

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

**The Administration's Proposed Committee Stage
Amendments to Schedule 2**

This note presents the committee stage amendments (“CSAs”) we intend to make to Schedule 2 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill (“the Bill”) for Members’ consideration.

Proposed Amendments

2. Most of the amendments proposed to be made to Schedule 2 of the Bill were made pursuant to the comments raised by the Hong Kong Association of Banks (“HKAB”). The rationale for those proposed amendments were set out in the Bills Committee paper titled “Response to Hong Kong Association of Banks’ Submission” (“Response to HKAB’s Submission”). The list of sections in Schedule 2 to which we will propose amendments with the underlying rationale is set out in **Annex A** and a marked up version of Schedule 2 of the Bill showing the proposed CSAs is at **Annex B**.

3. We will separately provide a paper on CSAs to other parts of the Bill to the Bills Committee later.

**Financial Services and the Treasury Bureau
25 May 2011**

**Sections under Schedule 2 to be amended and
the underlying rationale**

Section	Rationale
1(1) “beneficial owner”	<p>The rationale for the removal of the references to “customer” under paragraph (a), (b), (c) and (d) of the definition of “beneficial owner” is set out in item 4 of the Annex to the Response to HKAB’s Submission.</p> <p>The proposal to add paragraphs (a)(ii) and (b)(ii) of the definition of “beneficial owner” is to better reflect the Financial Action Task Force (“FATF”) requirement that financial institutions should determine whether the customer is acting on behalf of another person and take reasonable steps to verify the identity of that other person.</p>
1(1) “occasional transaction”	As the term “occasional transaction” is referred to under section 3 as well as other sections, we propose to move the definition of this term from section 3(5) to section 1(1) (Interpretation).
1(3)	To correct a textual error. A person would be regarded as a close associate of an individual if the person falls under either paragraphs (a) <u>or</u> (b), instead of paragraphs (a) <u>and</u> (b).
2(1)(b) and (2)	To give effect to the amendment proposed in item 3 of the Annex to the Response to HKAB’s Submission.
2(d)(i)	To improve the drafting of this section to clarify that a financial institution needs to <u>take reasonable measures</u> to verify the identity of a person purporting to act on behalf of the customer (emphasis added).
4(1A) and (5)	To give effect to the amendment proposed in item 12 of the Annex to the Response to HKAB’s Submission.
4(4)	To give effect to the amendment proposed in item 13 of the Annex to the Response to HKAB’s Submission.
6(1)(b)	To give effect to the amendment proposed in item 11 of the Annex to the Response to HKAB’s Submission.
9(b)	To give effect to the amendment proposed in item 15 of the Annex

	to the Response to HKAB's Submission.
10(1)(b) and (2)(b)	To give effect to the amendment proposed in item 16 of the Annex to the Response to HKAB's Submission.
12(9) and (10)	To give effect to the amendment proposed in item 6 of the Annex to the Response to HKAB's Submission.
13(3)	As the obligations under section 13(2) which requires MSOs to identify and verify the identity of an originator apply to outgoing transactions only, the definition of "remittance transaction" under section 13(3) is to be amended by deleting paragraphs (b) and (c) thereof.
15	To give effect to the amendment proposed in items 1 and 3 of the Annex to the Response to HKAB's Submission.
17(2)	To correct a textual error.
18(3)(a)(ii) and (7)	To replace the reference to "certified public accountant (practising)" by "certified public accountant" pursuant to the submission from the Hong Kong Institute of Certified Public Accountants to rectify a textual error as "certified public accountant (practising)" only covers practising certificate holders.
18(3)(a)(iii)	To align the description in respect of Chartered Secretaries with the description of other professional intermediaries described under section 18(3)(a) pursuant to the comment from the Hong Kong Institute of Chartered Secretaries.
18(4)(a) and (b) and 20(6)	To give effect to the amendment proposed in item 14 of the Annex to the Response to HKAB's Submission.
19(2)	To put right the deficiency that section 19(2) does not cater for scenario covered by section 12(6) and (7), section 19(2) is amended to require financial institutions to establish procedures to identify wire transfers not accompanied by the information in compliance with section 12(5).
22	The heading is revised to better reflect the content of the provision. A textual error under section 22(1)(b) is also corrected.

Schedule 2

[ss. 3, 5, 6 & 7]

Requirements Relating to Customer Due Diligence and
Record-keeping

Part 1

Interpretation

1. Interpretation

(1) In this Schedule—

beneficial owner (實益擁有人)—

- (a) in relation to a ~~customer that is a corporation~~, means ~~an individual who—~~
- (i) means 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;
- (b) in relation to a ~~customer that is a partnership~~, means ~~an individual who—~~

(i) means 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;(c) in relation to a ~~customer that is a trust~~, means—

(i) an individual who is entitled to a vested interest in not less than 10% of the capital of the trust property, whether the interest is in possession or in remainder or reversion and whether it is defeasible or not;

(ii) the settlor of the trust;

(iii) a protector or enforcer of the trust; or

(iv) an individual who has ultimate control over the trust; and

(d) in relation to a ~~customer person~~ not falling within paragraph (a), (b) or (c)—(i) means an individual who ultimately owns or controls the ~~customer person~~; or(ii) if the ~~customer person~~ is acting on behalf of another person, means the other person;**business relationship** (業務關係), as between a person and a financial institution, means a business, professional or commercial relationship—

(a) that has an element of duration; or

- (b) that the financial institution, at the time the person first contacts the financial institution in the person's capacity as a potential customer of the financial institution, expects to have an element of duration;

correspondent banking (代理銀行服務) means the provision of banking services by an authorized institution to another institution to enable the latter to provide services and products to its own customers;

customer due diligence measures (客戶盡職審查措施) means the measures set out in section 2(1) of this Schedule;

equivalent jurisdiction (對等司法管轄區) means—

- (a) a jurisdiction that is a member of the Financial Action Task Force, other than Hong Kong; or
- (b) a jurisdiction that imposes requirements similar to those imposed under this Schedule;

Financial Action Task Force (財務特別行動組織) means the Financial Action Task Force on Money Laundering established by the G-7 Summit held in Paris in 1989;

identification document (識別文件)—

- (a) in relation to an individual, means his or her identity card, certificate of identity, document of identity or travel document, as defined by section 2(1) of the Immigration Ordinance (Cap. 115);
- (b) in relation to a company as defined by section 2(1) of the Companies Ordinance (Cap. 32), means its certificate of incorporation issued under that Ordinance;
- (c) in relation to a non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 32), means its certificate of registration issued under that Ordinance;
- (d) in relation to a corporation that is incorporated in a place outside Hong Kong other than a company falling within paragraph (c), means its certificate of incorporation or

registration, or any other document evidencing its incorporation, issued by an authority in that place that performs functions similar to those of the Registrar of Companies;

- (e) in relation to a partnership that carries on business in Hong Kong, means its business registration certificate issued under section 6 of the Business Registration Ordinance (Cap. 310); and
- (f) in relation to a partnership that does not carry on business in Hong Kong, means its partnership agreement or any document evidencing its formation or registration issued by a governmental body;

legal person (法人) includes any public body and any body of persons, corporate or unincorporate;

occasional transaction (非經常交易) means a transaction between a financial institution and a customer who does not have a business relationship with the financial institution;

politically exposed person (政治人物) means—

- (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; but
- (ii) 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), 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);

pre-existing customer (先前客戶), in relation to a financial institution, means a customer with whom the financial institution has established a business relationship before the date of commencement of this Ordinance;

public body (公共機構) includes—

- (a) any executive, legislative, municipal or urban council;
- (b) any Government department or undertaking;
- (c) any local or public authority or undertaking;
- (d) any board, commission, committee or other body, whether paid or unpaid, appointed by the Chief Executive or the Government; and
- (e) any board, commission, committee or other body that has power to act in a public capacity under or for the purposes of any enactment.

(2) For the purposes of paragraph (b) of the definition of **politically exposed person** in subsection (1), a person is a partner of an individual if the person is considered by the law of the place where the person and the individual live together as equivalent to a spouse of the individual.

(3) For the purposes of paragraph (c) of the definition of **politically exposed person** in subsection (1), a person is a close associate of an individual if the person is—

- (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/or
- (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.

(4) For the purposes of this Schedule, a wire transfer is a transaction carried out by an institution (referred to in this Schedule as **ordering institution**) on behalf of a person by electronic means with a view to making an amount of money available to that person or another person (referred to in this Schedule as **recipient**) at an institution (referred to in this Schedule as **beneficiary institution**), which may be the ordering institution or another institution, whether or not one or more other institutions (referred to in this Schedule as **intermediary institutions**) participate in completion of the transfer of the money.

Part 2

Customer Due Diligence Requirements

Division 1

General

2. What are customer due diligence measures

(1) The following measures are customer due diligence measures applicable to a financial institution—

- (a) identifying the customer and verifying the customer's identity on the basis of documents, data or information provided by—
 - (i) a governmental body;
 - (ii) the relevant authority or any other relevant authority;
 - (iii) an authority in a place outside Hong Kong that performs functions similar to those of the relevant authority or any other relevant authority; or

- (iv) any other reliable and independent source that is recognized by the relevant authority;
- (b) if there is a beneficial owner in relation to the customer, identifying the beneficial owner and, subject to subsection (2), taking reasonable measures to verify the beneficial owner's identity so that the financial institution is satisfied that it knows who the beneficial owner is, including, where the customer is a legal person or trust, measures to enable the financial institution to understand the ownership and control structure of the legal person or trust;
- (c) if a business relationship is to be established, obtaining information on the purpose and intended nature of the business relationship with the financial institution, unless the purpose and intended nature are obvious; and
- (d) if a person purports to act on behalf of the customer—
 - (i) identifying the person and taking reasonable measures to verify ~~verifying~~ the person's identity on the basis of documents, data or information provided by—
 - (A) a governmental body;
 - (B) the relevant authority or any other relevant authority;
 - (C) an authority in a place outside Hong Kong that performs functions similar to those of the relevant authority or any other relevant authority; or
 - (D) any other reliable and independent source that is recognized by the relevant authority; and
 - (ii) verifying the person's authority to act on behalf of the customer.

(2) Except where a situation referred to in section 15 of this Schedule exists, if an individual is a beneficial owner of a

customer by virtue of paragraph (a)(i)(A) or (B), (b)(i)(A) or (B) or (c)(i) of the definition of *beneficial owner* in section 1(1) of this Schedule, the financial institution is not required to verify the identity of the individual unless—

(a) for an individual falling within paragraph (a)(i)(A) of that definition, the individual owns or controls, directly or indirectly, including through a trust or bearer share holding, not less than 25% of the issued share capital of the relevant corporation;

(b) for an individual falling within paragraph (a)(i)(B) of that definition, the individual is, directly or indirectly, entitled to exercise or control the exercise of not less than 25% of the voting rights at general meetings of the relevant corporation;

(c) for an individual falling within paragraph (b)(i)(A) of that definition, the individual is entitled to or controls, directly or indirectly, not less than a 25% share of the capital or profits of the relevant partnership;

(d) for an individual falling within paragraph (b)(i)(B) of that definition, the individual is, directly or indirectly, entitled to exercise or control the exercise of not less than 25% of the voting rights in the relevant partnership; or

(e) for an individual falling within paragraph (c)(i) of that definition, the individual is entitled to a vested interest in not less than 25% of the capital of the relevant trust property, whether the interest is in possession or in remainder or reversion and whether it is defeasible or not.

3. When customer due diligence measures must be carried out

- (1) Subject to section 4 of this Schedule, a financial institution must carry out customer due diligence measures in relation to a customer in the following circumstances—
 - (a) subject to subsection (2), before establishing a business relationship with the customer;
 - (b) before carrying out for the customer an occasional transaction involving an amount equal to or above \$120,000 or an equivalent amount in any other currency, whether the transaction is carried out in a single operation or in several operations that appear to the financial institution to be linked;
 - (c) despite paragraph (b), before carrying out for the customer an occasional transaction that is a wire transfer involving an amount equal to or above \$8,000 or an equivalent amount in any other currency, whether the transaction is carried out in a single operation or in several operations that appear to the financial institution to be linked;
 - (d) when the financial institution suspects that the customer or the customer's account is involved in money laundering or terrorist financing;
 - (e) when the financial institution 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.
- (2) Despite subsection (1)(a), a financial institution may verify the identity of a customer and any beneficial owner of the customer after establishing a business relationship with the customer if—
 - (a) this is necessary not to interrupt the normal conduct of business with regard to the customer; and

- (b) any risk of money laundering or terrorist financing that may be caused by carrying out the verification after establishing the business relationship is effectively managed.
- (3) A financial institution that carries out verification after establishing a business relationship with a customer under subsection (2) must complete the verification as soon as reasonably practicable after establishing the business relationship.
- (4) If a financial institution is unable to comply with subsection (1) or (3), it—
 - (a) must not establish a business relationship or carry out any occasional transaction with that customer; or
 - (b) if it has already established a business relationship with that customer, must terminate the business relationship as soon as reasonably practicable.

~~(5) In this section—~~

~~*occasional transaction* (非經常交易) means a transaction between a financial institution and a customer who does not have a business relationship with the financial institution.~~

4. Simplified customer due diligence

- (1) In any of the circumstances set out in section 3(1)(a), (b) and (c) of this Schedule, a financial institution may, instead of carrying out all the customer due diligence measures, carry out only the measures set out in section 2(1)(a), (c) and (d) of this Schedule in relation to a customer if it has reasonable grounds to believe that the customer falls within subsection (2).

(1A) If a customer of a financial institution not falling within subsection (2) has in its beneficial ownership chain an entity that falls within that subsection, the financial institution is not required, when carrying out the measure set out in section 2(1)(b) of this Schedule in respect of the beneficial owners in

that chain in any of the circumstances set out in section 3(1)(a), (b) and (c) of this Schedule, to identify, or verify the identities of, the beneficial owners of that entity or of any person in that chain beyond that entity.

- (2) The customer is—
- (a) a financial institution;
 - (b) an institution that—
 - (i) is incorporated or established in an equivalent jurisdiction;
 - (ii) carries on a business similar to that carried on by a financial institution;
 - (iii) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and
 - (iv) is supervised for compliance with those requirements by an authority in that jurisdiction that performs functions similar to those of any of the relevant authorities;
 - (c) a corporation listed on any stock exchange;
 - (d) an investment vehicle where the person responsible for carrying out measures that are similar to the customer due diligence measures in relation to all the investors of the investment vehicle is—
 - (i) a financial institution;
 - (ii) an institution that—
 - (A) is incorporated or established in Hong Kong;
 - (B) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and
 - (C) is supervised for compliance with those requirements; or

- (iii) an institution that—
 - (A) is incorporated or established in an equivalent jurisdiction;
 - (B) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and
 - (C) is supervised for compliance with those requirements;
 - (e) the Government or any public body in Hong Kong; or
 - (f) the government of an equivalent jurisdiction or a body in an equivalent jurisdiction that performs functions similar to those of a public body.
- (3) In any of the circumstances set out in section 3(1)(a), (b) and (c) of this Schedule, a financial institution may, instead of carrying out all the customer due diligence measures, carry out only the measures set out in section 2(1)(a), (c) and (d) of this Schedule in relation to a customer if it has reasonable grounds to believe that the product related to the transaction falls within subsection (4).
- (4) The product is—
- (a) a provident, pension, retirement or superannuation scheme (however described) that provides retirement benefits to employees, where contributions to the scheme are made by way of deduction from income from employment and the scheme rules do not permit the assignment of a member's interest under the scheme;
 - (b) an insurance policy for the purposes of a provident, pension, retirement or superannuation scheme (however described) that does not contain a surrender clause and cannot be used as a collateral; or
 - (c) a life insurance policy in respect of which—

- (i) an annual premium of no more than \$8,000 or an equivalent amount in any other currency is payable; or
- (ii) a single premium of no more than \$20,000 or an equivalent amount in any other currency is payable.

~~(5) If a customer of a financial institution is a subsidiary of a corporation listed on any stock exchange, the financial institution is not required, in any of the circumstances set out in section 3(1)(a), (b) and (c) of this Schedule, to carry out the measure set out in section 2(b) of this Schedule in respect of the shares in the subsidiary that are held by that corporation.~~

(6) If a customer of a financial institution is a solicitor or a firm of solicitors, the financial institution is not required, in any of the circumstances set out in section 3(1)(a), (b) and (c) of this Schedule, to carry out the measure set out in section 2(1)(b) of this Schedule in relation to an account—

- (a) that is kept in the name of the customer;
- (b) in which moneys or securities of the customer's clients are mingled; and
- (c) that is managed by the customer as those clients' agent.

(7) In this section—

securities (證券) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

5. Duty to continuously monitor business relationships

- (1) A financial institution must continuously monitor its business relationship with a customer by—
 - (a) reviewing from time to time documents, data and information relating to the customer that have been obtained by the financial institution for the purpose of complying with the requirements imposed under this Part to ensure that they are up-to-date and relevant;

- (b) conducting appropriate scrutiny of transactions carried out for the customer to ensure that they are consistent with the financial institution's knowledge of the customer and the customer's business and risk profile, and with its knowledge of the source of the customer's funds; and

(c) identifying transactions that—

- (i) are complex, unusually large in amount or of an unusual pattern; and
- (ii) have no apparent economic or lawful purpose, and examining the background and purposes of those transactions and setting out its findings in writing.

(2) When a financial institution carries out its duty under subsection (1)(a) in relation to a pre-existing customer before it first carries out the customer due diligence measures in relation to the customer in accordance with the requirements under this Part, the financial institution is only required to review the documents, data and information relating to the customer that are held by it at the time it conducts the review.

(3) If—

- (a) a customer of a financial institution has not been physically present for identification purposes;
- (b) a customer, or a beneficial owner of a customer, of a financial institution is known to the financial institution, from publicly known information or information in its possession, to be a politically exposed person; or
- (c) a customer, or a beneficial owner of a customer, of a financial institution is involved in a situation referred to in section 15 of this Schedule,

the financial institution 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 (a), (b) or (c).

6. Provisions relating to pre-existing customers

- (1) In relation to a pre-existing customer who is not a customer to whom section 7 of this Schedule applies, a financial institution must, in addition to the situations specified in section 3(1)(d) and (e) of this Schedule, carry out the customer due diligence measures when—
 - (a) a transaction takes place with regard to the customer that—
 - (i) is, by virtue of the amount or nature of the transaction, unusual or suspicious; or
 - (ii) is not consistent with the financial institution'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; or
 - ~~(b) the financial institution becomes aware that, having regard to its current customer documentation standards, it lacks sufficient information about the customer; or~~
 - (c) a material change occurs in the way in which the customer's account is operated.
- (2) If a financial institution is unable to comply with subsection (1), it must terminate its business relationship with the customer as soon as reasonably practicable.

7. Provisions relating to pre-existing respondent banks

- (1) This section applies to a customer (referred to in this section as *respondent bank*) of an authorized institution—
 - (a) that is an institution located in a place outside Hong Kong carrying on a business similar to that carried on by an authorized institution; and

- (b) with which the first-mentioned authorized institution has established a correspondent banking relationship before the date of commencement of this Ordinance.
- (2) An authorized institution must terminate its correspondent banking relationship with a respondent bank on the date of commencement of this Ordinance unless—
 - (a) it had carried out the measures set out in section 14(1) of this Schedule in relation to the respondent bank at some time before that date and was at that time satisfied that the anti-money laundering and anti-terrorist financing controls of the respondent bank were adequate and effective;
 - (b) it had documented its responsibilities and the responsibilities of the respondent bank before that date; and
 - (c) it was satisfied at some time before that date that, in respect of those of the respondent bank's customers who could directly operate the accounts it maintained for the respondent bank, the respondent bank—
 - (i) had verified the identities of those customers, and would continuously monitor its business relationships with those customers, in accordance with requirements similar to those imposed under this Schedule; and
 - (ii) was able to provide to it, on request, the documents, data or information obtained by the respondent bank in relation to those customers in accordance with requirements similar to those imposed under this Schedule.

Division 2**Special Requirements****8. Requirements in this Division are additional to those in sections 3 and 5 of this Schedule**

In addition to complying with the requirements under sections 3 and 5 of this Schedule, a financial institution must also comply with the requirements under this Division.

9. Special requirements when customer is not physically present for identification purposes

If a customer has not been physically present for identification purposes, a financial institution must carry out at least one of the following measures—

- (a) further verifying the customer's identity on the basis of documents, data or information referred to in section 2(1)(a) of this Schedule but not previously used for the purposes of verification of the customer's identity under that section;
- (b) taking supplementary measures to verify all the information provided by the customer, ~~including obtaining from appropriate persons or authorities certificates certifying that the documents provided by the customer are true copies of the originals;~~
- (c) ensuring that the payment or, if there is more than one payment, the first payment made in relation to the customer's account is carried out through an account opened in the customer's name with—
 - (i) an authorized institution; or
 - (ii) an institution that—
 - (A) is incorporated or established in an equivalent jurisdiction;

- (B) carries on a business similar to that carried on by an authorized institution;
- (C) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and
- (D) is supervised for compliance with those requirements by authorities in that jurisdiction that perform functions similar to those of the Monetary Authority.

10. Special requirements when customer is politically exposed person

- (1) If a financial institution knows, from publicly known information or information in its possession, that a customer or a beneficial owner of a customer is a politically exposed person, it must, before establishing a business relationship with the customer—
 - (a) obtain approval from its senior management; and
 - (b) take ~~adequate~~ reasonable 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.
- (2) If a financial institution 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 politically exposed person or has become a politically exposed person, it must not continue its business relationship with the customer unless it—
 - (a) has obtained approval from its senior management; and
 - (b) has taken ~~adequate~~ reasonable 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.

11. Special requirements for insurance policies

- (1) A financial institution must, whenever a beneficiary or a new beneficiary is identified or designated by the policy holder of an insurance policy—
 - (a) if the beneficiary is identified by name, record the name of the beneficiary;
 - (b) if the beneficiary is designated by description or other means, obtain sufficient information about the beneficiary to satisfy itself that it will be able to establish the identity of the beneficiary—
 - (i) at the time the beneficiary exercises a right vested in the beneficiary under the insurance policy; or
 - (ii) at the time of payout or, if there is more than one payout, the time of the first payout to the beneficiary in accordance with the terms of the insurance policy,
 whichever is the earlier.
- (2) A financial institution must carry out the measures specified in subsection (3)—
 - (a) at the time a beneficiary exercises a right vested in the beneficiary under an insurance policy; or
 - (b) at the time of payout or, if there is more than one payout, the time of the first payout to a beneficiary in accordance with the terms of an insurance policy,
 whichever is the earlier.
- (3) The specified measures are—
 - (a) verifying the beneficiary's identity on the basis of documents, data or information provided by—
 - (i) a governmental body;
 - (ii) the relevant authority or any other relevant authority;

- (iii) an authority in a place outside Hong Kong that performs functions similar to those of the relevant authority or any other relevant authority; or
 - (iv) any other reliable and independent source that is recognized by the relevant authority; and
- (b) where the beneficiary is a legal person or trust—
- (i) identifying its beneficial owners; and
 - (ii) if there is a high risk of money laundering or terrorist financing having regard to the particular circumstances of the beneficial owners, taking reasonable measures to verify the beneficial owners' identities so that the financial institution knows who the beneficial owners are.

12. Special requirements for wire transfers

- (1) Subject to subsection (2), this section applies to a wire transfer involving an amount equal to or above \$8,000 or an equivalent amount in any other currency, that is carried out by a financial institution.
- (2) This section does not apply to the following wire transfers—
 - (a) a wire transfer between two financial institutions if each of them acts on its own behalf;
 - (b) a wire transfer between a financial institution and a foreign institution if each of them acts on its own behalf;
 - (c) a wire transfer if—
 - (i) it arises from a transaction that is carried out using a credit card or debit card (such as withdrawing money from a bank account through an automated teller machine with a debit card, obtaining a cash advance on a credit card, or paying for goods or services with a credit or debit card), except when the card is used to effect a transfer of money; and

- (ii) the credit card or debit card number is included in the message or payment form accompanying the transfer.
- (3) Before carrying out a wire transfer, a financial institution that is an ordering institution must record—
- (a) the originator's name;
 - (b) the number of the originator's account maintained with the financial institution and from which the money for the wire transfer is paid or, in the absence of such an account, a unique reference number assigned to the wire transfer by the financial institution; and
 - (c) the originator's address or, in the absence of an address, the originator's customer identification number or identification document number or, if the originator is an individual, the originator's date and place of birth.
- (4) The information mentioned in subsection (3)(a) and (c) must, before it is recorded, be verified by the financial institution on the basis of documents, data or information provided by—
- (a) a governmental body;
 - (b) the relevant authority or any other relevant authority;
 - (c) an authority in a place outside Hong Kong that performs functions similar to those of the relevant authority or any other relevant authority; or
 - (d) any other reliable and independent source that is recognized by the relevant authority.
- (5) Subject to subsections (6) and (7), a financial institution that is an ordering institution must include in the message or payment form accompanying the wire transfer the information recorded under subsection (3) in relation to the transfer.
- (6) A financial institution may, in relation to a domestic wire transfer, include in the message or payment form accompanying the transfer only the information recorded under subsection (3)(b) in relation to the transfer but if it does

- so, it must, on the request of the financial institution to which it passes on the transfer instruction or the relevant authority, provide to that financial institution or the relevant authority the information recorded under subsection (3)(a) and (c) in relation to the transfer within 3 business days after it receives the request.
- (7) If more than one individual wire transfer from a single originator is bundled in a batch file for transmission to a recipient or recipients in a place outside Hong Kong, a financial institution is not required to comply with subsection (5) in relation to each of the wire transfers if—
- (a) the information recorded under subsection (3)(b) is included in the message or payment form accompanying each transfer; and
 - (b) the batch file contains the information recorded under subsection (3).
- (8) If a financial institution acts as an intermediary institution in a wire transfer, it must transmit all of the information that it receives with the transfer to the institution to which it passes on the transfer instruction.
- (9) ~~If~~ Where a financial institution is a beneficiary institution in a domestic wire transfer—
- (a) ~~and if~~ the wire transfer is not accompanied by the information required under subsection (3)(b), it must as soon as reasonably practicable—
 - (ai) obtain the information from the institution from which it receives the transfer instruction; and
 - (bii) if the information cannot be obtained, either—
 - (A) ~~consider restricting or terminating its business relationship with the institution referred to in subparagraph (i); or~~
 - (B) ~~decide whether to refuse to accept the wire transfer having regard to~~ take reasonable

measures to mitigate the risk of money laundering or terrorist financing involved; or

(b) if the financial institution is aware that the accompanying information that purports to be the information required under subsection (3)(b) is incomplete or meaningless, it must as soon as reasonably practicable take reasonable measures to mitigate the risk of money laundering or terrorist financing involved.

(10) ~~If~~ Where a financial institution is a beneficiary institution in a wire transfer that is not a domestic wire transfer—

(a) ~~and~~if the wire transfer is not accompanied by all of the information required under subsection (3), it must as soon as reasonably practicable—

(ai) obtain the missing information from the institution from which it receives the transfer instruction; and

(bii) if the missing information cannot be obtained, either—

(A) consider restricting or terminating its business relationship with the institution referred to in subparagraph (i); or

(B) ~~decide whether to refuse to accept the wire transfer having regard to~~ take reasonable measures to mitigate the risk of money laundering or terrorist financing involved; or

(b) if the financial institution is aware that any of the accompanying information that purports to be the information required under subsection (3) is incomplete or meaningless, it must as soon as reasonably practicable take reasonable measures to mitigate the risk of money laundering or terrorist financing involved.

(11) In this section—

business day (營業日) means any day other than—

(a) a public holiday; or

(b) a gale warning day or a black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

domestic wire transfer (本地電傳轉賬) means a wire transfer in which the ordering institution and the beneficiary institution and, if one or more intermediary institutions are involved in the transfer, the intermediary institution or all the intermediary institutions are financial institutions located in Hong Kong;

foreign institution (外地機構) means an institution—

(a) that is located in a place outside Hong Kong; and

(b) that carries on a business similar to that carried on by a financial institution;

originator (匯款人), in relation to a wire transfer, means—

(a) the person from whose account with the ordering institution the money for the wire transfer is paid; or

(b) in the absence of such an account, the person who instructs the ordering institution to carry out the wire transfer.

13. Special requirements for remittance transactions

(1) This section applies to a remittance transaction, other than a wire transfer, involving an amount equal to or above \$8,000 or an equivalent amount in any other currency, that is carried out by a licensed money service operator.

(2) Before carrying out a remittance transaction, a licensed money service operator must—

(a) identify the originator;

(b) verify the identity of the originator by reference to the originator's identification document; and

(c) record—

(i) the originator's name;

- (ii) the originator's identification document number and, if the originator's identification document is a travel document, the place of issue of the travel document;
- (iii) the originator's address;
- (iv) the currency and amount involved; and
- (v) the date and time of receipt of the instructions, the recipient's name and address and the method of delivery.

(3) In this section—

originator (匯款人), in relation to a remittance transaction carried out by a licensed money service operator, means—

- (a) the person from whose account with the licensed money service operator the money for the remittance is paid; or
- (b) in the absence of such an account, the person who instructs the licensed money service operator to carry out the remittance transaction;

remittance transaction (匯款交易) means a transaction for sending, or arranging for the sending of, money to a place outside Hong Kong.—

- ~~(a) sending, or arranging for the sending of, money to a place outside Hong Kong;~~
- ~~(b) receiving, or arranging for the receipt of, money from a place outside Hong Kong; or~~
- ~~(c) arranging for the receipt of money in a place outside Hong Kong.~~

14. Special requirements for correspondent banking relationships

- (1) An authorized institution must, before establishing a correspondent banking relationship with an institution located in a place outside Hong Kong that carries on a business

similar to that carried on by an authorized institution (referred to in this section as **proposed respondent bank**)—

- (a) collect sufficient information about the proposed respondent bank to enable it to understand fully the nature of the proposed respondent bank's business;
- (b) determine from publicly available information the reputation of the proposed respondent bank and the quality of its supervision by authorities in that place that perform functions similar to those of the Monetary Authority; and
- (c) assess the anti-money laundering and anti-terrorist financing controls of the proposed respondent bank.

(2) An authorized institution must not establish a correspondent banking relationship with a proposed respondent bank unless—

- (a) it has obtained approval from its senior management;
- (b) having complied with subsection (1), it is satisfied that the anti-money laundering and anti-terrorist financing controls of the proposed respondent bank are adequate and effective;
- (c) it has documented its responsibilities and the responsibilities of the proposed respondent bank; and
- (d) it is satisfied that, in respect of those of the proposed respondent bank's customers who will be able to directly operate the accounts it is to maintain for the proposed respondent bank, the proposed respondent bank—
 - (i) will verify the identities of those customers, and will continuously monitor its business relationships with those customers, in accordance with requirements similar to those imposed under this Schedule; and
 - (ii) will be able to provide to it, on request, the documents, data or information obtained by the

proposed respondent bank in relation to those customers in accordance with requirements similar to those imposed under this Schedule.

15. Special requirements in other high risk situations

A financial institution must, in a situation specified by the relevant authority in a notice in writing given to the financial institution and in any other situation that by its nature may present a high risk of money laundering or terrorist financing—

(a) where a business relationship is to be established—

(i) obtain approval from its senior management to establish ~~or continue~~ the business relationship ~~concerned~~; and

(ii) either—

(A) take ~~adequate~~ reasonable measures to establish the relevant customer's or beneficial owner's source of wealth and the source of the funds that will be ~~or are~~ involved in the business relationship ~~concerned~~; or

(B) take additional measures to mitigate the risk of money laundering or terrorist financing involved;

(b) where a business relationship has been established—

(i) obtain approval from its senior management to continue the business relationship;

(ii) if there is a beneficial owner in relation to the relevant customer, take reasonable measures to verify the beneficial owner's identity so that the financial institution is satisfied that it knows who the beneficial owner is; and

(iii) either—

(A) take reasonable measures to establish the relevant customer's or beneficial owner's

source of wealth and the source of the funds that are involved in the business relationship;
or

(B) take additional measures to mitigate the risk of money laundering or terrorist financing involved; or

(c) where an occasional transaction is to be carried out, take additional measures to mitigate the risk of money laundering or terrorist financing involved.

Division 3

Prohibitions

16. Anonymous accounts etc.

A financial institution must not open, or maintain, any anonymous account or account in a fictitious name for any customer.

17. Correspondent banking relationships with shell banks

- (1) An authorized institution must not establish or continue a correspondent banking relationship with a corporation that—
- is incorporated in a place outside Hong Kong;
 - is authorized to carry on banking business in that place;
 - does not have a physical presence in that place; and
 - is not an affiliate of a corporation that—
 - is incorporated in a particular jurisdiction;
 - is authorized to carry on banking business in that jurisdiction; and
 - has a physical presence in that jurisdiction.
- (2) For the purposes of subsection (1)(c) and (d)(iii), a corporation has a physical presence in a place or jurisdiction if—

- (a) the corporation carries on banking business at any premises in that place or jurisdiction; and
 - (b) at least one full-time employee of the corporation performs banking-related duties at those premises.
- (3) For the purposes of subsection (1)(d), a corporation is an affiliate of another corporation if—
- (a) the corporation is a subsidiary of the other corporation; or
 - (b) at least one individual who is a controller of the corporation is at the same time a controller of the other corporation.
- (4) In this section—

associate (相關者), in relation to a person entitled to exercise, or control the exercise of, voting rights in relation to, or holding shares in, a corporation, means any other person in respect of whom that first-mentioned person has an agreement or arrangement, whether oral or in writing, express or implied, with respect to the acquisition, holding or disposal of shares or other interests in that corporation or under which they act together in exercising their voting rights in relation to it;

controller (控制人), in relation to a corporation, means—

- (a) a person in accordance with whose directions or instructions the directors of the corporation, or of another corporation of which it is a subsidiary, are accustomed to act, but does not include any person in accordance with whose directions and instructions those directors are accustomed to act by reason only that they act on advice given by the person in his or her professional capacity; or
- (b) a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 50% of the voting rights at any general

meeting of the corporation or of another corporation of which it is a subsidiary;

subsidiary (附屬公司) has the same meaning as in the Companies Ordinance (Cap. 32).

Division 4

Miscellaneous

18. Carrying out customer due diligence measures by means of intermediaries

- (1) Subject to subsection (2), a financial institution may carry out any customer due diligence measure by means of an intermediary specified in subsection (3) if—
- (a) the intermediary consents in writing to be the financial institution's intermediary; and
 - (b) the financial institution is satisfied that the intermediary will on request provide a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out the customer due diligence measure without delay.
- (2) A financial institution that carries out a customer due diligence measure by means of an intermediary remains liable under this Ordinance for a failure to carry out that customer due diligence measure.
- (3) The specified intermediary is—
- (a) any of the following persons who is able to satisfy the financial institution that they have adequate procedures in place to prevent money laundering and terrorist financing—
 - (i) a solicitor practising in Hong Kong;
 - (ii) a certified public accountant (~~practising~~)-practising in Hong Kong;

- (iii) a current member of The Hong Kong Institute of Chartered Secretaries ~~who is practising as a Chartered Secretary~~ in Hong Kong;
- (iv) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) carrying on trust business in Hong Kong;
- (b) a financial institution that is an authorized institution, a licensed corporation, an authorized insurer, an appointed insurance agent or an authorized insurance broker; or
- (c) a lawyer, a notary public, an auditor, a professional accountant, a trust or company service provider or a tax advisor practising in an equivalent jurisdiction, or a trust company carrying on trust business in an equivalent jurisdiction, or an institution that carries on in an equivalent jurisdiction a business similar to that carried on by a financial institution mentioned in paragraph (b), that—
- (i) is required under the law of that jurisdiction to be registered or licensed or is regulated under the law of that jurisdiction;
 - (ii) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and
 - (iii) is supervised for compliance with those requirements by an authority in that jurisdiction that performs functions similar to those of any of the relevant authorities.
- (4) A financial institution that carries out a customer due diligence measure by means of an intermediary must—
- (a) immediately after the intermediary has carried out that measure, obtain from the intermediary the data or information that the intermediary has obtained in the course of carrying out that measure, but nothing in this ~~subsection-paragraph~~ requires the financial institution to

- obtain at the same time from the intermediary a copy of any document, or a record of any data or information, that is obtained by the intermediary in the course of carrying out that measure~~copies of documents at the same time~~; and
- (b) ensure that the intermediary will, if requested by the financial institution within the period referred to in section 20(2) or (3) of this Schedule, as the case requires, provide to the financial institution a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out that measure as soon as reasonably practicable after receiving the request.
- (5) Subsection (3)(a) expires at the end of 3 years beginning on the date of commencement of this Ordinance.
 - (6) Nothing in this section prevents a financial institution from carrying out a customer due diligence measure by its agent but such a financial institution remains liable under this Ordinance for a failure to carry out that customer due diligence measure.
 - (7) In this section—
certified public accountant (~~practising~~) (執業會計師) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50).

19. Financial institutions to establish procedures

- (1) A financial institution must establish and maintain effective procedures for determining whether a customer or a beneficial owner of a customer is a politically exposed person.
- (2) A financial institution that carries out wire transfers must establish and maintain effective procedures for identifying and handling wire transfers in relation to which section 12(5) of this Schedule has not been complied with~~that are not~~

~~accompanied by all of the information required under section 12(3) of this Schedule.~~

- (3) A financial institution must, in respect of each kind of customer, business relationship, product and transaction, establish and maintain effective procedures not inconsistent with this Ordinance for the purpose of carrying out its duties under sections 3, 4, 5, 9, 10 and 15 of this Schedule.

Part 3

Record-keeping Requirements

20. Duty to keep records

- (1) A financial institution must—
- (a) in relation to each transaction it carries out, keep the original or a copy of the documents, and a record of the data and information, obtained in connection with the transaction in accordance with Part 2 of this Schedule; and
- (b) in relation to each of its customers, keep—
- (i) 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 or any beneficial owner of the customer in accordance with Part 2 of this Schedule; and
- (ii) the original or a copy of the files relating to the customer's account and business correspondence with the customer and any beneficial owner of the customer.
- (2) Records required to be kept under subsection (1)(a) must be kept for a period of 6 years beginning on the date on which

the transaction is completed, regardless of whether the business relationship ends during that period.

- (3) Records required to be kept under subsection (1)(b) must be kept throughout the continuance of the business relationship with the customer and for a period of 6 years beginning on the date on which the business relationship ends.
- (4) A relevant authority may, by notice in writing to a financial institution, require the financial institution to keep the records relating to a specified transaction or customer for a period specified by the relevant authority that is longer than that referred to in subsection (2) or (3), as the case requires, if—
- (a) the relevant authority is satisfied that the records are relevant to an ongoing criminal or other investigation carried out by it; or
- (b) the records are relevant to any other purposes as specified by the relevant authority in the notice.
- (5) A financial institution to whom a notice is given under subsection (4) must keep the relevant records for the period specified in the notice.

~~(6) If a financial institution carries out a customer due diligence measure by means of an intermediary under section 18 of this Schedule, it must ensure that the intermediary will, if requested by the financial institution within the period referred to in subsection (2) or (3), as the case requires, provide to the financial institution a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out the customer due diligence measure as soon as reasonably practicable after receiving the request.~~

21. Manner in which records are to be kept

Records required to be kept under section 20 of this Schedule must be kept in the following manner—

- (a) if the record consists of a document, either—

- (i) the original of the document must be kept; or
 - (ii) a copy of the document must be kept either on microfilm or in the database of a computer; or
- (b) if the record consists of data or information, a record of the data or information must be kept either on microfilm or in the database of a computer.

Part 4

Miscellaneous

22. Duties extended to branches and ~~subsidiaries~~ subsidiary undertakings outside Hong Kong

- (1) A financial institution incorporated in Hong Kong must ensure that—
- (a) its branches; and
 - (b) its subsidiary undertakings that carry on the same business as ~~the a~~ financial institution in a place outside Hong Kong,
- have procedures in place to ensure compliance with, to the extent permitted by the law of that place, requirements similar to those imposed under Parts 2 and 3 of this Schedule that are applicable to the financial institution.
- (2) If the law of the place at which a branch or subsidiary undertaking of a financial institution carries on business does not permit the application of any procedures relating to any of the requirements referred to in subsection (1), the financial institution must—
- (a) inform the relevant authority accordingly; and
 - (b) take additional measures to effectively mitigate the risk of money laundering and terrorist financing faced by the branch or subsidiary undertaking as a result of its inability to comply with the requirement.

- (3) In this section—

branch (分行), in relation to a financial institution, means a branch of the financial institution outside Hong Kong at which it carries on a business similar to that carried on by the financial institution, whether or not the business of the branch is limited by the laws or regulations of the place in which the branch is situated and whether or not the branch is referred to as an agency in that place;

subsidiary undertaking (附屬企業) is to be construed in accordance with the Twenty-third Schedule to the Companies Ordinance (Cap. 32).

23. Financial institutions to prevent contravention of Part 2 or 3 of this Schedule

A financial institution must take all reasonable measures—

- (a) to ensure that proper safeguards exist to prevent a contravention of any requirement under Part 2 or 3 of this Schedule; and
- (b) to mitigate money laundering and terrorist financing risks.