

**Bills Committee on
Anti-money Laundering and Counter-terrorist Financing
(Financial Institutions) Bill**

**Comparison between the Guidelines Issued by the Hong Kong
Monetary Authority and the Bill in respect of
Politically Exposed Persons**

This note sets out a comparison between the current guideline issued by the Hong Kong Monetary Authority ("HKMA") and the relevant provisions under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill ("the Bill") in respect of the definition of politically exposed persons ("PEPs") and the special customer due diligence (CDD) requirements applicable to PEPs.

2. Paragraph 10 of the "Supplement to the Guideline on Prevention of Money Laundering" (Annexed to Bills Committee Paper CB(1)881/10-11(02)) issued by HKMA covers authorized institutions ("AIs")' dealings with PEPs. The provisions under the Bill that are relevant to financial institutions ("FIs")' dealings with PEPs are clause 1 (definition of PEPs), clause 5 (enhanced ongoing monitoring) and clause 10 (special CDD requirements) of Schedule 2.

3. A table comparing the relevant provisions under the current guideline issued by HKMA and the provisions under the Bill with explanation for the differences is set out in the **Annex** for Members' reference. In this regard, it should be noted that the HKMA Guideline and the Bill are different documents that have different legal effect, i.e. the HKMA Guideline is not legislation while the Bill is a piece of legislation with criminal sanctions provided for breaches of the requirements set out therein. For this reason, the relevant provisions in the Bill are more precise in order to provide for certainty, hence there is more elaboration on the terms used in these legislative provisions than in the case of a guideline.

**Financial Services and the Treasury Bureau
12 January 2011**

Comparison between the relevant provisions of the Bill and the HKMA Guidelines in respect of the definition of PEPs and special CDD requirements applicable to PEPs

	The Bill	HKMA Guidelines	Explanation for differences
Definition	<p>(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-</p> <p>(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; but</p> <p>(ii) does not include a middle-ranking or more junior official of any of the categories mentioned in subparagraph (i). <i>(clause 1(1) of Schedule 2)</i></p>	<p>Individuals being, or who have been, entrusted with prominent public functions, such as heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of public organisations and senior political party officials. <i>(para 10.3)</i></p>	<ul style="list-style-type: none"> ● The Bill only covers persons entrusted with a prominent public function in a place outside the People's Republic of China, having regard to the international standards as promulgated by the Financial Action Task Force which refers to individuals who are or have been entrusted with prominent public functions in a foreign country. ● The Bill covers "senior executive of a state-owned corporation and an important political party official", as compared with "senior executive of public organisations and senior political party official" in the HKMA Guideline. The terms used in the Bill better align with the current international standards and will not entail any substantive changes

			<p>to the implementation arrangements.</p> <ul style="list-style-type: none"> ● The Bill clarifies that PEPs does not include a middle-ranking or more junior official. While there is no such express provision under the HKMA Guidelines, in practice these officials would not be regarded as PEPs. This provision will better reflect the international standards.
<p>Family and close associates of PEPs</p>	<p>(b) a spouse, a partner, a child or a parent of an individual falling within paragraph (a), 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) (<i>clause 1(1) of Schedule 2</i>)</p> <p>For the purpose of paragraph (b) of the definition of PEP, a person is a partner of an individual if the person is considered by the law of the place where the person and the</p>	<p>Business relationships with individuals holding important public positions as well as persons or companies clearly related to them (i.e. families, close associates etc) expose an AI to particularly significant reputation or legal risks. (<i>para10.2</i>)</p>	<ul style="list-style-type: none"> ● The Bill contains more elaboration on which family members of an individual entrusted with a prominent public function are to be covered under the definition of PEPs, and who would be regarded as a close associate of an individual entrusted with a prominent public function, so as to provide more certainty. This formulation is modeled on the relevant provision under the United Kingdom

	<p>individual live together as equivalent to a spouse of the individual. (<i>Clause 1(2) of Schedule 2</i>)</p> <p>For the purposes of paragraph (c) of the definition of PEP, a person is a close associate of an individual if the person is –</p> <p>(a) an individual who has close business relations with the first-mentioned individual, including an individual who is a beneficial owner of a legal person or trust of which the first-mentioned individual is also a beneficial owner; and</p> <p>(b) an individual who is the beneficial owner of a legal person or trust that is set up for the benefit of the first-mentioned individual. (<i>clause 1(3) of Schedule 2</i>)</p>		<p>Anti-Money Laundering Regulation 2007.</p>
<p>Special CDD requirements</p>	<p>If a FI knows, from publicly known information or information in its possession, that a customer or a beneficial owner of a customer is a PEP, it must, before establishing a business relationship with the customer –</p>	<p>AIs must obtain senior management approval before establishing a business relationship with a customer or a beneficial owner identified as a PEP. An AI must also obtain senior management approval to continue</p>	<ul style="list-style-type: none"> ● The same special CDD requirements to obtain senior management approval are applicable in both cases. ● The Bill requires FIs to take "adequate" measures instead of

	<p>(a) obtain approval from its senior management; and (b) take adequate measures to establish the customer's or beneficial owner's source of wealth and the source of the funds that will be involved in the proposed business relationship.</p> <p><i>(Clause 10(1) of Schedule 2)</i></p> <p>If a FI comes to know, from publicly known information or information in its possession, that an existing customer or a beneficial owner of an existing customer is a PEP or has become a PEP, it must not continue its business relationship with the customer unless it-</p> <p>(a) has obtained approval from its senior management; and (b) has taken adequate measures to establish the customer's or beneficial owner's source of wealth and the source of the funds that are involved in the business relationship.</p>	<p>the relationship as soon as practicable after an existing customer or a beneficial owner is identified as a PEP. <i>(para 10.5)</i></p> <p>An AI should take reasonable measures to identify the source of wealth and funds of a customer identified as a PEP; and ensure increased ongoing monitoring of the customer and his business with the AI throughout the relationship. <i>(para 10.5a)</i></p>	<p>"reasonable" measures to identify the source of wealth and funds of the customer as provided under the HKMA Guideline, having regard to the relevant provisions under the United Kingdom Money Laundering Regulations 2007.</p> <ul style="list-style-type: none"> ● The Bill elaborates more on what is meant by "increased ongoing monitoring". The actual measures that FIs should take are largely the same.
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	<p><i>(Clause 10(2) of Schedule 2)</i></p> <p>If-</p> <p>(b) a customer, or a beneficial owner of a customer, of a FI is known to the FI, from publicly known information or information in its possession, to be a PEP, the FI must, in monitoring its business relationship with the customer under this section, take additional measures to compensate for any risk of money laundering or terrorist financing that may be caused by the fact that the customer or beneficial owner is a customer or beneficial owner falling within paragraph [(b)].</p> <p><i>(Clause 5(3) of Schedule 2)</i></p>		
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