether such refusal amounts to a ground for suspicion so that he should consider lodging a STR with the JFIU.

Q53. To comply with the requirement for documenting risk assessment, is it sufficient to keep records in a licensee’s mind?



Answer: No.

Although “record” in the AMLO means any record of information (however compiled or stored), it should be capable of being reproduced in a legible form. Since memory in one’s mind cannot be reproduced in a legible form, it would not be regarded as “record” kept by licensees for the purpose of documenting their risk assessment. As such, licensees should keep written or electronic records of the risk assessment.

Please refer to paragraph 3.11 of the Guidelines.

Risk Assessment

Q54. How is a risk assessment of ML/TF risks made?

Answer: Licensees should take appropriate steps to identify, assess and understand their ML/TF risks and take effective action to mitigate them. In assessing ML/TF risks, licensees should consider all the relevant risk factors before determining what the level of overall risk is and the appropriate level and type of mitigation (e.g. taking supplementary measures to verify information relating to the client that has been obtained by the licensee; ensuring that payments made are carried out through accounts opened in the client’s name with an authorised institution or an institution that is incorporated or established in an equivalent jurisdiction; carries on a business similar to that carried on by an authorised institution; has measures in place to ensure compliance with the requirements similar to those imposed under Schedule 2 to the AMLO; and is supervised for compliance with those requirements by authorities in that jurisdiction that perform functions similar to those of the Monetary Authority; taking reasonable measures to establish the client’s or the beneficial

owner's source of wealth and the source of funds involved in the business relationship; and where there is any suspicion, a STR should be made to the JFIU, etc.) to be applied, and then document their risk assessment.

Licensees may assess the ML/TF risks of individual customers by assigning a ML/TF risk rating to their customers. While there is neither an agreed set of risk factors nor a single methodology to apply these risk factors, the following factors may be considered:

- (a) customer risk (e.g. resident or non-resident, type of customers, occasional or one-off, legal person structure, types of PEP, types of occupation, etc.);
- (b) country/geographic risk (e.g. customers with residence in or connection with high-risk jurisdictions e.g. countries identified by the FATF as having deficient systems to prevent ML/TF, etc.);
- (c) service risk (e.g. services that inherently have provided more anonymity, large cash payments, payments received from unassociated or unknown third parties, etc.); and
- (d) delivery channel risk (e.g. on-line or other non face-to-face, cross-boundary service, etc.).

Licensees may also refer to the examples of the more specific factors set out in Appendix B to the Guidelines.

With a view to assisting licensees to determine the risk rating of their customers, the EAA has included section 5/6 in the relevant Identity Verification Form setting out questions for licensees' general reference and consideration.

Please refer to paragraphs 3.5 to 3.11 of the Guidelines and section 5/6 in the relevant Identity Verification Form.



Q55. To comply with the record-keeping requirement under the AMLO, is it necessary to make and keep a photocopy of the client's identity document?

Answer: Yes, unless the original document is retained, otherwise a copy of the identity document must be kept on microfilm or in the database of a computer.

Q56. Under the record-keeping requirement, does the term “business correspondence” include emails and WhatsApp messages?

Answer: There is no legal definition of the term “business correspondence” in the AMLO. It is to be applied in its everyday normal meaning, which may include emails and WhatsApp messages. Licensees are, however, not expected to keep each and every correspondence, such as a series of emails with the client. The expectation is that sufficient correspondence is kept to demonstrate compliance with the AMLO.

Company search

Q57. May a licensee carry out a company search of his corporate client for the purpose of complying with the CDD requirement through a search company or a legal professional?

Answer: Yes, but the licensee remains liable under the AMLO for a failure to carry out that CDD measure though nothing in the AMLO prevents the licensee from carrying out a CDD measure by its agent.



Q58. Can licensees use the information of a company (e.g. date of incorporation) made available free of charge at the Integrated Companies Registry Information System (ICRIS) for the purpose of filling out the Identity Verification Form?

Answer: For a corporation incorporated in Hong Kong, i.e. a company incorporated under the Companies Ordinance (Cap. 622), the information of the company can usually be verified against the information in the Companies Register maintained by the Companies Registry. A licensee should verify such information by conducting a search at the Companies Registry and obtaining, for example, a company search report (e.g. an annual return) and other image records of documents of the company filed at the Companies Registry, copies of which must be retained for record keeping.

However, if no company search is conducted or if the relevant documents have not been filed with the Companies Registry, a licensee should obtain from the customer a copy certified by a professional third party of the following documents and retain a copy of the same for record keeping:

- (a) the certificate of incorporation;
- (b) a list showing the name(s) of all the current director(s) and current shareholder(s) of the company and the address of the registered office; and
- (c) a list showing the name(s) of all the beneficial owner(s) of the customer, if appropriate.

Licensees may refer to Appendix D to the Guidelines for guidance regarding information to be obtained for identifying and verifying the identity of a customer which is a corporation (including its beneficial owners) and how to obtain such information.



Q59. What if the client is a company incorporated outside Hong Kong? Is it impossible to conduct a company search of such a company at the company registry in the place of its incorporation? Is the certificate of incumbency of a company incorporated outside Hong Kong the only means of verifying its identity?

Answer: As company clients may come to Hong Kong from all over the world, it is difficult to say for sure whether it is possible or impossible to conduct a company search of the company concerned at the registry in its place of incorporation.

For a company incorporated outside Hong Kong but has established a place of business in Hong Kong, it is required to be registered under Part 16 of the Companies Ordinance (Cap.622). Hence, a company search of such a company may be available at the Companies Registry in Hong Kong.

A certificate of Incumbency issued by the registered agent in the place of incorporation is not the only means but an alternative of providing the necessary information for verifying the information on the certificate of incorporation, the names of the current directors and shareholders and the company's registered office address.

An equivalent to a certificate of incumbency or a similar or comparable document to a company search report issued by the company registry in the place of incorporation or any other written evidence issued by the government or an official authority in the place of incorporation is also acceptable.

If the relevant documents cannot be obtained, licensees should obtain from the customer a copy certified by a professional third party of the following documents and

retain a copy of the same for record keeping:

- (a) the certificate of incorporation; and
- (b) a list showing the names of all the current directors and current shareholders of the company and the address of the registered office; and
- (c) a list showing the name(s) of all the beneficial owner(s) of the customer, if appropriate.

Licensees may refer to paragraphs 4 and 5 of Appendix D to the Guidelines for guidance on verifying the information of a corporation which is incorporated outside Hong Kong.

Q60. Is a certificate of incumbency available at the Companies Registry in Hong Kong?

Answer: No.

Please refer to the reply in Q59 above for other documents to be used for verification of information of a corporation incorporated outside Hong Kong

Recognised Digital Identification System

Q61. Is “iAM Smart” a recognised digital identification system under paragraph 4.16(d) of the Guidelines?

Answer: Yes.

“iAM Smart” is the digital identity developed by the Hong Kong Government and it is a digital identification system that is recognised by the EAA for customer identification and verification purposes.



Licensed operators of estate agencies (including licensees in the form of a sole proprietor, a partnership or operated by a company) should have regard to the latest features of “iAM Smart” to determine how their own AML/CTF policies and procedures can be met before deciding whether to register to use “iAM Smart”. For those interested licensed operators who would like to get better prepared for adoption of “iAM Smart”, they should make application to join the “iAM Smart” Sandbox Programme implemented by the Office of the Government Chief Information Officer (“OGCIO”) and Cyberport by sending an email to the EAA at enquiry@eaa.org.hk (i) indicating their interest to join the “iAM Smart” Sandbox Programme; and (ii) providing their company/business name; licence number; contact person; contact phone number; and email address. By joining the “iAM Smart” Sandbox Programme, licensed operators can have access to the “iAM Smart” technical documentation; attend training; seek technical support; and conduct mock-up tests and integration tests.

Licensed operators should note that if they decide to use “iAM Smart”, they will need to engage their own system integration vendors with respect to system development. In addition, they should note that before adoption of the “iAM Smart” application programming interface to their business, they will need to make application to register with OGCIO in advance and confirm that their services and information security requirements can comply with the terms of use of the service.

For details of “iAM Smart” and “iAM Smart” Sandbox Programme, please contact OGCIO or visit <https://www.iamsmart.gov.hk/en> and <https://iamsmart.cyberport.hk> respectively.



Q62. When a recognised digital identification system is used for identity verification of a customer, what kind of records relating to CDD should licensees retain?

Answer: According to paragraph 8.3 of the Guidelines, licensees must keep the original or copy of the documents, and a record of the data and information obtained in the course of identifying and verifying the identity of the customer. When a recognised digital identification system is used for identifying and verifying the identity of the customer, relevant data and information must be kept. This may include all the specific data or information obtained from the digital identification system showing the customer's authentication result and verified Hong Kong Identity Card data. The objective is to permit reconstruction of the customer's identity. For the avoidance of doubt, licensees will not need to obtain additional identity documents solely for record keeping purposes.

Q63. What should licensees do if a customer has not been physically present for identification purposes?

Answer: Generally, if a customer has not been physically present for identification purpose, licensees must carry out the ECDD measures under paragraph 4.25 of the Guidelines as well as at least one of the additional measure(s) under paragraph 4.28 of the Guidelines to mitigate the risk. If licensees have identified the customer and verified the customer's identity by reference to a recognized digital identification system as mentioned under paragraph 4.16(d) of the Guidelines, they are still required to apply the ECDD measures but they are not

required to carry out the additional measure(s) under paragraph 4.28 of the Guidelines.

Miscellaneous

Q64. With respect to a person purporting to act on behalf of a customer (i.e. the representative), how can a licensee verify that the representative has been authorised to act on behalf of the customer in order to comply with the CDD requirements in the Guidelines?

Answer: Licensees must obtain a written authorisation (such as power of attorney, board resolution or similar written authorisation issued by the concerned corporation) to verify that the representative has been authorised to represent the customer.

Please refer to paragraph 4.19C of the Guidelines.

Q65. Referring to the answer in Q64, if the customer is a private limited company incorporated in Hong Kong and the representative is a director of the company, will a company search report (e.g. an annual return) or a list of directors of the company downloaded from the Companies Registry be regarded as written authority as required under paragraph 4.19C of the Guidelines?

Answer: No.

While a company search report or a list of directors can be used to ascertain the capacity of a signatory who purports to act for and on behalf of a limited company, it is not a satisfactory proof that the representative has been authorised to represent the company concerned.



In such cases, a written authorisation document (e.g., board resolution or similar written authorisation issued by the private limited company) evidencing that the concerned director has been duly authorised to act on behalf of the private limited company would be regarded by the EAA as a satisfactory proof of proper authorisation and a written authority as required under paragraph 4.19C of the Guidelines.

Q66. Referring to the answer in Q65, if the representative is a sole director of a private limited company, will licensees still have to obtain written authority to verify that the representative has been duly authorised to act on its behalf in order to comply with paragraph 4.19C of the Guidelines?

Answer: Yes.

Even if the representative is the sole director of a private limited company, licensees will still be required to obtain a written record of the company's decision to verify that the representative has been duly authorised to act on behalf of the company.

3 October 2025