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By email: baselcommittee@bis.org

Secretariat
Basel Committee on Banking Supervision
Bank for International Settlements
CH-4002 Basel
Switzerland

Dear Sirs

Consultative Document on General Guide to Account Opening

We refer to the BCBS Consultative Document on General Guide to Account Opening ("the Guide") issued in July 2015.

We are grateful for the opportunity to provide feedback on this important topic. After consulting members of the Hong Kong Association of Banks, we would like to provide our comments as set out in the attachment.

We hope you would find our comments useful in finalising the Guide. Please let us know if you have any comments or queries in relation to our feedback.

Yours faithfully

Henry Chan
Secretary

Enc.

c.c. Mr Stewart McGlynn, Head (AML & Financial Crime Risk), Banking Supervision, Hong Kong Monetary Authority

Basel Committee on Banking Supervision

Consultative Document
General guide to account opening

Submission of The Hong Kong Association of Banks

19 October 2015

This paper sets out the views of The Hong Kong Association of Banks ("**HKAB**") in relation to Basel Committee on Banking Supervision ("**BCBS**") consultation document titled *General guide to account opening - consultative document* ("**Consultation Document**").

We are grateful for the opportunity to provide feedback on an important and topical area of direct relevance to our members' daily operations.

Assisted by King & Wood Mallesons, HKAB has carefully examined the proposals set out in the Consultation Paper and has provided its feedback in the **schedule**. Comments are in the form of annotations to the proposal.

HKAB's feedback draws on our members' knowledge and practical experience, having operated under best international standards for several years.

In particular, Hong Kong now has some of the leading standards on anti-money laundering and counter-terrorist financing ("**AML/CTF**"), following the implementation of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("**AMLO**") in 2012. This applies to banks as well as securities, insurance, and remittance and money changing institutions (collectively, "**financial institutions**" or "**FIs**"). The AMLO is supplemented by regulatory guidelines issued by each relevant regulator ("**Guidelines**"), which assist FIs in designing and implementing AML/CTF and related controls. Importantly, the AMLO codifies and provides statutory backing to customer due diligence requirements at account opening.

Our feedback is also informed by our experience in other relevant areas, such as the importance of anti-discrimination principles in dealings with customers.

Please let us know if you have any comments or queries in relation to our feedback.

Otherwise, we look forward to receiving the finalised BCBS *General guide to account opening* in due course.

Schedule – HKAB's comments

Global comment

We suggest clarifying, where applicable, whether examples provided are listed in order of preference.

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12. The rest of this annex is divided into two sections covering different aspects of customer identification. Section III describes what types of information should be collected and verified for natural persons seeking to open accounts. Section IV describes what types of information should be collected and verified for legal persons and legal arrangements.

III. Natural persons

A. Identification of individuals who are customers or beneficial owners

13. For natural persons, the bank should collect the following information for identification purposes

At a minimum[4]	Potential additional information (on the basis of risks)
Legal name (first names and last name);	Any other names used (such as marital name, former legal name or alias); 1
Complete permanent address, whenever applicable; 2	3 Professional address, 4 post office box number, e-mail address and landline or mobile telephone numbers; 5
6 Nationality, an official personal identification number or other unique identifier ;	Resident status;
Date and place of birth. 7	Gender. 8

B. Information related to the customer's risk profile 9

14. When the account opening is the start of a customer relationship, further information should be collected with a view to developing an initial customer risk profile (see in particular paragraphs 37–39 of the main body of the guidelines):

[4] Not all this information may be required in lower-risk situations according to the results of the national risk assessment. The list does not include other basic requirements that are not specifically AML-related, such as collecting the signatures of the account holders.

1 We suggest reconsidering inclusion of "any other names used (such as marital, former legal name or alias)" as it can be difficult to obtain and/or verify. It is currently not required under Hong Kong regulatory requirements

2 We suggest including residential address if different from permanent address. This is consistent with Hong Kong regulatory requirements.

3 We:

(a) suggest clarifying whether this relates to work address or business address for sole proprietor situations; and

(b) submit that this more than is necessary for general deposit account opening and may be difficult to verify in certain circumstances.

4 We suggest clarifying under what situation post office box will be acceptable. For example, under Hong Kong regulatory requirements, this is only acceptable for countries without postal deliveries and virtually no street addresses and therefore residents rely upon post office boxes or their employers for the delivery of mail. In such scenarios FIs may adopt a common sense approach on a risk-sensitive basis by adopting alternative methods to verify the address of customers.

5 We submit that e-mail address and telephone number are not static and it is common for a person to have multiple email addresses and/ or mobile telephone numbers. Accordingly, we do not consider the information meaningful for customer identification.

6 We suggest clarifying whether all nationalities should be collected in the case of persons with multiple nationalities and if verification should be undertaken on a risk sensitive basis.

7 We submit that obtaining this information may be contradictory with local race discrimination legislation in particular jurisdictions and should be examined and do not consider it should be a mandatory information requirement.

8 We note that there is increasing concern about the handling of transgender customers. We suggest including a footnote that reminds FIs to be sensitive to, and appropriately consider, the position of persons who may be transgender or intersex.

9 We note that some of the information proposed in this paragraph is often obtained from sources other than directly from the customer (for example commercial databases). We suggest specifying whether the expectation is that the information is obtained from the customer.

Key attributes[5]	Potential additional information (on the basis of risks)
10 Occupation, public position held;	Name of employer, where applicable;
Income;	Sources of customer's wealth;
Expected use of the account: amount, number, type, purpose and frequency of the transactions expected.	Sources of funds passing through the account;
Financial products or services requested by the customer. 10	Destination of funds passing through the account. 11

C. Verification of identity of natural persons

15. The verification should be proportionate to the risk posed by the customer and to the types of document produced. The bank should verify the information, collected according to paragraph 13 and related to the identity of the customer, using reliable, independently sourced documents, data or information. The bank should take reasonable measures to verify the identity of the customer's beneficial owner. Examples are given below. They are not the only possibilities. In some jurisdictions, there may be other documents or verification processes of an equivalent nature that could be used to satisfactorily confirm a customer's identity.

(a) Documentary verification procedures

- confirming the identity of the customer or the beneficial owner from an unexpired official document (eg passport, identification card, residence permit, social security records, driver's licence) that bears a photograph of the customer;
- confirming the date and place of birth from an official document (eg birth certificate, passport, identity card, social security records); 12
- confirming the validity of official documentation provided through certification by an authorised person (eg embassy official, public notary); and
- 13 confirming the permanent address (eg utility bill, tax assessment, bank statement, letter from a public authority).

(b) Non-documentary verification procedures

- contacting the customer by telephone or by letter to confirm the information supplied, after an account has been opened (eg a disconnected phone, returned mail etc should warrant further investigation); 14
- 15 checking references provided by other financial institutions; and
- using non-documentary verification methods, such as public and private databases. 16

[5] These key attributes are useful in establishing the first step of the customer's risk profile; they might not be required in lower-risk situations, depending on the results of the national risk assessment.

10 We submit that:

(a) requesting such information might not always be appropriate in the circumstance, for example general deposit accounts; and

(b) this information should be obtained using a risk based approach.

11 We suggest elaborating what would be required. Specifically, whether it is referring to the anticipated account activities and who are the parties that the account will transfer funds to,

for example outflows to the same beneficial owner or third parties, or any pass-through transactions expected, etc.

12 We submit that obtaining birth certificate may not be feasible and place of birth may not be stated in the customer’s identification document (for example, Hong Kong Identity Cards) or some passports.

13 We suggest confirming residential address if different from permanent address. This is consistent with Hong Kong regulatory requirements.

14 We suggest that given the growing concern of phone scams, customers might be wary of receiving such a call from the FI and any such practice needs to be implemented with care and in accordance with clear regulatory guidance.

15 We are concerned that unless provided directly by the customer this may raise data privacy and data sharing concerns.

16 We suggest elaborating the criteria for an acceptable public and private database for verification purposes in order to ensure credible information is obtained if utilising this method. For example, a public database maintained by local government and which requires government notification of any change could be considered as a reliable source of information.

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16. Banks should verify that any person purporting to act on behalf of the customer is so authorised. If so, banks should identify and verify the identity of that person. In such a case, the bank should also verify the authorisation to act on behalf of the customer (a signed mandate, an official judgment or equivalent document).

D. Further verification of information on the basis of risks

17. Particular attention needs to be focused on those customers assessed as having higher-risk profiles (eg PEPs). Additional sources of information and enhanced verification procedures may include:

- evidence of an individual's permanent address utilising official papers, a credit reference agency search, or through independent verification by home visits;
- personal reference (ie by an existing customer of the same bank); 17
- prior bank reference (including banking group reference) and contact with the bank regarding the customer; 18
- verification of income sources, funds and wealth identified through appropriate measures; and
- verification of employment and of public positions held.

18. If national law allows for non-face-to-face account opening, banks should take into account the specific risks associated with this method. Customer identification and verification procedures should be equally effective and similar to those implemented for face-to-face interviews. In particular, banks should (i) establish that the customer exists; and (ii) establish that the person the bank is dealing with is that customer.

19. As part of its broader customer due diligence measures, the bank should consider, on a risk-sensitive basis, whether the information regarding sources of wealth should be corroborated. 19

IV. Legal persons and arrangements and beneficial ownership

20. The underlying principles of customer identification for natural persons can be applied equally to identifying and verifying customers who are legal persons and arrangements. Accordingly, the procedures discussed previously in Section III (paragraphs 13–19) are similarly applicable to legal persons and arrangements. Banks should identify and verify the identity of the customer, and understand the nature of its business, and its ownership and control structure, with a view to establishing a customer risk profile.

A. Legal persons[6]

21. The term legal person includes any entity (eg business or non-profit organisation, distinct from its officers and shareholders) that is not a natural person or a legal arrangement. In considering the

[6] FATF definition: "legal persons" refers to any entities other than natural persons that can establish a permanent customer relationship with a bank or otherwise own property. This can include companies, bodies corporate, foundations, *Anstalt*-type structures, partnerships, or associations and other relevantly similar entities.

17 We are concerned that unless provided directly by the customer this may raise data privacy and data sharing concerns.

18 We consider requesting such information might not always be appropriate in the circumstance, for example general deposit accounts, for general high risk clients. In practice, this information is generally verified where the FI doubts the veracity of the information provided.

19 We suggest elaborating or providing examples of the acceptable means to corroborate; for example, self-declaration or public information, personal knowledge of the relationship manager, etc.

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customer identification guidance for the different types of legal persons, particular attention should be given to the different levels and nature of risk associated with these entities.

1. Identification of legal persons

22. For legal persons, the following information should be obtained for identification purposes:

At a minimum[7]	Potential additional information (on the basis of risks)
Name, legal form, status and proof of incorporation of the legal person;	
Permanent address of principal place of the legal person's activities;	
Official identification number (company registration number, tax identification number);	Legal entity identifier (LEI) if available;
Mailing and registered address of legal person;	Contact telephone and fax numbers. 20
Identity of natural persons who have authority to operate the account and who exercise control of the legal person through ownership or other means. In the absence of a natural person, the identity of the relevant person who is the senior managing official. 22	21 Identity of relevant persons holding senior management positions.
Identity of the beneficial owners[8] (according to relevant FATF standards and paragraph 13 of this annex);[9]	
Powers that regulate and bind the legal person.	

2. Information for defining the risk profile of a customer which is a legal person

23. When the account opening is the start of a customer relationship, further information should be collected with a view to developing an initial customer risk profile (see in particular paragraphs 37–39 of the main body of the guidelines):

[7] Not all this information may be required in lower-risk situations depending on the results of the national risk assessment. The list does not include other basic requirements that are not specifically AML-related, such as collecting the signatures of the account holders.

[8] The term "beneficial owner" is used in this annex in a manner consistent with the definition and clarifications provided in the FATF standards. For reference, the FATF defines a "beneficial owner" as the natural person(s) who ultimately owns or controls a customer and/or natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

[9] See *Interpretative note to recommendation 10* of the FATF. See also FATF, *Transparency and beneficial ownership*, October 2014, www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf.

20 We submit that contact telephone and fax numbers may not be meaningful for offshore incorporated company used for investment holding purposes as it is likely be a contact number of the registered agent.

21 We suggest it would be helpful to specify if there is any difference between the relevant persons "who are the senior managing officials" and "holding senior management persons".

22 We suggest elaborating on the senior management positions is required; for example, director or chairman of the company.

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At a minimum[10]	Potential additional information (on the basis of risks)
Nature and purpose of the activities of the legal entity and its legitimacy;	Financial statements of the entity; 23
Expected use of the account: amount, number, type, purpose and frequency of the transactions expected.	Sources of funds paid into the account and destination of funds passing through the account.

3. Verification of identity of legal persons

24. The bank should verify the identity of the customer using reliable, independent source documents, data or information. The verification should be proportionate to the assessment of risk tied to the customer and to the types of document produced by the customer. The bank should obtain:

- a copy of the Certificate of Incorporation and Memorandum and Articles of Association, or Partnership agreement (or any other legal document certifying the existence of the entity, eg abstract of the registry of companies/commerce);

25. Examples of other verification include:

(a) *Documentary verification* 23

- for established corporate entities – reviewing a copy of the latest financial statements (audited, if available).

(b) *Non-documentary verification* 24

- undertaking a company search and/or other commercial enquiries to ensure that the legal person has not been, or is not in the process of being, dissolved, struck off, wound up or terminated;
- utilising an independent information verification process, such as by accessing public corporate registers, private databases or other reliable independent sources (eg lawyers, accountants); 25
- validating the LEI and associated data in the public access service;
- obtaining prior bank references;
- visiting the corporate entity, where practical; and
- contacting the corporate entity by telephone, mail or e-mail.

26. The list of examples included in paragraph 25 is not exhaustive. In some jurisdictions, there may be other documents of an equivalent nature, such as procedures or sources of information, which may be produced, applied or accessed as satisfactory evidence of a customer's identity.

10 Not all this information may be required in lower-risk situations depending on the results of the national risk assessment. The list does not include other basic requirements that are not specifically AML-related, such as collecting the signatures of the account holders.

23 We submit that financial statements of the entity are:

(a) only meaningful for operating companies; and

(b) are generally only required in a lending situation.

We further note that no risk factor is taken into account for collection of financial statements for the purposes of verification (unlike the example provided in relation to identification in paragraph 25(a)).

24 We suggest specifying the requisite time period for validity of the document; for example, within six months of provision by the customer.

25 We suggest elaborating whether there are any requirements in relation to acceptable lawyers and/or accountants; such as from a FATF member country or from the country of incorporation of the legal entity.

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4. Verification of identity of authorised signatories and of beneficial owners of the customer

27. Banks should verify that any person purporting to act on behalf of the legal person is so authorised. If so, banks should verify the identity of that person. This verification should entail verification of the authorisation to act on behalf of the customer (a signed mandate, an official judgment or equivalent document).

28. Banks should undertake reasonable measures to verify the identity of the beneficial owners, in accordance with the FATF definition referenced in footnote 9 and the due diligence procedures for natural persons outlined in Section III above.

B. Legal arrangements[11]

1. Identification of legal arrangements

29. For legal arrangements, the following information should be obtained:

At a minimum[12]	Potential additional information (on the basis of risks)
Name of the legal arrangement and proof of existence;	Contact telephone and fax numbers. 26
Address, and country of establishment;	
Nature, purpose and objects of the legal arrangement (eg is it discretionary, testamentary etc);	
The names of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the legal arrangement (including through a chain of control/ownership);	27 28 The names of the relevant persons having a senior management position in the legal arrangement, if relevant.

2. Information for defining the risk profile of a customer which is a legal arrangement

30. When the account opening is the start of a customer relationship, further information should be collected with a view to develop an initial customer risk profile (see in particular paragraphs 37–39 of the main body of the guidelines):

11 The term "legal arrangements" is used in this annex consistently with the definition provided by the FATF standards. As a reminder, the FATF defines "legal arrangements" as express trusts or other similar legal arrangements. Examples of other similar arrangements (for AML/CFT purposes) include *fiducie*, *Treuhand* and *fideicomiso*.

12 Not all this information may be required in lower-risk situations depending on the results of the national risk assessment. The list does not include other basic requirements that are not specifically AML-related, such as collecting the signatures of the account holders.

26 We suggest clarifying:

(a) whether this information is only required on a risk-sensitive basis;

(b) which parties these requirements refer to; for example, settlor, trustee etc.

27 We suggest defining "beneficiaries" in this context. For example, the definition adopted in Hong Kong under the AMLO is "*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*".

28 We suggest clarifying what constitutes "senior management".

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At a minimum[13]	Potential additional information (on the basis of risks)
Description of the purpose/activities of the legal arrangement (eg in a formal constitution, trust deed);	Source of funds;
Expected use of the account: amount, number, type, purpose and frequency of the transactions expected.	Destination of funds passing through the account.

3. Verification of information

31. The bank should verify this information, at least by obtaining a copy of documentation confirming the nature and legal existence of the account holder (eg a deed of trust, register of charities). Other procedures of verification could include: 29

- obtaining an independent undertaking from a reputable and known firm of lawyers or accountants confirming the documents submitted;
- obtaining prior bank references; and 30
- accessing or searching public and private databases or other reliable independent sources.

32. Banks should undertake reasonable measures to verify the identity of the beneficial owners of the legal arrangements, in accordance with Section III above.

4. Verification of identity of authorised signatories and of beneficial owners of the legal arrangement

33. Banks should verify that any person purporting to act on behalf of the legal arrangement is so authorised. If so, banks should verify not only the identity of that person but also the person's authorisation to act on behalf of the legal arrangement (by means of a signed mandate, an official judgment or another equivalent document).

34. Banks should undertake reasonable measures to verify the identity of the beneficial owners.

C. Focus on specific types of customer

1. Retirement benefit programmes 31

35. Where an occupational pension programme, employee benefit trust or share option plan is an applicant for an account, the trustee and any other person who has control over the relationship (eg 32
administrator, programme manager or account signatories) can be considered as beneficial owners and the bank should take steps to identify them and verify their identities.

[13] Not all this information may be required in lower-risk situations depending on the results of the national risk assessment. The list does not include other basic requirements that are not specifically AML-related, such as collecting the signatures of the account holders.

29 We suggest the following alternate methods of verification (which are permitted in Hong Kong):

(a) reviewing a copy of the trust instrument and retaining a redacted copy;

(b) by reference to an appropriate register in the relevant country of establishment;

(c) a written confirmation from a trustee acting in a professional capacity;

(d) a written confirmation from a lawyer who has reviewed the relevant instrument; or

(e) for trusts that are managed by the trust companies which are subsidiaries (or affiliate companies) of an FI, that FI may rely on a written confirmation from its trust subsidiaries (or trust affiliate companies).

30 We suggest clarifying whether there are any specific limitations on "private databases or other reliable independent sources"; for example, limited to service providers approved by/ contracted with authorities in FATF member countries.

31 For BCBS’s consideration, the AMLO provides a more flexible approach.

The AMLO permits simplified due diligence measures in relation to the following product: “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”. This means that, on a risk basis, FIs do not need to identify and verify the “beneficial owners” (being the employees). The direct customer (the employer) and authorised signatories still need to be identified and verified to AMLO standards.

The AMLO also provides simplified due diligence for a customer that is an investment vehicle if the FI is able to ascertain that the person responsible for carrying out measures that are similar to the CDD measures in relation to all the investors of the investment is a local or foreign financial institution (subject to particular qualifying requirements).

32 We suggest that depending on the structure, the trustee could be considered to be the customer. In addition, given the generic description of “who has control”, there is potential for confusion as some of these persons would be considered “authorised signatories” or beneficial owner under Hong Kong requirements depending on the circumstances. The identification and verification requirements for beneficial owners are more onerous.