



The Hong Kong S.A.R.  
**LICENSED  
MONEY  
LENDERS**  
ASSOCIATION LTD.

香港持牌放債人公會

# **Anti-Money Laundering and Counter-Terrorist Financing**

A Guideline issued by The Hong Kong  
S.A.R. Licensed Money Lenders  
Association Limited

*March 2013*

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<b>Chapter 1 – OVERVIEW</b>		
	1.1	This Guideline is published by The Hong Kong S.A.R. Licensed Money Lenders Association Limited (“LMLA”) with reference to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (“AMLO”). Money lenders (as defined in Section 2 of the Money Lenders Ordinance, Cap.163, Laws of Hong Kong) are not one of the “Authorized Institutions” within the meaning of AMLO. However, members of the LMLA are recommended to follow this Guideline with a view to maintaining, as far as applicable and practicable, the same regulatory standard against money laundering and terrorist financing. All references herein to AMLO shall be taken and construed as if the same applies to members. This Guideline forms part of the Code of Money Lending Practice.
	1.2	Terms and abbreviations used in this Guideline shall be interpreted by reference to the definitions set out in the Glossary part of this Guideline. Interpretation of other words or phrases should follow those set out in the AMLO.
	1.3	This Guideline is issued by LMLA for giving guidance to money lenders.
	1.4	The Guideline is intended for use by money lenders, their officers, and staff. The purposes of the Guideline are to:  (a) provide a general background on the subjects of money laundering and terrorist financing (ML/TF), including a summary of the main provisions of the applicable anti-money laundering and counter-financing of terrorism (AML/CFT) legislation in Hong Kong; and (b) provide practical guidance to assist money lenders and their senior management in designing and implementing their own policies, procedures and controls in the relevant operational areas, taking into consideration their special circumstances so as to meet the relevant AML/CFT statutory and regulatory requirements.
	1.5	The relevance and usefulness of the Guideline will be kept under review and it may be necessary to issue amendments from time to time.
	1.6	Given the significant differences that exist in the organizational and legal structures of different money lenders as well as the nature and scope of the business activities conducted by them, there exists no single set of universally applicable implementation measures. It

		must also be emphasized that the contents of the Guideline is neither intended to, nor should be construed as, an exhaustive list of the means of meeting the statutory and regulatory requirements.
	1.7	This Guideline provides guidance in relation to the operation of the provisions of Schedule 2 to the AMLO (Schedule 2). This will assist money lenders to meet their legal and regulatory obligations when tailored by money lenders to their particular business risk profile. Any departures from this Guidance, and the rationale for so doing, should be documented.
s.7, AMLO	1.8	A failure by any person to comply with any provision of this Guideline does not by itself render the person liable to any judicial or other proceedings but, in any proceedings under the AMLO before any court, this Guideline is admissible in evidence; and if any provision set out in this Guideline appears to the court to be relevant to any question arising in the proceedings, the provision may be taken into account in determining that question.
<b>The nature of money laundering and terrorist financing</b>		
s.1, Sch. 1, AMLO	1.9	The term “money laundering” is defined in section 1 of Part 1 of Schedule 1 to the AMLO and means an act intended to have the effect of making any property:  (a) that is the proceeds obtained from the commission of an indictable offence under the laws of Hong Kong, or of any conduct which if it had occurred in Hong Kong would constitute an indictable offence under the laws of Hong Kong; or (b) that in whole or in part, directly or indirectly, represents such proceeds,  not to appear to be or so represent such proceeds.
	1.10	There are three common stages in the laundering of money, and they frequently involve numerous transactions. A money lender should be alert to any such sign for potential criminal activities. These stages are:  (a) <u>Placement</u> - the physical disposal of cash proceeds derived from illegal activities; (b) <u>Layering</u> - separating illicit proceeds from their source by creating complex layers of financial transactions designed to disguise the source of the money, subvert the audit trail and provide anonymity; and (c) <u>Integration</u> - creating the impression of apparent legitimacy to criminally derived wealth. In situations

		where the layering process succeeds, integration schemes effectively return the laundered proceeds back into the general financial system and the proceeds appear to be the result of, or connected to, legitimate business activities.
s.1, Sch. 1, AMLO	1.11	<p>The term “terrorist financing” is defined in section 1 of Part 1 of Schedule 1 to the AMLO and means:</p> <p>(a) the provision or collection, by any means, directly or indirectly, of any property –</p> <p>(i) with the intention that the property be used; or</p> <p>(ii) knowing that the property will be used, in whole or in part, to commit one or more terrorist acts (whether or not the property is actually so used); or</p> <p>(b) the making available any property or financial (or related) services, by any means, directly or indirectly, to or for the benefit of a person knowing that, or being reckless as to whether, the person is a terrorist or terrorist associate.</p> <p>(c) the collection of property or solicitation of financial (or related) services, by any means, directly or indirectly, for the benefit of a person knowing that, or being reckless as to whether, the person is a terrorist or terrorist associate.</p>
	1.12	Terrorists or terrorist organizations require financial support in order to achieve their aims. There is often a need for them to obscure or disguise links between them and their funding sources. It follows then that terrorist groups must similarly find ways to launder funds, regardless of whether the funds are from a legitimate or illegitimate source, in order to be able to use them without attracting the attention of the authorities.
<b>Legislation concerned with money laundering and terrorist financing</b>		
	1.13	The Financial Action Task Force (the FATF) is an inter-governmental body formed in 1989 that sets the international AML standards. Its mandate was expanded in October 2001 to combat the financing of terrorism. In order to ensure full and effective implementation of its standards at the global level, the FATF monitors compliance by conducting evaluations on jurisdictions and undertakes stringent follow-up after the evaluations, including identifying high-risk and uncooperative jurisdictions which could be subject to enhanced scrutiny by the FATF or counter-measures by the FATF members and the international community at large. Many major economies have joined the FATF which has developed into a global network for

		international cooperation that facilitates exchanges between member jurisdictions. As a member of the FATF, Hong Kong is obliged to implement the AML requirements as promulgated by the FATF, which include the 40 Recommendations and the Nine Special Recommendations (hereafter referred to collectively as “FATF’s Recommendations”) <sup>1</sup> and it is important that Hong Kong complies with the international AML standards in order to maintain its status as an international financial centre.
	1.14	The four main pieces of legislation in Hong Kong that are concerned with ML/TF are the AMLO, the Drug Trafficking (Recovery of Proceeds) Ordinance (the DTROP), the Organized and Serious Crimes Ordinance (the OSCO) and the United Nations (Anti-Terrorism Measures) Ordinance (the UNATMO). It is very important that money lenders and their officers and staff fully understand their respective responsibilities under the different legislation.
s23, Sch.2	1.15	Money lenders are advised to take all reasonable measures to mitigate ML/TF risks.
<b><u>DTROP</u></b>		
	1.16	The DTROP contains provisions for the investigation of assets that are suspected to be derived from drug trafficking activities, the freezing of assets on arrest and the confiscation of the proceeds from drug trafficking activities upon conviction.
<b><u>OSCO</u></b>		
	1.17	The OSCO, among other things:  (a) gives officers of the Hong Kong Police and the Customs and Excise Department powers to investigate organized crime and triad activities; (b) gives the Courts jurisdiction to confiscate the proceeds of organized and serious crimes, to issue restraint orders and charging orders in relation to the property of a defendant of an offence specified in the OSCO; (c) creates an offence of money laundering in relation to the proceeds of indictable offences; and (d) enables the Courts, under appropriate circumstances, to receive information about an offender and an offence in order to determine whether the imposition of a greater sentence is appropriate where the offence amounts to an organized crime/triad related offence or

<sup>1</sup> The FATF’s Recommendations can be found on the FATF website [www.fatf-gafi.org](http://www.fatf-gafi.org).

		other serious offences.
<b>UNATMO</b>		
	1.18	The UNATMO is principally directed towards implementing decisions contained in Resolution 1373 dated 28 September 2001 of the United Nations Security Council (UNSC) aimed at preventing the financing of terrorist acts. Besides the mandatory elements of the UNSC Resolution 1373, the UNATMO also implements the more pressing elements of the FATF's special recommendations on terrorist financing.
s.25, DTROP & OSCO	1.19	Under the DTROP and the OSCO, a person commits an offence if he deals with any property knowing or having reasonable grounds to believe it to represent any person's proceeds of drug trafficking or of an indictable offence respectively. The highest penalty for the offence upon conviction is imprisonment for 14 years and a fine of \$5 million.
s.6, 7, 8, 13 & 14, UNATMO	1.20	The UNATMO, among other things, criminalizes the provision or collection of property and making any property or financial (or related) services available to terrorists or terrorist associates. The highest penalty for the offence upon conviction is imprisonment for 14 years and a fine. The UNATMO also permits terrorist property to be frozen and subsequently forfeited.
s.25A, DTROP & OSCO, s.12 & 14, UNATMO	1.21	The DTROP, the OSCO and the UNATMO also make it an offence if a person fails to disclose, as soon as it is reasonable for him to do so, his knowledge or suspicion of any property that directly or indirectly, represents a person's proceeds of, was used in connection with, or is intended to be used in connection with, drug trafficking, an indictable offence or is terrorist property respectively. This offence carries a maximum term of imprisonment of 3 months and a fine of \$50,000 upon conviction.
s.25A, DTROP & OSCO, s.12 & 14, UNATMO	1.22	"Tipping off" is another offence under the DTROP, the OSCO and the UNATMO. A person commits an offence if, knowing or suspecting that a disclosure has been made, he discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following that first- mentioned disclosure. The maximum penalty for the offence upon conviction is imprisonment for 3 years and a fine.

**Chapter 2 – AML/CFT SYSTEMS AND BUSINESS CONDUCTED OUTSIDE HONG KONG**

**AML/CFT systems**

s.23(a) & (b), Sch. 2	2.1	Money lenders are advised to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of ML/TF and to prevent a contravention of any requirement under Part 2 or 3 of Schedule 2. To ensure compliance with this requirement, money lenders should implement appropriate internal AML/CFT policies, procedures and controls (hereafter collectively referred to as “AML/CFT systems”).
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**Risk factors**

	2.2	While no system will detect and prevent all ML/TF activities, money lenders should establish and implement adequate and appropriate AML/CFT systems (including customer acceptance policies and procedures) taking into account factors including products and services offered, types of customers, geographical locations involved.
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**Product/service risk**

	2.3	A money lender should consider the characteristics of the products and services that it offers and the extent to which these are vulnerable to ML/TF abuse. In this connection, a money lender should assess the risks of any new products and services (especially those that may lead to misuse of technological developments or facilitate anonymity in ML/TF schemes) before they are introduced and ensure appropriate additional measures and controls are implemented to mitigate and manage the associated ML/TF risks.
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**Delivery/distribution channel risk**

	2.4	A money lender should also consider its delivery/distribution channels and the extent to which these are vulnerable to ML/TF abuse. These may include sales through online, postal or telephone channels where a non-face-to-face account opening approach is used. Business sold through intermediaries may also increase risk as the business relationship between the customer and a money lender may become indirect.
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**Customer risk**

	2.5	When assessing the customer risk, money lenders should consider who their customers are, what they do and any other information that may suggest the customer is of higher risk.
	2.6	A money lender should be vigilant where the customer is of such a legal form that enables individuals to divest themselves of ownership of property whilst retaining an element of control over it or the business/industrial sector to which a customer has business connections is more

		<p>vulnerable to corruption. Examples include:</p> <p>(a) companies that can be incorporated without the identity of the ultimate underlying principals being disclosed;</p> <p>(b) certain forms of trusts or foundations where knowledge of the identity of the true underlying principals or controllers cannot be guaranteed;</p> <p>(c) the provision for nominee shareholders; and</p> <p>(d) companies issuing bearer shares.</p>
	2.7	<p>A money lender should also consider risks inherent in the nature of the activity of the customer and the possibility that the transaction may itself be a criminal transaction. For example, the arms trade and the financing of the arms trade is a type of activity that poses multiple ML and other risks, such as:</p> <p>(a) corruption risks arising from procurement contracts;</p> <p>(b) risks in relation to politically exposed persons (PEPs); and</p> <p>(c) terrorism and TF risks as shipments may be diverted.</p>
<b><i>Country risk</i></b>		
	2.8	<p>A money lender should pay particular attention to countries or geographical locations of operation with which its customers and intermediaries are connected where they are subject to high levels of organized crime, increased vulnerabilities to corruption and inadequate systems to prevent and detect ML/TF. When assessing which countries are more vulnerable to corruption, money lenders may make reference to publicly available information or relevant reports and databases on corruption risk published by specialized national, international, non-governmental and commercial organizations (an example of which is Transparency International's 'Corruption Perceptions Index', which ranks countries according to their perceived level of corruption).</p>
<b><u>Effective controls</u></b>		
	2.9	<p>To ensure proper implementation of such policies and procedures, money lenders should have effective controls covering:</p> <p>(a) senior management oversight;</p> <p>(b) appointment of a Compliance Officer (CO) and a Money Laundering Reporting Officer (MLRO)<sup>2</sup>;</p>

<sup>2</sup> The role and functions of an MLRO are detailed at paragraphs 7.19-7.30. For some money lenders, the functions of the CO and the MLRO may be performed by the same staff member.

		(c) compliance and audit function; and (d) staff screening and training <sup>3</sup> .
<b><i>Senior management oversight</i></b>		
	2.10	The senior management of any money lender is responsible for managing its business effectively; in relation to AML/CFT this includes oversight of the functions described below.
	2.11	Senior management should:  (a) be satisfied that the money lender's AML/CFT systems are capable of addressing the ML/TF risks identified; (b) appoint a director or senior manager as a CO who has overall responsibility for the establishment and maintenance of the money lender's AML/CFT systems; and (c) appoint a senior member of the money lender's staff as the MLRO who is the central reference point for suspicious transaction reporting.
	2.12	In order that the CO and MLRO can discharge their responsibilities effectively, senior management should, as far as practicable, ensure that the CO and MLRO are:  (a) subject to constraint of size of the money lender, independent of all operational and business functions; (b) normally based in Hong Kong; (c) of a sufficient level of seniority and authority within the money lender; (d) provided with regular contact with, and when required, direct access to senior management to ensure that senior management is able to satisfy itself that the statutory obligations are being met and that the business is taking sufficiently robust measures to protect itself against the risks of ML/TF; (e) fully conversant in the money lender's statutory and regulatory requirements and the ML/TF risks arising from the money lender's business; (f) capable of accessing, on a timely basis, all available information (both from internal sources such as CDD records and external sources such as circulars from the LMLA); and (g) equipped with sufficient resources, including staff and appropriate cover for the absence of the CO and MLRO (i.e. an alternate or deputy CO and MLRO who should, where practicable, have the same status).
<b><i>Compliance officer and money laundering reporting officer</i></b>		
	2.13	The principal function of the CO is to act as the focal point

<sup>3</sup> For further guidance on staff training see Chapter 9.

		<p>within a money lender for the oversight of all activities relating to the prevention and detection of ML/TF and providing support and guidance to the senior management to ensure that ML/TF risks are adequately managed. In particular, the CO should assume responsibility for:</p> <p>(a) developing and/or continuously reviewing the money lender’s AML/CFT systems to ensure they remain up-to-date and meet current statutory and regulatory requirements; and</p> <p>(b) the oversight of all aspects of the money lender’s AML/CFT systems which include monitoring effectiveness and enhancing the controls and procedures where necessary.</p>
	2.14	<p>In order to effectively discharge these responsibilities, a number of areas should be considered. These include:</p> <p>(a) the means by which the AML/CFT systems are managed and tested;</p> <p>(b) the identification and rectification of deficiencies in the AML/CFT systems;</p> <p>(c) reporting numbers within the systems, both internally and disclosures to the Joint Financial Intelligence Unit (JFIU);</p> <p>(d) the mitigation of ML/TF risks arising from business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations;</p> <p>(e) the communication of key AML/CFT issues with senior management, including, where appropriate, significant compliance deficiencies;</p> <p>(f) changes made or proposed in respect of new legislation, regulatory requirements or guidance;</p> <p>(g) compliance with any requirement under Part 2 or 3 of Schedule 2 in overseas branches and subsidiary undertakings and any guidance from time to time issued by the LMLA in this respect; and</p> <p>(h) AML/CFT staff training.</p>
	2.15	<p>The MLRO should play an active role in the identification and reporting of suspicious transactions. Principal functions performed are expected to include:</p> <p>(a) reviewing all internal disclosures and exception reports and, in light of all available relevant information, determining whether or not it is necessary to make a report to the JFIU;</p> <p>(b) maintaining all records related to such internal reviews;</p> <p>(c) providing guidance on how to avoid “tipping off” if any</p>

		disclosure is made; and (d) acting as the main point of contact with the JFIU, law enforcement, and any other competent authorities in relation to ML/TF prevention and detection, investigation or compliance.
<b><i>Compliance and audit function</i></b>		
	2.16	Where practicable, a money lender should establish an independent compliance and audit function which should have a direct line of communication to the senior management of the money lender.
	2.17	The compliance and audit function of the money lender should regularly review the AML/CFT systems, e.g. sample testing, (in particular, the system for recognizing and reporting suspicious transactions) to ensure effectiveness. The frequency and extent of the review should be commensurate with the risks of ML/TF and the size of the money lender's business. Where appropriate, the money lender should seek a review from external sources.
	2.17a	<i>Internal audit has an important role to play in independently evaluating on a periodic basis a money lender's policies and procedures on anti-money laundering. This should include checking the effectiveness of the compliance function, the adequacy of MIS reports of large or irregular transactions and the quality of reporting of suspicious transactions. The level of awareness of front line staff of their responsibilities in relation to the prevention of money laundering should also be reviewed. The internal audit function should have sufficient expertise and resources to enable it to carry out its responsibilities.</i>
<b><i>Staff screening</i></b>		
	2.18	Money lenders should establish, maintain and operate appropriate procedures in order to be satisfied of the integrity of any new employees.
<b><i>Business conducted outside Hong Kong</i></b>		
s.22(1), Sch. 2	2.19	A Hong Kong-incorporated money lender with overseas branches or subsidiary undertakings should put in place a group AML/CFT policy to ensure that all branches and subsidiary undertakings that carry on the same business as a money lender in a place outside Hong Kong have procedures in place to comply with the CDD and record-keeping requirements similar to those imposed under Parts 2 and 3 of Schedule 2 to the extent permitted by the law of that place. The money lender should communicate the group policy to its overseas branches and subsidiary undertakings.
s.22(2), Sch. 2	2.20	When a branch or subsidiary undertaking of a money lender outside Hong Kong is unable to comply with requirements that are similar to those imposed under Parts

		2 and 3 of Schedule 2 because this is not permitted by local laws, the money lender should take additional measures to effectively mitigate ML/TF risks faced by the branch or subsidiary undertaking as a result of its inability to comply with the above requirements.
s.25A, OSCO & DTROP	2.21	Suspicion that property in whole, or partly directly or indirectly represents the proceeds of an indictable offence, should normally be reported within the jurisdiction where the suspicion arises and where the records of the related transactions are held. However, in certain cases, e.g. when the account is domiciled in Hong Kong, reporting to the JFIU <sup>4</sup> may be required in such circumstances, but only if section 25A of OSCO/DTROP applies.

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<sup>4</sup> Section 25(4) of the OSCO stipulates that an indictable offence includes conduct outside Hong Kong which would constitute an indictable offence if it had occurred in Hong Kong. Therefore, where a money lender in Hong Kong has information regarding money laundering, irrespective of the location, it should consider seeking clarification with and making a report to the JFIU.

**Chapter 3 – RISK-BASED APPROACH**

**Introduction**

	3.1	<p>The risk-based approach to CDD and ongoing monitoring (RBA) is recognized as an effective way to combat ML/TF. The general principle of an RBA is that where customers are assessed to be of higher ML/TF risks, money lenders should take enhanced measures to manage and mitigate those risks, and that correspondingly where the risks are lower, simplified measures may be applied.</p> <p>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.</p>
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**General requirement**

	3.2	<p>Money lenders should determine the extent of CDD measures and ongoing monitoring, using an RBA depending upon the background of the customer and the product, transaction or service used by that customer, so that preventive or mitigating measures are commensurate to the risks identified. The measures should however comply with the legal requirements of the AMLO.</p> <p>The RBA will enable money lenders to subject customers to proportionate controls and oversight by determining:</p> <ul style="list-style-type: none"><li>(a) the extent of the due diligence to be performed on the direct customer; 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 customer;</li><li>(b) the level of ongoing monitoring to be applied to the relationship; and</li><li>(c) measures to mitigate any risks identified.</li></ul> <p>For example, the RBA may require extensive CDD for high risk customers, such as an individual (or corporate entity) whose source of wealth and funds is unclear or who requires the setting up of complex structures.</p> <p>Money lenders should ensure that the extent of CDD and ongoing monitoring is appropriate in view of the customer’s ML/TF risks.</p>
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	3.3	<p>There are no universally accepted methodologies that prescribe the nature and extent of an RBA. However, an effective RBA does involve identifying and categorizing ML/TF risks at the customer level and establishing reasonable measures based on risks identified. An effective RBA will allow money lenders to exercise reasonable</p>
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		<p>business judgment with respect to their customers.</p> <p>An RBA should not be designed to prohibit money lenders from engaging in transactions with customers or establishing business relationships with potential customers, but rather it should assist money lenders to effectively manage potential ML/TF risks.</p>
<b>Customer acceptance/risk assessment</b>		
	3.4	<p>Money lenders may assess the ML/TF risks of individual customers by assigning a ML/TF risk rating to their customers.</p>
	3.5	<p>While there is no agreed upon set of risk factors and no one single methodology to apply these risk factors in determining the ML/TF risk rating of customers, relevant factors to be considered may include the following:</p> <p><u>1. Country risk</u></p> <p>Customers with residence in or connection with high-risk jurisdictions<sup>5</sup> for example:</p> <p>(a) those that have been identified by the FATF as jurisdictions with strategic AML/CFT deficiencies;</p> <p>(b) countries subject to sanctions, embargos or similar measures issued by, for example, the United Nations;</p> <p>(c) countries which are vulnerable to corruption; and</p> <p>(d) those countries that are believed to have strong links to terrorist activities.</p> <p>In assessing country risk associated with a customer, consideration may be given to local legislation (United Nations Sanctions Ordinance (UNSO), UNATMO), data available from the United Nations, the International Monetary Fund, the World Bank, the FATF, etc. and the money lender's own experience or the experience of other group entities (where the money lender is part of a multi-national group) which may have indicated weaknesses in other jurisdictions.</p> <p><u>2. Customer risk</u></p> <p>The following are examples of customers who might be considered to carry lower ML/TF risks:</p> <p>(a) customers who are employment-based or with a regular</p>

<sup>5</sup> Guidance on jurisdictions that do not or insufficiently apply the FATF's Recommendations or otherwise pose a higher risk is provided at paragraphs 4.15.

		<p>source of income from a known legitimate source which supports the activity being undertaken; and</p> <p>(b) the reputation of the customer, e.g. a well-known, reputable private company, with a long history that is well documented by independent sources, including information regarding its ownership and control.</p> <p>However, some customers, by their nature or behaviour might present a higher risk of ML/TF. Factors might include:</p> <p>(a) the public profile of the customer indicating involvement with, or connection to, PEPs;</p> <p>(b) complexity of the relationship, including use of corporate structures, trusts and the use of nominee and bearer shares where there is no legitimate commercial rationale;</p> <p>(c) a request to use numbered accounts or undue levels of secrecy with a transaction;</p> <p>(d) involvement in cash-intensive businesses;</p> <p>(e) nature, scope and location of business activities generating the funds/assets, having regard to sensitive or high-risk activities; and</p> <p>(f) where the origin of wealth (for high risk customers and PEPs) or ownership cannot be easily verified.</p> <p><u>3. Product/service risk</u></p> <p>Factors presenting higher risk might include:</p> <p>(a) services that inherently have provided more anonymity; and</p> <p>(b) ability to pool underlying customers/funds.</p> <p><u>4. Delivery/distribution channel risk</u></p> <p>The distribution channel for products may alter the risk profile of a customer. This may include sales through online, postal or telephone channels where a non-face-to-face account opening approach is used. Business sold through intermediaries may also increase risk as the business relationship between the customer and a money lender may become indirect.</p>
<b>Ongoing review</b>		
	3.6	<p>The identification of higher risk customers, products and services, including delivery channels, and geographical locations are not static assessments. They will change over time, depending on how circumstances develop, and how threats evolve. In addition, while a risk assessment should</p>

		always be performed at the inception of a customer relationship, for some customers, a comprehensive risk profile may only become evident once the customer has begun transacting through an account, making monitoring of customer transactions and ongoing reviews a fundamental component of a reasonably designed RBA. A money lender may therefore have to adjust its risk assessment of a particular customer from time to time or based upon information received from a competent authority, and review the extent of the CDD and ongoing monitoring to be applied to the customer.
	3.7	A money lender should keep its policies and procedures under regular review and assess that its risk mitigation procedures and controls are working effectively.
<b>Documenting risk assessment</b>		
	3.8	A money lender should keep records and relevant documents of how it assesses the customer's ML/TF risk and the extent of CDD and ongoing monitoring is appropriate based on that customer's ML/TF risk covered in this Chapter.

**Chapter 4 - CUSTOMER DUE DILIGENCE**

**4.1 Introduction to CDD**

	4.1.1	The AMLO defines what CDD measures are (see paragraph 4.1.3). As indicated in the AMLO, money lenders may also need to conduct additional measures (referred to as enhanced customer due diligence (EDD) hereafter) or could conduct simplified customer due diligence (SDD) depending on specific circumstances. This chapter suggests ways that the expectations of LMLA may be met. Wherever possible, the guideline gives money lenders a degree of discretion in how they comply with the AMLO and put in place procedures for this purpose.
	4.1.2	CDD information is a vital tool for recognizing whether there are grounds for knowledge or suspicion of ML/TF.
s.2, Sch. 2	4.1.3	<p>The following are CDD measures applicable to a money lender:</p> <p>(a) identify the customer and verify the customer’s identity using reliable, independent source documents, data or information (see paragraphs 4.2);</p> <p>(b) where there is a beneficial owner in relation to the customer, identify and take reasonable measures to verify the beneficial owner’s identity so that the money lender is satisfied that it knows who the beneficial owner is, including in the case of a legal person or trust<sup>6</sup>, measures to enable the money lender to understand the ownership and control structure of the legal person or trust (see paragraphs 4.3);</p> <p>(c) obtain information on the purpose and intended nature of the business relationship (if any) established with the money lender unless the purpose and intended nature are obvious (see paragraphs 4.6); and</p> <p>(d) if a person purports to act on behalf of the customer:</p> <p>(i) identify the person and take reasonable measures to verify the person’s identity using reliable and independent source documents, data or information; and</p> <p>(ii) verify the person’s authority to act on behalf of the customer (see paragraphs 4.4).</p>
	4.1.4	<p>The term “customer” is not defined in the AMLO. Its meaning should be inferred from its everyday meaning and in the context of the industry practice.</p> <p>In general, the term “customer” refers to the party, or parties, with whom a business relationship is established,</p>

<sup>6</sup> For the purpose of this guideline, a trust means an express trust or any similar arrangement for which a legal-binding document (i.e. a trust deed or in any other forms) is in place.

		or for whom a transaction is carried out by a money lender.
	4.1.5	In determining what constitutes reasonable measures to verify the identity of a beneficial owner and reasonable measures to understand the ownership and control structure of a legal person or trust, the money lender should consider and give due regard to the ML/TF risks posed by a particular customer and a particular business relationship. Due consideration should also be given to the measures set out in Chapter 3.
	4.1.6	Money lenders should adopt a balanced and common sense approach with regard to customers connected with jurisdictions which do not or insufficiently apply the FATF recommendations (see paragraphs 4.10). Money lenders should weigh all the circumstances of the particular situation and assess whether there is a higher than normal risk of ML/TF.
s.1, Sch. 2	4.1.7	<p>“Business relationship” between a person and a money lender is defined in the AMLO as a business, professional or commercial relationship:</p> <p>(a) that has an element of duration; or</p> <p>(b) that the money lender, at the time the person first contacts it in the person’s capacity as a potential customer of the money lender, expects to have an element of duration.</p>
s.3(1), Sch. 2	4.1.8	<p>CDD requirements should apply:</p> <p>(a) at the outset of a business relationship;</p> <p>(b) when the money lender suspects that the customer or the customer’s account is involved in ML/TF; or</p> <p>(c) when the money lender doubts the veracity or adequacy of any information previously obtained for the purpose of identifying the customer or for the purpose of verifying the customer’s identity.</p>
<b>4.2 Identification and verification of the customer’s identity</b>		
s.2(1)(a), Sch. 2	4.2.1	<p>The money lender should identify the customer and verify the customer’s identity by reference to documents, data or information provided by a reliable and independent source<sup>7</sup>:</p> <p>(a) a governmental body; or</p> <p>(b) any other reliable and independent source that is recognized by the LMLA.</p>
<b>4.3 Characteristics and evidence of identity</b>		

<sup>7</sup> See Appendix A which contains a list of documents recognized by the RAs as independent and reliable sources for identity verification purposes.

	4.3.1	<p>No form of identification can be fully guaranteed as genuine or representing correct identity and money lenders should recognise that some types of documents are more easily forged than others. If suspicions are raised in relation to any document offered, money lenders should take whatever practical and proportionate steps that are available to establish whether the document offered is genuine, or has been reported as lost or stolen. This may include searching publicly available information, approaching relevant authorities (such as the Immigration Department through its hotline) or requesting corroboratory evidence from the customer. Where suspicion cannot be eliminated, the document should not be accepted and consideration should be given to making a report to the authorities.</p> <p>Where documents are in a foreign language, appropriate steps should be taken by the money lender to be reasonably satisfied that the documents in fact provide evidence of the customer's identity (e.g. ensuring that staff assessing such documents are proficient in the language or obtaining a translation from a suitably qualified person).</p>
<b>4.4 Purpose and intended nature of business relationship</b>		
s.2(1)(c), Sch. 2	4.4.1	A money lender should understand the purpose and intended nature of the business relationship. In some instances, this will be self-evident, but in many cases, the money lender may have to obtain information in this regard.
	4.4.2	<p>Unless the purpose and intended nature are obvious, money lenders should obtain satisfactory information from all new customers as to the intended purpose and reason for opening the account or establishing the business relationship, and record the information on the account opening documentation. Depending on the money lender's risk assessment of the situation, information that might be relevant may include:</p> <p>(a) nature and details of the business / occupation / employment;</p> <p>(b) the anticipated level and nature of the activity that is to be undertaken through the relationship (e.g. what the typical transactions are likely to be);</p> <p>(c) location of customer;</p> <p>(d) the expected source and origin of the funds to be used in the relationship; and</p> <p>(e) initial and ongoing source(s) of wealth or income.</p>
	4.4.3	This requirement also applies in the context of

		non-residents. While the vast majority of non-residents seek business relationships with money lenders in Hong Kong for perfectly legitimate reasons, some non-residents may represent a higher risk for ML/TF. A money lender should understand the rationale for a non-resident to seek to establish a business relationship in Hong Kong.
<b>4.5 Timing of identification and verification of identity</b>		
<b>General requirement</b>		
s.3(1), Sch. 2	4.5.1	A money lender should complete the CDD process before establishing any business relationship (exceptions are set out at paragraph 4.5.3).
<b>Delayed identity verification during the establishment of a business relationship</b>		
	4.5.2	Customer identification information (and information on any beneficial owners) and information about the purpose and intended nature of the business relationship should be obtained before the business relationship is entered into.
s.3(2), (3) & (4)(b), Sch. 2	4.5.3	<p>However, money lenders may, exceptionally, verify the identity of the customer after establishing the business relationship, provided that:</p> <p>(a) any risk of ML/TF arising from the delayed verification of the customer's identity can be effectively managed;</p> <p>(b) it is necessary not to interrupt the normal course of business with the customer;</p> <p>(c) verification is completed as soon as reasonably practicable; and</p> <p>(d) the business relationship will be terminated if verification cannot be completed as soon as reasonably practicable.</p>
	4.5.4	<p>Where a customer is permitted to utilize the business relationship prior to verification, money lenders should adopt appropriate risk management policies and procedures concerning the conditions under which this may occur. These policies and procedures should include:</p> <p>(a) establishing timeframes for the completion of the identity verification measures;</p> <p>(b) regular monitoring of such relationships pending completion of the identity verification, and keeping senior management periodically informed of any pending completion cases;</p> <p>(c) obtaining all other necessary CDD information;</p> <p>(d) ensuring verification of identity is carried out as soon as it is reasonably practicable;</p> <p>(e) advising the customer of the money lender's obligation to terminate the relationship at any time on the</p>

		<p>basis of non-completion of the verification measures;</p> <p>(f) placing appropriate limits on the number of transactions and type of transactions that can be undertaken pending verification; and</p> <p>(g) ensuring that funds are not paid out to any third party. Exceptions may be made to allow payments to third parties subject to the following conditions:</p> <p>(i) there is no suspicion of ML/TF;</p> <p>(ii) the risk of ML/TF is assessed to be low;</p> <p>(iii) the transaction is approved by senior management, who should take account of the nature of the business of the customer before approving the transaction; and</p> <p>(iv) the names of recipients do not match with watch lists such as those for terrorist suspects and PEPs.</p>
	4.5.5	<p>The money lender should not use this concession for the circumvention of CDD procedures, in particular, where it:</p> <p>(a) has knowledge or a suspicion of ML/TF;</p> <p>(b) becomes aware of anything which causes it to doubt the identity or intentions of the customer or beneficial owner; or</p> <p>(c) the business relationship is assessed to pose a higher risk.</p>
<b><u>Failure to complete verification of identity</u></b>		
s.3(4)(b), Sch. 2	4.5.6	<p>Verification of identity should be concluded within a reasonable timeframe<sup>8</sup> Where verification cannot be completed within such a period, the money lender should as soon as reasonably practicable suspend or terminate the business relationship unless there is a reasonable explanation for the delay. Examples of reasonable timeframe are:</p> <p>(a) the money lender completing such verification no later than 30 working days after the establishment of business relations;</p> <p>(b) the money lender suspending business relations with the customer and refraining from carrying out further transactions (except to return funds to their sources, to the extent that this is possible) if such verification remains uncompleted 30 working days after the establishment of business relations; and</p> <p>(c) the money lender terminating business relations with the customer if such verification remains uncompleted 120 working days after the establishment of business</p>

<sup>8</sup> The same principle applies to the verification of address for a direct customer; an example of a reasonable timeframe being 90 working days.

		relations.
s.25A, DTROP & OSCO, s.12, UNATMO	4.5.7	The money lender should assess whether this failure provides grounds for knowledge or suspicion of ML/TF and a report to the JFIU is appropriate.
<b><u>Keeping customer information up-to-date</u></b>		
s.5(1)(a), Sch. 2	4.5.8	<p>Once the identity of a customer has been satisfactorily verified, there is no obligation to re-verify identity (unless doubts arise as to the veracity or adequacy of the evidence previously obtained for the purposes of customer identification); however, money lenders should take steps from time to time to ensure that the customer information that has been obtained for the purposes of complying with the requirements of sections 2 and 3 of Schedule 2 are up-to- date and relevant. To achieve this, a money lender should undertake periodic reviews of existing records of customers.</p> <p>An appropriate time to do so is upon certain trigger events. These include:</p> <p>(a) when a significant transaction<sup>9</sup> is to take place;</p> <p>(b) when a material change occurs in the way the customer’s account is operated<sup>10</sup>;</p> <p>(c) when the money lenders customer documentation standards change substantially; or</p> <p>(d) when the money lender is aware that it lacks sufficient information about the customer concerned.</p> <p>In all cases, the factors determining the period of review or what constitutes a trigger event should be clearly defined in the money lenders’ policies and procedures.</p>
	4.5.9	All high-risk customers (excluding dormant accounts) should be subject to a minimum of an annual review, and more frequently if deemed necessary by the money lender, of their profile to ensure the CDD information retained remains up-to-date and relevant. money lenders should however clearly define what constitutes a dormant account in their policies and procedures.
<b>4.6 Natural persons</b>		
<b><u>Identification</u></b>		
s.2, Sch. 2	4.6.1	Money lenders should collect the following identification information in respect of personal customers who need to be identified:

<sup>9</sup> The word “significant” is not necessarily linked to monetary value. It may include transactions that are unusual or not in line with the money lender’s knowledge of the customer.

<sup>10</sup> Reference should also be made to section 6 of Schedule 2 “Provisions relating to Pre-Existing Customers”.

		<p>(a) full name;  (b) date of birth;  (c) nationality; and  (d) identity document type and number.</p>
<b>Verification (Hong Kong residents)</b>		
s.2(1)(a), Sch. 2	4.6.2	For Hong Kong permanent residents, money lenders should verify an individual's name, date of birth and identity card number by reference to their Hong Kong identity card. Money lenders should retain a copy of the individual's identity card.
	4.6.3	<p>For non-permanent residents, money lenders should verify an individual's name, date of birth, nationality and travel document number and type by reference to a valid travel document (e.g. an unexpired international passport). In this respect the money lender should retain a copy of the "biodata" page which contains the bearer's photograph and biographical details.</p> <p>Alternatively, money lenders may verify the individual's name, date of birth, identity card number by reference to their Hong Kong identity card and the individual's nationality by reference to:</p> <p>(a) a valid travel document;  (b) a relevant national (i.e. government or state-issued) identity card bearing the individual's photograph; or  (c) any government or state-issued document which certifies nationality.</p> <p>Money lenders should retain a copy of the above documents.</p>
<b>Verification (non-residents)</b>		
s.2(1)(a), Sch. 2	4.6.4	For non-residents who are physically present in Hong Kong for verification purposes, money lenders should verify an individual's name, date of birth, nationality and travel document number and type by reference to a valid travel document (e.g. an unexpired international passport). In this respect the money lender should retain a copy of the "biodata" page which contains the bearer's photograph and biographical details.
s.2(1)(a), Sch. 2	4.6.5	<p>For non-residents who are not physically present in Hong Kong for verification purposes, money lenders should verify the individual's identity, including name, date of birth, nationality, identity or travel document number and type by reference to:</p> <p>(a) a valid travel document;</p>

		(b) a relevant national (i.e. government or state-issued) identity card bearing the individual's photograph; (c) a valid national driving license bearing the individual's photograph; or (d) any applicable alternatives mentioned in Appendix A.
s.9, Sch. 2	4.6.6	In respect of paragraph 4.6.5 above, where a customer has not been physically present for identification purposes, a money lender should also carry out the measures at section 9 of Schedule 2.
<b>Address identification and verification</b>		
	4.6.7	A money lender should obtain and verify the residential address (and permanent address if different) of a direct customer with whom it establishes a business relationship as this is useful for verifying an individual's identity and background.
	4.6.8	For avoidance of doubt, it is the trustee of the trust who will enter into a business relationship or carry out a transaction on behalf of the trust and who will be considered to be the customer. The address of the trustee in a direct customer relationship should therefore always be verified.
	4.6.9	Methods for verifying residential addresses may include obtaining <sup>11</sup> :  (a) a recent utility bill issued within the last 3 months; (b) recent correspondence from a Government department or agency (i.e. issued within the last 3 months); (c) a statement, issued by an authorized institution, a licensed corporation or an authorized insurer within the last 3 months; (d) a record of a visit to the residential address by the money lender; (e) an acknowledgement of receipt duly signed by the customer in response to a letter sent by the money lender to the address provided by the customer; (f) a letter from an immediate family member at which the individual resides confirming that the applicant lives at that address in Hong Kong, setting out the relationship between the applicant and the immediate family member, together with evidence that the immediate family member resides at the same address (for persons such as students and housewives who are unable to provide proof of address of their own name); (g) mobile phone or pay TV statement (sent to the address provided by the customer) issued within the last 3 months; (h) a letter from a Hong Kong nursing or residential home

<sup>11</sup> The examples provided are not exhaustive.

		<p>for the elderly or disabled, which a money lender is satisfied that it can place reliance on, confirming the residence of the applicant;</p> <p>(i) a letter from a Hong Kong university or college, which a money lender is satisfied that it can place reliance on, that confirms residence at a stated address;</p> <p>(j) a Hong Kong tenancy agreement which has been duly stamped by the Inland Revenue Department;</p> <p>(k) a current Hong Kong domestic helper employment contract stamped by an appropriate Consulate (the name of the employer should correspond with the applicant's visa endorsement in their passport);</p> <p>(l) a letter from a Hong Kong employer together with proof of employment, which a money lender is satisfied that it can place reliance on and that confirms residence at a stated address in Hong Kong;</p> <p>(m) a lawyer's confirmation of property purchase, or legal document recognizing title to property; and</p> <p>(n) for non-Hong Kong residents, a government-issued photographic driving license or national identity card containing the current residential address or bank statements issued by a bank in an equivalent jurisdiction where the money lender is satisfied that the address has been verified.</p>
	4.6.10	<p>It is conceivable that money lenders may not always be able to adopt any of the suggested methods in the paragraph above. Examples include countries without postal deliveries and virtually no street addresses, where residents rely upon post office boxes or their employers for the delivery of mail. Some customers may simply be unable to produce evidence of address to the standard outlined above. In such circumstances money lenders may, on a risk sensitive basis, adopt a common sense approach by adopting alternative methods such as obtaining a letter from a director or manager of a verified known overseas employer that confirms residence at a stated overseas address (or provides detailed directions to locate a place of residence).</p> <p>There may also be circumstances where a customer's address is a temporary accommodation and where normal address verification documents are not available. For example, an expatriate on a short-term contract. Money lenders should adopt flexible procedures to obtain verification by other means, e.g. copy of contract of employment, or bank's or employer's written confirmation. Money lenders should exercise a degree of flexibility under special circumstances (e.g. where a</p>

		customer is homeless). For the avoidance of doubt, a post office box address is not sufficient for persons residing in Hong Kong or corporate customers registered and/or operating in Hong Kong.
<b>Other considerations</b>		
	4.6.11	The standard identification requirement is likely to be sufficient for most situations. If, however, the customer, or the product or service, is assessed to present a higher ML/TF risk because of the nature of the customer, his business, his location, or because of the product features, etc., the money lender should consider whether it should require additional identity information to be provided, and/or whether to verify additional aspects of identity.
	4.6.12	Appendix A contains a list of documents recognized by the LMLA as independent and reliable sources for identity verification purposes.
<b>4.7 Legal persons and trusts</b>		
<b>General</b>		
	4.7.1	For legal persons, the principal requirement is to look behind the customer to identify those who have ultimate control or ultimate beneficial ownership over the business and the customer's assets. Money lenders would normally pay particular attention to persons who exercise ultimate control over the management of the customer.
s.2(1)(b), Sch. 2	4.7.2	In deciding who the beneficial owner is in relation to a legal person where the customer is not a natural person, the money lender's objective is to know who has ownership or control over the legal person which relates to the relationship, or who constitutes the controlling mind and management of any legal entity involved in the funds. Verifying the identity of the beneficial owner(s) should be carried out using reasonable measures based on a risk-based approach, following the guidance in Chapter 3.
	4.7.3	Where the owner is another legal person or trust, the objective is to undertake reasonable measures to look behind that legal person or trust and to verify the identity of beneficial owners. What constitutes control for this purpose will depend on the nature of the institution, and may vest in those who are mandated to manage funds, accounts or investments without requiring further authorization.
s.2(1)(b), Sch. 2	4.7.4	For a customer other than a natural person, money lenders should ensure that they fully understand the customer's legal form, structure and ownership, and should additionally obtain information on the nature of its business, and the reasons for seeking the product or service unless the reasons are obvious.

s.5(1)(a) & s.6, Sch. 2	4.7.5	Money lenders should conduct reviews from time to time to ensure the customer information held is up-to-date and relevant; methods by which a review could be conducted include conducting company searches, seeking copies of resolutions appointing directors, noting the resignation of directors, or by other appropriate means.
	4.7.6	Many entities operate internet websites, which contain information about the entity. Money lenders should bear in mind that this information, although helpful in providing much of the materials that a money lender might need in relation to the customer, its management and business, may not be independently verified.
<b>Corporation</b>		
<b><i>Identification information</i></b>		
	4.7.7	<p>The information below should be obtained as a standard requirement; thereafter, on the basis of the ML/TF risk, a money lender should decide whether further verification of identity is required and if so the extent of that further verification. The money lender should also decide whether additional information in respect of the corporation, its operation and the individuals behind it should be obtained.</p> <p>A money lender should obtain and verify the following information in relation to a customer which is a corporation:</p> <p>(a) full name;  (b) date and place of incorporation;  (c) registration or incorporation number; and  (d) registered office address in the place of incorporation.</p> <p>If the business address of the customer is different from the registered office address in (d) above, the money lender should obtain information on the business address and verify as far as practicable.</p>
	4.7.8	<p>In the course of verifying the customer's information mentioned in paragraph 4.7.7, a money lender should also obtain the following information<sup>12</sup>:</p> <p>(a) a copy of the certificate of incorporation and business registration (where applicable);  (b) a copy of the company's memorandum and articles of association which evidence the powers that regulate and bind the company; and  (c) details of the ownership and structure control of the</p>

<sup>12</sup> Examples given are not exhaustive.

		<p>company, e.g. an ownership chart.</p> <p>For avoidance of doubt, this requirement does not apply in respect of a company falling within section 4(3) of Schedule 2.</p>
	4.7.9	A money lender should <sup>13</sup> record the names of all directors and verify the identity of directors on a risk-based approach.
	4.7.10	<p>Money lenders should:</p> <p>(a) confirm the company is still registered and has not been dissolved, wound up, suspended or struck off;</p> <p>(b) independently identify and verify the names of the directors and shareholders recorded in the company registry in the place of incorporation; and</p> <p>(c) verify the company's registered office address in the place of incorporation.</p>
	4.7.11	<p>The money lender should verify the information in paragraph 4.7.10 from:</p> <p>for a locally incorporated company:</p> <p>(a) a search of file at the Hong Kong Company Registry and obtain a company report<sup>14</sup>;</p> <p>for a company incorporated overseas:</p> <p>(b) a similar company search enquiry of the registry in the place of incorporation and obtain a company report<sup>14</sup>;</p> <p>(c) a certificate of incumbency<sup>15</sup> or equivalent issued by the company's registered agent in the place of incorporation; or</p> <p>(d) a similar or comparable document to a company search report or a certificate of incumbency certified by a professional third party in the relevant jurisdiction verifying that the information at paragraph 4.7.10, contained in the said document, is correct and accurate.</p>

<sup>13</sup> The money lender may, of course, be already be required to identify a particular director if the director acts as a beneficial owner or a person purporting to act on behalf of the customer (e.g. account signatories). (see paragraphs 4.2)

<sup>14</sup> Alternatively, the money lender may obtain from the customer a certified true copy of a company search report certified by a company registry or professional third party. The company search report should have been issued within the last 6 months. For the avoidance of doubt, it is not sufficient for the report to be self-certified by the customer.

<sup>15</sup> Money lenders may accept a certified true copy of a certificate of incumbency certified by a professional third party. The certificate of incumbency should have been issued within the last 6 months. For the avoidance of doubt, it is not sufficient for the certificate to be self-certified by the customer.

		For avoidance of doubt, this requirement does not apply in respect of a company falling within section 4(3) of Schedule 2.
	4.7.12	If the money lender has obtained a company search report pursuant to paragraph 4.7.11 which contains information such as certificate of incorporation, company's memorandum and articles of association, etc, the money lender is not required to obtain the same information again from the customer pursuant to paragraph 4.7.8.
<i>Beneficial owners</i>		
s.1, Sch. 2	4.7.13	The AMLO defines beneficial owner in relation to a corporation as:  (i) an individual who – (a) owns or controls, directly or indirectly, including through a trust or bearer share holding, not less than 10% of the issued share capital of the corporation; (b) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights at general meetings of the corporation; or (c) exercises ultimate control over the management of the corporation; or (ii) if the corporation is acting on behalf of another person, means the other person.
	4.7.14	A money lender should identify and record the identity of all beneficial owners, and take reasonable measures to verify the identity of:  (a) all shareholders holding 25% (for normal risk circumstances) / 10% (for high risk circumstances) or more of the voting rights or share capital; (b) any individual who exercises ultimate control over the management of the corporation; and (c) any person on whose behalf the customer is acting.
	4.7.15	For companies with multiple layers in their ownership structures, a money lender should ensure that it has an understanding of the ownership and control structure of the company. The intermediate layers of the company should be fully identified. The manner in which this information is collected should be determined by the money lender, for example by obtaining a director's declaration incorporating or annexing an ownership chart describing the intermediate layers (the information to be included should be determined on a risk sensitive basis but at a minimum should include company name and place of incorporation, and where applicable, the rationale behind the particular structure employed). The objective should always be to follow the chain of

		ownership to the individuals who are the ultimate beneficial owners of the direct customer of the money lender and verify the identity of those individuals.
	4.7.16	Money lenders need not, as a matter of routine, verify the details of the intermediate companies in the ownership structure of a company. Complex ownership structures (e.g. structures involving multiple layers, different jurisdictions, trusts, etc.) without an obvious commercial purpose pose an increased risk and may require further steps to ensure that the money lender is satisfied on reasonable grounds as to the identity of the beneficial owners.
	4.7.17	The need to verify the intermediate corporate layers of the ownership structure of a company will therefore depend upon the money lender's overall understanding of the structure, its assessment of the risks and whether the information available is adequate in the circumstances for the money lender to consider if it has taken adequate measures to identify the beneficial owners.
	4.7.18	Where the ownership is dispersed, the money lender should concentrate on identifying and taking reasonable measures to verify the identity of those who exercise ultimate control over the management of the company.
<b><u>Partnerships and unincorporated bodies</u></b>		
	4.7.19	Partnerships and unincorporated bodies, although principally operated by individuals or groups of individuals, are different from individuals, in that there is an underlying business. This business is likely to have a different ML/TF risk profile from that of an individual.
s.1, Sch. 2	4.7.20	The AMLO defines beneficial owner, in relation to a partnership as:  (i) an individual who (a) is entitled to or controls, directly or indirectly, not less than a 10% share of the capital or profits of the partnership; (b) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights in the partnership; or (c) exercises ultimate control over the management of the partnership; or (ii) if the partnership is acting on behalf of another person, means the other person.
s.1, Sch. 2	4.7.21	In relation to an unincorporated body other than a partnership, beneficial owner:  (i) means an individual who ultimately owns or controls the unincorporated body; or

		(ii) if the unincorporated body is acting on behalf of another person, means the other person.
	4.7.22	<p>The money lender should obtain the following information in relation to the partnership or unincorporated body:</p> <p>(a) the full name;  (b) the business address; and  (c) the names of all partners and individuals who exercise control over the management of the partnership or unincorporated body, and names of individuals who own or control not less than 10% of its capital or profits, or of its voting rights.</p> <p>In cases where a partnership arrangement exists, a mandate from the partnership authorizing the opening of an account and conferring authority on those who will operate it should be obtained.</p>
	4.7.23	<p>The money lender's obligation is to verify the identity of the customer using evidence from a reliable and independent source. Where partnerships or unincorporated bodies are well-known, reputable organizations, with long histories in their industries, and with substantial public information about them, their partners and controllers, confirmation of the customer's membership of a relevant professional or trade association is likely to be sufficient to provide such reliable and independent evidence of the identity of the customer. This does not remove the need to take reasonable measures to verify the identity of the beneficial owners of the partnerships or unincorporated bodies.</p>
	4.7.24	<p>Other partnerships and unincorporated bodies have a lower profile, and generally comprise a much smaller number of partners and controllers. In verifying the identity of such customers, money lenders should primarily have regard to the number of partners and controllers. Where these are relatively few, the customer should be treated as a collection of individuals; where numbers are larger, the money lender should decide whether it should continue to regard the customer as a collection of individuals, or whether it can be satisfied with evidence of membership of a relevant professional or trade association. In either case, money lenders should obtain the partnership deed (or other evidence in the case of sole traders or other unincorporated bodies), to satisfy themselves that the entity exists, unless an entry in an appropriate national register may be checked.</p>

	4.7.25	In the case of associations, clubs, societies, charities, religious bodies, institutes, mutual and friendly societies, co-operative and provident societies, a money lender should satisfy itself as to the legitimate purpose of the organization, e.g. by requesting sight of the constitution.
<b>4.8 High-risk situations</b>		
	4.8.1	<p>A money lender should, in any situation that by its nature presents a higher risk of ML/TF, take additional measures to mitigate the risk of ML/TF.</p> <p>Additional measures<sup>16</sup> or EDD should be taken to mitigate the ML/TF risk involved, which for illustration purposes, may include:</p> <p>(a) obtaining additional information on the customer (e.g. connected parties<sup>17</sup>, accounts or relationships) and updating more regularly the customer profile including the identification data;</p> <p>(b) obtaining additional information on the intended nature of the business relationship (e.g. anticipated account activity), the source of wealth and source of funds;</p> <p>(c) obtaining the approval of senior management to commence or continue the relationship; and</p> <p>(d) conducting enhanced monitoring of the business relationship, by increasing the number and timing of the controls applied and selecting patterns of transactions that need further examination.</p> <p>For avoidance of doubt, all high-risk customers should be subject to a minimum annual review with reference to paragraph 4.5.9.</p>
<b>4.9 Politically exposed persons (PEPs)</b>		
<b>General</b>		
s.1 & s.10, Sch. 2	4.9.1	Much international attention has been paid in recent years to the risk associated with providing financial and business services to those with a prominent political profile or holding senior public office. However, PEP status itself does not automatically mean that the individuals are corrupt or that they have been incriminated in any corruption.
	4.9.2	However, their office and position may render PEPs vulnerable to corruption. The risks increase when the person concerned is from a foreign country with

<sup>16</sup> Additional measures should be documented in the money lender's policies and procedures.

<sup>17</sup> Consideration might be given to obtaining, and taking reasonable measures to verify, the addresses of directors and account signatories.

		widely-known problems of bribery, corruption and financial irregularity within their governments and society. This risk is even more acute where such countries do not have adequate AML/CFT standards.
s.15, Sch. 2	4.9.3	While the statutory definition of PEPs in the AMLO (see paragraph 4.9.5 below) only includes individuals entrusted with prominent public function in a place outside the People's Republic of China <sup>18</sup> , domestic PEPs may also present, by virtue of the positions they hold, a high risk situation where EDD should be applied. Money lenders should therefore adopt a risk-based approach to determining whether to apply the measures in paragraph 4.9.11 below in respect of domestic PEPs.
s.1, s.15 & s.5(3)(c), Sch. 2	4.9.4	The statutory definition does not automatically exclude sub-national political figures. Corruption by heads of regional governments, regional government ministers and large city mayors is no less serious as sub-national figures in some jurisdictions may have access to substantial funds. Where money lenders identify a customer as a sub-national figure holding a prominent public function, they should apply appropriate EDD. This also applies to domestic sub-national figures assessed by the money lender to pose a higher risk. In determining what constitutes a prominent public function, money lenders should consider factors such as persons with significant influence in general, significant influence over or control of public procurement or state owned enterprises, etc.
<b><u>(Foreign) Politically exposed person</u></b>		
s.1, Sch. 2	4.9.5	A politically exposed person is defined in the AMLO as:  (a) an individual who is or has been entrusted with a prominent public function in a place outside the People's Republic of China 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) a spouse, a partner, a child or a parent of an individual falling within paragraph (a) above, or a spouse or a partner of a child of such an individual; or (c) a close associate of an individual falling within paragraph (a) (see paragraph 4.9.6).

<sup>18</sup> Reference should be made to the definition of the People's Republic of China in the Interpretation and General Clauses Ordinance (Cap. 1).

s.1, Sch. 2	4.9.6	<p>The AMLO defines a close associate as:</p> <p>(a) an individual who has close business relations with a person falling under paragraph 4.9.5(a) above, including an individual who is a beneficial owner of a legal person or trust of which the person falling under paragraph 4.9.5(a) is also a beneficial owner; or</p> <p>(b) an individual who is the beneficial owner of a legal person or trust that is set up for the benefit of a person falling under paragraph 4.9.5(a) above.</p>
	4.9.7	<p>Money lenders that handle the proceeds of corruption, or handle illegally diverted government, supranational or aid funds, face reputational and legal risks, including the possibility of criminal charges for having assisted in laundering the proceeds of crime.</p>
	4.9.8	<p>Money lenders can reduce risk by conducting EDD at the outset of the business relationship and ongoing monitoring where they know or suspect that the business relationship is with a PEP.</p>
s.19(1), Sch. 2	4.9.9	<p>Money lenders should establish and maintain effective procedures (for example making reference to publicly available information and/or screening against commercially available databases) for determining whether a customer or a beneficial owner of a customer is a PEP. These procedures should extend to the connected parties of the customer using a risk-based approach.</p>
	4.9.10	<p>Money lenders may use publicly available information or refer to relevant reports and databases on corruption risk published by specialized national, international, non-governmental and commercial organizations to assess which countries are most vulnerable to corruption (an example of which is Transparency International's 'Corruption Perceptions Index', which ranks countries according to their perceived level of corruption).</p> <p>Money lenders should be vigilant where either the country to which the customer has business connections or the business/industrial sector is more vulnerable to corruption.</p>
	4.9.10a	<p><i>Money lenders may demonstrate compliance with the requirement set out at paragraph 4.9.9 (this also applies to domestic PEPs), for example, by implementing policies and procedures to screen the name of the customer and the beneficial owner against publicly available information or a commercial electronic database to determine, as far as practicable, whether the individual is politically exposed, before establishing a business relationship, and on a periodic basis thereafter. These</i></p>

		<p><i>procedures should extend to the connected parties of the customer using a risk-based approach.</i></p> <p><i>Money lenders may rely on its overseas office to undertake the screening process.</i></p>
	4.9.10b	<p><i>Having regard to Chapter 3, specific risk factors the money lenders should consider in handling a business relationship (or potential relationship) with a PEP include:</i></p> <p><i>(a) any particular concern over the country where the PEP holds his public office or has been entrusted with his public functions, taking into account his position;</i></p> <p><i>(b) any unexplained sources of wealth or income (i.e. value of assets owned not in line with the PEP's income level);</i></p> <p><i>(c) expected receipts of large sums from governmental bodies or state-owned entities;</i></p> <p><i>(d) source of wealth described as commission earned on government contracts;</i></p> <p><i>(e) request by the PEP to associate any form of secrecy with a transaction; and</i></p> <p><i>(f) use of accounts at a government-owned bank or of government accounts as the source of funds in a transaction.</i></p>
s.5(3)(b) & s.10, Sch. 2	4.9.11	<p>When money lenders know that a particular customer or beneficial owner is a PEP, it should, before (i) establishing a business relationship or (ii) continuing an existing business relationship where the customer or the beneficial owner is subsequently found to be a PEP, apply all the following EDD measures:</p> <p>(a) obtaining approval from its senior management;</p> <p>(b) taking reasonable measures to establish the customer's or the beneficial owner's source of wealth and the source of the funds; and</p> <p>(c) applying enhanced monitoring to the relationship in accordance with the assessed risks.</p>
	4.9.12	<p>It is for a money lender to decide which measures it deems reasonable, in accordance with its assessment of the risks, to establish the source of funds and source of wealth. In practical terms, this will often amount to obtaining information from the PEP and verifying it against publicly available information sources such as asset and income declarations, which some jurisdictions expect certain senior public officials to file and which often include information about an official's source of wealth and current business interests. Money lenders</p>

		should however note that not all declarations are publicly available and that a PEP customer may have legitimate reasons for not providing a copy. Money lenders should also be aware that some jurisdictions impose restrictions on their PEP's ability to hold foreign bank accounts or to hold other office or paid employment.
<b><i>Senior management approval</i></b>		
	4.9.13	While the AMLO is silent on the level of senior management who may approve the establishment or continuation of the relationship, the approval process should take into account the advice of the money lender's CO. The more potentially sensitive the PEP, the higher the approval process should be escalated.
<b><u>Domestic politically exposed persons</u></b>		
	4.9.14	For the purposes of this Guideline, a domestic PEP is defined as:  (a) an individual who is or has been entrusted with a prominent public function in a place within the People's Republic of China 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) a spouse, a partner, a child or a parent of an individual falling within paragraph (a) above, or a spouse or a partner of a child of such an individual; or (c) a close associate of an individual falling within paragraph (a) (see paragraph 4.9.6).
	4.9.15	Money lenders should take reasonable measures to determine whether an individual is a domestic PEP.
s.5(3)(c) & s.15, Sch. 2	4.9.16	If an individual is known to be a domestic PEP, the money lender should perform a risk assessment to determine whether the individual poses a higher risk of ML/TF. Domestic PEPs status in itself does not automatically confer higher risk. In any situation that the money lender assesses to present a higher risk of ML/TF, it should apply the EDD and monitoring specified in paragraph 4.8.1.
	4.9.17	Money lenders should retain a copy of the assessment for authorities and auditors and should review the assessment whenever concerns as to the activities of the individual arise.
<b><u>Periodic reviews</u></b>		
	4.9.18	For foreign PEPs and domestic PEPs assessed to present

		a higher risk, they should be subject to a minimum annual review. Money lenders should review CDD information to ensure that it remains up-to- date and relevant.
<b>4.10 Jurisdictions that do not or insufficiently apply the FATF recommendations or otherwise posing higher risk</b>		
	4.10.1	<p>Money lenders should give particular attention to, and exercise extra care in respect of:</p> <p>(a) business relationships and transactions with persons (including legal persons ) from or in jurisdictions that do not or insufficiently apply the FATF Recommendations; and</p> <p>(b) transactions and business connected with jurisdictions assessed as higher risk.</p> <p>Based on the money lender’s assessment of the risk in either case, the special requirements of section 15 of Schedule 2 may apply. In addition to ascertaining and documenting the business rationale for establishing a relationship, a money lender should take reasonable measures to establish the source of funds of such customers.</p>
	4.10.2	<p>In determining which jurisdictions do not apply, or insufficiently apply the FATF Recommendations, or may otherwise pose a higher risk, money lenders should consider, among other things:</p> <p>(a) whether the jurisdiction is subject to sanctions, embargoes or similar measures issued by, for example, the United Nations (UN). In addition, in some circumstances where a jurisdiction is subject to sanctions or measures similar to those issued by bodies such as the UN, but which may not be universally recognized, the sanctions or measures may still be given credence by a money lender because of the standing of the issuer and the nature of the measures;</p> <p>(b) whether the jurisdiction is identified by credible sources as lacking appropriate AML/CFT laws, regulations and other measures;</p> <p>(c) whether the jurisdiction is identified by credible sources as providing funding or support for terrorist activities and has designated terrorist organizations operating within it; and</p> <p>(d) whether the jurisdiction is identified by credible sources as having significant levels of corruption, or other criminal activity.</p>

		<p>“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 organizations. 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.</p> <p>A money lender 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 ML/TF.</p> <p>If a money lender incorporated in Hong Kong has operating units in such jurisdictions, care should be taken to ensure that effective controls on prevention of ML/TF are implemented in these units. In particular, the money lender should ensure that the policies and procedures adopted in such overseas units are similar to those adopted in Hong Kong. There should also be compliance and internal audit checks by staff from the head office in Hong Kong.</p>
<b>4.11 Pre-existing customers</b>		
<b><u>Guideline to pre-existing customers</u></b>		
	4.11.1	<p>Money lenders should perform the CDD measures prescribed in this Guideline in respect of pre-existing customers (with whom the business relationship was established before the AMLO came into effect on 1 April 2012), when:</p> <p>(a) a transaction takes place with regard to the customer, which is, by virtue of the amount or nature of the transaction, unusual or suspicious; or is not consistent with the money lender’s knowledge of the customer or the customer’s business or risk profile, or with its knowledge of the source of the customer’s funds;</p> <p>(b) a material change occurs in the way in which the customer’s account is operated;</p> <p>(c) the money lender suspects that the customer or the customer’s account is involved in ML/TF; or</p> <p>(d) the money lender doubts the veracity or adequacy of</p>

		any information previously obtained for the purpose of identifying the customer or for the purpose of verifying the customer's identity.
	4.11.2	Trigger events may include the re-activation of a dormant account or a change in the beneficial ownership or control of the account but money lenders will need to consider other trigger events specific to their own customers and business.
s.5, Sch. 2	4.11.3	Money lenders should note that requirements for ongoing monitoring under Chapter 5 of this Guideline.

## Chapter 5 - ONGOING MONITORING

### General

s.5(1), Sch. 2	5.1	<p>Effective ongoing monitoring is vital for understanding of customers' activities and an integral part of effective AML/CFT systems. It helps money lenders to know their customers and to detect unusual or suspicious activities.</p> <p>A money lender should continuously monitor its business relationship with a customer by:</p> <ul style="list-style-type: none"><li>(a) reviewing from time to time documents, data and information relating to the customer to ensure that they are up-to-date and relevant<sup>19</sup>;</li><li>(b) monitoring the activities (including cash and non-cash transactions) of the customer to ensure that they are consistent with the nature of business, the risk profile and source of funds. An unusual transaction may be in the form of activity that is inconsistent with the expected pattern for that customer, or with the normal business activities for the type of product or service that is being delivered; and</li><li>(c) identifying transactions that are complex, large or unusual or patterns of transactions that have no apparent economic or lawful purpose and which may indicate ML/TF.</li></ul>
	5.2	<p>Failure to conduct ongoing monitoring could expose a money lender to potential abuse by criminals, and may call into question the adequacy of systems and controls, or the prudence and integrity or fitness and properness of the money lender's management.</p>
	5.3	<p>Possible characteristics money lenders should consider monitoring include:</p> <ul style="list-style-type: none"><li>(a) the nature and type of transactions (e.g. abnormal size or frequency);</li><li>(b) the nature of a series of transactions (e.g. a number of cash deposits);</li><li>(c) the amount of any transactions, paying particular attention to particularly substantial transactions;</li><li>(d) the geographical origin/destination of a payment or receipt; and</li><li>(e) the customer's normal activity or turnover.</li></ul>
	5.4	<p>Money lenders should be vigilant for changes on the basis of the business relationship with the customer over time. These may include where:</p>

<sup>19</sup> See paragraphs 4.5.8 and 4.5.9

		<p>(a) new products or services that pose higher risk are entered into;</p> <p>(b) new corporate or trust structures are created;</p> <p>(c) the stated activity or turnover of a customer changes or increases; or</p> <p>(d) the nature of transactions changes or their volume or size increases etc.</p>
	5.5	Where the basis of the business relationship changes significantly, money lenders should carry out further CDD procedures to ensure that the ML/TF risk involved and basis of the relationship are fully understood. Ongoing monitoring procedures should take account of the above changes.
	5.6	Money lenders should conduct an appropriate review of a business relationship upon the filing of a report to the JFIU and should update the CDD information where appropriate; this will enable money lenders to assess appropriate levels of ongoing review and monitoring.
<b>Risk-based approach to monitoring</b>		
	5.7	The extent of monitoring should be linked to the risk profile of the customer which has been determined through the risk assessment required in Chapter 3. To be most effective, resources should be targeted towards business relationships presenting a higher risk of ML/TF.
s.5(3), Sch. 2	5.8	<p>Money lenders should take additional measures when monitoring business relationships that pose a higher risk. High-risk relationships, for example those involving PEPs, will require more frequent and intensive monitoring. In monitoring high-risk situations, relevant considerations may include:</p> <p>(a) whether adequate procedures or management information systems are in place to provide relevant staff (e.g. CO, MLRO, front line staff, and relationship managers) with timely information that might include, as a result of EDD or other additional measures undertaken, any information on any connected accounts or relationships; and</p> <p>(b) how to monitor the sources of funds, wealth and income for higher risk customers and how any changes in circumstances will be recorded.</p>
<b>Methods and procedures</b>		
	5.9	When considering how best to monitor customer transactions and activities, a money lender should take into account the following factors:

		<p>(a) the size and complexity of its business;</p> <p>(b) its assessment of the ML/TF risks arising from its business;</p> <p>(c) the nature of its systems and controls;</p> <p>(d) the monitoring procedures that already exist to satisfy other business needs; and</p> <p>(e) the nature of the products and services (which includes the means of delivery or communication).</p> <p>There are various methods by which these objectives can be met including exception reports (e.g. large transactions exception report) and transaction monitoring systems. Exception reports will help money lender's stay apprised of operational activities.</p>
	5.9a	<p><i>Money lenders should monitor both cash transactions and non-cash transactions (e.g. inter-account transfers or inter-bank transfers). The aim should be to obtain a comprehensive picture of the customer's transactions and overall relationship with the money lenders. In this regard, money lenders should also consider covering, to the extent possible and using a risk-based approach, the customer's accounts and transactions with the money lender's overseas operations when monitoring the overall relationship of a customer.</i></p>
s.5(1)(c), Sch. 2	5.10	<p>Where transactions that are complex, large or unusual, or patterns of transactions which have no apparent economic or lawful purpose are noted, money lenders should examine the background and purpose, including where appropriate the circumstances, of the transactions. The findings and outcomes of these examinations should be properly documented in writing and be available to assist other competent authorities and auditors. Proper records of decisions made, by whom, and the rationale for them will help a money lender demonstrate that it is handling unusual or suspicious activities appropriately.</p>
s. 25A(5), DTROP & OSCO, s.12(5), UNATMO	5.11	<p>Such examinations may include asking the customer questions, based on common sense, that a reasonable person would ask in the circumstances. Such enquiries, when conducted properly and in good faith, do not constitute tipping off (<i>see</i>: <a href="http://www.jfio.gov.hk/eng/suspicious_ask.html">www.jfio.gov.hk/eng/suspicious_ask.html</a>). These enquiries are directly linked to the CDD requirements, and reflect the importance of "knowing your customer" in detecting unusual or suspicious activities. Such enquiries and their results should be properly documented and be available to assist authorities and auditors. Where there is any suspicion, a report must be</p>

		made to the JFIU.
	5.12	Where cash transactions (including deposits and withdrawals) and transfers to third parties are being proposed by customers, and such requests are not in accordance with the customer's known reasonable practice, money lenders should approach such situations with caution and make relevant further enquiries. Where the money lender has been unable to satisfy itself that any cash transaction or third party transfer is reasonable, and therefore considers it suspicious, it should make a suspicious transaction report (STR) to the JFIU.

<b>Chapter 6 – FINANCIAL SANCTIONS AND TERRORIST FINANCING</b>		
<b>Financial sanctions &amp; proliferation financing</b>		
	6.1	The obligations under the Hong Kong’s financial sanctions regime apply to all persons, and not just money lenders.
s.3(1), UNSO	6.2	The United Nations Sanctions Ordinance, Cap. 537 (UNSO) gives the Chief Executive the authority to make regulations to implement sanctions decided by the Security Council of the United Nations and to specify or designate relevant persons and entities.
	6.3	These sanctions normally prohibit making available or dealing with, directly or indirectly, any funds or economic resources for the benefit of or belonging to a designated party.
<b>Terrorist financing</b>		
	6.4	Terrorist financing generally refers to the carrying out of transactions involving property that are owned by terrorists, or that have been, or are intended to be, used to assist the commission of terrorist acts. This has not previously been explicitly covered under the money laundering regime where the focus is on the handling of criminal proceeds, i.e. the source of property is what matters. In terrorist financing, the focus is on the destination or use of property, which may have derived from legitimate sources.
UNSCR 1373 (2001)	6.5	The UN Security Council has passed United Nations Security Council Resolution (UNSCR) 1373 (2001), which calls on all member states to act to prevent and suppress the financing of terrorist acts. Guidance issued by the UN Counter Terrorism Committee in relation to the implementation of UNSCRs regarding terrorism can be found at: <a href="http://www.un.org/Docs/sc/committees/1373/">www.un.org/Docs/sc/committees/1373/</a> .
UNSCR 1267 (1999); 1390 (2002); 1617 (2005)	6.6	The UN has also published the names of individuals and organizations subject to UN financial sanctions in relation to involvement with Usama bin Laden, Al-Qa’ida, and the Taliban under relevant UNSCRs (e.g. UNSCR 1267 (1999), 1390 (2002) and 1617 (2005)). All UN member states are required under international law to freeze the funds and economic resources of any legal person(s) named in this list and to report any suspected name matches to the relevant authorities.
	6.7	The United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575 (UNATMO) was enacted in 2002 to give effect to the mandatory elements of UNSCR 1373 and the Special Recommendations of the FATF.
s.6, UNATMO	6.8	The Secretary for Security (S for S) has the power to freeze suspected terrorist property and may direct that a

		person shall not deal with the frozen property except under the authority of a licence. Contraventions are subject to a maximum penalty of 7 years imprisonment and an unspecified fine.
	6.9	Section 6 of the UNATMO essentially confers the S for S an administrative power to freeze suspected terrorist property for a period of up to two years, during which time the authorities may apply to the court for an order to forfeit the property. This administrative freezing mechanism will enable the S for S to take freezing action upon receiving intelligence of suspected terrorist property in Hong Kong.
s.8 & 14, UNATMO	6.10	It is an offence for any person to make any property or financial services available, by any means, directly or indirectly, to or for the benefit of a terrorist or terrorist associate except under the authority of a licence granted by S for S. It is also an offence for any person to collect property or solicit financial (or related) services, by any means, directly or indirectly, for the benefit of a terrorist or terrorist associate. Contraventions are subject to a maximum sentence of 14 years imprisonment and an unspecified fine.
	6.11	Section 8 of the UNATMO does not affect a freeze per se; it prohibits a person from (i) making available, by any means, directly or indirectly, any property or financial services to or for the benefit of a person he knows or has reasonable grounds to suspect is a terrorist or terrorist associate, in the absence of a licence granted by S for S; and (ii) collecting property or soliciting financial (or related) services, by any means, directly or indirectly, for the benefit of a person he knows or has reasonable grounds to suspect is a terrorist or terrorist associate.
s.6(1), UNATMO	6.12	The S for S can licence exceptions to the prohibitions to enable frozen property and economic resources to be unfrozen and to allow payments to be made to or for the benefit of a designated party under the UNATMO.
s.4(1), UNATMO	6.13	Where a person is designated by a Committee of the United Nations Security Council as a terrorist, his details are subsequently published in a notice under section 4 of the UNATMO in the Government gazette.
s.4, WMD(CPS)O	6.14	It is an offence under section 4 of the Weapons of Mass Destruction (Control of Provision of Services) Ordinance (WMD(CPS)O), Cap. 526, for a person to provide any services where he believes or suspects, on reasonable grounds, that those services may be connected to WMD proliferation. The provision of services is widely defined and includes the lending of

		money.
	6.15	<p>Money lenders may draw reference from a number of sources including relevant designation by overseas authorities, such as the designations made by the US Government under relevant Executive Orders.</p> <p>All money lenders will therefore need to ensure that they should have appropriate system to conduct checks against the relevant list for screening purposes and that this list is up-to-date.</p>
<b>Database maintenance and screening (customers and payments)</b>		
	6.16	<p>Money lenders should take measures to ensure compliance with the relevant regulations and legislation on terrorist financing. The legal obligations of money lenders and those of its staff should be well understood and adequate guidance and training should be provided to the latter. Money lenders are required to establish policies and procedures for combating terrorist financing. The systems and mechanisms for identification of suspicious transactions should cover terrorist financing as well as money laundering.</p>
	6.17	<p>It is particularly vital that a money lender should be able to identify and report transactions with terrorist suspects and designated parties. To this end, the money lender should ensure that it maintains a database of names and particulars of terrorist suspects and designated parties which consolidates the various lists that have been made known to it. Alternatively, a money lender may make arrangements to access to such a database maintained by third party service providers.</p>
	6.18	<p>Money lenders should ensure that the relevant designations are included in the database. Such database should, in particular, include the lists published in the Gazette and those designated under the US Executive Order 13224. The database should also be subject to timely update whenever there are changes, and should be made easily accessible by staff for the purpose of identifying suspicious transactions.</p>
	6.19	<p>Comprehensive ongoing screening of a money lender's complete customer base is a fundamental internal control to prevent terrorist financing and sanction violations, and should be achieved by:</p> <p>(a) screening customers against current terrorist and sanction designations at the establishment of the relationship; and</p> <p>(b) thereafter, as soon as practicable after new terrorist and sanction designations are published by the LMLA</p>

		that these new designations, screening against their entire client base.
	6.20a	<i>The screening procedures should extend to the connected parties of the customer using a risk based approach. Money lenders may rely on its overseas office to undertake the screening process.</i>
	6.21	Money lenders need to have some means of screening payment instructions to ensure that proposed payments to designated parties are not made. Money lenders should be particularly alert for suspicious wire transfers.
	6.22	Enhanced checks should be conducted before establishing a business relationship or processing a transaction, where possible, if there are circumstances giving rise to suspicion.
	6.23	In order to demonstrate compliance with the provisions of paragraphs 6.20 to 6.22 above, the screening and any results should be documented, or recorded electronically.
	6.24	If a money lender suspects that a transaction is terrorist-related, it should make a report to the JFIU. Even if there is no evidence of a direct terrorist connection, the transaction should still be reported to the JFIU if it looks suspicious for other reasons, as it may emerge subsequently that there is a terrorist link.

**Chapter 7 – SUSPICIOUS TRANSACTION REPORTS**

**General issues**

s.25A(1), DTROP & OSCO, s.12(1), UNATMO	7.1	Sections 25A of the DTROP and the OSCO make it an offence to fail to disclose where a person knows or suspects that property represents the proceeds of drug trafficking or of an indictable offence respectively. Likewise, section 12 of the UNATMO makes it an offence to fail to disclose knowledge or suspicion of terrorist property. Under the DTROP and the OSCO, failure to report knowledge or suspicion carries a maximum penalty of three months imprisonment and a fine of \$50,000.
s.25A(2), DTROP & OSCO, s.12(2), UNATMO	7.2	<p>Filing a report to the JFIU provides money lenders with a statutory defense to the offence of ML/TF in respect of the acts disclosed in the report, provided:</p> <p>(a) the report is made before the money lender undertakes the disclosed acts and the acts (transaction(s)) are undertaken with the consent of the JFIU; or</p> <p>(b) the report is made after the money lender has performed the disclosed acts (transaction(s)) and the report is made on the money lender’s own initiative and as soon as it is reasonable for the money lender to do so.</p>
s.25A(4), DTROP & OSCO, s.12(4), UNATMO	7.3	Once an employee has reported his suspicion to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures, he has fully satisfied the statutory obligation.
s.25A(5), DTROP & OSCO, s.12(5), UNATMO	7.4	It is an offence (“tipping off”) to reveal to any person any information which might prejudice an investigation; if a client is told that a report has been made, this would prejudice the investigation and an offence would be committed.
	7.5	<p>Once knowledge or suspicion has been formed the following general principles should be applied:</p> <p>(a) in the event of suspicion of ML/TF, a disclosure should be made even where no transaction has been conducted by or through the money lender<sup>20</sup>;</p> <p>(b) disclosures must be made as soon as is reasonably practical after the suspicion was first identified; and</p> <p>(c) money lenders should ensure that they put in place internal controls and systems to prevent any directors, officers and employees committing the offence of tipping off the customer or any other person who is the subject of the disclosure. Money lenders should also take care that their</p>

<sup>20</sup> The reporting obligations require a person to report suspicions of ML/TF, irrespective of the amount involved. The reporting obligations of section 25A(1) DTROP and OSCO and section 12(1) UNATMO apply to “any property”. These provisions establish a reporting obligation whenever a suspicion arises, without reference to transactions *per se*. Thus, the obligation to report applies whether or not a transaction was actually conducted and also covers attempted transactions.

		line of enquiry with customers is such that tipping off cannot be construed to have taken place.
	7.6	CDD and ongoing monitoring provide the basis for recognizing unusual and suspicious transactions and events. An effective way of recognizing suspicious activity is knowing enough about customers, their circumstances and their normal expected activities to recognise when a transaction or instruction, or a series of transactions or instructions, is unusual.
	7.7	Money lenders should ensure sufficient guidance is given to staff <sup>21</sup> to enable them to form suspicion or to recognise when ML/TF is taking place, taking account of the nature of the transactions and instructions that staff is likely to encounter, the type of product or service and the means of delivery, i.e. whether face to face or remote. This will also enable staff to identify and assess the information that is relevant for judging whether a transaction or instruction is suspicious in the circumstances.
<b>Knowledge vs. suspicion</b>		
	7.8	Money lenders have an obligation to report where there is knowledge or suspicion of ML/TF. Generally speaking, knowledge is likely to include:  (a) actual knowledge; (b) knowledge of circumstances which would indicate facts to a reasonable person; and (c) knowledge of circumstances which would put a reasonable person on inquiry.
	7.9	Suspicion is more subjective. Suspicion is personal and falls short of proof based on firm evidence.
	7.10	As the types of transactions which may be used for criminal activity are almost unlimited, it is difficult to determine what will constitute a suspicious transaction.
	7.11	The key knows enough about the customer's business to recognise that a transaction, or a series of transactions, is unusual and, from an examination of the unusual, whether there is a suspicion of ML/TF. Where a transaction is inconsistent in amount, origin, destination, or type with a customer's known, legitimate business or personal activities, etc., the transaction should be considered as unusual and the money lender should be put on alert.
JFIU "SAFE" Approach	7.12	Where the money lender conducts enquiries and obtains what it considers to be a satisfactory explanation of the activity or transaction, it may conclude that there are no grounds for suspicion, and therefore take no further action. However, where the money lender's enquiries do not provide

<sup>21</sup> In the context of Chapter 7, staff includes appointed insurance agents.

		a satisfactory explanation of the activity or transaction, it may conclude that there are grounds for suspicion, and must make a disclosure ( <i>see</i> : <a href="http://www.jfiu.gov.hk/eng/suspicious_ask.html">www.jfiu.gov.hk/eng/suspicious_ask.html</a> ).
	7.13	For a person to have knowledge or suspicion, he does not need to know the nature of the criminal activity underlying the money laundering, or that the funds themselves definitely arose from the criminal offence.
	7.14	<p>The following is a (non-exhaustive) list of examples of situations that might give rise to suspicion in certain circumstances:</p> <p>(a) transactions or instructions which have no apparent legitimate purpose and/or appear not to have a commercial rationale;</p> <p>(b) transactions, instructions or activity that involve apparently unnecessary complexity or which do not constitute the most logical, convenient or secure way to do business;</p> <p>(c) where the transaction being requested by the customer, without reasonable explanation, is out of the ordinary range of services normally requested, or is outside the experience of the financial services business in relation to the particular customer;</p> <p>(d) where, without reasonable explanation, the size or pattern of transactions is out of line with any pattern that has previously emerged;</p> <p>(e) where the customer refuses to provide the information requested without reasonable explanation or who otherwise refuses to cooperate with the CDD and/or ongoing monitoring process;</p> <p>(f) where a customer who has entered into a business relationship uses the relationship for a single transaction or for only a very short period without a reasonable explanation;</p> <p>(g) the extensive use of trusts or offshore structures in circumstances where the customer's needs are inconsistent with the use of such services;</p> <p>(h) transfers to and from high risk jurisdictions<sup>22</sup> without reasonable explanation, which are not consistent with the customer's declared business dealings or interests; and</p> <p>(i) unnecessary routing of funds or other property from/to third parties or through third party accounts.</p> <p>Further examples of what might constitute suspicious transactions are provided in paragraph 7.39. These are not intended to be exhaustive and only provide examples of the most basic ways in which money may be laundered.</p>

<sup>22</sup> Guidance on determining high risk jurisdictions is provided at paragraphs 4.10.

		However, identification of any of the types of transactions listed above or in paragraph 7.39 should prompt further investigations and be a catalyst towards making at least initial enquiries about the source of funds.
	7.15	<p>The OSCO, DTROP and UNATMO prohibit disclosure by the money lender or its staff that a suspicious transaction report (STR) has been made which is likely to prejudice any investigation that might be conducted following that disclosure. A risk exists that customers could be unintentionally tipped off when the money lender is seeking to perform its CDD obligations during the establishment or course of the business relationship, or when conducting occasional transactions.</p> <p>The customer's awareness of a possible STR or investigation could prejudice future efforts to investigate the suspected ML/TF operation. Therefore, if money lenders form a suspicion that transactions relate to ML/TF, they should take into account the risk of tipping off when performing the CDD process. Money lenders should ensure that their employees are aware of and sensitive to these issues when conducting CDD.</p>
<b>Timing and manner of reports</b>		
	7.16	When a money lender knows or suspects that property represents the proceeds of crime or terrorist property, a disclosure must be made to the JFIU as soon as it is reasonable to do so <sup>23</sup> . The use of a standard form or the use of the e-channel "STREAMS" <sup>24</sup> by registered users is strongly encouraged. Further details of reporting methods and advice may be found at <a href="http://www.jfiu.police.gov.hk">www.jfiu.police.gov.hk</a> . In the event that an urgent disclosure is required, particularly when the account is part of an ongoing investigation, it should be indicated in the disclosure. Where exceptional circumstances exist in relation to an urgent disclosure, an initial notification by telephone may be considered.
	7.17	Dependent on when knowledge or suspicion arises, disclosures may be made either before a suspicious transaction or activity occurs (whether the intended transaction ultimately takes place or not), or after a transaction or activity has been completed.
<b>Internal reporting</b>		
	7.18	A money lender should appoint a Money Laundering Reporting Officer (MLRO) as a central reference point for

<sup>23</sup> The purpose of disclosure is to fulfil the legal obligations set out in paragraph 7.1. Where money lenders want to make a crime report, a report should be made directly to the Hong Kong Police.

<sup>24</sup> STREAMS (Suspicion Transaction Report and Management System) is a web-based platform to assist in the receipt, analysis and dissemination of STRs. Use of STREAMS is recommended, especially for money lenders who make frequent reports. Further details may be obtained from the JFIU.

		reporting suspicious transactions. The money lender should have measures in place to check, on an ongoing basis that it has policies and procedures to ensure compliance with legal and regulatory requirements and of testing such compliance. The type and extent of the measures to be taken in this respect should be appropriate having regard to the risk of ML/TF and the size of the business.
	7.19	The money lender should ensure that the MLRO is of sufficient status within the organization, and has adequate resources, to enable him to perform his functions.
s.25A(4), DTROP & OSCO, s12(4), UNATMO	7.20	It is the responsibility of the MLRO to consider all internal disclosures he receives in the light of full access to all relevant documentation and other parties. However, the MLRO should not simply be that of a passive recipient of ad hoc reports of suspicious transactions. Rather, the MLRO should play an active role in the identification and reporting of suspicious transactions. This may also involve regular review of exception reports or large or irregular transaction reports as well as ad hoc reports made by staff. To fulfil these functions all money lenders should ensure that the MLRO receives full co-operation from all staff and full access to all relevant documentation so that he is in a position to decide whether attempted or actual ML/TF is suspected or known.
	7.21	Failure by the MLRO to diligently consider all relevant materials may lead to vital information being overlooked and the suspicious transaction or activity or suspicious attempted transaction or activity not being disclosed to the JFIU in accordance with the requirements of the legislation. Alternatively, it may also lead to vital information being overlooked which may have made it clear that a disclosure would have been unnecessary.
	7.22	Money lenders should establish and maintain procedures to ensure that:  (a) all staff are made aware of the identity of the MLRO and of the procedures to follow when making an internal disclosure report; and (b) all disclosure reports must reach the MLRO without undue delay.
	7.23	While money lenders may wish to set up internal systems that allow staff to consult with supervisors or managers before sending a report to the MLRO, under no circumstances should reports raised by staff be filtered out by supervisors or managers who have no responsibility for the money laundering reporting/compliance function. The legal obligation is to report as soon as it is reasonable to do so, so reporting lines should be as short as possible with the

		minimum number of people between the staff with the suspicion and the MLRO. This ensures speed, confidentiality and accessibility to the MLRO.
	7.24	All suspicious activity reported to the MLRO must be documented (in urgent cases this may follow an initial discussion by telephone). The report must include the full details of the customer and as a full statement as possible of the information giving rise to the suspicion.
s.25A(5), DTROP & OSCO, s.12(5), UNATMO	7.25	The MLRO must acknowledge receipt of the report and at the same time provide a reminder of the obligation regarding tipping off. The tipping-off provision includes circumstances where a suspicion has been raised internally, but has not yet been reported to the JFIU.
	7.26	The reporting of a suspicion in respect of a transaction or event does not remove the need to report further suspicious transactions or events in respect of the same customer. Further suspicious transactions or events, whether of the same nature or different to the previous suspicion, must continue to be reported to the MLRO who should make further reports to the JFIU if appropriate.
	7.27	When evaluating an internal disclosure, the MLRO must take reasonable steps to consider all relevant information, including CDD and ongoing monitoring information available within or to the money lender concerning the entities to which the report relates. This may include: (a) making a review of other transaction patterns and volumes through connected accounts; (b) any previous patterns of instructions, the length of the business relationship and reference to CDD and ongoing monitoring information and documentation; and (c) appropriate questioning of the customer per the systematic approach to identifying suspicious transactions recommended by the JFIU <sup>25</sup> .
	7.28	As part of the review, other connected accounts or relationships may need to be examined. The need to search for information concerning connected accounts or relationships should strike an appropriate balance between the statutory requirement to make a timely disclosure to the JFIU and any delays that might arise in searching for more relevant information concerning connected accounts or relationships. The evaluation process should be documented, together with any conclusions drawn.
	7.29	If after completing the evaluation, the MLRO decides that there are grounds for knowledge or suspicion, he should disclose the information to the JFIU as soon as it is reasonable to do so after his evaluation is complete together

<sup>25</sup> For details, please see [www.jfiu.gov.hk](http://www.jfiu.gov.hk).

		with the information on which that knowledge or suspicion is based. Providing they act in good faith in deciding not to file an STR with the JFIU, it is unlikely that there will be any criminal liability for failing to report if a MLRO concludes that there is no suspicion after taking into account all available information. It is however vital for MLROs to keep proper records of their deliberations and actions taken to demonstrate they have acted in reasonable manner.
<b>Recording internal reports</b>		
	7.30	Money lenders should establish and maintain a record of all ML/TF reports made to the MLRO. The record should include details of the date the report was made, the staff members subsequently handling the report, the results of the assessment, whether the report resulted in a disclosure to the JFIU, and information to allow the papers relevant to the report to be located.
<b>Records of reports to the JFIU</b>		
	7.31	Money lenders should establish and maintain a record of all disclosures made to the JFIU. The record must include details of the date of the disclosure, the person who made the disclosure, and information to allow the papers relevant to the disclosure to be located. This register may be combined with the register of internal reports, if considered appropriate.
<b>Post reporting matters</b>		
	7.32	<p>Money lenders should note that:</p> <p>(a) filing a report to the JFIU only provides a statutory defense to ML/TF in relation to the acts disclosed in that particular report. It does not absolve a money lender from the legal, reputational or regulatory risks associated with the account's continued operation;</p> <p>(b) a "consent" response from the JFIU to a pre-transaction report should not be construed as a "clean bill of health" for the continued operation of the account or an indication that the account does not pose a risk to the money lender;</p> <p>(c) money lenders should conduct an appropriate review of a business relationship upon the filing of a report to the JFIU, irrespective of any subsequent feedback provided by the JFIU;</p> <p>(d) once a money lender has concerns over the operation of a customer's account or a particular business relationship, it should take appropriate action to mitigate the risks. Filing a report with the JFIU and continuing to operate the relationship without any further consideration of the risks and the imposition of appropriate controls to mitigate the risks identified is not acceptable;</p> <p>(e) relationships reported to the JFIU should be subject to</p>

		<p>an appropriate review by the MLRO and if necessary the issue should be escalated to the money lender’s senior management to determine how to handle the relationship to mitigate any potential legal or reputational risks posed by the relationship in line with the money lender’s business objectives, and its capacity to mitigate the risks identified; and</p> <p>(f) money lenders are not obliged to continue business relationships with customers if such action would place them at risk. It is recommended that money lenders indicate any intention to terminate a relationship in the initial disclosure to the JFIU, thereby allowing the JFIU to comment, at an early stage, on such a course of action.</p>
s.25A(1)(c) & (2)(a), DTROP & OSCO, s.1 & 12(2)(a), UNATMO	7.33	The JFIU will acknowledge receipt of a disclosure made by a money lender under section 25A of both the DTROP and the OSCO, and section 12 of the UNATMO. If there is no need for imminent action e.g. the issue of a restraint order on an account, consent will usually be given for the institution to operate the account under the provisions of section 25A(2) of both the DTROP and the OSCO. An example of such a letter is given at Appendix B to this guideline. For disclosures submitted via e-channel “STREAM”, e-receipt will be issued via the same channel. The JFIU may, on occasion, seek additional information or clarification with a money lender of any matter on which the knowledge or suspicion is based.
	7.34	Whilst there are no statutory requirements to provide feedback arising from investigations, the Hong Kong Police and Customs and Excise Department recognise the importance of having effective feedback procedures in place. The JFIU provides feedback both in its quarterly report <sup>26</sup> and upon request, to a disclosing money lender in relation to the current status of an investigation.
	7.35	After initial analysis by the JFIU, reports that are to be developed are allocated to financial investigation officers for further investigation. Money lenders should ensure that they respond to all production orders within the prescribed time limit and provide all of the information or material that falls within the scope of such orders. Where a money lender encounters difficulty in complying with the timeframes stipulated, the MLRO should at the earliest opportunity contact the officer-in-charge of the investigation for further guidance.
s.10 & 11, DTROP,	7.36	During a law-enforcement investigation, a money lender may

<sup>26</sup> The purpose of the quarterly report, which is relevant to all financial sectors, is to raise AML/CFT awareness. It consists of two parts, (i) analysis of STRs and (ii) matters of interest and feedback. The report is available through the JFIU’s website at [www.jfiu.gov.hk](http://www.jfiu.gov.hk). A password is required, details may be found under the typologies and feedback section of the website or by contacting the JFIU directly.

s.15 & 16, OSCO, s.6, UNATMO		be served with a Restraint Order, designed to freeze particular funds or property pending the outcome of an investigation. A money lender must ensure that it is able to freeze the relevant property that is the subject of the order. It should be noted that the Restraint Order may not apply to all funds or property involved within a particular business relationship and money lenders should consider what, if any, funds or property may be utilized subject to having obtained the appropriate consent from the JFIU.
s.3, DTROP, s.8, OSCO, s13, UNATMO	7.37	Upon the conviction of a defendant, a court may order the confiscation of his criminal proceeds and a money lender may be served with a Confiscation Order in the event that it holds funds or other property belonging to that defendant that are deemed by the Courts to represent his benefit from the crime. A court may also order the forfeiture of property where it is satisfied that the property is terrorist property.
<b>Examples of suspicious transactions</b>		
	7.38	<p><i>Examples of money laundering involving money lenders' employees and agents include:</i></p> <p><i>(a) changes in employee characteristics, e.g. lavish life styles; and</i></p> <p><i>(b) any dealing with an agent where the identity of the ultimate beneficiary or counterparty is undisclosed, contrary to normal procedure for the type of business concerned.</i></p>
	7.39	<p><i>Examples of money laundering by secured and unsecured lending include:</i></p> <p><i>(a) customers who repay problem loans unexpectedly;</i></p> <p><i>(b) request to borrow against assets held by the institution or a third party, where the origin of the assets is not known or the assets are inconsistent with the customer's standing;</i></p> <p><i>(c) request by a customer for an institution to provide or arrange finance where the source of the customer's financial contribution to a deal is unclear, particularly where property is involved; and</i></p> <p><i>(d) a customer who is reluctant or refuses to state a purpose of a loan or the source of repayment, or provides a questionable purpose and/or source.</i></p>

**Chapter 8 – RECORD-KEEPING**

**General legal and regulatory requirements**

	8.1	Record-keeping is an essential part of the audit trail for the detection, investigation and confiscation of criminal or terrorist property or funds. Record-keeping helps the investigating authorities to establish a financial profile of a suspect, trace the criminal or terrorist property or funds and assists the Court to examine all relevant past transactions to assess whether the property or funds are the proceeds of or relate to criminal or terrorist offences.
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	8.2	<p>Money lenders should maintain customer, transaction and other records that are necessary and sufficient to meet the record-keeping requirements under the AMLO, this Guideline and other regulatory requirements, that are appropriate to the scale, nature and complexity of their businesses. This is to ensure that:</p> <p>(a) the audit trail for funds moving through a money lender that relate to any customer and, where appropriate, the beneficial owner of the customer, account or transaction is clear and complete;</p> <p>(b) any customer and, where appropriate, the beneficial owner of the customer can be properly identified and verified;</p> <p>(c) all customer and transaction records and information are available on a timely basis to authorities and auditors upon appropriate authority; and</p> <p>(d) money lenders are able to comply with any relevant requirements specified in other sections of this guideline and other guidelines issued by the LMLA, including, among others, records of customer risk assessment (see paragraph 3.8), registers of suspicious transaction reports (see paragraph 7.31) and training records (see paragraph 9.9).</p>
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**Retention of records relating to customer identity and transactions**

s.20(1)(b)(i), Sch. 2 s.2(1)(c), Sch. 2	8.3	<p>Money lenders should keep:</p> <p>(a) the original or a copy of the documents, and a record of the data and information, obtained in the course of identifying and verifying the identity of the customer and/or beneficial owner of the customer and/or beneficiary and/or persons who purport to act on behalf of the customer and/or other connected parties to the customer;</p> <p>(b) any additional information in respect of a</p>
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s.20(1)(b)(ii), Sch. 2		<p>customer and/or beneficial owner of the customer that may be obtained for the purposes of EDD or ongoing monitoring;</p> <p>(c) where applicable, the original or a copy of the documents, and a record of the data and information, on the purpose and intended nature of the business relationship;</p> <p>(d) the original or a copy of the records and documents relating to the customer's account (e.g. account opening form; insurance application form; risk assessment form) and business correspondence<sup>27</sup> with the customer and any beneficial owner of the customer (which at a minimum should include business correspondence material to CDD measures or significant changes to the operation of the account).</p>
s.20(3), Sch. 2	8.4	All documents and records mentioned in paragraph 8.3 should be kept throughout the business relationship with the customer and for a period of six years after the end of the business relationship.
s.21, Sch. 2	8.5	If the record consists of a document, either the original of the document should be retained or a copy of the document should be kept on microfilm or in the database of a computer. If the record consists of data or information, such record should be kept either on microfilm or in the database of a computer.

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<sup>27</sup> Money lenders are not expected to keep each and every correspondence, such as a series of emails with the customer; the expectation is that sufficient correspondence is kept to demonstrate compliance with the AMLO.

<b>Chapter 9 – STAFF TRAINING</b>		
	9.1	Staff training is an important element of an effective system to prevent and detect ML/TF activities. The effective implementation of even a well-designed internal control system can be compromised if staff using the system is not adequately trained.
	9.2	Staff should be trained in what they need to do to carry out their particular roles in the money lender with respect to AML/CFT. This is particularly important before new staff commence work.
	9.3	Money lenders should implement a clear and well articulated policy for ensuring that relevant staff receive adequate AML/CFT training.
	9.4	The timing and content of training packages for different groups of staff will need to be adapted by individual money lenders for their own needs, with due consideration given to the size and complexity of their business and the type and level of ML/TF risk.
	9.5	Money lenders should provide appropriate AML/CFT training to their staff. The frequency of training should be sufficient to maintain the AML/CFT knowledge and competence of the staff.
	9.6	Staff should be made aware of:  (a) their money lender’s and their own personal statutory obligations and the possible consequences for failure to report suspicious transactions under the DTROP, the OSCO and the UNATMO; (b) any other statutory and regulatory obligations that concern their money lenders and themselves under the DTROP, the OSCO, the UNATMO, the UNSO and the AMLO, and the possible consequences of breaches of these obligations; (c) the money lender’s policies and procedures relating to AML/CFT, including suspicious transaction identification and reporting; and (d) any new and emerging techniques, methods and trends in ML/TF to the extent that such information is needed by the staff to carry out their particular roles in the money lender with respect to AML/CFT.
	9.7	In addition, the following areas of training may be appropriate for certain groups of staff:  (a) all new staff, irrespective of seniority: (i) an introduction to the background to ML/TF and the importance placed on ML/TF by the money lender; and (ii) the need for identifying and reporting of any suspicious transactions to the MLRO, and the offence of

		<p>“tipping- off”;</p> <p>(b) members of staff who are dealing directly with the public (e.g. front-line personnel)</p> <p>(i) the importance of their role in the money lender’s ML/TF strategy, as the first point of contact with potential money launderers;</p> <p>(ii) the money lender’s policies and procedures in relation to CDD and record-keeping requirements that are relevant to their job responsibilities; and</p> <p>(iii) training in circumstances that may give rise to suspicion, and relevant policies and procedures, including, for example, lines of reporting and when extra vigilance might be required;</p> <p>(c) back-office staff, depending on their roles:</p> <p>(i) appropriate training on customer verification and relevant processing procedures; and</p> <p>(ii) how to recognise unusual activities including abnormal settlements, payments or delivery instructions;</p> <p>(d) managerial staff including internal audit officers and COs:</p> <p>(i) higher level training covering all aspects of the money lender’s AML/CFT regime; and</p> <p>(ii) specific training in relation to their responsibilities for supervising or managing staff, auditing the system and performing random checks as well as reporting of suspicious transactions to the JFIU; and</p> <p>(e) MLROs:</p> <p>(i) specific training in relation to their responsibilities for assessing suspicious transaction reports submitted to them and reporting of suspicious transactions to the JFIU; and</p> <p>(ii) training to keep abreast of AML/CFT requirements/developments generally.</p>
	9.8	<p>Money lenders are encouraged to consider using a mix of training techniques and tools in delivering training, depending on the available resources and learning needs of their staff. These techniques and tools may include on-line learning systems, focused classroom training, relevant videos as well as paper- or intranet-based procedures manuals. Money lenders may consider including available FATF papers and typologies as part of the training materials. All materials should be up-to-date and in line with current requirements and standards.</p>
	9.9	<p>No matter which training approach is adopted, money lenders should monitor and maintain records of who have been trained, when the staff received the training and the type of the training provided. Records should be maintained for a minimum of 3 years.</p>

	9.10	<p>Money lenders should monitor the effectiveness of the training. This may be achieved by:</p> <ul style="list-style-type: none"><li>(a) testing staff's understanding of the money lender's policies and procedures to combat ML/TF, the understanding of their statutory and regulatory obligations, and also their ability to recognise suspicious transactions; and</li><li>(b) monitoring the compliance of staff with the money lender's AML/CFT systems as well as the quality and quantity of internal reports so that further training needs may be identified and appropriate action can be taken.</li></ul>
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**APPENDIX A****Examples of reliable and independent sources for customer identification purposes**

s.2(1)(a)(iv) & s.2(1)(d)(i)(D), Sch. 2	1	The identity of an individual physically present in Hong Kong should be verified by reference to their Hong Kong identity card or travel document. Money lenders 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.
	2	For non-resident individuals who are not physically present in Hong Kong, money lenders may identify and or verify their identity 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 license <sup>28</sup> 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	A money lender may identify and/or verify a corporate

<sup>28</sup> For avoidance of doubt, international drivers permits and licences are not acceptable for this purpose.

		customer 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).
	5	For jurisdictions that do not have national ID cards and where customers do not have a travel document or driving licence with a photograph, money lenders 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.

**APPENDIX B**

CONFIDENTIAL 機密



Joint Financial Intelligence Unit

G.P.O. Box No. 6555, General Post Office, Hong Kong

**Tel : 2866 3366 Fax : 2529 4013**  
**Email : [jfiu@police.gov.hk](mailto:jfiu@police.gov.hk)**



**Date: 2012-XX-XX**

Money Laundering Reporting Officer,  
XXXXXXX.

**Fax No. : XXXX XXXX**

Dear Sir/Madam,

**Suspicious Transaction Report (“STR”)**

**JFIU No.**

XX

**Your Reference**

XX

**Date Received**

XX

I acknowledge receipt of the above mentioned STR made in accordance with the provisions of section 25A(1) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) / Organized and Serious Crimes Ordinance (Cap 455) and section 12(1) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap 575).

Based upon the information currently in hand, consent is given in accordance with the provisions of section 25A(2) of the Drug Trafficking (Recovery of Proceeds) Ordinance and Organized / Serious Crimes Ordinance, and section 12(2) of United Nations (Anti-Terrorism Measures) Ordinance.

Should you have any queries, please feel free to contact Senior Inspector Mr. XXXXX on (852) 2860 XXXX.

Yours faithfully,

(XXXXX)

for Head, Joint Financial Intelligence Unit



CONFIDENTIAL 機密

**PERSONAL DATA**



Joint Financial Intelligence Unit



G.P.O. Box No. 6555, General Post Office,  
Hong Kong  
Tel : 2866 3366 Fax : 2529 4013  
Email : jfiu@police.gov.hk

Our Ref. :  
Your Ref :

2012-XX-XX

Money Laundering Reporting Officer,  
XXXXXX  
Fax No. : XXXX XXXX

Dear Sir/Madam,

**Drug Trafficking (Recovery of Proceeds) Ordinance/  
Organized and Serious Crimes Ordinance**

I refer to your disclosure made to JFIU under the following reference:

<u>JFIU No.</u>	<u>Your Reference</u>	<u>Dated</u>
XX	XX	XX

Your disclosure is related to an investigation of 'XXXXX' by officers of XXXXX under reference XXXXX.

In my capacity as an Authorized Officer under the provisions of section 25A(2) of the Organized and Serious Crimes Ordinance, Cap. 455 ("OSCO"), I wish to inform you that you do NOT have my consent to further deal with the funds in the account listed in Annex A since the funds in the account are believed to be crime proceeds.

As you should know, dealing with money known or reasonably believed to represent the proceeds of an indictable offence is an offence under section 25 of OSCO. This information should be treated in strict confidence and disclosure of the contents of this letter to any unauthorized person, including the subject under investigation which is likely to prejudice the police investigation, may be an offence under section 25A(5) OSCO. Neither the accounts holder nor any other person should be notified about this correspondence.

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If any person approaches your institution and attempts to make a transaction involving the account, please ask your staff to immediately contact the officer-in-charge of the case, and decline the transaction. Should the account holder or a third party question the bank as to why he cannot access the funds in the accounts he should be directed to the officer-in-charge of the case, without any further information being revealed.

Please contact the officer-in-charge, Inspector XXXXX on XXXX XXXX or the undersigned should you have any other query or seek clarification of the contents of this letter.

Yours faithfully,

( XXXXXX )

Superintendent of Police  
Head, Joint Financial Intelligence Unit

c.c. OC Case

**Annex A**

S/N	Account Holder	Account Number
1.		
2.		

<b>GLOSSARY OF KEY TERMS AND ABBREVIATIONS</b>	
<b>Terms / abbreviations</b>	<b>Meaning</b>
AMLO	Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615)
AML/CFT	Anti-money laundering and counter financing of terrorism
CDD	Customer due diligence
CO	Compliance officer
Connected parties	Connected parties to a customer include the beneficial owner and any natural person having the power to direct the activities of the customer. For the avoidance of doubt the term connected party will include any director, shareholder, beneficial owner, signatory, trustee, settlor/grantor/founder, protector(s), or defined beneficiary of a legal arrangement.
DTROP	Drug Trafficking (Recovery of Proceeds) Ordinance (Cap.405)
EDD	Enhanced customer due diligence
FATF	Financial Action Task Force
Individual	Individual means a natural person, other than a deceased natural person.
JFIU	Joint Financial Intelligence Unit
LMLA	The Hong Kong S.A.R. Licensed Money Lenders Association Limited
MLRO	Money laundering reporting officer
ML/TF	Money laundering and/or terrorist financing
OSCO	Organized and Serious Crimes Ordinance (Cap. 455)
PEP(s)	Politically exposed person(s)
RBA	Risk-based approach to CDD and ongoing monitoring
Schedule 2	Schedule 2 to the AMLO
SDD	Simplified customer due diligence
Senior management	Senior management means directors (or board) and senior managers (or equivalent) of a firm who are responsible, either individually or collectively, for management and supervision of the firm's business. This may include a firm's Chief Executive Officer, Managing Director, or other senior operating management personnel (as the case may be).
STR(s)	Suspicious transaction report(s); also referred to as reports or disclosures
UNATMO	United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)
UNSO	United Nations Sanctions Ordinance (Cap. 537)

