



8 March 2023

To: **Members of the Hong Kong Institute of CPAs**
All other interested parties

**INVITATION TO COMMENT ON EXPOSURE DRAFT OF THE REVISED GUIDELINES
ON ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING
FOR PROFESSIONAL ACCOUNTANTS**

Comments to be received by 11 April 2023

The Institute is seeking views on an exposure draft ("ED") of revised Guidelines on Anti-Money Laundering and Counter-Terrorist Financing ("Guidelines"). The Guidelines currently form Part F of the Institute's Code of Ethics for Professional Accountants and the revised Guidelines will be issued as an update to Part F of the Code.

They remain applicable, primarily, to member practices and members working in practices. They are also relevant to members working in the trust or company service provider ("TCSP") sector, particularly members who are proprietors, partners or directors of TCSP entities.

The ED of the revised AML Guidelines can be found via the following links (in marked-up and clean formats):

https://www.hkicpa.org.hk/-/media/Document/APD/AML/AML-Guidelines_revised_consultation-ED_marked-up_March-2023.pdf

https://www.hkicpa.org.hk/-/media/Document/APD/AML/AML-Guidelines_revised_consultation-ED_clean_March-2023.pdf

Background

The Institute was designated as the regulatory body for the accounting profession under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) ("AMLO"), when the ordinance was extended to cover designated non-financial businesses and professions ("DNFBPs"), including accounting professionals, commencing 1 March 2018. To help members comply with their anti-money laundering and counter-terrorist financing ("AML/CFT") obligations under AMLO, the Institute issued the Guidelines, which are given statutory recognition under section 7 of the legislation.

Guidelines issued under section 7 of AMLO are non-statutory and a failure to comply with a provision in such guidelines does not by itself render a person liable to any judicial or other proceedings. However, under AMLO, guidelines are admissible as evidence in court proceedings and, in determining a question in proceedings, the court must take into account any provision that appears to be relevant to that question. A regulatory body must also have regard any relevant provision of the Guidelines in considering whether there has been a contravention of a requirement of Schedule 2 of AMLO.

Notwithstanding the transfer of most of the Institute's regulatory functions to the Accounting and Financial Reporting Council ("AFRC") with effect from 1 October 2022, under AMLO, the Institute remains the regulatory body for purposes of issuing and amending the Guidelines. The AFRC is the regulatory body for other purposes, including enforcement.

Amendments to AMLO were passed the Legislative Council in early December 2022 and the resulting legislation, the [Anti-Money Laundering and Counter-Terrorist Financing](#)



[\(Amendment\) Ordinance 2022](#) (“AML(A)O”) was gazetted on 16 December 2022. AML(A)O enhances Hong Kong’s AML/CFT regulatory regime by setting up a licensing regime for virtual asset service providers (“VASPs”) and a registration process for dealers in precious metals and stones (“DPMS”), extending the scope of the statutory AML/CFT requirements to these two sectors. In addition, AML(A)O makes a number of miscellaneous and technical amendments, as part of the follow-up work to the mutual evaluation of Hong Kong conducted, in 2018-19, by the Financial Action Task Force (“FATF”), the international body leading action against money laundering and terrorist financing, of which Hong Kong is a member.

Most provisions of AML(A)O, including the registration regime for DPMS, will take effect on 1 April 2023, while the licensing requirement for VASPs, as well as other relevant amendments to the AML/CTF requirements affecting DNFBPs, among others, will take effect on 1 June 2023. It is expected that the regulators of the sectors covered by AMLO will update their AML/CFT guidelines in the light of the changes introduced by AML(A)O. The government has requested that updates to the sectoral guidelines also help to address certain other gaps identified in Hong Kong’s mutual evaluation, to ensure that Hong Kong can achieve technical compliance with the FATF Recommendations prior to its mid-term review in 2024.

Given the need revise the Guidelines for the above reasons, the Institute has taken the opportunity to review other aspects of the Guidelines and, having regard also to the past five years’ experience of working with them, to make some further technical and clarificatory changes. The aim is to facilitate members’ compliance with their statutory obligations, and enable Hong Kong to comply with the international AML/CFT standards set out by the FATF.

The proposed changes in the ED fall broadly into the following categories:

- Revisions resulting from AML(A)O, including: (i) revising the definition of “politically exposed person (‘PEP’)”, to categorise all PEPs outside of Hong Kong as high-risk PEPs (previously the definition referred to PEPs outside of the People’s Republic of China, including Hong Kong), and adding a definition of “former PEP”; (ii) revising the definition of the beneficial owner of a trust; and (iii) providing for customer due diligence to be carried out remotely, where a “recognised digital identification system” is used. In relation to (iii), it should be noted, however, that the question of which digital identification systems in Hong Kong align with the relevant FATF guidance is still under discussion.
- Revisions due to other relevant legislative changes since the Guidelines were issued in 2018, including: (i) amendments to the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (adding provisions prohibiting travelling overseas to commit terrorist acts or giving financial support to others do so); and (ii) bringing “responsible persons” who are accounting professionals, under the Limited Partnership Fund Ordinance (Cap. 637), within the scope of the Guidelines.
- Other technical revisions and updates comprising:
 - (a) Clarifications and tidying up of the use of terminology such as “must”, “should”, “may”, etc., and correcting and updating various cross-references. It is made clear, among other things, that practices must have policies, procedures and controls in place to deal with suspicious transaction reporting and United Nations sanctions, regardless of the services that they are providing.
 - (b) Updates of background material and references to explain the changed role of the Institute under AMLO, i.e., the Institute remains a regulatory body for publishing and amending the Guidelines, but not for other purposes. In some



provisions, therefore, reference to the AFRC has replaced reference to the Institute.

- Revisions requested to implement other FATF Recommendations, in particular, to make it clear that practices must conduct an AML/CFT risk assessment before introducing a new product or service, or using new technology. The ED limits this requirement to new products/ services or new technologies within the context of the types of activities relevant to accounting professionals under section 5A of AMLO, and subsections 600.2.1 and 600.2.2 of the Guidelines.

The marked-up version of the revised Guidelines, shows the proposed substantive changes (excluding minor presentational changes and corrections, etc.) highlighted against the existing Guidelines. As noted above, a clean version of the revised Guidelines is also made available for ease of reference.

The Institute invites members' and other stakeholders' comments on the ED. Comments should be supported by specific reasoning and should be submitted in written form, on or by **11 April 2023**.

Comments may be sent by mail or e-mail to:

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Comments will be acknowledged and may be made available for public review unless otherwise requested by the respondent.