

## KYC, CDD, SDD, EDD, PEP, SIP, SIE....



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It's been 18 years since the 2 passenger planes flew into the World Trade Centre in New York and another into the Pentagon and one which was grounded by passengers on the flight. As a result of those events the world has become very conscious of Money Laundering and Terrorist Financing. Laws have been introduced over the years by countries around the world and the word of business and commerce, as well as the institutions and professionals have become subject to such ever more stringent laws and regulations in order to counter Money Laundering and Terrorist Financing (the "AML Laws"). AML laws require the need for professionals and other service providers to "Know Your Clients" and to conduct "Client Due Diligence" and much of the requirements in the various laws around the world are substantially the same. All developed nations and any worthy financial centre in the world have adopted AML Laws to avoid being labeled as a jurisdiction that may be considered associated with or facilitates money laundering activities.

Hong Kong, being one of the premier financial centres in the world, is subject to its plethora of AML Laws. Institutions, professional bodies and professional service providers are now all subject to these stringent AML Laws.

In this Bulletin we hope to bring to you the basics of the AML Laws in Hong Kong and an example of how Regulators are being more pro-active in the Client Due Diligence process.

## HONG KONG'S AML LAWS

Hong Kong has in place 4 pieces of legislation in relation to money laundering and counter terrorism financing, namely:

1. Anti-Money laundering and Counter -Terrorism Finance Ordinance (“**AMLO**”);
2. Drug Trafficking (Recovery of Proceeds) Ordinance;
3. Organised and Serious Crimes Ordinance and
4. The United Nations (Anti-Terrorism Measures) Ordinance (“**UNATMO**”)

The primary legislations that concerns providers of Company Secretarial services is the AMLO and UNATMO.

Effective March 1, 2018, a new licensing regime was put in place requiring company secretary services providers to be licensed under the AMLO by the Trust or Company Secretarial Service Providers (“**TCSP**”) division of the Companies Registry.



公司註冊處  
Companies Registry

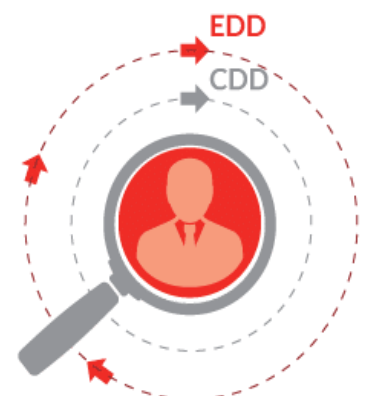
Registry for Trust and Company Service Providers

Unit 1208, 12/F, One Kowloon, 1 Wang Yuen Street, Kowloon Bay, Kowloon,  
Hong Kong

Schedule 2 of the AMLO also puts into place procedures for client due diligence, namely when and how it is to be carried out by the various institutions, professionals and services providers.

The requirements on conducting client due diligence for companies incorporated in Hong Kong are set out in the Companies Registry’s “Guidelines on Compliance of Anti-Money Laundering and Counter Terrorists Financing Requirements for Trust or Company Service Providers” (the “Guidelines”). (You can download a copy of the Guidelines by using the following link: <https://www.tcsp.cr.gov.hk/tcspls/portal/guide/62/eng>. For the Chinese version please follow this link: <https://www.tcsp.cr.gov.hk/tcspls/portal/guide/62/chi-t>)

The Guidelines have been prepared in a simplified easy to understand manner by the Companies Registry for non-lawyers and provides examples for easier understanding of the requirements under the AMLO. The Guidelines elaborates on when any beneficial owner or director of a company is a PEP’s (Politically Exposed Persons), SIP’s (Special Interest Persons) and SIE (Special Interest Enterprises) and when Simplified Due Diligence (SDD) and Extreme Due Diligence (EDD) need to be carried out depending on the background of an individual and or corporate shareholder.



## CONDUCTING KYC AND CDD

### The Basics

As we all know by now “KYC” is the abbreviated name of Know Your Customer.

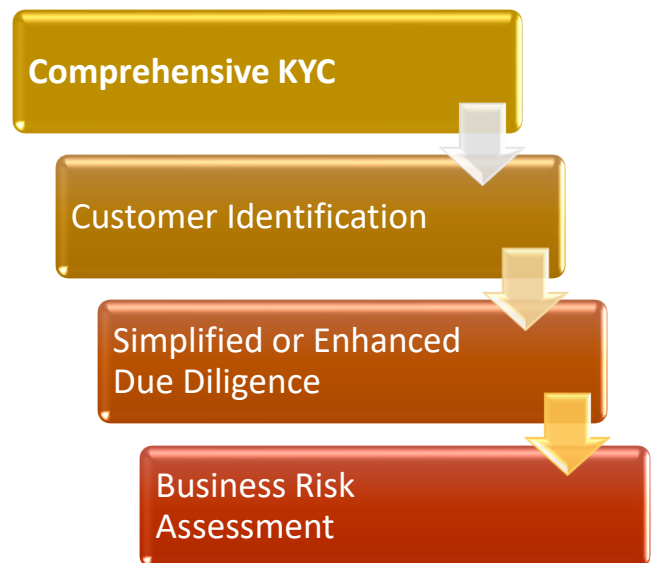
KYC is the due diligence that financial institutions and other regulated companies, including TCSP Licensees must perform in order to identify their clients and to ascertain relevant information pertinent to doing business with them.

The main purpose of KYC policies and programs is to prevent identity theft fraud, money laundering and terrorist financing.

The steps in a KYC process include:

- (1) Ascertaining the Customer Identification which requires the service provider to collect and document a customer’s name, date of birth, address, identity at the time of onboarding of new customers;
- (2) If the CDD inquiry leads to a high-risk determination, the service provider has to conduct an Enhanced Due Diligence.

- (3) Customer Due Diligence which requires the service provider to obtain information on the customer’s business and assess any risk involved.



The objective of the Comprehensive KYC is to reduce the possibility of institutions and service providers from being used for money laundering and terrorist financing activities.

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### Simplified Due Diligence (SDD)

There are times when the client is a regulated body, such as a company listed on an internationally recognised stock exchange or a banking institution or one that is subject to oversight by regulatory bodies such as a securities regulator or a body that is incorporated by statute like some universities, then the level of due diligence need not be as extensive as that of a private individual or a private company because that client would already be regulated by another governmental or statutory recognised body. Information on the client background such as the details of the beneficial owners may not be necessary and can be substantially relaxed.

## Enhanced Due Diligence (EDD)

At times when conducting CDD, you may come across situations whereby EDD (Extreme Due Diligence) is required, by way of example, if an individual:

- (1) is not physically present for identification; or
- (2) or the beneficial owner is a PEP (Politically Exposed Person); or
- (3) is person that is a SIP (Special Interest Person) or SIE (Special Interest Enterprise); or
- (4) as may be requested by the Companies Registry

## PEP

A PEP is a term describing someone who has been entrusted with a prominent public position such as the Mayor, a Governor, a Legislative Counsellor or a senior government official.

A PEP generally presents a higher risk for political involvement and may be subject to bribery or corruption by virtue of their position or influence that they may hold. PEP's may be both local or foreign holding similar positions.

Being a PEP does not automatically mean that a person is corrupt but the position may render them vulnerable to corruption or subject to influence. The risk increases when the PEP is from a country with widely known problems of bribery, corruption and financial irregularity within its government and society.

Service providers, including VCSL, are required under the Guidelines to adopt

reasonable measures to assess risk of the customer and to establish from information collected from the customer its source of funds and source of wealth and making comparisons with public information available to make an assessment as to the risk of being unwilling acting in collusion with the client in Money Laundering and/or Terrorist Financing activities.



## SIP and SIE's

Special Interest Person are people who are convicted, arrested or undergoing trial for financial or serious crime such as fraud or drug trafficking and SIE's are Special Interest Enterprises.

As above, if a client is a SIP or SIE, it does not automatically mean that a service provider cannot conduct business with a SIP or SIE.

However, extreme due diligence needs to be conducted on the SIP or SIE as to the nature of their business, source of their funds for the intended business or transaction may be questionable. Additional investigation and questions from the client may be necessary together with Extensive Frequent and Continuous Monitoring of the client as the Service Provider may consider necessary



## KYC - A NEVER-ENDING PROCESS

Client Due Diligence together with knowing and understanding your client is a never-ending process.

A business can remain in the hands of a family or may change or expands or diversifies to other territories.

Businesses grow over time and take on new investors or additional management and director level staff.

Therefore the AMLO requires service providers to continuously monitor the business relationship with its customers by reviewing from time to time documents, data and information relating to the customer that have been obtained for the purpose of complying with CDD requirements to ensure that they are up-to-date and relevant.

For this reason, customers will be requested to update service providers whenever there are any changes to the nature of their business, their personal details together with any changes to their corporations and beneficial owners.

Updates such as updated proof of addresses are required annually and confirmation if there are changes to personal particulars and if there has



been any change in the nature of the company's corporate structure, business and with whom they



do business with. These are not necessarily the only updates necessary and may change or be subject to further questions where the need requires.

Additionally, as a business grows and diversifies the service provider needs to know what it is growing or diversifying into. Therefore, service providers understanding and knowledge of their client is not limited to who the owners and management are but also that the business is over time.

The extent of monitoring should be commensurate with the risk profile of the customer complied through the service provider's risk assessment.

## Companies Registry requests CDD documents

Traditionally the Companies Registry has not required viewing of Client Due Diligence Documents, other than for registration for an account for e-filing.

Ordinarily it is the service provider's obligation under the AMLO to ensure that the CDD is properly complied with.



However, there now appears to be internal guidelines that the Companies Registry will make random checks on shareholders and directors in documents filed with them either on the basis that it is simply random or if individuals may be from mainland China certain, some Eastern European countries or other jurisdictions less commonly seen to have an interest in Hong Kong companies.

In addition they have specific requirements on the proof of address, that is they expect to see utility bills such as electricity, gas, water or phone where the services are provided directly to the property rather than bank statements where a property could be used as a forwarding address.

They also request information on the beneficial owner of the company. Therefore, if the shareholder

is holding onto shares for a third party, then information on the third party must also be given.

Finally, they require information on the business of the company, that is the purpose for which the company has been incorporated for. For this, they would expect an answer that is properly descriptive,

therefore a mere "Investment Holding" is not likely to suffice and would be inviting the Companies Registry to come back with follow up questions. If the company, however to be used for investment holding purposes, then perhaps a more descriptive answer such as "an investment holding vehicles to hold shares in publicly listed companies traded on the Hong Kong Stock Exchange", would be a more comprehensive reply.

In addition to the above it would be expected that the results of a name search on the individuals in question via a reputable service provider such as Thomson Reuters, LexisNexis or the like, where by the names of individuals and corporations are searched against data sources of PEP's, SIP's, SIE's, UN Sanctions, etc., be provided to the Companies Registry too.



The following is an actual request from the Companies Registry for information of the director and information on the Beneficial Owner of a new incorporation.

## Letter from the Companies Registry

To: From: Date:2019-07-03 [REDACTED] Page:1/2

BY FAX AND POST



公 司 註 冊 處  
COMPANIES REGISTRY

覆函請註明本處檔號:  
In reply please quote this Ref.: CR/NC/[REDACTED]

來函檔號 YOUR REF.: [REDACTED]

電話 TEL: 28672007

圖文傳真 FAX: 25269843

電郵 E-MAIL: ranc1@cr.gov.hk

香港金鐘道六十六號  
金鐘道政府合署十四樓  
QUEENSWAY GOVERNMENT OFFICES  
14TH FLOOR, 66 QUEENSWAY,  
HONG KONG.  
網址 Web Site : www.cr.gov.hk

3 July 2019

VONGS CORPORATE SERVICES LIMITED  
2/A QUEEN'S CTR  
60 QUEEN'S RD EAST  
WANCHAI

Dear Sir/Madam,

### Application for Incorporation of [REDACTED]

( "the Proposed Company" )

We refer to your application for incorporation of the Proposed Company delivered to the Companies Registry on 26 June 2019.

To enable us to consider your application, we should be grateful if you would provide the following information / documents for our consideration:

1. the business nature of the Proposed Company and the activities intended to be carried out by the Proposed Company in or outside Hong Kong;
2. copy of the identification document as reported in the Incorporation Form relating to [REDACTED], the first director of the Proposed Company;
3. copy of the proof of residential address relating to [REDACTED], the first director of the Proposed Company. The proof of residential address, for example, bills issued by suppliers of water, electricity, town gas, mobile phone services etc. must be issued within the last three months from the date of application for incorporation of the Proposed Company; and
4. the full name of the beneficial owner of the Proposed Company.

[REDACTED]