

# Updates on Keeping of Significant Controllers Registers (SCR) and Licensing of Trust or Company Service Providers

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21 June 2018

# Agenda

- I. Updates on new requirements under the Companies Ordinance - Significant Controllers Register (SCR)
- II. Updates on Licensing of Trust or Company Service Providers (TCSP)

**I. Updates on new requirements under  
the Companies Ordinance –  
Significant Controllers Register (SCR)**

# I. Updates on new requirements under the Companies Ordinance – Significant Controllers Register (SCR)

## 1. When to be effective

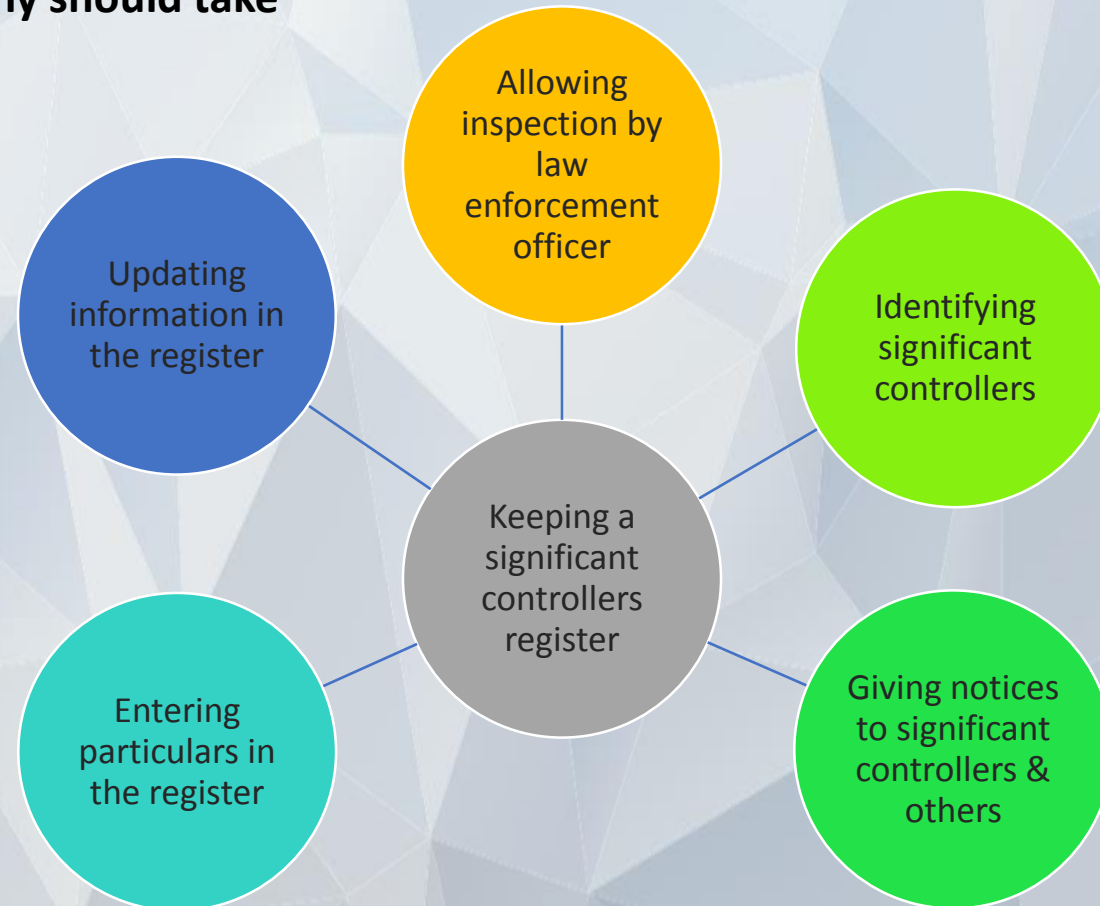
- 1 March 2018
- Within 7 days all particulars confirmed or come to notice

## 2. Which company to keep

- In general all HK incorporated companies limited by shares or guarantee and unlimited companies except for listed companies

# I. Updates on new requirements under the Companies Ordinance – Significant Controllers Register (SCR)

## 3. Actions a company should take



# I. Updates on new requirements under the Companies Ordinance – Significant Controllers Register (SCR)

## 4. Where to keep it

- At the registered office or at a prescribed place (Form NR2 must be filed within 15 days)

## 5. Who are to be included and who can do inspection

- In general holding directly or indirectly more than 25% in voting shares or voting rights or control/influence the Board of directors/company/trustees
- Law enforcement officer and significant controllers can inspect the records

# I. Updates on new requirements under the Companies Ordinance – Significant Controllers Register (SCR)

## 5. Who are to be included and who can do inspection (continued)

- Law enforcement officer includes an officer of the following government departments or statutory bodies:
  - Companies Registry
  - Customs and Excise Department
  - Hong Kong Monetary Authority
  - Hong Kong Police Force
  - Immigration Department
  - Inland Revenue Department
  - Insurance Authority
  - Independent Commission Against Corruption
  - Securities and Futures Commission

# I. Updates on new requirements under the Companies Ordinance – Significant Controllers Register (SCR)

## 6. What to be recorded

The SCR must contain:

- The required particulars of every significant controller of the company
- The particulars of any registrable change with respect to each significant controller of the company
- The name and contact details of a designated representative
- All additional matters required under the new Schedule 5C of the CO. These include, for example, where a company does not have any significant controller, the company must note in the SCR that “the company knows, or has reasonable cause to believe, that it has no significant controller”.

# I. Updates on new requirements under the Companies Ordinance – Significant Controllers Register (SCR)

## 6. What to be recorded (continued)

- The “required particulars” include:

- Name

- | For a registrable person   | For a registrable legal entity  |
|--|---|
| <ul style="list-style-type: none"><li>i. Correspondence address,</li><li>ii. identity card number (if the person does not have an identity card, the number and issuing country of the passport)</li></ul> | <ul style="list-style-type: none"><li>i. Legal form,</li><li>ii. registration number,</li><li>iii. place of incorporation (governing law); and</li><li>iv. address of registered office</li></ul> |

- Date of becoming a significant controller

- Nature of control over the company

# I. Updates on new requirements under the Companies Ordinance – Significant Controllers Register (SCR)

## 6. What to be recorded (continued)

A company's designated representative must be one of the following:

- A member, director or an employee of the company who is a natural person resident in Hong Kong
- An accounting professional, a legal professional or a TCSP licensee as defined in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, Cap. 615 (“AMLO”)

## Sample 1 of SCR – a company with a registrable person

Significant controllers				
Entry No.	Date of Entry	Name of registrable person / legal entity	Particulars	Remarks/ Notes
1	2-Mar-2018	Chan Tai Tai	a) Correspondence address : Room 10, 11/F, 2000 Nathan Road, Kowloon b) HKID card no : AA123456(7) c) Date of becoming a registrable person : 1-Mar-2018 d) Nature of control over the company : Chan Tai Tai holds more than 25% of the issued shares of the company	
Designated representative				
Entry No.	Date of Entry	Name (capacity)	Contact details	Remarks/ Notes
1	2-Mar-2018	Chan Tai Ho (director of the company)	a) Address : Room 10, 11/F, 2000 Nathan Road, Kowloon b) Telephone no.:1234-5678 c) Fax no.:1234-5679	

## Sample 2 of SCR – a company with a registrable person and a registrable legal entity

Significant controllers				
Entry No.	Date of Entry	Name of registrable person / legal entity	Particulars	Remarks/ Notes
1	7-Mar-2018	XYZ Profits Limited	<ul style="list-style-type: none"> <li>a) Legal form : private limited company</li> <li>b) Registration number : 123456</li> <li>c) Place of incorporation : Hong Kong (Governing law)</li> <li>d) Address of registered office : Room 10, 12/F, Forever Green Building, 1000 Wong Chuk Hang Road, Aberdeen, Hong Kong</li> <li>e) Date of becoming a registrable legal entity : 1-Mar-2018</li> <li>f) Nature of control over the company : XYZ Profits Limited holds more than 25% of the issued shares of the company</li> </ul>	
1	7-Mar-2018	Lee Tai Long	<ul style="list-style-type: none"> <li>a) Correspondence address : Suite 19, 19/F, Flourishing Tower, 3000 Chai Wan Road, Chai Wan, Hong Kong</li> <li>b) HKID card no : AA300300(0)</li> <li>c) Date of becoming a registrable person : 1-Mar-2018</li> <li>d) Nature of control over the company : Lee Tai Long holds more than 25% of the issued shares of the company</li> </ul>	
Designated representative				
Entry No.	Date of Entry	Name (capacity)	Contact details	Remarks/ Notes
1	7-Mar-2018	Chan, Lee, Cheung & Co. (legal professional)	<ul style="list-style-type: none"> <li>a) Address : Room 10, 12/F, Forever Green Building, 1000 Wong Chuk Hang Road, Aberdeen, Hong Kong</li> <li>b) Telephone no.:6789-4321</li> <li>c) Fax no.:6789-4322</li> </ul>	

# I. Updates on new requirements under the Companies Ordinance – Significant Controllers Register (SCR)

## 7. Consequences if failing to do the 6 “W”s

- Failure to comply with the above obligations is a criminal offence. The company and every responsible person of the company are liable to a fine at level 4 (i.e. \$25,000). Where applicable, there is a further daily fine of \$700.
- A person who has received a notice relating to the SCR issued by a company must comply with the requirements stated in the notice within one month from the date of the notice.
- Failure to comply with any of the requirements in the notice within 1 month from the date of the notice is a criminal offence. The notice addressee and every related person (if any) is liable to a fine at level 4 (i.e. \$25,000)

# I. Updates on new requirements under the Companies Ordinance – Significant Controllers Register (SCR)

## 7. Consequences if failing to do the 6 “W”s (continued)

- If any person knowingly or recklessly:
    - a) makes a statement which is misleading, false or deceptive in any material particular in the SCR;  
or
    - b) makes a statement or provides any information that is misleading, false or deceptive in a material particular in the reply to a company’s notice,
- the person commits an offence and is liable:
- On conviction on indictment to a fine of \$300,000 and imprisonment for two years; or
  - On summary conviction, to a fine at level 6 (i.e. \$100,000) and imprisonment for six months

## Further information

Dedicated thematic section on “Significant Controllers Register” on Companies Registry’s website ([www.cr.gov.hk.scr](http://www.cr.gov.hk.scr)):

- Companies (Amendment) Ordinance 2018
- Companies Registry External Circular No. 2/2018
- Guideline on the Keeping of Significant Controllers Registers by Companies
- Frequently asked questions

## **II. Updates on Licensing of Trust or Company Service Providers (TCSP)**

## II. Updates on Licensing of Trust or Company Service Providers (TCSP)

### Key points to note

1. Very much inter-related with the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (“AMLO”).
2. Standard policy on customer due diligence and record-keeping. (see Schedule E)
3. Exemptions for:
  - accounting professional under Professional Accountants Ordinance (Cap.50) (“PAO”);
  - legal professional under Legal Practitioners Ordinance (Cap.159) (“LPO”);
  - licensed corporation by Securities and Futures Ordinance (Cap.571) (“SFO”);
  - authorized institutes under Banking Ordinance; and
  - the government.

## II. Updates on Licensing of Trust or Company Service Providers (TCSP)

### Key points to note

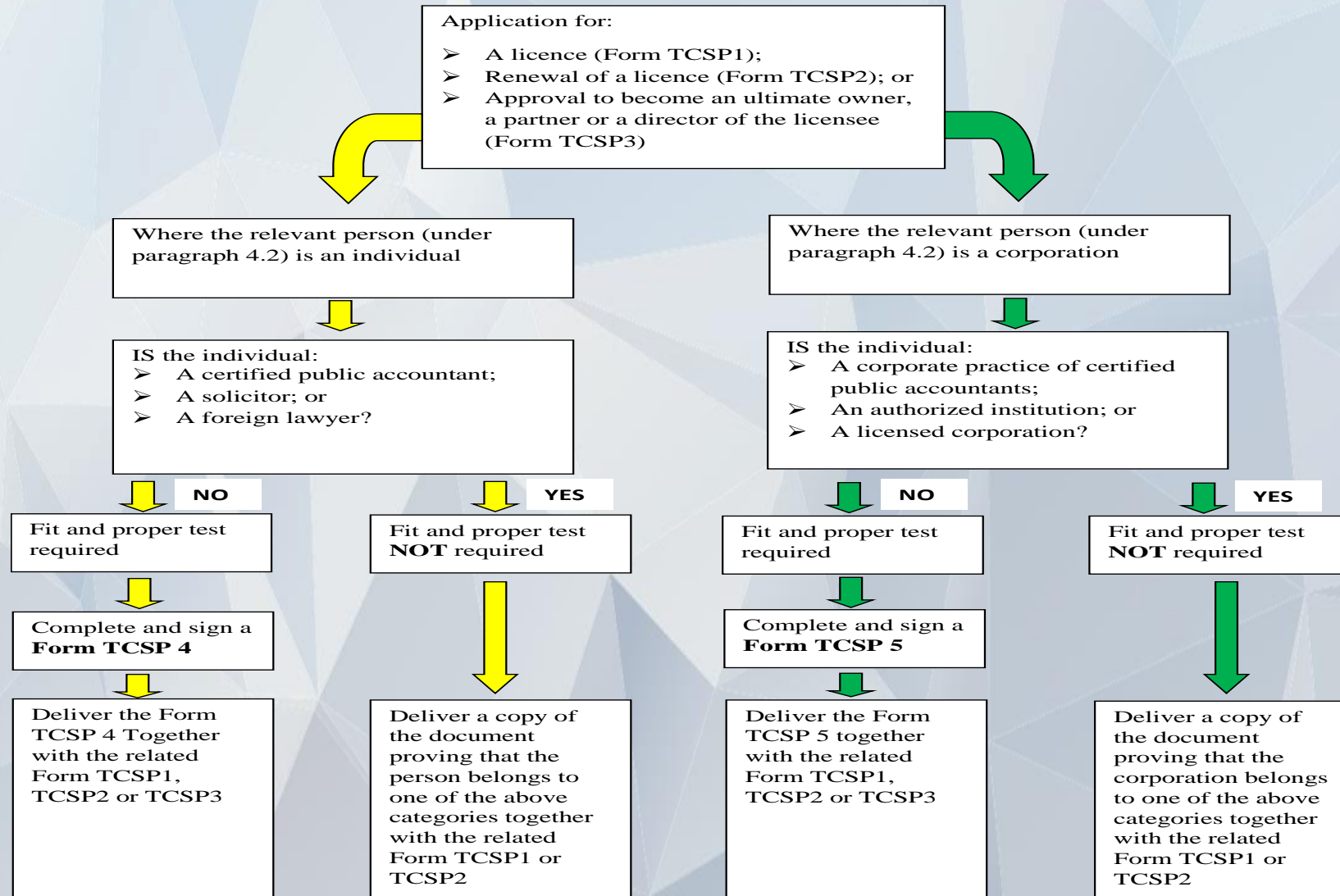
4. Transitional period – 120 days.
5. Fit & proper person for directors and ultimate owners, i.e. 25% shareholding or more (see Schedule A & B).
6. Application fee \$3,440 plus \$975 for each person subject to fit & proper test.
7. Renewal is due on 60 days before expiry date at a fee of \$2,910 plus \$975 for each person subject to fit & proper test.

## II. Updates on Licensing of Trust or Company Service Providers (TCSP)

### Key points to note

8. For changes in directors and/or shareholders of TCSP licensee, approval must be obtained except for the exempted persons, otherwise need to file a notification to the Registrar within one month from commencement.
9. Notification to the Registrar on cessation beforehand is necessary.
10. Examples of contraventions and disciplinary actions (see Schedule C).
11. Objections to any rulings can be applied to the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal within 21 days after the notice of decision; and
12. List of specified forms (see Schedule D).

# Schedule A - Illustration on the application of the fit and proper test



## Schedule B - What are the criteria for fit and proper test<sup>1</sup>?

In determining whether a person is a fit and proper person, the Registrar must, in addition to any other matters that the Registrar considers relevant, have regard to the following matters:

- a) Whether the person has been convicted of an offence –
  - i. Under the AMLO<sup>2</sup>;
  - ii. Relating to terrorists act<sup>3</sup>;
  - iii. Relating to drug trafficking<sup>4</sup>; or
  - iv. Relating to an organized or serious crime<sup>5</sup>;
- b) Whether the person has a conviction in a place outside Hong Kong –
  - i. For an offence in respect of an act that would have constituted an offence specified in paragraph (a) above had it been done in Hong Kong;
  - ii. For an offence relating to money laundering or terrorist financing; or
  - iii. For an offence for which it was necessary to find that the person had acted fraudulently, corruptly or dishonestly;
- c) Whether the person has failed to comply with a requirement imposed under the AMLO or a regulation made by the Registrar;
- d) If the person is an individual, whether he or she is an undischarged bankrupt or is the subject of any bankruptcy proceedings under the Bankruptcy Ordinance (Cap. 6);

## Schedule B - What are the criteria for fit and proper test<sup>1</sup>? (continued)

- e) If the person is a corporation, whether it is an liquidation or is the subject of a winding up order, or there is a receiver appointed in relation to it.

The Registrar will request for additional information and/or documentary evidence in support whenever necessary. In some cases, the Registrar may invite the person to attend interviews in our office to answer any questions concerning the information provided.

<sup>1</sup> Please refer to section 53I of the AMLO

<sup>2</sup> Please refer to section 53I(a)(i) of the AMLO

<sup>3</sup> Please refer to section 14 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)

<sup>4</sup> Please refer to section 25(1), 25A(5) or (7) of, and Schedule 1 to, the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)

<sup>5</sup> Please refer to section 25(1), 25A(5) or (7) of, and Schedules 1 and 2 to, the Organized and Serious Crimes Ordinance (Cap. 455).

## Schedule C – Disciplinary actions

### Examples of situations in which the Registrar may take disciplinary actions<sup>1</sup>

- The TCSP licensee contravenes any customer due diligence and record-keeping requirement;
- The TCSP licensee contravenes any of the related regulations made by the Registrar pursuant to the AMLO;
- The TCSP licensee contravenes a condition of the TCSP licence;
- A person becomes an ultimate owner, a partner or a director of a TCSP licensee without the prior approval of the Registrar;
- The TCSP licensee fails to notify the Registrar of any change in particulars within 1 month beginning on the date on which the change takes place; and
- The TCSP licensee fails to notify the Registrar before the intended date of cessation of its intention to cease to carry on its trust or company service business in Hong Kong and the intended date of cessation.

What disciplinary actions may be taken by the Registrar against TCSP licensees?

In case of contravention, the Registrar may exercise one or more of the following disciplinary powers against a TCSP licensee:

- Publicly reprimand the licensee;
- Order the licensee to take, by a date specified by the Registrar, any action specified by the Registrar for the purpose of remedying the contravention; and
- Order the licensee to pay a pecuniary penalty not exceeding HK\$500,000<sup>2</sup>.

<sup>1</sup> Please refer to section 53Z(2) of the AMLO.

<sup>2</sup> Please refer to section 53Z(3) of the AMLO.

## Schedule D – List of forms specified for the TCSP licensing regime

	Form No.	Title	Remarks
1	Form TCSP1	Application for a Trust or Company Service Provider Licence	
2	Form TCSP2	Application for Renewal of a Trust or Company Service Provider Licence	
3	Form TCSP3	Application for Approval to Become an Ultimate Owner / a Partner / a Director of a Trust or Company Service Provider Licensee	
4	Form TCSP4	Statement as regards Fit and Proper Criteria (For applicant / ultimate owner / partner / director – individual)	To be submitted with Form TCSP1, TCSP2 or TCSP3
5	Form TCSP5	Statement as regards Fit and Proper Criteria (For partner / director – corporation)	To be submitted with Form TCSP1, TCSP2 or TCSP3
6	Form TCSP6	Notification of Changes I Particulars	
7	Form TCSP7	Notification of Cessation of Trust or Company Service Business	

The above forms can be downloaded at the website of the CR's Trust and Company Service Providers Licensing Regime at [www.tcsp.cr.gov.hk](http://www.tcsp.cr.gov.hk).

# Schedule E – Anti-Money Laundering and Counter-Terrorist Financing

## 1. When

- Effective on 1 March 2018 for section 7 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance, Cap. 615 (AMLO).

## 2. Which

- Staff and officers of TCSP licensees, legal professional, real estate agents, accounting professional and their overseas subsidiaries.

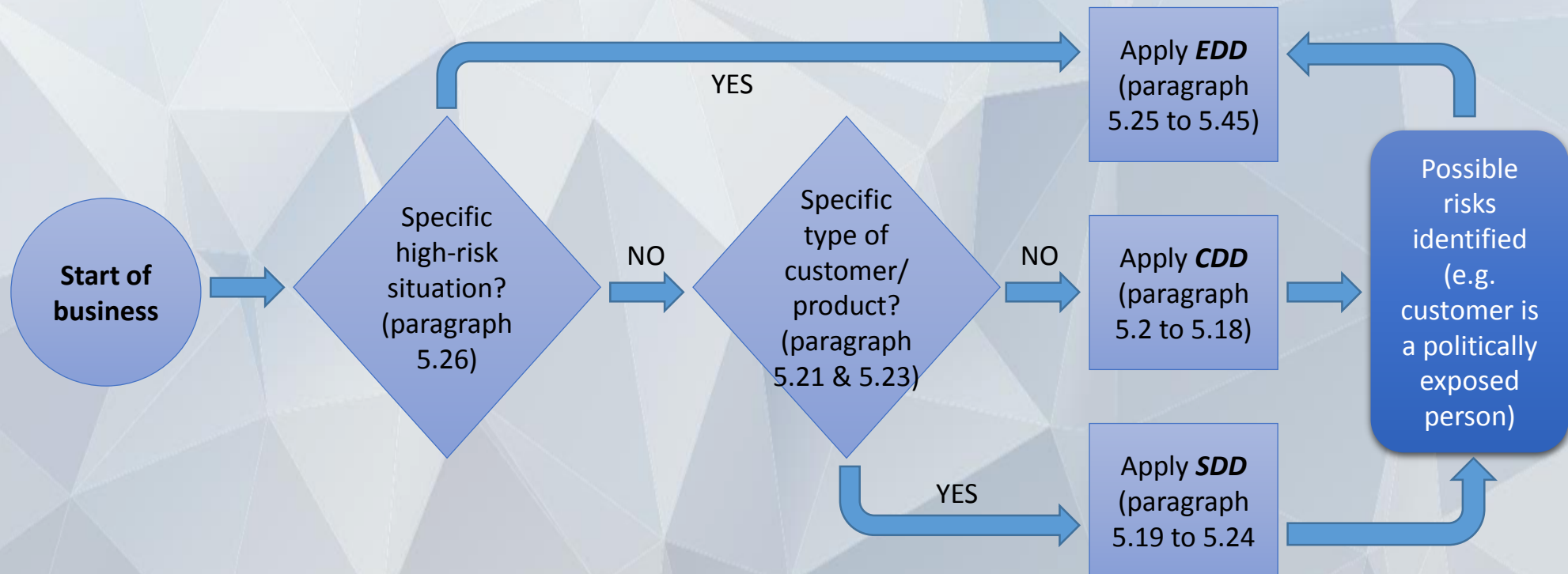
## 3. Who

- All customers business relationship and/or occasional transactions.

# Schedule E – Anti-Money Laundering and Counter-Terrorist Financing (continued)

## 4. How

Requirement under Schedule 2 of AMLO:



# Schedule E – Anti-Money Laundering and Counter-Terrorist Financing (continued)

## 4. How (continued)

### (A) Customer due diligence (CDD)

- before any business relationship
- before occasional transaction or series of transactions involving HK\$120,000 or above
- Exceptions: (i) not to disrupt the normal conduct of customer business; and  
(ii) ML/TF risk is effectively managed
- Pre-existing customers (i.e. established before 1 March 2018)
  - Unusual or suspicious transaction
  - Not consistent with normal customer business
  - A material change in customer operation
- Continuously monitoring on risk profile and source of funds
- Identify complex and large or unusual or patterns of transactions with no economic or lawful purpose

# Schedule E – Anti-Money Laundering and Counter-Terrorist Financing (continued)

## 4. How (continued)

### (B) Enhanced due diligence (EDD)

- If customer not physically present
- Further verification on customer ID and all other information
- First payment into the customer's account is received from an account in the customer's name with an authorized institution
- Politically Exposed Persons (PEPs) - obtain any approval from its senior management and to establish the beneficial owner's source of wealth and funds; including his/her spouse, partner, child (plus his/her spouse or partner) or parent and close associate
- High risks situation such as bearer shares, higher-risk jurisdictions or situation specified by the Registrar of Companies

# Schedule E – Anti-Money Laundering and Counter-Terrorist Financing (continued)

## 4. How (continued)

### (C) Simplified CDD

- If it is a financial institution or its equivalent, listed company, investment vehicle with investors of FIs, government or public body in Hong Kong or its equivalent in other jurisdictions
- No need to identify and verify the beneficial owner
- Other aspects of CDD still be undertaken
- Not be applied if suspicions or with doubts when other aspects were checked

# Schedule E – Anti-Money Laundering and Counter-Terrorist Financing (continued)

## 4. How (continued)

(D) Duty for records keeping (RK)

- For at least 5 years after end of transactions or business relationship with all proper documentations (see Schedule F)

(E) Staff training (see Schedule G)

(F) Appointment of compliance officer (CO) and money laundering reporting officer (MLRO) and reporting requirement with JFIU but watch out possible “tipping off”

(G) Suspend business relationship if within 60 days cannot complete ID verification and terminate business relationship if after 120 days cannot be done

# Schedule E – Anti-Money Laundering and Counter-Terrorist Financing (continued)

## 5. Sanctions

- If found contravening the CDD & RK.
- Publicly reprimand, take remedial action and/or pecuniary penalty not exceeding HK\$500,000; if still failing to comply at HK\$10,000 per day
- Fails to report the knowledge or suspicion carries a maximum penalty of 3 months' imprisonment and a fine of HK\$50,000.

# Schedule F – Record-keeping requirements

	Record-keeping requirements in respect of	
	<i>each customer</i>	<i>each transaction</i>
For how long should records be kept?	Throughout the continuance of the business relationship with the customer and for a period of <b>at least 5 years</b> after the end of the business relationship	<b>At least 5 years</b> after the completion of a transaction regardless of whether the business relationship ends during the period
What records should be kept?	<p>The original or a copy of :</p> <ul style="list-style-type: none"> <li>➤ the documents, and a record of the data and information obtained in the course of identifying and verifying the identity of                             <ul style="list-style-type: none"> <li>• the customer;</li> <li>• beneficial owner of the customer;</li> <li>• the person who purports to act on behalf of the customer; and</li> <li>• other connected parties<sup>41</sup> to the customer.</li> </ul> </li> </ul> <p><i>(Note: The information should include the additional information obtained for the purposes of EDD or ongoing monitoring.)</i></p> <ul style="list-style-type: none"> <li>➤ the documents, and a record of the data and information, on the purpose and intended nature of the business relationship; and</li> <li>➤ the files relating to the customer's business relationship and business correspondence with the customer and any beneficial owner of the customer.</li> </ul>	<p>The original or a copy of the documents, and a record of the data and information obtained in connection with the transaction, including the following types of information:</p> <ul style="list-style-type: none"> <li>➤ the identity of the parties to the transaction;</li> <li>➤ the nature and date of the transaction;</li> <li>➤ the type and amount of currency involved;</li> <li>➤ the origin of the funds (if known);</li> <li>➤ the form in which the funds were offered or withdrawn, e.g. cash, cheques, etc;</li> <li>➤ the destination of the funds;</li> <li>➤ the form of instruction and authority; and</li> <li>➤ the type and identifying number of any account involved in the transaction (where applicable).</li> </ul>

## Schedule G – Staff training



## Schedule H – The “SAFE” approach

### The “SAFE” approach

- A. An effective systemic approach to identify suspicious transactions may safeguard TCSP licensees from the risk of being involved with ML/TF. TCSP licensees may adopt, where applicable, the “SAFE” approach promoted by JFIU.
- B. Four steps are involved in the “SAFE” approach”
  - i. **S**creen the account for suspicious indicators;
  - ii. **A**sk the customers appropriate questions;
  - iii. **F**ind out the customers’ records; and
  - iv. **E**valuate all the above information.
- C. TCSP licensees are strongly advised to familiarize themselves with the “SAFE” approach. Details of the “SAFE” approach are available at JFIU’s website ([www.jfiu.gov.hk](http://www.jfiu.gov.hk))

# Schedule I – Glossary of key terms and abbreviations

Terms / abbreviations	Meaning	Terms / abbreviations	Meaning
AMLO	Anti-Money Laundering and Counter-Terrorist Financing Ordinance, Cap. 615	IO	Insurance Ordinance, Cap. 41
AML/CTF	Anti-money laundering and counter-terrorist financing	JFIU	Joint Financial Intelligence Unit
AML/CTF system	The policies, procedures and controls developed and implemented by a TCSP licensee for AML/CTF purposes	MLRO	Money laundering reporting officer
CDD	Customer due diligence	ML/TF	Money laundering and/or terrorist financing
CO	Compliance officer	OSCO	Organized and Serious Crimes Ordinance, Cap. 455
CR	The Company Registry	PEP(s)	Politically exposed person(s)
DTROPO	Drug Trafficking (Recovery of Proceeds) Ordinance, Cap. 405	RA(s)	Relevant authority (authorities)
EDD	Enhanced customer due diligence	Registrar	Registrar of Companies
FATF	Financial Action Task Force	SDD	Simplified customer due diligence
Individual	Individual means a natural person, other than a deceased natural person	Senior management	For a corporation, senior management means directors (or board) and senior managers (or equivalent) of the corporation, who are responsible, either individually or collectively, for management and supervision of the corporation's business. This may include a company's Chief Executive Officer, Managing Director, or other senior operating management personnel (s the case may be)

# Anti-Money Laundering and Counter-Terrorist Financing

## Reference

- Terrorist List in the Gazette:
  - [https://www.jfiu.gov.hk/en/news\\_terrorist\\_list.html](https://www.jfiu.gov.hk/en/news_terrorist_list.html)
- UN Sanctions Committee - New Resolutions/Lists:
  - [https://www.jfiu.gov.hk/en/news\\_watchlist.html](https://www.jfiu.gov.hk/en/news_watchlist.html)
- High-risk and other monitored jurisdictions:
  - <http://www.fatf-gafi.org/countries/#high-risk>.

## Contact details

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