

HONG KONG TRUSTEES' ASSOCIATION

GUIDELINES FOR CLIENT DUE DILIGENCE PROCEDURES

FOR TRUSTEES OF CHARITABLE TRUSTS

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1. INTRODUCTION TO CHARITABLE TRUSTS IN HONG KONG

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 Guideline for Client Due Diligence Procedures serves as a Practice Guideline to provide members with ideas on how the Guiding Principles and Guidance Note may be met by Private Client Trustees.

This Guideline 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 Guideline differ from the existing practices of trustees, especially those which are subsidiaries of regulated financial institutions with stipulated or established AML frameworks. The Guideline is not intended to compel, suggest or advise changes to those existing practices.

Also, in the event of any conflict between the Guideline 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.

- 1.1 This guideline aims to provide guidance for Hong Kong charities and/or those who are responsible for the general control and management of the administration of a charity in Hong Kong.
- 1.2 Charities, in this context, refer to organisations in form of a trust or other forms that are established exclusively for charitable purposes.¹ Charity under Hong Kong law follows the common law and the leading authority of *Income Tax Special Purposes Commissioners v Pemsel* [1891] AC 531 (HL), which classifies charitable purposes into four categories:-
 - (a) relief of poverty;
 - (b) advancement of education;
 - (c) advancement of religion; and
 - (d) other purposes of a charitable nature that are beneficial to the public of Hong Kong.

While the purposes under (a), (b) and (c) above can be in relation to activities carried out in any part of the world, those under head (d) are confined to activities that are beneficial to the Hong Kong community.

¹ IRD, *A Tax Guide for Charitable Institutions and Trusts of a Public Character* (revised ed Sep 2010) at: https://www.ird.gov.hk/eng/tax/ach_tgc.htm

1.3 Charities may be structured in form of:-

- (a) a charitable trust;
- (b) a company incorporated under the Companies Ordinance (Cap. 622);
- (c) a statutory body established under a specific Hong Kong ordinance; or
- (d) a registered society established under the Societies Ordinance (Cap. 151).

In Hong Kong, the most common types of structure of charities are (i) charitable trust and (ii) company limited by guarantee.

1.4 Pursuant to Section 88 of the Inland Revenue Ordinance (Cap. 112) (the “IRO”), charitable institutions and trusts of a public character are exempt from tax. The Inland Revenue Department (“IRD”) may from time to time send questionnaires to entities it recognises as charitable under section 88 and/or call for accounts and annual reports as means of verification that the entity in question remains charitable in principle and in practice. A charity may cease to be recognised as tax exempt for the purposes of section 88 if it has one or more of the following objects:-

- (a) the charity was dissolved or wound up;
- (b) the charity has ceased operation or is dormant;
- (c) the charity no longer qualifies for the status of a charitable trust of a public character; or
- (d) the charity did not respond to the IRD’s enquiries or was considered untraceable despite various efforts.

1.5 Notwithstanding the foregoing, the IRD does not regulate the day-to-day activities of charities. There is currently no charities regulator in Hong Kong. Depending on the objects of the charity, additional regulatory obligations may be imposed by other public bodies, such as the Education Bureau, the Home Affairs Bureau, the Social Welfare Department and the Department of Health. The Secretary for Justice, in his capacity as protector of charities, may intervene in Court proceedings relating to the administration of charities.²

² See the Trustee Ordinance (Cap. 29) and Order 120 of the Rules of High Court (Cap. 4A).

- 1.6 A charitable trust is governed by the provisions of the trust deed, the Trustee Ordinance (Cap. 29), and general common law. Although there is no requirement to register a trust under Hong Kong law, most charitable trusts will in practice seek to be acknowledged by the IRD as falling within the section 88 exemption from tax and to be listed as a body so recognised on the register of charitable entities from time to time maintained by the Department.
- 1.7 It is recommended that charities should take note of Hong Kong Trustees Association's 9 guiding principles (the “**Guiding Principles**”) for the purpose of good governance:-
- (1) Act in Good Faith;
 - (2) Act with Prudence and Care;
 - (3) Act with Skill and Diligence;
 - (4) Act with Integrity and Independence;
 - (5) Maintain Confidentiality;
 - (6) Comply with Applicable Laws and Regulations;
 - (7) Communicate Effectively in a Transparent Manner;
 - (8) Promote the Highest Standards of Governance; and
 - (9) Act in Accordance with Trust Objects.

Further information on the Guiding Principles is available in the Guidance Notes of the “Best Practice Guide for Trustees of Charitable Trusts”.

1.8 In addition to the Guiding Principles,³ trustees of charitable trusts or those operating a charity should pay particular attention to the following:

(a) **Acting in the Charity's Best Interests**

Understanding the charity's objects and making balanced decisions that will best enable the charity to carry out the same. Avoid situations where the trustee's duty to the charity's objects conflicts with personal interests or loyalty.

(b) **Ensure the Charity carries out its Charitable Objects**

Understanding the charity's objects, operations, resources and the legal requirements that are applicable to charities in Hong Kong. Ensure that the charity's activities fulfil one of the following objects: (i) relief of poverty; (ii) advancement of education; (iii) advancement of religion; and (iv) other purposes of a charitable nature that are beneficial to the public of Hong Kong.

(c) **Complying with the Governing Instrument**

Ensuring the charity's compliance with the governing instrument, which may contain key provisions on the charity's objects and powers, the appointment and removal of trustees, voting rights, conduct and procedures of trustees' meetings etc.

(d) **Ensure the Accountability of the Charity**

Taking all reasonable steps to ensure that proper accounts are kept so as to give a true and fair view of the state of affairs of the charity. Maintain compliance with statutory accounting and reporting requirements.

(e) **Managing Money Responsibly**

Establishing effective procedures for dealing with income and expenditure to help avoid accidental errors, theft and fraud. Use the charity's funds for charitable purposes only. Ensure the charity receives tax reliefs to which it is entitled.

³ The Guiding Principles only seek to guide trustees of charitable trusts on how they exercise their fiduciary duties and obligations. They should not be treated as a definitive and/or exhaustive guidance and should be applied and adopted as appropriate in the circumstances taking into account the scope and nature of the trustee activities being undertaken.

(f) **Making Delegation Decisions Effectively**

Setting out in writing the limits of any delegated authority e.g. job descriptions, volunteers' role descriptions and committees' terms of reference. Establish clear reporting procedures to ensure that the delegated authority is exercised properly. Avoid delegating high-risk decisions and trustees' overall responsibilities because trustees remain collectively responsible for the charity.

(g) **Taking Advice**

Employing professional advisers or obtaining external professional advice whenever additional expertise is required, especially in situations where the trustee could act in breach of their duties, such as making investment decisions, considering legal action and engaging in land transactions.

(h) **Managing Risks**

Establishing policies and procedures to identify and manage risks proactively. Ensure that the charity has robust financial controls in place to monitor financial transactions made by the charity and mitigate risks of fraud, theft or other kinds of abuse. If the charity makes grants of cash or other financial support directly to individuals, or works with partners to carry out any charitable work, verify the beneficiaries' and/or partners' backgrounds to mitigate risks of money laundering and illegal fund transfers.

1.9 In December 2013, the Law Reform Commission published a report⁴ proposing to impose a registration requirement on all charitable organisations which (1) solicit from the public for the donation of cash or its equivalent from the public; and/or (2) have sought tax exemption under Section 88 of the IRO. Furthermore, the Commission recommended the long-term goal of establishing a charity commission in Hong Kong.

1.10 While the Commission's proposals have yet to be implemented, trustees of charitable trusts are advised to actively keep up with all regulatory developments and ensure compliance with applicable laws and regulations.

⁴ Law Reform Commission of Hong Kong, Report, Charities (December 2013), at: http://www.hkreform.gov.hk/en/docs/rcharities_e.pdf

- 1.11 In August 2018, the Government has promulgated the Good Practice Guide on Charitable Fund-raising⁵ (the “**Good Practice Guide**”), wherein reference is also made to the Best Practice Checklist for Management of Charities and Fund-Raising Activities issued by the Independent Commission Against Corruption of Hong Kong (“**ICAC**”).⁶ Trustees of charitable trusts are recommended to adopt the Good Practice Guide to ensure the transparency and accountability of charitable fund-raising activities.

2. BACKGROUND

- 2.1 For the purpose of this guideline, “**Client**” would mean the individual founder or donor of a charitable trust, or a corporate entity which is establishing or making donations to a charitable trust, or any equivalent person or entity in any structure (each a “**Client**” and, collectively, “**Clients**”).
- 2.2 Trustees of charitable trusts 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 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 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 charitable 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.

⁵ Social Welfare Department, Home Affairs Department, Food and Environmental Hygiene Department (August 2018), at: <https://www.gov.hk/en/theme/fundraising/guide>

⁶ ICAC, at: https://www.icac.org.hk/filemanager/en/content_218/fund_raising.pdf

2.3 The CCD procedure should consist of the following:

- (a) Identification and collection of all relevant information of the Client;
- (b) Risk Assessment allocation and the appropriate review frequency of the relationship;
- (c) Identification of source of funds and corroboration with source of wealth;
- (d) Screening against the necessary lists and databases;
- (e) Self-certification from the Client in compliance with FATCA and CRS (see *Appendix IX*) reporting; and
- (f) Retention of verified client documentation on file.

2.4 These CDD procedures must be completed in full in the following circumstances:-

2.4.1 On account set up of a new relationship

- (a) when establishing a trust (“**Trust**”) or a structure; or
- (b) on acceptance of a gift or donation from a new donor.

The CDD information must be reviewed:-

2.4.2 At a minimum on an annual basis

2.4.3 On such frequency as determined by the risk assessment criteria

2.4.4 On the following trigger events

- (a) injection of additional assets into a Trust or a structure; or
- (b) 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
- (c) prior to any activity undertaken in any structure involving a PEP; or
- (d) death of the testator, and on grant of probate; or
- (e) before performing any occasional transaction equal to, or exceeding, an aggregate value of the lower of the aggregate value of 10% of the total assets of the trust or HK\$500,000 (whichever is the lower); (whether carried out in a single operation or several operations) that appear to the Trustee to be linked; or

- (f) change in the Client's / structure's transaction profile; or
- (g) when the Trustee suspects that the Client or the Client's account is involved in any suspicious transactions such as money laundering or terrorist financing; or
- (h) 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; or
- (i) on the restructuring of the structure; or
- (j) on personal changes of the Client, e.g. marriage, divorce, change of residence to another country; or
- (k) reactivation of a dormant account.

3. RISK ASSESSMENT

The Risk Assessment Form (substantially in the format set out in Appendix II hereto) has to be completed for the Client and based on the reasons set out therein, the Client shall be assessed as ***low / medium / high risk**. This assessment should be used to determine the frequency of the reviews that should be conducted for the relationship.

A PEP should be a high risk client.

A Medium to High risk Client should trigger the need for enhanced CDD procedures in the form of senior sign off, more information on the role of the client, assessment of the business case, potential activities and purposes of the structure. *See also Appendix IV.*

4. CLIENT IDENTITY VERIFICATION

It is mandatory to have face to face meeting with the intended Client, and proper notes of the meeting must be kept.

The following information are required to be obtained of the Client or any entity or assets which are to be brought into the structure.

4.1 **Individual**

- 4.1.1 Surname (and Maiden Name if applicable)
- 4.1.2 First / Given / Other Names
- 4.1.3 Chinese Name
- 4.1.4 Gender
- 4.1.5 Date of Birth
- 4.1.6 Place / Country of Birth
- 4.1.7 Identity Card / Passport / Citizenship
- 4.1.8 Nationality
- 4.1.9 Domicile
- 4.1.10 Tax Residency
- 4.1.11 Residential Address
- 4.1.12 Address for correspondence (if different to the above address)
- 4.1.13 Home / Mobile Phone number
- 4.1.14 Occupation / Nature of Business
- 4.1.15 Is the Client acting through an Agent (*Note 1 of Appendix 1*) / professional adviser?

If Yes, identify the Agent / professional adviser and determine if separate CDD needs to be conducted on a RBA.

4.2 **Corporate Entity**

- 4.2.1 Name / Trading Name
- 4.2.2 Place / Date of Incorporation
- 4.2.3 Corporate Registration Number
- 4.2.4 Business Registration Number

- 4.2.5 Registered Address
- 4.2.6 Business / Correspondence Address
- 4.2.7 Nature of Business
- 4.2.8 If privately owned Company: Name of Shareholders / Directors

4.3 Beneficial Owner(s) *(Notes 2 of Appendix I)*

- 4.3.1 As mentioned in paragraph 1.2 above, a charitable trust must be established exclusively for charitable purposes. As the charitable trust is a trust for purposes not persons, neither the persons who factually benefit from the charitable objects under the trust deed, nor the individuals who were trustees, nor the public, are the beneficial owners.
- 4.3.2 In the case of a Client which is a corporate entity, the necessary CDD procedures to be completed in respect of any individual as follows:-

(i)	in non-high risk situations <i>(Note 2 of Appendix I)</i> , holds not less than 25% interest in the Client.	<input type="checkbox"/>
(ii)	in high risk situations <i>(Note 2 of Appendix I)</i> , holds not less than 10% interest in the Client.	<input type="checkbox"/>

The information of any such individual should be declared and recorded as in *Appendix III*.

- 4.3.3 Under the Companies (Amendment) Ordinance 2018, every Hong Kong company (including companies limited by guarantee) must maintain a significant controllers register to be accessible by law enforcement officers upon demand. A significant controller includes:-

- a registrable person who is a natural person that has significant control over the company; and
- a registrable legal entity e.g. a company, which is a shareholder of the company that has significant control over the company.

A person has significant control over a company if one or more of the following 5 conditions are met:

- The person holds, directly or indirectly, more than 25% of the issued shares in the company or, if the company does not have a share capital, the person holds, directly or indirectly, a right to share in more than 25% of the capital or profits of the company;

- The person holds, directly or indirectly, more than 25% of the voting rights of the company;
- The person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company;
- The person has the right to exercise, or actually exercises, significant influence or control over the company;
- The person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or a firm that is not a legal person, but whose trustees or members satisfy any of the first four conditions in relation to the company.

4.4 MAKING A DONATION OR GRANT

- 4.4.1 As stated in paragraph 4.3.1 above, a charitable trust is a trust for purposes not persons. Accordingly, the beneficiary of a charitable trust is not any one individual or group, but the public at large. The number of potential beneficiaries can be indefinite.

In circumstances where the charitable trust makes grants of cash or other financial support directly to individuals, or works with partners to carry out any charitable work, due diligence exercises may be conducted on such individuals/ partners.

- 4.4.2 Trustees of charitable trusts have a duty to ensure that the charity's funds are used in accordance with its objectives. It is recommended that the Trustees adopt a common-sense approach in verifying the identities of the charity's beneficiaries. The extent of such verification will depend upon the number of beneficiaries and the activities of the charity. The following information may be obtained of the beneficiary:

- Name (including Surname, Maiden name, First / given / other name and Chinese name) of Beneficiary / Beneficiaries
- Identity Card / Passport / Citizenship
- Nationality
- Domicile
- Tax Residence
- Details of Bank Account for payment of funds
- Beneficiary's Address
- Home / Mobile phone number

- Date of Birth
- Place of Birth

If the Trustees suspects that the beneficiary or the beneficiary's account is involved in any suspicious transactions such as money laundering or other criminal/illegal activities, they must report the suspicious activities to the Joint Financial Intelligence Unit or even the Police.

- 4.4.3 Trustees are under a duty to ensure that the charity's funds are only used for charitable purposes. Hence, they are required to account for the proper use of the charitable funds. In circumstances where the charity provides funds to partners for carrying out any charitable work, Trustees should take reasonable steps to verify the proper end use of funds.

With reference to Appendix V to this guideline, a RBA may be adopted in the monitoring and verification of the use of charitable funds. The RBA recognises that monitoring may take different forms for different partners and financial transactions, depending on the nature and amount of the charity's work. Such monitoring may include measures to ensure that:-

- there are proper accounting records evidencing the expenditure of the charity's funds by the partner or recipient of grant
- there is an audit trail evidencing that the funds were received and forwarded (if applicable) by the partner or recipient of grant
- there are clear deliverables to prove that the partner's project / charitable work had been carried out as expected
- the charity's funds have been used for the intended proper purposes or for the benefit of the intended beneficiaries

- 4.4.4 Trustees of charitable trusts are recommended to take note of the following key points in making a donation or grant:

Due Diligence

- Establishing clear policies and procedures to ensure that the charity's staff and volunteers are able to identify suspicious and/or high-risk transactions/ activities
- Taking enhanced due diligence measures where there is a cause for concern
- Maintaining clear records of due diligence processes and the results e.g. decisions to refuse or accept donations which may present high risks
- Staying alert of the risk of false applications for individual assistance / grant funding
- Reporting suspicious transactions/ activities to the Joint Financial Intelligence Unit

or even the Police (if illegal or criminal activities are suspected)

- Seeking professional advice whenever additional expertise is required

Monitoring

- Establishing clear policies and procedures to ensure that the charity's staff and volunteers are competent to undertake monitoring and deal with any conflicts of interest
- Keeping an audit trail for movement of funds from the charity to partners / recipients of grants
- Maintaining proper accounting records, such as receipts and invoices, which evidence the expenditure of the charity's funds by the partner or recipient of grant
- Adopting effective monitoring tools and measures, such as reviewing the relevant accounting records, asking for progress reports from partners and reporting of the project work undertaken by the charity to donors and supporters at regular intervals
- Taking enhanced monitoring measures where there is a cause for concern
- Reporting suspicious transactions/ activities to the Joint Financial Intelligence Unit or even the Police (if illegal or criminal activities are suspected)

A separate CDD procedures must 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.

5. CLIENT DOCUMENTATION

Client Documentation need to be 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 VII.

6. NATURE AND PURPOSE OF TRUST

6.1 Charitable purpose of the Trust: _____

6.2 Type of assets to be injected into the Trust: _____

6.3 Anticipated 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 6 of Appendix I)*

7.1 Considerations should be given to

7.1.1 the Client's business activities;

7.1.2 the reputation of the Client through public domain – law, media;

7.1.3 the country with which the Client is associated.

7.2 For the purpose of this guideline, “**transaction**” would mean any event that has a monetary impact on an entity's financial statements and is recorded as an entry in its accounting records. Accordingly, distributions and/or donations from the charity would be considered as transactions of the charity.

7.3 All reasonable steps should be made to ensure that the Client's transactions are consistent with the knowledge of the Client, his family or corporate background, the reasons for setting up a structure, the nature of business and risk profile, including understanding:-

7.3.1 the source of the Client's funds;

7.3.2 the likely types of transaction for the Client, 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;

7.3.3 the nature and intended purpose of the Trust which has been established.

7.4 The new Client's name should be checked against any website or electronic search engines which specialize in identifying and establishing whether individuals are connected to any unlawful activities, such as by the use of World Check, the published list of terrorist suspects, and any other relevant databases.

7.5 **Simplified CDD**

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

If an individual,

7.5.1 Any Client whose satisfactory identification and address proof has been obtained, and source of funds identified;

7.5.2 Any Client who has been rated as low risk and not associated with a high-risk country.

If a corporate entity:

7.5.3 a financial institution (“**Financial Institution**”) as defined in the AMLO;

7.5.4 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;

7.5.5 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.

7.5.6 the Government or any public body in Hong Kong; or

7.5.7 the government of an equivalent jurisdiction or a body in an equivalent jurisdiction that performs functions similar to those of a public body.

7.5.8 a charitable institution as defined in the laws of and subject to governmental regulation in any jurisdiction which is not a high-risk country.

7.6 Enhanced CDD *(Note 7 of Appendix I)*

7.6.1 In situations where enhanced CDD is required *(see Note 7 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).

7.6.2 The following declaration can be incorporated into the CDD procedures:

(i)	We have checked the Client for risk of terrorist or money laundering activities	<input type="checkbox"/>
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(ii)	<p>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</p> <hr/> <hr/> <hr/> <hr/>	□
(iii)	<p>We have conducted search on local company registry with regard to the Client's beneficial ownership and management structure</p>	□
(iv)	<p>We have obtained a declaration from the local registered agent of the overseas corporation or other satisfactory third party evidence of its beneficial ownership and management structure</p>	□

8. ON GOING MONITORING

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

Enhanced on-going monitoring should be conducted of the business relationship with such persons at least annually (or more frequently if deemed necessary) during the engagement and a written note detailing the results of such monitoring should be filed.

8.2 All other Clients

Periodic reviews should be undertaken 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 *(also see 2.4.4 above)*:-

- (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 a Dormant Account is re-activated;
- (iv) when the Trustee's Client documentation standards change substantially; or
- (v) 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:

10. CONFIRMATION (please see Appendix I – Explanatory Notes for Completion of Declaration below)

The CDD procedures should be completed by a relationship manager of the Trustee company and audited by a supervisor, team leader or person responsible for compliance in the company to ensure four-eyes review principles; and to include the following declarations with the appropriate sign off.

- (a) *The information obtained is not inconsistent with any other information of which I am aware.*
- (b) *I am satisfied that adequate Client identity verification and due diligence measures have been taken.*
- (c) *Whilst working with this Client and in the business relationship, 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*

APPENDIX I

EXPLANATORY NOTES FOR COMPLETION OF CDD FORM

1. Is the Client acting through an agent?

Where a Client is acting through an agent, we 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:- insurance company, law firm, accountant, professional services provider.

Where it is expected to receive payments from a third party on behalf of the Client, one 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 the Client. A risk-based approach should be adopted. Distinctions need to be made between individual clients and corporate clients.

Where corporate entities are concerned, either as Client or as asset being brought in to be part of the trust structure, 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 it is 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. The fact 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 connections 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.

The current list of NCCTs can be found on the FATF website at 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.

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.

In addition, 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. We need to indicate in the CDD Form if there is reason to believe that control is vested in someone other than the directors or shareholders of a corporate vehicle.

3. Identification Documentation

Evidence of identity must be obtained. In the case of an existing client, 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, up to date evidence of identity must be obtained.

4. Person Giving Instructions

It needs to be ensured that in an individual Client, that they have the basis to do so.

For corporate Clients reasonable measures must be taken to identify the person purporting to give instructions on behalf of the Client and one 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 herein.

5. 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.

6. Due diligence / Source of wealth / Source of incoming funds

It is not needed for the source of wealth/source of funds to be verified to complete the CDD Form. One 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 type and 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.**

7. Enhanced Due Diligence

Enhanced due diligence is required:-

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

8. 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.

9. Dormant Account

9.1 An account which has not experienced any payments of funds into, or withdrawals of funds out of, it for a period of 12 months, except payment of fees out of the account for on-going maintenance or administration of the Trust / structure.

9.2 An unfunded Trust / structure for 12 months.

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, amount or frequency of any 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 PEP⁷
- The Client or beneficial owner matches with a person named in any website or electronic search engines which specialize in identifying and establishing whether individuals are connected to any unlawful activities, such as by the use of World Check
- The Client's business is in a high-risk / medium-risk industry

⁷ "Foreign PEP" is defined as:

- (a) an individual who is or has been entrusted with a prominent public function in a place outside Mainland China, Hong Kong and Macau), 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 Mainland China Hong Kong and Macau
- (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 ownership structure of the Client cannot be verified
- 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 high risk and non-cooperative jurisdictions
- 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 IRO (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;
 - 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. 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

4. Account Activities

- The Client frequently transacts large amounts in cash
- The Client previously requested undue levels of secrecy with certain transactions / information
- 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/u-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 on "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

APPENDIX III
IDENTIFICATION FORM⁸

1. Details

- 1.1 Surname (and Maiden name if applicable): _____
- 1.2 First / Given / or other Name: _____
- 1.3 Chinese: _____
- 1.4 Gender: _____
- 1.5 Date of Birth: _____
- 1.6 Place / Country of Birth: _____
- 1.7 Identity Card / Passport / Citizenship: _____
- 1.8 Nationality: _____
- 1.9 Domicile: _____
- 1.10 Tax Residence: _____
- 1.11 Residential Address: _____
- 1.12 Address for correspondence (if different to the above address): _____
- 1.13 Home / Mobile Number: _____
- 1.14 Occupation / Nature of Business: _____

2. Details

- 2.1 Surname (and Maiden name if applicable): _____
- 2.2 First / Given / or other Name: _____
- 2.3 Chinese: _____
- 2.4 Gender: _____

⁸ This identification form may be applicable to current trustees and/or directors and members of the companies limited by guarantee under charitable trusts.

2.5 Date of Birth: _____

2.6 Place / Country of Birth: _____

2.7 Identity Card / Passport / Citizenship: _____

2.8 Nationality: _____

2.9 Domicile: _____

2.10 Tax Residency: _____

2.11 Residential Address: _____

2.12 Address for correspondence (if different to the above address): _____

2.13 Home / Mobile Number: _____

2.14 Occupation / Nature of Business: _____

3. Details

3.1 Surname (and Maiden name if applicable): _____

3.2 First / Given / or other Name: _____

3.3 Chinese: _____

3.4 Gender: _____

3.5 Date of Birth: _____

3.6 Place / Country of Birth: _____

3.7 Identity Card / Passport / Citizenship: _____

3.8 Nationality: _____

3.9 Domicile: _____

3.10 Tax Residency: _____

3.11 Residential Address: _____

3.12 Address for correspondence (if different to the above address): _____

3.13 Home / Mobile Number: _____

3.14 Occupation / Nature of Business: _____

4. Details

4.1 Surname (and Maiden name if applicable): _____

4.2 First / Given / or other Name: _____

4.3 Chinese: _____

4.4 Gender: _____

4.5 Date of Birth: _____

4.6 Place / Country of Birth: _____

4.7 Identity Card / Passport / Citizenship: _____

4.8 Nationality: _____

4.9 Domicile: _____

4.10 Tax Residency: _____

4.11 Residential Address: _____

4.12 Address for correspondence (if different to the above address): _____

4.13 Home / Mobile Number: _____

4.14 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 and 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 citizenship proof / 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:

2. Corporations

- 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 organization chart including a share register (or equivalent official documents to identify the shareholding structure and ultimate beneficial owner(s) of the Company eg. for Hong Kong companies, the significant controllers register or its equivalent for companies incorporated in other jurisdictions)
- 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:-

3. Trust

- Trust Deed
- Evidence of registration of Trust (where applicable)
- Board resolution of the Trustee of the Trust authorising the establishment of the trust / transfer of trust fund
- 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:-

APPENDIX V

RISK-BASED APPROACH (“RBA”)⁹

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.

1. The risk-based approach **RBA** to CDD and ongoing monitoring is recognised 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:-

⁹ For further details, please refer to the chapters 3 of the Hong Kong Monetary Authority Guideline on Anti-Money Laundering and Counter-Terrorist Financing.

- (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.

APPENDIX VI

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 occasions difficulties may be encountered 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.
12. Reference is made to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance 2018 (the "Amendment Ordinance"), which came into effect on 1 March 2018. The Amendment Ordinance extends the statutory CDD and record-keeping requirements to include designated non-financial businesses and professions, such as legal professionals, accounting professionals, estate agents, and trust or company service providers ("TCSPs"). Enhanced CDD measures shall be implemented by the TCSPs to (1) identify and verify the identity of their customers and their beneficial owners; (2) obtain information on the purpose and the intended nature of the business relationship before establishing business relationship with their customers; and (3) identify and verify the identity of the person purporting to act on behalf of their customers.
13. In addition, the Amendment Ordinance introduces a licensing regime for TCSPs requiring them to apply for a licence from the Registrar of Companies and satisfy a "fit-and-proper" test before they can provide trust or company services as a business in Hong Kong.

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, whose identity may be identified and/or verified 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 license¹⁰ 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 card¹¹, 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.

¹⁰ 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.

¹¹ 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 II – 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.

Appendix IX

COMMON REPORTING STANDARD AUTOMATIC EXCHANGE OF INFORMATION

The following is extracted from the IRD website at: http://www.ird.gov.hk/eng/tax/dta_aeoi

In September 2014, Hong Kong indicated its support for implementing automatic exchange of financial account information (AEOI) on a reciprocal basis with appropriate partners with a view to commencing the first exchanges by the end of 2018, on condition that necessary domestic legislation is in place by 2017. The Government introduced an amendment bill into the Legislative Council (LegCo) in January 2016, which was passed by the LegCo on 22 June, and the Inland Revenue (Amendment) (No. 3) Ordinance 2016 was gazetted on 30 June 2016 and came into immediate effect ("**the HK AEOI legislation**").

The new Hong Kong legislation adopted the OECD Common Reporting Standard (CRS). Starting 1 January 2017, all HK FIs will be required to comply with the due diligence and reporting obligations under the HK AEOI legislation, and it provides reporting financial institutions in Hong Kong with the legal basis to collect the required information from account holders in relation to periods that start on or after 1 January 2017.

Under the AEOI standard, a financial institution (FI) is required to identify financial accounts held by tax residents of reportable jurisdictions in accordance with the OECD due diligence procedures. FIs are required to collect the reportable information of these accounts and furnish such information to the IRD. The IRD will exchange the information with the tax authorities of the AEOI partner jurisdictions on an annual basis.

While the definition of FI in the HK AEOI legislation does not cover trust companies; the application of the amending legislation to trusts can be found in **Chapter 17** of the Guidelines on the website:
<http://www.ird.gov.hk/eng/tax/aeoi/guidance>

Clients opening new accounts after January 2017 will be required to make self-certification under the IR legislation amendment passed and coming into effect on 30 June 2016.

For new accounts opening after January 2017, FI will seek self-certification from account holders in respect of their personal information, including tax residence. For pre-existing accounts, FI will be required to conduct due diligence procedures to identify and verify the tax residence of the account holders. In case of doubt, self-certification from account holders will be sought.

Hong Kong will exchange information with the jurisdictions with which it has entered or will enter AEOI agreements ("AEOI partners") (which list can be found on the IRD website), the information to be exchanged should be made in the self-certification forms. Sample Self Certification Forms for "Individual, Entity and Controlling Persons" are available at the following link:
http://www.ird.gov.hk/eng/tax/aeoi/self_cert.htm

FI resident or located in Hong Kong will identify the financial accounts held by individuals or entities liable to tax by reason of residence in the AEOI partner jurisdictions. The financial institution will collect and furnish to IRD information of the identified account holders (individual or entity) and the financial account

information on an annual basis. IRD will then transmit the information to the tax administration of the relevant jurisdiction of which the account holder is tax resident.

From the Client's point of view, if they are unsure whether they are resident in any jurisdiction, they should consult a professional adviser. In OECD's AEOI portal, more information can be found regarding the tax laws of different jurisdictions for defining tax residence. The website address is <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/#d.en.347760>

Information that will be exchanged with the AEOI partner shall include:

For **Personal data**, the information to be exchanged includes name, address, jurisdiction of residence, taxpayer identification number ("TIN"), and the date and place of birth.

For **Financial account data**, it includes the account number, account balance or value (year-end), and the gross amount of interests, dividends and sale proceeds of financial assets as appropriate for the year concerned.

Hong Kong intends to partner only with jurisdictions which have signed a comprehensive avoidance of double taxation agreement (CDTA) or tax information exchange agreement (TIEA) with Hong Kong in the first place.

In identifying potential candidates for AEOI, the guiding principles are that these jurisdictions should have put in place the relevant legal framework for implementing AEOI which can meet the international standard and relevant safeguards in their domestic law for protecting data privacy and confidentiality of the information exchanged.