

**Amendments to Supplement to Guideline on  
Prevention of Money Laundering and Its Interpretative Notes**

**Supplement to Guideline on Prevention of Money Laundering**

1. Subsection 2.3(a) of the Supplement will be amended as follows:

“origin of the customer (e.g. place of birth [IN 2], residency), the place where the customer’s business is established, the location of the counterparties with which the customer conducts transactions and does business, and whether the customer is otherwise connected with ~~certain jurisdictions which do not or insufficiently apply the FATF Recommendations such as Non-Cooperative Countries and Territories (NCCTs) designated by the FATF~~ (see section 14 below), or which are those known to the AI to lack proper standards in the prevention of money laundering or customer due diligence process [IN 3];”

2. Section 3.1 of the Supplement will be amended as follows:

“This section reinforces paragraphs 5.1 and 5.2 of the Guideline and introduces new requirements.”

3. Under section 3.2 of the Supplement, insert the following subsection (da) after subsection (d):

“obtain information on the purpose and reason for opening the account or establishing the relationship, unless it is self-evident; and”

4. The term “equivalent jurisdiction” in sections 4.4, 6.4 and 6.8 of the Supplement will be replaced with “comparable jurisdiction”.

5. Under section 6.8 of the Supplement, insert the following subsection (ca) after subsection (c):

“a member of the Hong Kong Institute of Chartered Secretaries; or”

6. Reference to NCCTs under section 11.7 of the Supplement will be deleted as follows:

“An AI should pay particular attention when maintaining a correspondent banking relationship with banks incorporated in jurisdictions that do not meet international standards for the prevention of money laundering, ~~such as NCCTs~~. Enhanced due diligence will generally be required in such cases,

including obtaining details of the beneficial ownership of such banks and more extensive information about their policies and procedures to prevent money laundering. There should also be enhanced procedures in respect of the on-going monitoring of activities conducted through such correspondent accounts, such as development of transaction reports for review by the compliance officer, close monitoring of suspicious fund transfers etc.”

7. The following sentence will be added at the end of section 13.5 of the Supplement:

“The AI should take appropriate follow-up actions on any unusual activities identified in the MIS reports. The findings and any follow-up actions taken should be properly documented and the relevant documents should be maintained for a period not less than six years following the date when the unusual activity is identified.”

8. Replace the whole section 14 of the Supplement with the following:

**“14. Jurisdictions which do not or insufficiently apply the FATF Recommendations**

14.1 This is a new section not currently covered in the Guideline.

14.2 Repealed.

14.3 Repealed.

14.4 An AI should apply Recommendation 21 of the FATF revised Forty Recommendations to jurisdictions which do not or insufficiently apply the FATF Recommendations. This states that:

“Financial institutions should give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF Recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help competent authorities.”

14.5 Extra care should therefore be exercised by an AI in respect of customers (including beneficial owners [IN 40]) connected with jurisdictions which do not or insufficiently apply the FATF Recommendations [IN 3 & 41] or otherwise pose a higher risk to an AI. In addition to ascertaining and documenting the business rationale for opening an account or applying for banking services as

required under paragraph 3.2(da) above, an AI should be fully satisfied with the legitimacy of the source of funds [IN 21] of such customers.

14.5a Factors that should be taken into account in determining whether jurisdictions do not or insufficiently apply the FATF Recommendations or otherwise pose a higher risk to an AI include:-

- (a) whether the jurisdiction is or a significant number of persons or entities in that jurisdiction are, subject to sanctions, embargoes or similar measures issued by, for example, the United Nations (UN). In addition, in some circumstances, a jurisdiction subject to sanctions or measures similar to those issued by bodies such as the UN, but which may not be universally recognized, may be given credence by an AI because of the standing of the issuer and the nature of the measures;
- (b) whether the jurisdiction is identified by credible sources as lacking appropriate AML/CFT laws, regulations and other measures;
- (c) whether the jurisdiction is identified by credible sources as providing funding or support for terrorist activities and has designated terrorist organisations operating within it; and
- (d) whether the jurisdiction is identified by credible sources as having significant levels of corruption, or other criminal activity.

“Credible sources” refers to information that is produced by well-known bodies that generally are regarded as reputable and that make such information publicly and widely available. In addition to the FATF and FATF-style regional bodies, such sources may include, but are not limited to, supra-national or international bodies such as the International Monetary Fund, and the Egmont Group of Financial Intelligence Units, as well as relevant national government bodies and non-government organisations. The information provided by these credible sources does not have the effect of law or regulation and should not be viewed as an automatic determination that something is of higher risk.

14.6 For jurisdictions with serious deficiencies in applying the FATF Recommendations and where inadequate progress has been made to improve their position, the FATF may recommend the application of further counter-measures. The specific counter-measures, to be

determined by the HKMA in each case, would be gradual and proportionate to the specific problem of the jurisdiction concerned. The measures will generally focus on more stringent customer due diligence and enhanced surveillance / reporting of transactions. An AI should apply the counter-measures determined by the HKMA from time to time.

- 14.7 An AI should be aware of the potential reputation risk of conducting business in jurisdictions which do not or insufficiently apply the FATF Recommendations or other jurisdictions known to apply inferior standards for the prevention of money laundering and terrorist financing.
- 14.8 If an AI incorporated in Hong Kong has operating units in such jurisdictions, care should be taken to ensure that effective controls on prevention of money laundering and terrorist financing are implemented in these units. In particular, the AI should ensure that the policies and procedures adopted in such overseas units are equivalent to those adopted in Hong Kong. There should also be compliance and internal audit checks by staff from the head office in Hong Kong. In extreme cases the AI should consider withdrawing from such jurisdictions.”

## Interpretative Notes

1. IN 3 will be amended as follows:

“AIs should adopt a balanced and common sense approach with regard to customers connected with jurisdictions which do not or insufficiently apply the FATF Recommendations from NCCTs or from other jurisdictions which do not meet FATF standards. While extra care may well be justified in such cases, it is not a requirement that AIs should refuse to do any business with such customers or automatically classify them as high risk and subject them to enhanced CDD process. Rather, AIs should weigh all the circumstances of the particular situation and assess whether there is a higher than normal risk of money laundering. [Para 2.3(a) & 14.5]”

2. Replace IN 10, which states that “A recognised stock exchange is one as listed in Annex 1 to the Interpretative Notes (this annex supersedes Annex 2 of the Guideline). [Para 4.2]”, with the following:

“A recognised stock exchange is a stock exchange of a jurisdiction which is a member of the FATF or a specified stock exchange as defined under Schedule 1 to the Securities and Futures Ordinance, but it does not include a stock exchange of jurisdictions which do not or insufficiently apply the FATF Recommendations (Annex 2 of the Guideline is superseded). [Para 4.2]”

3. IN 11 will be amended as follows:

“A simplified CDD process may be applied to state-owned enterprises in a ~~non-NCCT~~ jurisdiction where the risk of money laundering is assessed to be low and where the AI has no doubt as regards the ownership of the enterprise. [Para 4.2]”

4. Replace IN 14, which states that “Equivalent jurisdictions are presently defined as all members of the European Union (including Gibraltar), Netherlands Antilles and Aruba, Isle of Man, Guernsey and Jersey. [Para 4.4 & 6.4]”, with the following:

“Comparable jurisdictions are jurisdictions (other than FATF members) that in the view of the institution sufficiently apply standards of prevention of money laundering and terrorist financing equivalent to those of the FATF. These can be taken to include jurisdictions previously identified by the HKMA as comparable jurisdictions, namely members of the European Union (including Gibraltar), Netherlands Antilles and Aruba, Isle of Man, Guernsey and Jersey.

In determining whether or not a jurisdiction sufficiently applies FATF

standards in combating money laundering and terrorist financing and meets the criteria for a comparable jurisdiction, AIs should:

- (a) carry out their own assessment of the standards of prevention of money laundering and terrorist financing adopted by the jurisdiction concerned. The assessment can be made based on the AI's knowledge and experience of the jurisdiction or market intelligence. The higher the risk, the greater the due diligence measures that should be applied when undertaking business with a customer from the jurisdiction concerned;
- (b) pay attention to assessments that have been undertaken by standard setting bodies such as the FATF and by international financial institutions such as the International Monetary Fund (IMF). In addition to the mutual evaluations carried out by the FATF and FATF-style regional bodies, the IMF and the World Bank, as part of their financial stability assessments of countries and territories, have carried out country assessments in relation to compliance with prevention of money laundering and terrorist financing standards based on the FATF Recommendations; and
- (c) maintain an appropriate degree of ongoing vigilance concerning money laundering risks and take into account information that is reasonably available to them about the standards of anti-money laundering/terrorist financing systems and controls that operate in the jurisdiction with which any of their customers are associated. [Para 4.4 & 6.4]"

5. IN 40 will be amended as follows:

"Where a ~~non-NCCT~~ customer has one or more (principal)-~~NCCT~~ beneficial owners connected with jurisdictions which do not or insufficiently apply the FATF Recommendations, the general principle is that the exercise of extra care should be extended to cases where the ~~NCCT~~-beneficial owner(s) has/have a dominant influence over the customer concerned. [Para 14.5]"

6. To add a new IN 41 as follows:

"AIs may regard FATF members as jurisdictions which have sufficiently applied the FATF Recommendations. [Para 14.5]"

7. Annex 1 to the INs will be repealed.