



**SECURITIES AND
FUTURES COMMISSION**
證券及期貨事務監察委員會

Anti-Money Laundering and Counter-Terrorist Financing Seminar

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Disclaimer and Reminder

Where this presentation refers to certain aspects of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) and the guidelines on AML/CFT published by the SFC, it provides information of a general nature that is not based on a consideration of specific circumstances. Furthermore, it is not intended to cover all requirements that are applicable to you and your firm. Accordingly, it should not be regarded as a substitute for seeking detailed advice on any specific case from your own professional adviser.

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Agenda

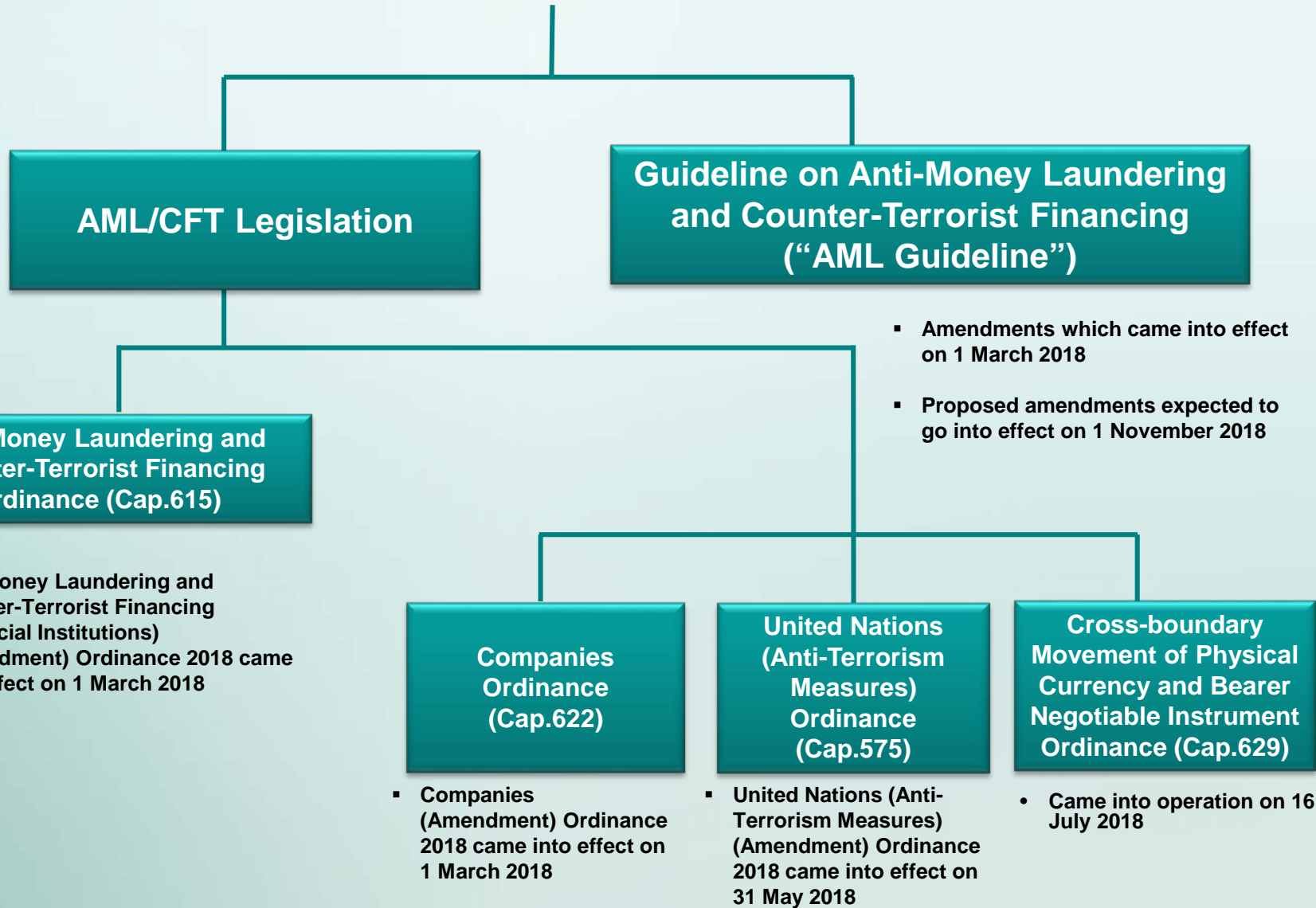
- **Update on key AML/CFT regulatory requirements**
- **Inspection findings and other supervisory observations on AML/CFT**



Update on key AML/CFT regulatory requirements



Update on key AML/CFT regulatory requirements



Update on key AML/CFT regulatory requirements

AML Guideline

Amendments which came into effect on 1 March 2018

To reflect the relevant provisions in the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance 2018



Proposed amendments expected to go into effect on 1 November 2018

Domestic and international organisation PEPs

Identity verification of natural and legal persons under the risk-based approach

Group-wide AML/CFT systems

Persons purporting to act on behalf of the customer

ML/TF risks that may arise from the use of new technologies

Supplementary measures on customers who are not physically present for identification purposes

Tipping-off

Record-keeping

Beneficial owners of a legal person

- Key proposed amendments to keep in line with the latest Financial Action Task Force ("FATF") standards
- Key proposed amendments to facilitate compliance

Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Financial Institutions) (Amendment) Ordinance 2018

- Extend the statutory customer due diligence and record-keeping requirements to cover the following designated non-financial businesses or professions (“**DNFBPs**”) :
 - Legal professionals;
 - Accounting professionals;
 - Estate agents; and
 - Trust or company service providerswhen they engage in specified transactions ^{Note}.
- Introduce a licensing regime for trust or company service providers

Note: Specified transactions include real estate transactions; management of client money, securities or other assets; management of bank, savings or securities accounts; company formation and management; and buying and selling of business entities, etc.



Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Financial Institutions) (Amendment) Ordinance 2018

Beneficial ownership threshold

- Align the threshold of defining beneficial ownership with the prevailing FATF's standards and international practice by changing it from the current "not less than 10%" to "more than 25%"

Customers not physically present for identification purpose

- Reflect technological developments in the methods used by FIs for obtaining information relating to customers

Group reliance

- Add a related foreign financial institution of an FI to the types of intermediaries through whom an FI can carry out CDD measures



Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Financial Institutions) (Amendment) Ordinance 2018

Wire transfers

- Reflect the current requirements relating to wire transfers in the FATF standards

Record-keeping period

- Change the record retention period from “six years” to “at least five years”

Companies (Amendment) Ordinance 2018

Keep a register of significant controllers

- Require applicable companies incorporated in Hong Kong to keep a register of individuals who (and the legal entities which) have significant control over the companies for inspection upon demand by law enforcement officers

Identify significant controllers

- Applicable companies are required to take reasonable steps to identify their significant controllers, including the giving of notices and obtaining their required particulars

United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2018

Prohibit:

- any Hong Kong permanent resident from travelling to a foreign state for the purpose of terrorist acts or terrorist training;
- the provision or collection of any property to finance the travel of any person between states for the purpose of terrorist acts or terrorist training #;
- the organization, or other facilitation, of the travel of any person between states for the purpose of terrorist acts or terrorist training #; and
- dealing with any property, knowingly that, or being recklessly as to whether the property is specified terrorist property or property owned or controlled by, held on behalf of or at the direction of a specified terrorist or terrorist associate #.

These prohibitions shall apply to (a) any person in the HKSAR, and (b) any person outside the HKSAR who is a Hong Kong permanent resident or a body incorporated or constituted under the law of the HKSAR.



Cross-boundary Movement of Physical Currency and Bearer Negotiable Instrument Ordinance

- Establish a declaration and disclosure system to detect the cross-boundary movement of currency and bearer negotiable instruments into or out of Hong Kong
- Provide for the powers to restrain the movement of physical currency and bearer negotiable instruments suspected to be related to money laundering and terrorist financing

Key proposed amendments in AML Guideline

- *To keep in line with the latest FATF standards*

Domestic and international organisation PEPs

- Expand the scope of PEPs to include persons who have been entrusted with a prominent function by an international organisation (ie. international organisation PEPs)
- Extend the special measures to be taken on foreign PEPs to domestic PEPs and international organisation PEPs when there is a higher risk business relationship
- Provide additional guidance on how to establish the source of funds and source of wealth of PEPs

Key proposed amendments in AML Guideline

- *To keep in line with the latest FATF standards*

Group-wide AML/CFT systems

- Require LCs incorporated in Hong Kong to implement group-wide AML/CFT systems in all of their overseas branches and subsidiary undertakings that carry on the same business as financial institutions
- Stipulate that such group-wide AML/CFT systems should include information sharing policies and provision of information to group-level functions subject to adequate safeguards

ML/TF risks that may arise from the use of new technologies

- Identify and assess the ML/TF risks arising from the use of new or developing technologies for both new and pre-existing products prior to their use

Key proposed amendments in AML Guideline

- *To keep in line with the latest FATF standards*

Tipping-off

- Allow LCs to stop pursuing the CDD process if they reasonably believe that performing the process will tip off the customer, and require the LCs to file a suspicious transaction report (STR) to the Joint Financial Intelligence Unit (JFIU) in these circumstances

Record-keeping

- Keep records obtained throughout the CDD and ongoing monitoring process, including the results of any analysis undertaken (e.g., inquiries to establish the background and purposes of complex, unusual large transactions)

Key proposed amendments in AML Guideline

- *To facilitate compliance*

Identity verification of natural persons under the risk-based approach

- No longer require the verification of every piece of identification information if principal aspects of an individual identity are verified against documents, data or information provided by a reliable and independent source
- Standardise identity verification requirements for all types of individual customers regardless of residency

Identity verification of legal persons under the risk-based approach

- Allow increased flexibility for using documents provided by different reliable and independent sources in verifying the name, legal form and current existence of a legal person customer, and powers that regulate and bind the customer

Key proposed amendments in AML Guideline

- *To facilitate compliance*

Person purporting to act on behalf of the customer ("PPTA")

- Remove the general rule that LC should identify and verify those persons authorised to give instructions for the movement of funds or assets as PPTA
- Provide increased flexibility in determining whether a natural person is considered to be a PPTA, which should be based on the nature of that person's roles and the activities which the person is authorised to conduct, as well as the ML/TF risks associated with these roles and activities.

Supplementary measures on customers who are not physically present for identification purposes

- Allow LCs to adopt other supplementary measures such as checking relevant data against reliable databases or registries, or using appropriate technology, in addition to the use of an independent and appropriate person to certify identification documents, to guard against the impersonation risk

Key proposed amendments in AML Guideline

- *To facilitate compliance*

Beneficial owners of a legal person

- Where no natural person ultimately owns or controls a legal person customer, LCs should identify the relevant natural persons who hold the position of senior managing official in the legal person, and take reasonable measures to verify their identities.

Inspection findings and other supervisory observations



Lack of clear policy and procedure

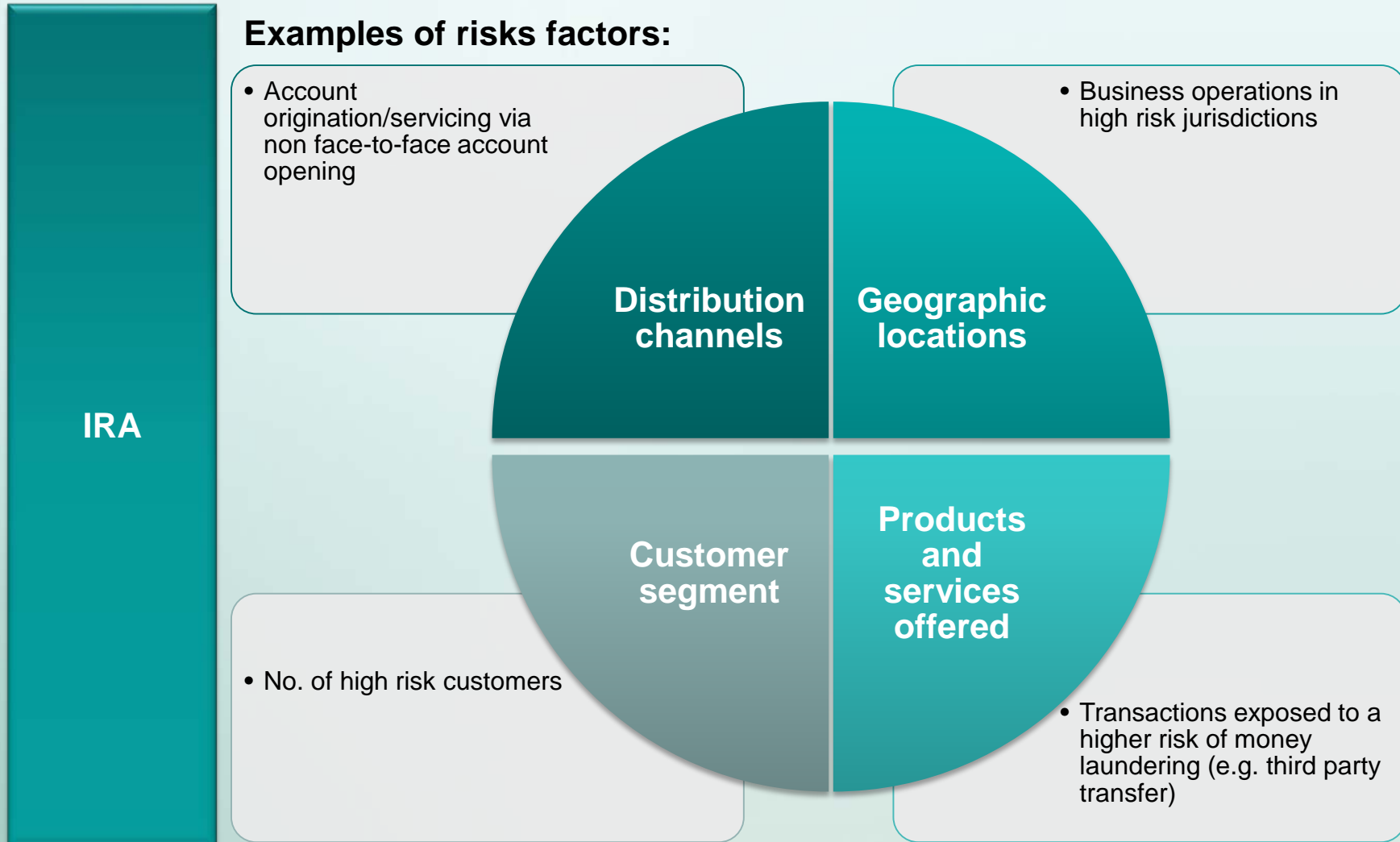
IRA

- Risk factors to be taken into consideration in IRA
- Types of information sources to be used in performing IRA

Consequence

Failure to consider ML/TF risks in all relevant key areas and/or to use the relevant available data

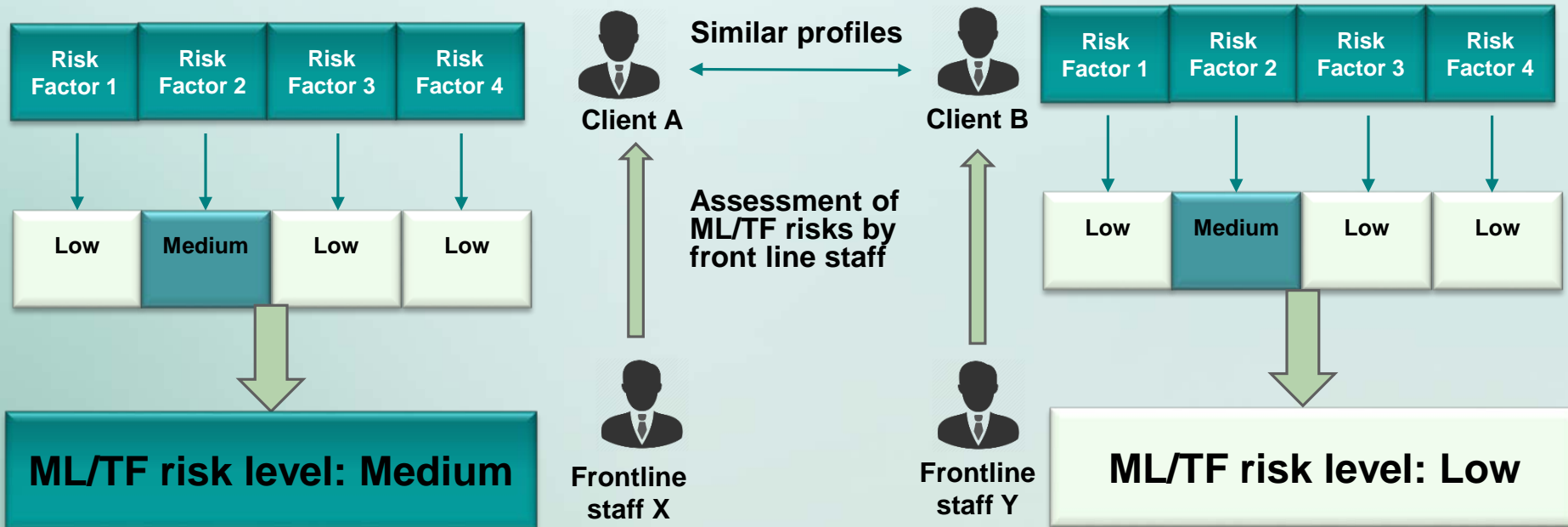
Lack of clear policy and procedure



Lack of clear policy and procedure

CRA

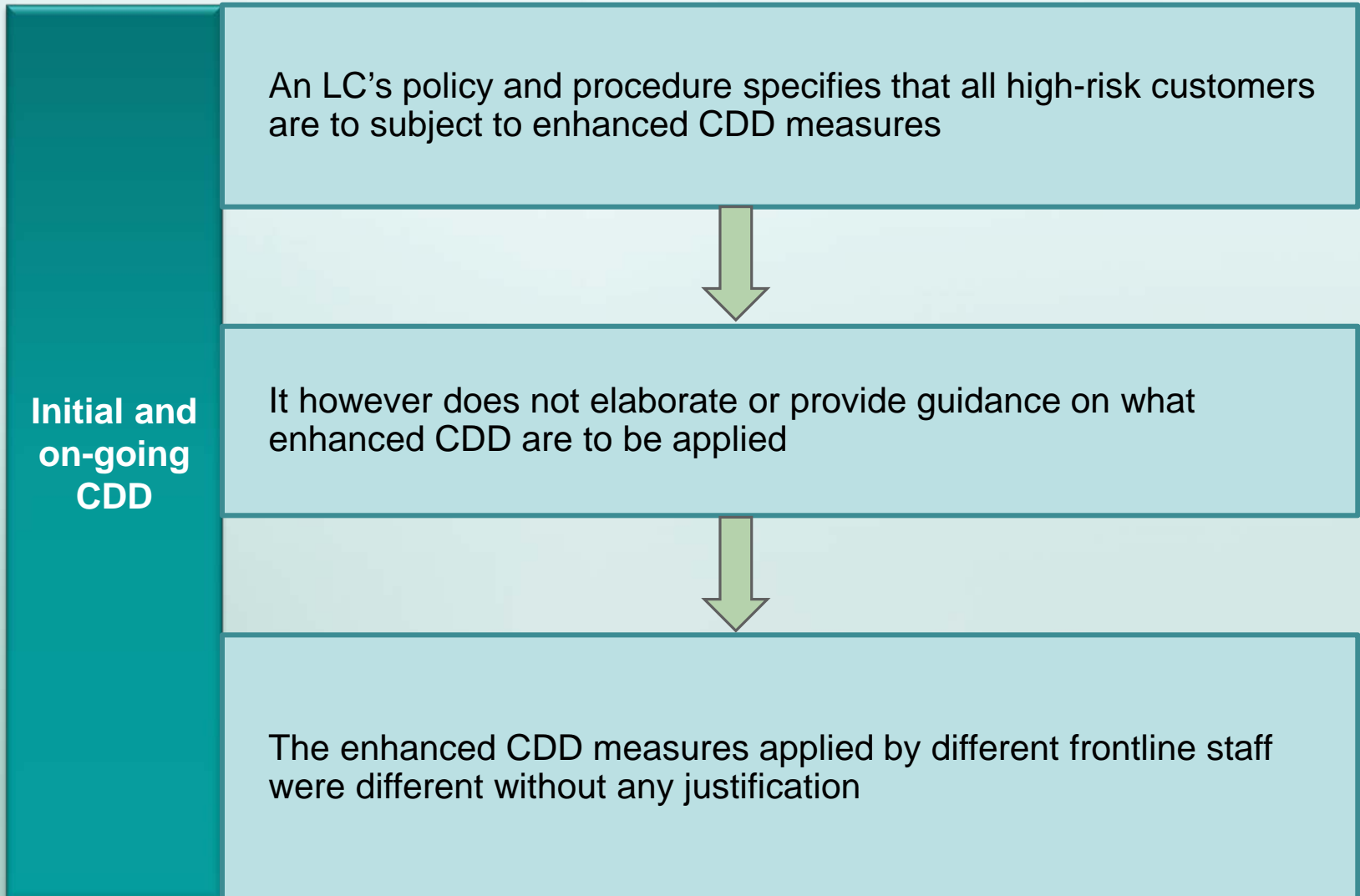
Assessment methodology to produce consistent ratings that take into account risk factors in all relevant key areas



Different results despite of similar profiles



Lack of clear policy and procedure



Inadequate management oversight and compliance monitoring

IRA

Result of IRA is not reviewed and approved by senior management



Inadequate management oversight and compliance monitoring

CRA

- Assessment methodology not followed by frontline staff
- Override not supported by any justification
- No supervisory review and approval of the risk ratings

Customer risk assessment

CUSTOMER RISK			
1. ~~~~~		<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
2. ~~~~~		<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
3. ~~~~~		<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
COUNTRY RISK			
4. ~~~~~		<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
5. ~~~~~		<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
PRODUCT/SERVICE RISK			
6. ~~~~~		<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
DELIVERY/DISTRIBUTION CHANNEL RISK			
7. ~~~~~		<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
8. ~~~~~		<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO

If there is any "YES" in reply to question 1-5, customer risk rating will be "High".

If there is any "YES" in reply to question 6-8, customer risk rating will be "Normal".

If none of the reply is "YES", customer risk rating will be "Low".

<input type="checkbox"/>	High risk
<input type="checkbox"/>	Medium risk
<input checked="" type="checkbox"/>	Low risk

Justification for any manual override:

Sign off: Account opening staff

A high risk customer under the firm's assessment methodology was reclassified as low risk without any justification

Inadequate management oversight and compliance monitoring

Initial and on-going CDD

Inconsistent information provided by a customer in the account opening documentation was not picked up by the frontline staff or supervisory review

Account Opening Form

[Redacted]	:	[Redacted]
[Redacted]	:	[Redacted]
Employment	:	Unemployed
[Redacted]	:	[Redacted]
Source of Income	:	Salary
[Redacted]	:	[Redacted]
[Redacted]	:	[Redacted]
[Redacted]	:	[Redacted]

Inadequate management oversight and compliance monitoring

Initial and on-going CDD

The list of high risk customers prepared for annual review was incomplete, and error was not picked up in supervisory review

Omission in inputting customer risk levels into the firm's internal system used to generate the list



Mismatch

Customer risk levels inputted into the firm's internal system was different from that recorded in the assessment form

CUSTOMER RISK ASSESSMENT FORM

Customer risk rating:
 Normal risk
 High risk

Customer risk rating:

[Blank]

CUSTOMER RISK ASSESSMENT FORM

Customer risk rating:
 Normal risk
 High risk

Customer risk rating:
NORMAL RISK

Need for increased vigilance

LCs should critically examine the following arrangements and transactions, and to the extent that any suspicion of market misconduct or other illegal activities that cannot be dispelled through enquiries, they should make a report to the JFIU, and where appropriate, terminate the relevant client accounts.

Use of multiple accounts

Multiple corporate accounts, which are beneficially owned/controlled by the same group of persons, are maintained by clients with an LC for conducting transactions

Off-exchange transactions

Transfers of listed shares by bought and sold notes in off-exchange transactions, sometimes involving more than one LC

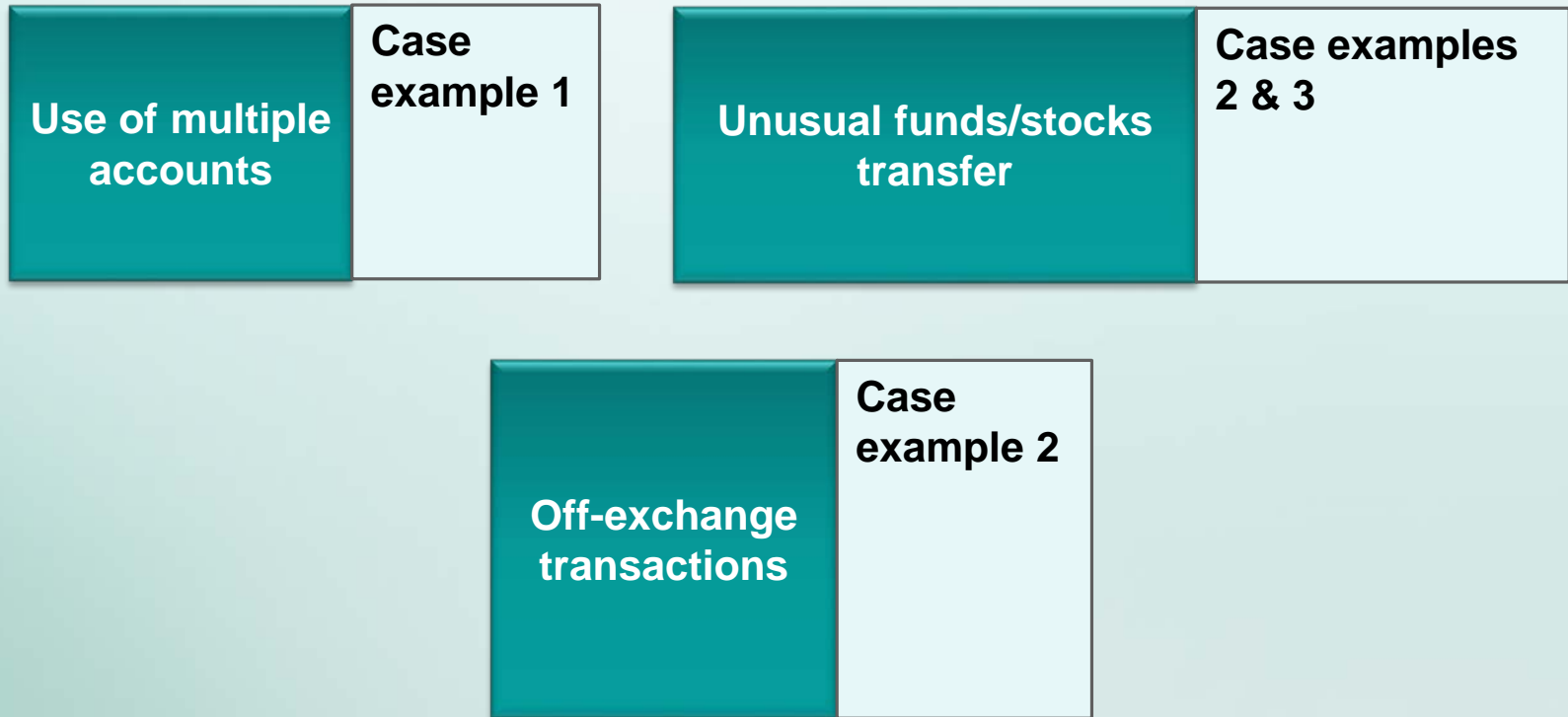
Unusual fund/ stock transfers

Frequent fund/ stock transfers to or from third parties that are unrelated, unverified or difficult to verify



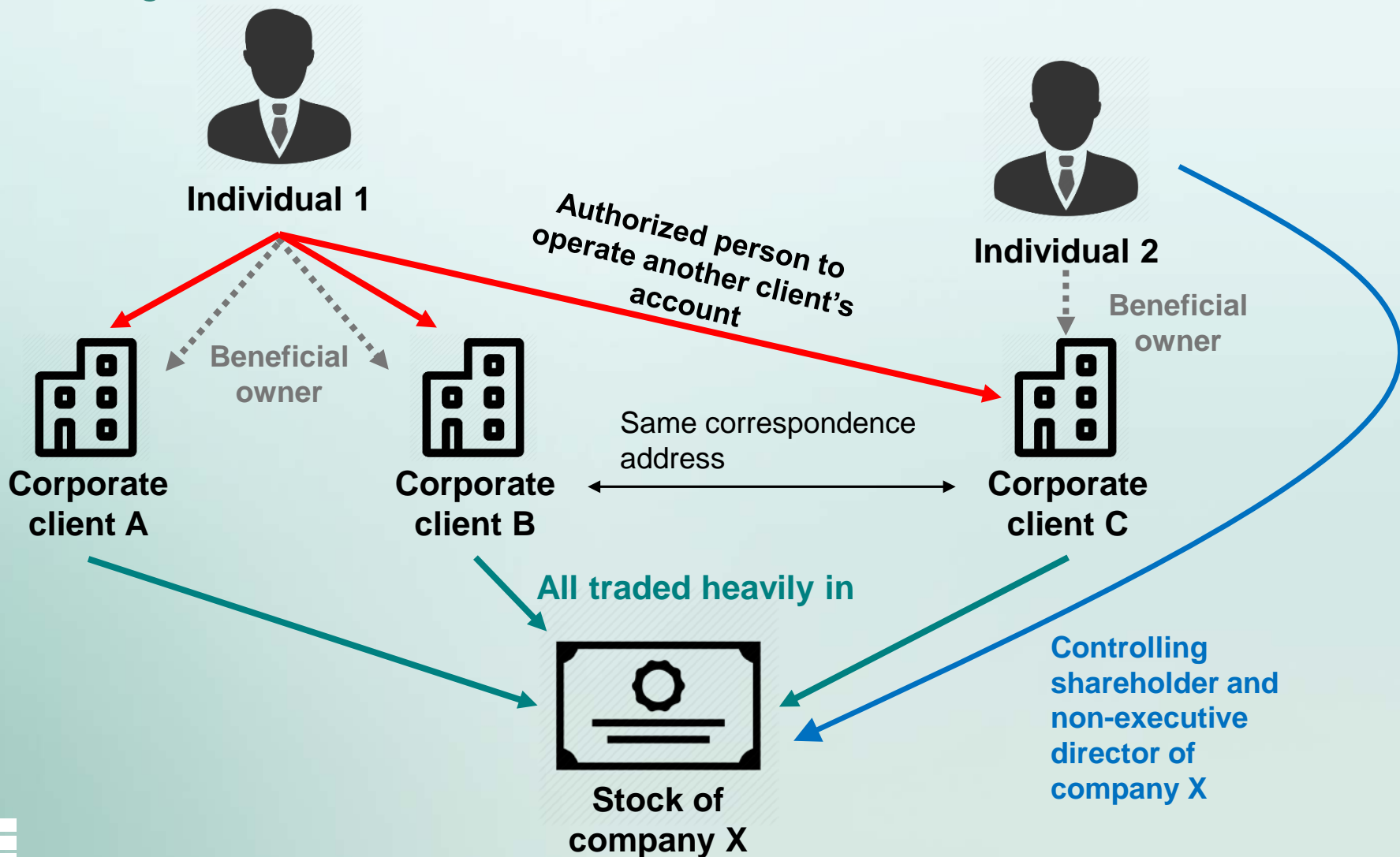
Need for increased vigilance

Some illustrative case examples:



Case example 1

Use of multiple accounts for conducting large trading transactions in a single stock



Case example 2

Transfers of listed shares by bought and sold notes in off-exchange transactions



Mr. X
Unemployed

He holds company A's shares in his account.

Mr. X claimed that the transfer was to his business partners as bonus and he declared to be unemployed in the account opening form

WITHIN 1 MONTH

All the shares in company A were transferred to a large number of other clients via bought and sold notes.

1 Feb



Around 70 individuals

10 Feb



Around 80 individuals

20 Feb

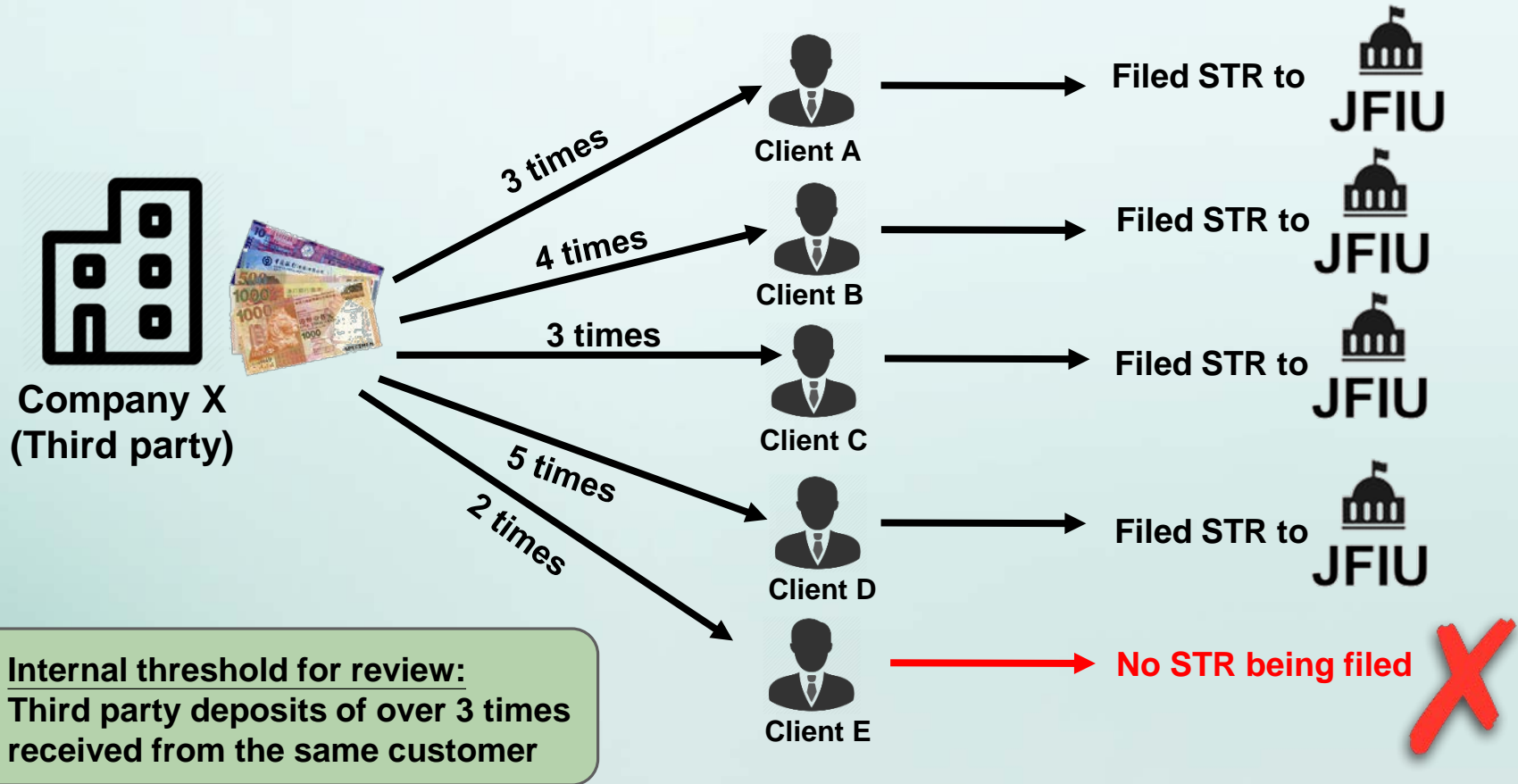


Over 300 individuals



Case example 3

Unusual third party fund transfers



LCs should evaluate potentially suspicious transactions holistically (instead of adhering mechanically to some internal thresholds) and have measures in place to identify client accounts which have unusual amount of smurfing transactions for evaluation.

Thank you

AML/CFT section of the SFC's website:

<http://www.sfc.hk/web/EN/rule-book/anti-money-laundering-and-counter-terrorist-financing/>

