



CHARTERED
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特許秘書

The Hong Kong Institute of Chartered Secretaries

Submission:

Consultation Paper on Proposed Amendments to the
(1) Guideline on Anti-Money Laundering and
Counter-Terrorist Financing and (2) Prevention of
Money Laundering and Terrorist Financing Guideline
issued by the Securities and Futures Commission
for Associated Entities

The Hong Kong Institute of Chartered Secretaries 香港特許秘書公會

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1 August 2018

By Email Only: amlguidelineconsultation@sfc.hk

Securities and Futures Commission
35/F Cheung Kong Center
2 Queen's Road Central
Hong Kong

Dear Sirs

Re: Consultation on Revised Guideline on AML/CFT

About HKICS

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional institute representing Chartered Secretaries as governance professionals in Hong Kong and Mainland China with over 5,800 members and 3,200 students. HKICS originates from The Institute of Chartered Secretaries and Administrators (ICSA) in the United Kingdom with 9 divisions and over 30,000 members and 10,000 students internationally. HKICS is also a Founder Member of Corporate Secretaries International Association Limited (CSIA), an international organisation comprising 14 national member organisations to promote good governance globally.

Support for the Amended Guidelines

We refer to the Consultation Paper and related definitions therein. We support, in general, the key proposed amendments to the Guidelines to (1) keep in line with the latest FATF standards; and (2) to facilitate compliance subject to our observations herein.

Supplementary measures (Question 9 of Consultation Paper)

Prior to the enactment of the AMLO amendments which took effect on 1 March 2018, an HKICS Member is recognised as a 'specified intermediary' under Section 18(3), Schedule 2 of AMLO. Following the AMLO amendments, instead of an HKICS Member, a 'TCSP Licensee' is recognised as a specified intermediary.

This would include an HKICS Member that owns and/or works for a TCSP Licensee. But for an HKICS Member that works in-house in a company (private and/or listed), he or she will not be required to apply for a TCSP Licence and will therefore not be a specified intermediary. This runs into thousands of HKICS Members who we represent in making this submission.

An emerging problem for these HKICS Members is that their administrative certification of documents for an FI's use is being rejected by a number of FIs. It appears that an increasing number of FIs is confusing the concept of a specified intermediary (for due diligence) with the administrative act of certification of documents. For the HKICS Member it is nothing short of an affront that as 'a professional company secretary practising in Hong Kong' under regulations pursuant to the Companies Ordinance (<https://www.cr.gov.hk/en/publications/docs/ec3-2007-e.pdf>) that their certification of documents are being rejected by FIs.

The emerging problem is no doubt because FIs do not appreciate that the provisions of paragraph 4.12.4 of the current AML/CFT Guideline is inclusive and not exclusive. It says that:

'suitable persons to certify verification of identity documents may include: an intermediary specified in Section 18(3) of Schedule 2; (b) a member of the judiciary in an equivalent jurisdiction; (c) an officer of an embassy, consulate or high commission of the country of issue of documentary verification of identity; and (d) a Justice of the Peace.'

We have sought clarification and the HKMA has noted that:

'this is an issue that has come up before and therefore the HKMA has clarified under Q7 of Frequently Asked Questions on Customer Due Diligence published in May 2017 (<http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2017/20170525e1.pdf>) that a list of suitable certifiers provided in paragraph 4.12.4 of the AML Guideline is non-exhaustive and AIs can accept other independent and reliable certifiers (e.g. a professional third party or a bank staff) where appropriate.'

We have explored this issue with the HKMA and have been advised that in case of there being any specific issue with an HKICS Member's certification of corporate documents for an FI's use to contact them. As this is an issue that affects thousands of professional HKICS Members and there is already an HKMA cited FAQ which states that 'certification can be time consuming and costly', we strongly urge that the proposed revised paragraph 4.10.7 under the Consultation Paper be revised to read as follows:

'appropriate persons to certify verification of identification documents may include: an intermediary specified in section 18(3) of Schedule 2; (b) a member of the judiciary in an equivalent jurisdiction; (c) an officer of an embassy, consulate or high commission of the country of issue of documentary verification of identity; (d) a Justice of the Peace; and (e) any independent and reliable certifiers including a professional company secretary practising in Hong Kong.'

Alternatively:

'appropriate persons to certify verification of identification documents may include: an intermediary specified in section 18(3) of Schedule 2; (b) a member of the judiciary in an equivalent jurisdiction; (c) an officer of an embassy, consulate or high commission of the country of issue of documentary verification of identity; (d) a Justice of the Peace; and (e) a professional company secretary practising in Hong Kong.'

Please further note that under the Companies Ordinance, the professional company secretary practising in Hong Kong is specifically authorised to certify documents and translations under sections 4 and 775 of the Companies Ordinance, and the AML/CFT Guideline should be consistent in approach to the Companies Ordinance and its related regulations.

Under the recent Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report by the HKSAR Government on April 2018 https://www.fstb.gov.hk/fsb/aml/en/doc/hk-risk-assessment-report_e.pdf, the work of HKICS has been recognised as follows:

'The HKICS, for example, has issued voluntary guidelines for its members' compliance, which are as comprehensive as those issued by regulatory authorities in the financial sector. In May 2016, the HKICS introduced an AML/CFT Charter for TCSPs, incorporating the FATF's essential AML/CFT measures, to accredit firms which have demonstrated compliance. A professional panel was set up to supervise participants' compliance. The Charter, which is intended for voluntary adoption by any company service provider, was signed by six leading firms in the trade, expanding to eight in 2017. The HKICS also works with the Government to promote AML/CFT awareness among its members through a series of outreach activities, such as seminars.'

We cannot see how our proposal - given the deep impact on our profession; in line with an existing HMKA FAQ; the Companies Ordinance; our work with the Government throughout the years including the 2008 FATF Mutual Evaluation, and the current 2018 Mutual Evaluation - does not warrant serious consideration.

Again, thousands of professionals are affected by the issue we have identified and the compliance industry can do well with HKICS Members' support through addressing the matter.

Should you have any questions, please feel free to contact Samantha Suen FCIS FCS(PE), Chief Executive, HKICS or Mohan Datwani FCIS FCS(PE), Senior Director, and Head of Technical and Research, HKICS at 2881 6177 or research@hkics.org.hk.

Yours faithfully,

A handwritten signature in black ink, appearing to read "David Fu". The signature is fluid and cursive, with a long horizontal stroke at the end.

David Fu FCIS FCS(PE)

President

The Hong Kong Institute of Chartered Secretaries