

For Discussion
on 24 May 2010

LEGISLATIVE COUNCIL PANEL ON FINANCIAL AFFAIRS

Proposed New Anti-Money Laundering (AML) Legislation for Financial Institutions

Purpose

This paper highlights the key AML legislative proposals on the customer due diligence (CDD) and record-keeping requirements for financial institutions and the regulation of remittance agents and money changers (RAMCs).

Background

2. Upon completion of the first-round consultation and taking into account comments received, the Financial Services and the Treasury Bureau launched the second-round consultation on 7 December 2009 to gauge views on legislative proposals to codify in statute the international AML/counter financing of terrorism (CFT) standards¹ in respect of CDD and record-keeping for financial sectors. The consultation document setting out the detailed proposals can be accessed via the following link:

http://www.fstb.gov.hk/fsb/aml/eng/consulation/aml_consultation_papers_07122009_e.pdf

3. We briefed the Legislative Council Financial Affairs Panel on 14 December 2009 on the legislative proposals. Members present indicated support for the legislative proposals in principle and the Administration's plan to

¹ The international AML/CFT standards are promulgated by the Financial Action Task Force (FATF). FATF is an inter-governmental body which sets international AML/CFT standards generally known as the FATF Recommendations. Members of FATF are obliged to implement the FATF Recommendations and subject to mutual evaluation conducted by FATF on their compliance with the FATF Recommendations.

introduce the relevant bill into LegCo within this year.

Key Legislative Proposals

4. The detailed legislative proposals are summarized in Annex A to the consultation document as attached. The proposals consist of the following key elements:

Coverage (Items 1 and 2 of Annex A to the consultation document)

- (a) Authorized institutions, licensed corporations, insurers, insurance agents and brokers and RAMCs will be subject to the requirements under the new legislation. In line with the institutional approach adopted in the existing financial regulatory regime, the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC), the Insurance Authority (IA) and Customs and Excise Department (C&ED) will be designated as the relevant authorities for supervising AML compliance by the banking, securities, insurance and RAMC sectors respectively.

Obligations (Items 3 to 19 of Annex A to the consultation document)

- (b) The proposed legislation will stipulate the detailed CDD and record-keeping obligations to be met by financial institutions (FIs), including the circumstances under which CDD should be conducted, the extent of CDD measures applicable to customers of different risk profiles, the classification of customers of different risk profiles, the specific requirements on wire transfers and remittance transactions, the requirements for ongoing due diligence, the actions required when unable to complete CDD, the types of records required to be maintained and the period for record retention, and officers' duty in ensuring proper systems to prevent non-compliance.
- (c) In view of the relatively low money laundering risks involved in money changing transactions and having regard to the maximum threshold permitted by FATF of US\$/Euro15,000, we propose that the threshold that triggers CDD requirements for occasional money changing transactions be

raised from \$8,000 at present as provided under the Organized and Serious Crimes Ordinance, Cap. 455 (OSCO) to \$120,000. Since money changing is a major business activity conducted by RAMCs, the proposed relaxation of the threshold would help alleviate the concerns of the RAMC sector over the proposed AML regulation and would also ensure that the new AML regime would not impact on the tourism industry.

- (d) We propose to maintain the existing threshold of \$8,000 for obtaining and verifying customers' information for remittance transactions as provided under OSCO. This level is already the maximum threshold permitted by FATF (US\$/Euro1,000) for remittance transactions, which are generally considered to involve higher money laundering risks.
- (e) We propose to permit FIs to continue, for a period of, say, 3 years, to rely on local third parties (i.e. lawyers, accountants, and trust and company service providers) to conduct CDD on customers in introduction of business under the existing arrangement allowed for in the guidelines issued by the financial regulators if the third parties can demonstrate to the FIs that they have adequate procedures to prevent money laundering. This will allow time for these sectors to be regulated as required by FATF if reliance on third parties is to be permitted in the longer term. Currently the Security Bureau is working on this in consultation with the relevant sectors.

Powers of the Relevant Authorities (Items 20 to 31 of Annex A to the consultation document)

- (f) The proposed legislation will provide that the relevant authorities may access the business premises of FIs and their books and records, require information and answers from FIs and other persons, initiate investigations into suspected breaches, apply to the Magistrate for warrants for search and seizure, initiate summary prosecutions, and share information with overseas regulators. The exercise of the powers of the relevant authorities will be subject to appropriate procedural safeguards. For example, inspections can only be carried out at a reasonable time during ordinary business hours; an inspector or investigator must provide evidence of authorization; search

and seizure can only be done upon court warrants; self-incriminating evidence shall not be used against a person in a criminal proceedings.

- (g) The proposed legislation will empower the relevant authorities to issue guidelines to facilitate AML compliance. Such guidelines will be non-statutory in nature but will have evidential value in determining whether the statutory obligations have been breached. HKMA, SFC, IA & C&ED will produce a generic set of guidelines which will be applicable to all relevant financial sectors so as to enhance consistency in compliance requirements and enforcement standards. In addition to this generic set of guidelines, individual regulators will draw up their own sectoral guidelines to cover measures relevant to transactions specific to their respective regulated sectors.

Sanctions (Items 32 to 37 of Annex A to the consultation document)

- (h) With reference to overseas jurisdictions, including the UK, the US, Singapore, Italy and Norway which have provided for criminal offences under their AML legislation in dealing with breaches of CDD and record-keeping requirements, we propose to provide for both criminal as well as supervisory sanctions subject to safeguards in the new legislation.
- (i) Taking into account the comments received in the first-round consultation that there should be a high mental threshold if the new legislation should provide for criminal liability on individuals, we propose that only those who contravene the statutory obligations with knowledge or intent to defraud commit an offence and shall be liable to criminal fines and/or imprisonment upon summary conviction or indictment.
- (j) The relevant authorities will be empowered to impose supervisory sanctions on their regulatees where appropriate, including issuing directions for remedial action, public reprimands, and supervisory fines.

Licensing Regime for RAMCs (Items 38 to 53 of Annex A to the consultation document)

- (k) The proposed legislation will stipulate that any person who conducts money changing and remittance services “as a business” is required to obtain a licence from C&ED. This licensing requirement will not apply to business entities providing remittance or money changing services incidental to transactions related to their main business (e.g. retail businesses accepting Renminbi in transactions).
- (l) The proposed legislation will provide for the details of the licensing regime for RAMCs to be administered by C&ED, including the functions and powers of C&ED as the licensing authority, coverage of the licensing regime, “fit and proper” criteria for RAMC licensees, and the offence for unlicensed RAMC operations.
- (m) To facilitate a smooth migration and having regard to views of the RAMC sector received in the first-round consultation, we propose that the new legislation should provide for a 60-day transitional period upon the implementation of the licensing regime for registered RAMCs to apply for a RAMC licence.

Appeals Mechanism (Items 54 to 60 of Annex A to the consultation document)

- (n) To ensure that there are proper checks and balances, we propose to establish an independent tribunal to review decisions made by the relevant authorities under the new legislation, including the imposition of supervisory sanctions and licensing of RAMCs. The proposed tribunal will comprise a Chairman (with qualifications for appointment as a judge of the High Court) and not less than two members to be appointed by the Secretary for Financial Services and the Treasury on a term of appointment not exceeding three years. The Chairman and members of the tribunal shall not be public officers.

Next Steps

5. We are examining the comments received during the second-round consultation on the legislative proposals. During the consultation period which ended in February 2010, we have organized 8 sector-specific consultative

sessions for the banking, securities, insurance sectors and remittance agents and money changers which were attended by over 800 participants and we have received 45 written comments from individuals, financial institutions, professional bodies and trade associations.

6. We are working closely with the concerned regulatory authorities and the Department of Justice in preparing the bill. This is a major exercise which covers various legal and operational aspects of implementing the relevant international AML/CFT requirements through domestic legislation. We will take into account the views and comments obtained at the meeting with deputations on 24 May 2010 before finalizing the bill for introduction into LegCo as soon as practicable.

**Financial Services and the Treasury Bureau
May 2010**

DETAILED LEGISLATIVE PROPOSALS

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| <u>Part 1 – Coverage¹</u> | |
| 1. | <p>The legislation will cover financial institutions (FIs) which mean:</p> <ul style="list-style-type: none"> (a) authorized institutions within the meaning of the Banking Ordinance (BO), Cap 155; (b) licensed corporations within the meaning of the Securities and Futures Ordinance (SFO), Cap 571; (c) insurers authorized under the Insurance Companies Ordinance (ICO), Cap 41; (d) appointed insurance agents and authorized insurance brokers as defined in ICO; and (e) <u>remittance agents²</u> and <u>money changers</u> (RAMCs) licensed under this legislation. <p>For insurers, insurance agents and insurance brokers, only transactions/ business relationships related to the long term insurance business will be subject to the requirements under this legislation.</p> |
| 2. | <p>Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC), the Insurance Authority (IA) and the Customs and Excise Department (C&ED) will be designated as the authorities to regulate the banking, securities, insurance and RAMC sectors respectively and enforce the obligations on these sectors under this legislation.</p> |
| <u>Part 2 – Obligations³</u> | |
| 3. | <p>An FI is required to undertake <u>customer</u> due diligence (CDD):</p> <ul style="list-style-type: none"> (a) before establishing a business relationship; (b) before carrying out an <u>occasional transaction</u> amounting to \$120,000 or more, whether conducted as a single transaction or several transactions that appear to be linked; (c) before carrying out an occasional transaction which is a domestic or international <u>wire transfer</u> amounting to \$8,000 or more, whether conducted |

¹ The meaning of financial institutions (FIs) and designation of relevant authorities will be set out in a Schedule to the new legislation, which may be amended by the Secretary for Financial Services and the Treasury (SFST) by notice in the Gazette.

² Please refer to the “List of Proposed Definitions” at the end of this proposal for definition of terms underlined.

³ Requirements under items 3 to 17 will be provided in a Schedule to the new legislation, which may be amended by SFST by notice in the Gazette.

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| | <p>as a single transaction or several transactions that appear to be linked;</p> <p>(d) when there is a suspicion of money laundering or terrorist financing; or</p> <p>(e) when the FI has doubts about the veracity or adequacy of previously obtained customer identification data.</p> |
| 4. | <p>Subject to the following, an FI must verify the identity of a customer before establishing a business relationship or carrying out an occasional transactions:</p> <p>(a) The verification process may be completed after the establishment of a business relationship if this is necessary not to interrupt the normal conduct of business and there is little risk of money laundering or terrorist financing.</p> <p>(b) The verification of the identity of the beneficiary under a life insurance policy may take place after the business relationship has been established provided that it takes place at or before the time of payout or at or before the time the beneficiary exercises a right vested under the policy provided that the verification is completed as soon as practicable and the money laundering or terrorist financing risks are effectively managed.</p> <p>(c) The verification of the identity of a bank account holder may take place after the bank account has been opened provided that there are adequate safeguards in place to ensure that the account is not closed and transactions are not carried out by or on behalf of the account holder before verification has been completed.</p> |
| 5. | <p>CDD measures to be carried out include:</p> <p>(a) identifying the customer and verifying his identity on the basis of documents, data or information obtained from a reliable and independent source;</p> <p>(b) identifying the <u>beneficial owner</u>, where relevant, and take reasonable measures to verify his identity, including, where the customer is a <u>legal person</u> or a <u>legal arrangement</u>, reasonable measures to understand the ownership and control structure of the legal person or arrangement; and</p> <p>(c) obtaining information on the purpose and intended nature of the business relationship.</p> <p>An FI must determine the extent of CDD measures to be applied based on a risk-based approach depending on the type of customer, business relationship, product or transaction, and must be able to demonstrate to the relevant authority that the extent of the measures is appropriate having regard to the risks of money laundering and terrorist financing.</p> <p>An FI must put in place a system to determine whether a potential customer, a</p> |

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| | customer or the beneficial owner is a <u>politically exposed person</u> (PEP). For the purpose of deciding whether a person is a known close associate of a person, an FI need only have regard to information which is in his possession or is publicly known. |
| 6. | <p>Business relationship maintained by an FI must be subject to ongoing due diligence, having regard to the size and complexity of the transactions. Ongoing due diligence includes:</p> <ul style="list-style-type: none"> (a) scrutinizing transactions to ensure that they are consistent with the FIs' knowledge of the customers, their business and risk profile, and where necessary, the source of funds; and (b) reviewing existing records to ensure that identification and verification data, information and documents obtained are kept up-to-date and relevant, particularly for higher risk categories of customers or business relationships. |
| 7. | <p>For business relationships entered into prior to the commencement of the legislation, on-going due diligence must be conducted upon the occurrence of one of the triggering events, including transactions of significance, substantial changes to customer documentation standards, material changes in the way the account is operated or the FI becomes aware that it lacks sufficient information about an existing customer. However, notwithstanding the non-occurrence of the above triggering events, an FI is required to apply CDD requirements to all existing accounts within 2 years upon the commencement of the legislation.</p> |
| 8. | <p>An FI may apply simplified due diligence when the FI has reasonable ground to believe that the customer or the product falls under one of the following categories:</p> <ul style="list-style-type: none"> (a) an FI as defined in item 1(a), (b), (c) and (e) or an overseas regulated FI from an <u>equivalent jurisdiction</u> except insurance agents and insurance brokers; (b) a listed company that is subject to regulatory disclosure requirements; (c) a government or government related organization in an equivalent jurisdiction which exercises public functions; (d) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme; (e) an investment vehicle where the manager is an FI supervised by a Hong Kong authority or is incorporated outside Hong Kong and subject to and |

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| | <p>supervised for compliance with requirements consistent with the requirements under this legislation;</p> <p>(f) an insurance policy for pension schemes if there is no surrender clause and the policy cannot be used as collateral; or</p> <p>(g) a life insurance policy where the annual premium is no more than HK\$8,000 or a single premium of no more than HK\$20,000.</p> <p>“Simplified due diligence” involves identifying the customer and verifying his identity on the basis of documents, data or information obtained from a reliable and independent source and obtaining information on the purpose and intended nature of the business relationship.</p> |
| 9. | <p>An FI must carry out enhanced due diligence in accordance with measures stated for that category where the customer or the transaction falls into the following-</p> <p>(a) where the customer has not been physically present for identification purposes, one or more of the following measures must be taken:</p> <ul style="list-style-type: none"> (i) establishing the customer’s identity by additional documents, data or information; (ii) taking supplementary measures to verify or certify the documents supplied; and (iii) ensuring that the first payment is carried out through an account opened in the customer’s name with an FI. <p>(b) where an FI which has or proposes to have a <u>correspondent banking</u> relationship, it must do the followings:</p> <ul style="list-style-type: none"> (i) gathering sufficient information about the respondent institution to understand fully the nature of its business; (ii) determining from publicly-available information the reputation of the respondent institution and the quality of its supervision; (iii) assessing the respondent institution’s anti-money laundering (AML) and counter financing of terrorism (CFT) controls; (iv) obtaining approval from senior management before establishing a new correspondent banking relationship; (v) documenting the respective responsibilities of the parties; (vi) be satisfied that, in respect of those of the respondent institution’s customers who have direct access to accounts of the FI, the respondent has verified the identity of and conducts ongoing monitoring in respect of such customers and is able to provide to the FI, upon request, the documents, data or information obtained when applying CDD measures and ongoing monitoring. <p>(c) where an FI proposes to have a business relationship or carry out an occasional transaction with a PEP or seeks to continue the business</p> |

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| | <p>relationship with an existing customer who is subsequently found to be a PEP or in any other situation which by its nature may present a higher risk of money laundering or terrorist financing, an FI must:</p> <ul style="list-style-type: none"> (i) have approval from senior management for carrying out an occasional transaction, establishing a business relationship or continuing with the business relationship with that person; (ii) take adequate measures to establish the source of wealth and source of funds which are involved in the occasional transaction, proposed business relationship or existing business relationship; and (iii) conduct enhanced ongoing monitoring of the relationship where the business relationship is entered into. <p>“Other situation which by nature can present a higher risk of money laundering or terrorist financing” includes those types of customers/institutions/transactions which are specified in written communications from the relevant authority.</p> |
| 10. | <p>On the premises that the FI remains liable for any failure to apply CDD measures, it may rely on a third party to conduct CDD provided that:</p> <ul style="list-style-type: none"> (a) the other person consents to being relied on; (b) the FI immediately obtains from the other person the necessary information relating to CDD requirements; (c) the FI is satisfied that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the other person upon request without delay; (d) the FI is satisfied that the other person has measures in place to comply with the requirements under this legislation; and (e) the other person falls under one of the following categories: <ul style="list-style-type: none"> (i) an FI covered under this legislation, with the exception of RAMCs; (ii) a person who carries on business in Hong Kong who is- <ul style="list-style-type: none"> (A) a lawyer, auditor, accountant, trust company or chartered secretary; (B) subject to mandatory professional registration, licensing or regulation recognized by law; (C) subject to requirements equivalent to those laid down in this legislation; and (D) supervised for compliance with those requirements; (iii) a person who carries on business in an equivalent jurisdiction who is- <ul style="list-style-type: none"> (A) a financial institution, lawyer, notary public, auditor, accountant, tax advisor, trust company or chartered secretary; (B) subject to mandatory professional registration, licensing or |

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| | <p style="text-align: center;">regulation recognized by law;</p> <p>(C) subject to requirements equivalent to those laid down in this legislation; and</p> <p>(D) supervised for compliance with those requirements; or</p> <p>(iv) a person who carries on business in Hong Kong who is a lawyer, auditor, accountant, trust company or chartered secretary who is able to demonstrate to that FI that they have adequate procedures to prevent money laundering. (*This sub-clause (iv) shall expire at a date to be appointed by SFST by notice in the Gazette)</p> <p>This does not prevent an FI from applying CDD measures by means of an outsourcing service provider or agent provided that the FI remains liable for any failure to apply CDD measures.</p> |
| 11. | <p>An FI shall not keep anonymous accounts or accounts in fictitious names and shall not enter into, or continue, a correspondent banking relationship with a shell bank.</p> |
| 12. | <p>Where an FI is unable to apply CDD measures required under this legislation, it must not establish a business relationship or carry out an occasional transaction with the customer and must terminate any existing business relationship with the customer.</p> |
| 13. | <p>When undertaking wire transfers equal to or above \$8 000, an FI shall:</p> <p>(a) identify and verify the identity of the <u>originator</u>;</p> <p>(b) obtain and maintain the account number of the originator or, in the absence of an account number, a unique reference number;</p> <p>(c) obtain and maintain the originator's address or, in the absence of address, the identity card number or date and place of birth; and</p> <p>(d) (i) for cross-border wire transfers, include information from (a) to (c) in the message or payment form accompany the transfer;</p> <p>(ii) for domestic wire transfers, include the originator's account number or a unique identifier in the message or payment form, provided that the information from (a) to (c) above can be made available to the beneficiary FI and to the relevant authority within three business days of receiving a request.</p> <p>An FI is not required to verify the identity of a customer with which it has an existing business relationship, provided that it is satisfied that it already knows and has verified the true identity of the customer.</p> |

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| | <p>When an FI acts as an intermediary in a chain of remittances, it shall retransmit all of the information it received with each of the remittances.</p> <p>For individual transfers from a single originator bundled in a batch file, the ordering FI only needs to include the originator's account number or unique reference number on each individual wire transfer, provided that the batch file contains full originator information that is fully traceable within the recipient jurisdiction.</p> <p>This requirement shall not be applicable to transfers executed as a result of credit card or debit card transactions, provided that the credit card or debit card number accompanies the transfer resulting from the transaction, nor shall they apply to transfers between FIs acting for their own account. However, when credit or debit cards are used as a payment system to effect a money transfer, they are covered by this requirement, and the necessary information from (a) to (c) should be included in the message.</p> <p>If the FI receives wire transfers that do not contain the complete originator information required, it shall take measures to obtain and verify the missing information from the ordering institution or the beneficiary. Should they not obtain the missing information they shall refuse acceptance of the transfers.</p> |
| 14. | <p>When undertaking remittances other than wire transfers equal to or above \$8,000, an FI shall-</p> <ul style="list-style-type: none"> (a) identify the customer and record- <ul style="list-style-type: none"> (i) the currency and amount involved; (ii) date and time of receiving instructions and instructions details; and (iii) name, identity card number (or certificate of identity, document of identity or travel document number with place of issue), telephone number and address of the customer. (b) verify the name and identity of the customer, by reference to his certificate of identity, document of identity, identity card or travel document. |
| 15. | <p>An FI is required to maintain:</p> <ul style="list-style-type: none"> (a) all necessary records on transactions, for six years following completion of the transaction regardless of whether the account or business relationship is ongoing or has been terminated; and (b) records of the identification data, account files and business correspondence, for six years following the termination of an account or business relationship, |

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| | <p>notwithstanding that the FI may have ceased his business subsequent to the transaction.</p> <p>An FI should ensure that all customer and transaction records and information are available on a timely basis to the relevant authority upon request. The relevant authority may require an FI to keep records beyond the specified period if the records relate to on-going investigations or transactions which have been the subject of disclosure, or any other purposes as specified by the relevant authority.</p> |
| 16. | <p>An FI incorporated in Hong Kong must require its overseas branches and subsidiary to apply, to the extent permitted by the law of that jurisdiction measures at least equivalent to those set out under this legislation.</p> <p>Where the law of a jurisdiction does not permit the application of such equivalent measures by the branch or subsidiary located in that jurisdiction, the FI must inform the relevant authority accordingly; and take additional measures to handle effectively the risk of money laundering and terrorist financing.</p> |
| 17. | <p>Every <u>officer</u> of an FI shall take all reasonable measures from time to time to ensure that proper safeguards exist to prevent the FI from acting in a way which would result in the FI breaching the requirements under this legislation.</p> |
| 18. | <p>The relevant authority (i.e. HKMA, SFC, IA and C&ED) may issue guidelines to facilitate regulatees' compliance with the requirements under this legislation and any AML/CFT matters. Any failure on the part of any person to comply with the provisions relevant to the statutory obligations under this legislation set out in any guidelines that apply to him shall not by itself render him liable to any judicial or other proceedings, but in any proceedings under this legislation before any court the guidelines shall be admissible in evidence, and if any provision set out in the guidelines appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.</p> |
| 19. | <p>In exercising their power to impose supervisory sanctions, any failure on the part of any person to comply with the provisions relevant to the statutory obligations under this legislation set out in the guidelines that apply to him shall be considered by the relevant authorities in deciding whether any statutory obligations under this legislation has been breached.</p> |
| <p><u>Part 3 – Powers of the Relevant Authority</u></p> | |

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| 20. | <p>The relevant authority may at any reasonable time appoint authorized persons to conduct inspections by</p> <ul style="list-style-type: none"> (a) entering into the premises of the FI; (b) inspecting and making copies or record details of any records or document relating to the business, transaction or activity conducted by the FI; (c) making inquiries of the FI or any other person whom the relevant authority has reasonable cause to believe that he has information that cannot be obtained from the FI, and requiring the person subject to an inquiry to verify by statutory declaration answers given or to verify by statutory declaration that he was unable to give an answer in accordance with the relevant authority requirement for the reason that the answer was not within his knowledge. |
| 21. | <p>The relevant authority may initiate investigation if it has reasonable cause to believe that obligations under the legislation may have been breached by appointing one or more persons as investigators. The investigators can require the person under investigation or a person whom he has reasonable cause to believe has in his possession any record or document which contains, or which is likely to contain, information relevant to the investigation to-</p> <ul style="list-style-type: none"> (a) produce any record or document relevant to the investigation; (b) give explanations or further particulars in respect of records/documents produced; (c) attend before the investigator at the time and place required and answer any questions related to the matters under investigation; (d) give the investigator all assistance in connection with the investigation which he is reasonably able to give, including responding to any written question raised by the investigator; (e) verify by statutory declaration answers, explanation and statements; (f) verify by statutory declaration that he was unable to give an answer in accordance with the investigator's requirement for the reason that the answer was not within his knowledge. |
| 22. | <p>To enforce the inspection and investigation powers of the relevant authority, three tiers of criminal offences will be provided under the legislation-</p> <ul style="list-style-type: none"> (a) failure to comply with the requirements imposed by the relevant authority without reasonable excuse; (b) knowingly or recklessly providing false or misleading information in purported compliance with a requirement imposed; (c) failure to comply with a requirement or providing false or misleading information or causing/allowing a corporation to do the above, with an |

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| | intent to defraud. |
| 23. | The relevant authority may also make an application to the Court of First Instance for court orders to compel compliance with the requirements. Failure to comply with the order will be a contempt of court. No proceedings may be instituted against any person if criminal proceedings have previously been instituted against the person under item 22 and no proceedings may be instituted against any person under item 22 if an application to court has been made in relation to non-compliance with requirements. |
| 24. | Inspectors/investigators are obliged to inform or remind a person of the limitations on the admissibility in evidence of the explanation, statement, further particulars and answer, etc. Self-incriminating evidence shall not be used against a person in criminal proceedings where the person has claimed privilege against self-incrimination (except where the person is charged with an offence set out in item 22, or under Part V of the Crimes Ordinance (Cap 200), or for perjury, etc.) |
| 25. | The production of records or documents by an FI required by the relevant authority in the course of an investigation and inspection shall not be affected by any lien claimed and no fees shall be payable by the relevant authority for the production. Any power to require production of records or documents includes the power to require the production of a reproduction of the recording of the information or matter in a legible form. |
| 26. | Where an inspector/investigator has taken possession of any record or document, he shall, subject to any reasonable conditions he imposes, permit a person who would be entitled to inspect the record or document to inspect it and to make copies or otherwise record details of it. |
| 27. | A relevant authority may apply to a Magistrate for a warrant to search for, seize and remove any records or documents required to be produced if there are reasonable grounds to suspect that there is, or is likely to be, on the premises specified any record or document required to be produced under this part. The person authorized above may require any person on the premises to produce any record or document which is in the possession of the person, and may prohibit any person on the premises from removing any record or document, erasing, adding to or otherwise altering an entry or other particulars in the record or document. Any record or document removed under this item by the authorized person may be retained for any period not exceeding 6 months beginning on the day of its removal or such longer period as may be necessary for the purposes of |

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| | <p>criminal proceedings or any other proceedings under this legislation. Any person who would be entitled to inspect the record or document removed may be permitted to inspect the record or document and to make copies or otherwise record details of it at all reasonable times.</p> <p>A person who without reasonable excuse fails to comply with a requirement or prohibition or obstructs a person exercising a power under this item commits an offence.</p> |
| 28. | A person commits an offence if he, with intent to conceal, destroys, falsifies, conceals or disposes any record or document required to be produced. |
| 29. | A relevant authority may prosecute offences under this legislation in its own name summarily. |
| 30. | A relevant authority may share information obtained under this legislation with overseas regulators which exercise similar functions if the overseas regulators are subject to adequate secrecy provisions and the sharing of the information is in the public interest. Onward disclosure of information related to individuals by overseas regulators is subject to consent of the relevant authorities. |
| 31. | The definition of “relevant provisions” in Schedule 1 under SFO will be amended to include AML obligations under this legislation. |
| <u>Part 4 – Sanctions</u> | |
| 32. | An FI which is found not in compliance with the statutory obligations under the legislation and an officer of the FI who has not taken reasonable measures to ensure FIs’ compliance would be liable to supervisory sanctions to be imposed by the relevant authority. |
| 33. | Supervisory sanctions include public reprimand, instructions to implement remedial actions or other specified actions related to the breach or pecuniary penalty not exceeding \$10 million or three times the profit made or loss avoided for the conduct. |
| 34. | The FI or the officer ordered to pay a pecuniary penalty shall pay the penalty within 30 days or such further period as the relevant authority may specify. The pecuniary penalty shall be paid into the general revenue. |

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| 35. | Before exercising its power to impose supervisory sanctions, the relevant authority must first give the FI/person concerned a reasonable opportunity of being heard. The relevant authority must notify the FI/person concerned in writing the reasons for the proposed imposition of the supervisory sanctions, the time that the sanction will take effect and the details of the sanction to be imposed. The relevant authority must also publish guidelines to indicate the manner in which it proposes to perform its function to impose supervisory sanctions and have regard to such guidelines when using such powers. |
| 36. | The relevant authority may disclose to the public details of the decision to impose supervisory sanctions, including the reasons for the decision and any material facts relating to the case. |
| 37. | Any person who knowingly contravenes the statutory obligations under this legislation commits an offence and shall be liable to criminal sanctions (fine and/or imprisonment). Any person who contravenes the statutory obligations under this legislation with intent to defraud commits an offence and shall be liable to criminal sanctions (fine and/or imprisonment). |
| <u>Part 5 – RAMCs</u> | |
| 38. | The Commissioner for Customs and Excise will be the licensing authority to administer the licensing regime for RAMCs and supervise the licensed RAMCs' compliance with the CDD and record-keeping obligations and licensing requirements. The licensing authority will be empowered under the legislation to take enforcement actions against unlicensed RAMC operations. |
| 39. | The licensing authority has a duty to maintain a register of licensed RAMCs which shall be kept at a location open for public inspection. |
| 40. | Upon the commencement of this part, the registration regime under s24A to s24E of the Organized and Serious Crimes Ordinance, Cap.455 (OSCO) will be repealed. Thereafter, any person who carries on a business as an RAMC without a valid licence granted under this legislation or at any place other than the premises specified in the licence commits an offence. RAMC registered under the OSCO regime will be deemed to be licensed under this legislation until a new licence is issued or the licensing authority gives notice of his decision to refuse licence. The deeming provision will lapse 60 days from the commencement of this part if no application for licence is submitted within the transitional period. |

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| 41. | The Postmaster General will be subject to the CDD and record-keeping requirements under this legislation. |
| 42. | An application for the grant or renewal of a RAMC licence is to be made in the manner prescribed by the licensing authority. A licence issued or renewed is subject to renewal at two years' intervals or some other period as may be specified by the licensing authority in respect of the individual license. The licensing authority shall notify the applicant of his decision and a decision to refuse to grant/renew a licence shall be provided with reasons. Any appeal against such decisions may be made to the independent appeals tribunal to be established under this legislation. |
| 43. | A licensee may apply for the renewal of his licence within a specified period prior to the expiration thereof in the prescribed manner. Where a person submits an application for the renewal of his licence, his licence shall continue to be in force until the date on which the licence is renewed or the application for its renewal is refused. |
| 44. | <p>As part of the licensing criteria, the applicant and the beneficial owner or every partners in case of a firm or every director or <u>controller</u> in case of a corporation must be a fit and proper person. A person is not a fit and proper person for the purpose of this legislation if he-</p> <ul style="list-style-type: none"> (a) has been convicted of a crime related to money laundering, terrorist financing or any other crimes involving fraud or dishonesty; (b) has been adjudged bankrupt and he has not been discharged; (c) has, in the opinion of the licensing authority, consistently failed to comply with the requirements under this legislation or the guidelines or regulation issued by the licensing authority under this legislation; or (d) is, in the opinion of the licensing authority, otherwise not a fit and proper person with regard to the risk of money laundering or terrorist financing. |
| 45. | Before a licence is granted/renewed, the licence fee prescribed by the licensing authority must be paid. There shall be no refund of any licence fee paid in the event that a licence is revoked or suspended or when the licensee ceases to carry on business at any time prior to the expiry of the licence. |
| 46. | A person who, in connection with an application for the granting of a licence or for the renewal of a licence, willfully provides information which is false or misleading in a material particular, knowing it to be false or misleading, or willfully omits to state any matter or thing without which the application is |

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| | misleading in a material respect, commits an offence. |
| 47. | The licensing authority may impose or vary the conditions on a licence. |
| 48. | Where the licensing authority is of the opinion that a licensee (or in case of a firm every partner thereof or in case of a corporation every director or controller thereof) and the beneficial owner(s) of the business is not a fit and proper person to carry on business as an RAMC, he may revoke or suspend its licence. The person concerned will be given a reasonable opportunity to be heard before the licensing authority invokes such power. The licensing authority shall inform the person by notice in writing the reasons for which the decision is made, the time at which the decision is to take effect and the terms of the revocation and suspension. |
| 49. | A licensee must notify the licensing authority in writing within one month- (a) of any material changes in the particulars submitted to the licensing authority in his application for licence; (b) of cessation of operation of the RAMC business. Failure to do so, without reasonable excuse, is an offence. |
| 50. | A licensee must seek approval from the licensing authority before a change or an addition of beneficial owner/partner/director/controller is made. The licensing authority shall refuse the application if the new beneficial owner/partner/director/controller is not a fit and proper person. A person who contravenes the requirement without reasonable excuse commits an offence. |
| 51. | The licensing authority will be empowered to exercise the regulatory powers for monitoring compliance with the CDD and record-keeping requirements (viz. inspection, investigation and prosecution) provided under the legislation to enforce the licensing requirements and the regulation made by the licensing authority. |
| 52. | Authorized officers appointed by the licensing authority may arrest or detain for further enquiries without warrant any person whom he reasonably suspects of having committed the offence of unlicensed operations. Authorized officers may also on reasonable suspicion that an offence of unlicensed RAMC operations has been or is being committed enter and search any premises other than domestic premises and seize, remove or detain any records, documents and cash found on the premises. |

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| 53. | The licensing authority may by regulation prescribe requirements on AML matters for the compliance of the licensees. Breaches of the regulation or the licensing conditions may be considered as misconduct which may trigger imposition of the same range of supervisory sanctions as set out in item 33 above. |
| <u>Part 6 – Appeals</u> | |
| 54. | An independent appeals tribunal will be established under the legislation to review decisions made by the relevant authority, including the imposition of supervisory sanctions and the licensing authority’s decisions made on RAMC licensing matters. |
| 55. | The proposed appeals tribunal will comprise a Chairman and not less than 2 members, as appointed by SFST. The Chairman shall be qualified for appointment as a judge of the High Court, and shall not be a public officer. The member shall not be public officers. The term of each appointment will be not more than 3 years. |
| 56. | The appeals tribunal may, following the review of the specified decision of a relevant authority, confirm, vary or set aside the relevant decision or remit the matter to the relevant authority with any directions that it consider appropriate. In reviewing the decision, the appeals tribunal shall afford the applicant and the relevant authority an opportunity of being heard and may determine that any matter of fact has been established if it has been established on the basis of standard of proof applicable to civil proceedings in a court of law. |
| 57. | A person is not excused from complying with an order, notice, prohibition or requirement of the appeals tribunal only on the ground that to do so might tend to incriminate the person. The appeals tribunal is not empowered to require the technical consultant or advisor of an applicant to disclose any information relating to the affairs of any person other than the applicant; or a solicitor or counsel to disclose any privileged communication, whether oral or written, made to or by him in that capacity. |
| 58. | The legislation will provide for an offence where a person, without reasonable excuse: (a) fails to comply with an order, notice, prohibition or requirement of the appeals tribunal made or given; (b) disrupts or otherwise misbehaves during any sitting of the appeals tribunal; (c) having been required by the appeals tribunal to attend before the appeals |

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| | <p>tribunal, leaves the place where his attendance is so required without the permission of the appeals tribunal;</p> <p>(d) hinders or deters any person from attending before the appeals tribunal, giving evidence or producing any article, record or document, for the purpose of a review;</p> <p>(e) threatens, insults or causes any loss to be suffered by any person who has attended before the appeals tribunal, on account of such attendance; or</p> <p>(f) threatens or insults or causes any loss to be suffered by the Chairman, or any member, of the appeals tribunal at any time on account of the performance of his functions in that capacity.</p> |
| 59. | Where the appeals tribunal requires a person to give evidence or answer questions or provide information which might tend to incriminate the person, such evidence, answer or information shall not be admissible in evidence against the person in criminal proceedings in a court of law, other than proceedings in which the person is charged with an offence under item 58, Part V of the Crimes Ordinance, Cap 200 or for perjury, in respect of the evidence or information. |
| 60. | A party to a review who is dissatisfied with a decision of the appeals tribunal relating to the review may appeal to the Court of Appeal. The Court of Appeal may, on application made to it by any party to the review proceedings, order a stay of the proceedings, or of execution of the determination of the appeals tribunal. The Court of Appeal may affirm, vary or set aside the determination of the appeals tribunal being appealed against by the relevant applicant or the relevant authority or to remit the matter to the appeals tribunal with any direction that it considers appropriate. The Court of Appeal may make such order for payment of costs as it consider appropriate. |
| <u>Commencement</u> | |
| 61. | The new legislation will commence one year after approval of the relevant bill by the Legislative Council. |

List of Proposed Definitions

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| beneficial owner | means (a) a natural person who ultimately owns or controls the rights to and/or benefits from property, including the person on whose behalf a transaction is conducted; (b) a person who exercise ultimate effective control over a legal person or legal arrangement; or (c) a beneficiary of a life or other investment linked insurance. A natural person is deemed to ultimately own or control rights to benefit from property within the meaning of (a) above when that person owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal entity 10% or more of the shares or voting rights of the entity or otherwise exercise control over the management of the entity. |
| controller | means a person whose instruction the directors are accustomed to act upon or a person having more than 15% of voting power. |
| correspondent banking | means the provision of banking services by one bank to another bank to enable the latter to provide services and products to its own customers. Such services may include cash management, international wire transfers of funds, cheque clearing, payable-through accounts and foreign exchange services. |
| customer | means any of the following: (a) the person for whom an account is opened or a transaction is arranged or undertaken; (b) a signatory to a transaction or account; (c) any person to whom an account or rights or obligations under a transaction have been assigned or transferred; (d) any person who is authorized to conduct a transaction or control an account; or (e) any person who attempts to take any of the actions referred to above. |
| equivalent jurisdiction | means a jurisdiction that is a member of the Financial Action Task Force (FATF), or any jurisdiction considered by an FI, based on reasonable documented evidence, to have sufficiently apply the FATF Recommendations. |
| legal arrangement | refers to express trust or any other arrangement which has a similar legal effect. |
| legal person | refers to a body corporate, foundation, partnership, or association, or any similar body that can establish a permanent customer relationship with an FI or otherwise own property. |
| money changer | means a person who carries on in Hong Kong the business of exchanging currencies and does not include a business which is a service provided within a hotel premises primarily for the convenience of guests of the hotel and consists solely of transactions of other currencies in exchange for Hong Kong currency and does not include an authorized institution within the |

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| | meaning of the BO. |
| occasional transaction | means a transaction with a customer who is neither an account holder nor in an established business relationship with the FI. |
| officers | means the following persons where the FI is not a natural person- (a) in relation to authorized institutions, a controller, director, chief executive, executive officer or manager within the meaning of the BO; (b) in relation to licensed corporations, a director, manager or secretary or any person involved in the management of the corporation within the meaning of SFO; (c) in relation to insurers, insurance agents and insurance brokers, a controller, director, manager, secretary or similar officer of the body corporate within the meaning of the ICO; (d) in relation to RAMCs, a controller, director or partner within the meaning of this legislation. |
| originator | means the account holder, or where there is no account, the person (natural or legal) that places the order with the FI to perform the wire transfer. |
| politically exposed person | means a person who is an individual who is or has been entrusted with a prominent public functions in a place outside People's Republic of China, for example heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials, and his immediate family member and known close associate. |
| remittance agent | means a person who provides a service to another person or persons as a business, of one or more of the following- (a) sending, or arranging for the sending of, money to; (b) receiving, or arranging for the receipt of, money from; or (c) arranging for the receipt of money in, a place outside Hong Kong. It does not include an authorized institution within the meaning of the BO. |
| wire transfer | means any transaction carried out on behalf of an originator through an FI by electronic means with a view to making an amount of money available to a beneficiary at another FI. The originator and the beneficiary may be the same person. |