



**Institute of Financial
Planners of Hong Kong**

The premier professional body representing financial planners who uphold the highest standards in financial planning that benefit the public

**IFPHK Response to the
Consultation Document on Detailed Proposals by the Financial
Services and Treasury Bureau on Proposed New Legislation on the
Customer Due Diligence and Record-Keeping Requirements for
Financial Institutions and the Regulation of Remittance Agents and
Money Changers**

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IFPHK Company Profile

The Institute of Financial Planners of Hong Kong (IFPHK) is a non-profit, self-regulatory organization that is recognized in the region as the leading professional entity representing over 10,000 financial services practitioners from the financial planning and wealth management industry in Hong Kong.

The IFPHK began operation in June 2000 and in November 2000 obtained authorization from the CFP Board (US) to be the sole licensing body for assessment and certification of the CFP certificants in Hong Kong and Macau, and issuing the CFP certification marks, including CFP^{CM}, CERTIFIED FINANCIAL PLANNER^{CM}, and , to qualified financial planning professionals in Hong Kong. Over the past eight years, CFP certification has gained respect and recognition from industry professionals, regulators and the broad retail community, and is currently regarded as the highest qualification for financial planning and wealth management practitioners.

The IFPHK has strong global networks and is an active Affiliate member of an international assembly of financial planning bodies called the Financial Planning Standards Board (FPSB), which was founded to promote the professionalism of individuals and organizations offering financial planning services to ensure that such services are offered in an ethical and competent manner throughout the world. FPSB works in conjunction with its Affiliate members to develop and promote rigorous international competency, ethics and professional practice standards for CFP certificants in member countries/regions to ensure that consumers looking for qualified personal financial planners understand and value CFP certification.

Role of IFPHK in the Consultation

As the leading professional body representing the interests of the financial planning community in Hong Kong, IFPHK believes that it is important to respond to government and regulatory proposals and consultations on significant policy issues that might result in an immediate or major impact on the financial planning public or the financial planning community and/or their clients (either as individuals or institutions).

The new legislation applies to the banking industry, securities industry, insurance sector and remittance agents and money chargers. Since our members comprise of practitioners from the banking, securities and insurance sectors, and regulated by either or all of the HKMA, SFC and OIC, IFPHK will limit the scope of replies to those sectors.

The new proposed legislation imposed customer due diligence obligations on financial institutions (FIs) in account opening process, ongoing monitoring of their customer information as well as payment and acceptance of funds. The new legislation also imposed on officers of financial institutions the responsibility to comply with the legislation. A lot of the measures are already being required by the regulators but there are a number of new ones which IFPHK believed will consequently impact on the daily operation of financial planning practitioners who provide financial planning advice



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relating to investments and insurance. IFPHK and the industry in general agree that we need to ensure that legitimate financial businesses are not allowed to be used as a conduit for money laundering and have no issues in extra vigilance and caution. It was also recognized that there would be a need to strike a balance between practicality and an ideal mode of operation. As such, it was the focus of IFPHK to look into the ease of implementation, resource implication and effectiveness of the proposed legislation when preparing this response and to study the impact of the statutory backing and the transitional arrangements to current records.

Financial transactions are not only integral parts of financial planning but an important part of the daily lives of members of the community. Therefore, a simple measure could have serious and wide implications for the society as a whole. When there is a widespread negative impact for the market or society, the proposed measures needed to be carefully considered. If the benefits in prevention of money laundering were thought to be minimal, it is IFPHK's belief that recommendations by the Financial Action Task Force (FATF) should not be blindly followed at the cost of public interest.

IFPHK has not conducted any detailed research on other anti-money laundering legislations. Full membership consultation has not taken place and no legal advice was sought. Responses and recommendations made herein are based on the analyses and studies provided in the consultation paper and relevant consultative sessions.

It should also be noted that the views and recommendations outlined below, referred to as "IFPHK views", represented the collective views of both the IFPHK management team and a few major industry players as well as professional bodies and do not reflect a comprehensive membership consultation process.

Our stance in the Round 1 Consultation (submitted in September 2009)

During the period from July to October 2009, the Financial Services and the Treasury Bureau (FSTB) launched a consultation on the "Conceptual Framework of Legislative Proposal to Enhance Anti-Money Laundering (AML) Regulatory Regime in respect of the Financial Sectors" (Round 1 Consultation). During the Round 1 Consultation, IFPHK expressed our views (**Appendix 1**) that we endorsed the general principle to provide statutory backing to the current AML regulations in Hong Kong, in order to step up to the international standard and to maintain Hong Kong's status as a global financial services provider SUBJECT to our stance that new legislations: -

- should be based on existing rules, principles and guidelines currently in force and imposed on practitioners;
- will not impose additional onus and/or burden on daily operations and/or fulfillment of compliance obligations; and



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- the power by regulatory authorities for investigation and seizure should be subject to control and be coupled with suitable safeguarding measures to avoid abuses.

Our Recommendation to this Round 2 Consultation

IFPHK's mission was to reinforce and uphold professional standards of the financial planning industry and to create a healthy, sustainable marketplace which protects the interest of both consumers and the industry. In considering the proposed legislation, IFPHK took into account the following: -

- cost effectiveness of the proposals in combating money laundering and terrorist financing
- adequacy of existing systems to support the changes and the cost implication for changing them, if necessary
- practical implications when such legislation is being implemented

Whilst looking into these factors, the following would be highlighted: -

- measures which might have such widespread implication that the market would be paralyzed
- unintended consequences which disrupt the market and do not effectively combat money laundering or terrorist financing

General Principles of the Anti-Money Laundering Bill

Riding on our stance in the Round 1 Consultation, IFPHK endorsed the general scope of the legislation and designations of the regulatory powers with the relevant authorities for the purpose of maintaining consistencies in the current regulatory approach. IFPHK saw that whilst the proposed legislation mainly aimed at addressing concerns raised by the FATF in their "Summary of the Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, Hong Kong China" dated 20 June 2008 (Report), and providing statutory backing to current market practices, thereby aligning Hong Kong to the requisite international standards, market applications and structures should as much as possible be maintained as-is.

IFPHK endorsed: -

- Continuity of the Regulatory Structure – IFPHK endorsed the general principle to continue the current supervisory model in that the Hong Kong Monetary Authority, Securities and Futures Commission and Insurance Authority as the relevant authorities to supervise the respective banking, securities and insurance sectors so as to maintain consistency in the regulatory control.



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- Level Playing Field – IFPHK welcomed the proposal and stressed the importance to provide a uniform set of basic requirements for all sectors to ensure that level supervisory powers and compliance requirements are universally adopted by all sectors to ensure consistency. However, IFPHK also recognized that the regulatory framework, resources and focuses for the different sectors are currently modeled on the characteristics of their respective business operations where complexities and business models have substantial variations. Therefore, the proposed legislation should also take this into consideration of and ensure that guidelines introduced would allow flexibility and cater for such differences to facilitate effective regulatory measures and meaningful enforcement functions.

Major Proposals

IFPHK noted that this Round 2 Consultation contained specific detailed proposals ranging from the obligations of financial institutions, to the powers of the regulatory authorities, through sanctions and offences, and the appeal mechanisms. In our response, we focused on those issues which would be more relevant for the financial planning industry. Therefore we would like to highlight a number of issues related to: -

- Ongoing Due Diligence and Transitional Period
- Simplified Due Diligence
- Third Party Reliance
- Wire Transfers and Remittances

Ongoing Due Diligence and Transitional Period

Items 6 and 7 of Annex A of the proposal required FIs to conduct ongoing due diligence on business relationships and on the occurrence of triggering events, within two years upon commencement of the legislation. Ongoing due diligence required FIs to scrutinize transactions to ensure that they would be consistent with the FI's knowledge of the customers, their business and risk profile, and possibly their source of funds. It also required FIs to review their existing records to ensure that identification and verification data, information and documents obtained had been kept up-to-date.

We understand the reasons why merely monitoring the account opening stage for financial transactions would not be sufficient in stopping money laundering because actions such as assignment of ownership and payment to third parties could also be abused by certain parties for illegitimate purposes. This however could be adequately captured by requesting relevant information when triggering events occur. After careful consideration, capturing ongoing information on all accounts including inactive ones (those without any triggering events for a period of time) was not considered to be effective in combating money laundering because without a triggering event, money could not actually be laundered.

Obtaining information on inactive accounts with no triggering events would not present any clear benefits in anti-money laundering but on the other hand would create an unreasonably huge administration burden for all market players especially for stockbrokers, banks and life insurance companies with a relatively long history. Examples of the types of accounts which could pose problems included: -



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- Policyholders of life insurance policies effected a while ago and the insurance company has lost contact with the client, especially after the life agent who recommended the original policy has left the insurance company
- Accounts held with stockbrokers without an active account executive and the stockbroker had lost contact with the client
- Customers of independent financial advisers the relationship of which commenced a while ago but the advisory firm has lost contact with, especially after the individual adviser who introduced the relationship has already left the independent financial advisory firm

Putting obligation on FIs to obtain relevant information on inactive ongoing accounts would not only be disruptive for businesses with no clear anti-money laundering benefits but have serious legal and moral implications for the, in particular, life insurance sector. The current proposal would require life insurance companies to terminate the insurer-client relationship, i.e. cancel the life policy, with a client whose information could not be obtained. Whilst bearing in mind that the contractual liabilities of life insurance companies towards their policyholders do not allow them to unilaterally cancel their obligation to policyholders thereby creating important legal implications, IFPHK would also like to highlight the moral issue as well. Policyholders who had taken out life insurance policies and paid all premiums in good faith should not be denied their rights to the policy benefits merely because either the life insurance company did not manage to verify the relevant information or the policyholders failed to respond to such requests. Many would rely on payments from the life companies to meet urgent and significant family needs. The distress and harm that would be caused by the introduction of such a measure could not be justified with any discernible benefits for the prevention of money laundering. As mentioned above, in the absence of a triggering event such as payment of a claim, partial withdrawal, assignment of policy, full surrender or withdrawal of a policy loan, money could not be effectively laundered.

In addressing this concern, IFPHK proposed that FIs be exempted from the ongoing due diligence requirement for accounts which are inactive, i.e. accounts which had not been the subject of any triggering events for a reasonable period of time. It was fully appreciated that this might not fully comply with the relevant requirements of FATF however IFPHK felt that their recommended administrative requirements should not be allowed to preside over unintended consequences which could have detrimental effects on public interests.

Simplified Due Diligence

Items 3.4 and 3.5 of the proposal allowed for simplified due diligence for certain categories which are deemed to be low risk. Details of these were specified in Item 8 of Annex A of the proposal. We would like to put forward for consideration including that an overseas FI which might not be in an equivalent jurisdiction but after assessment was deemed to have introduced measures in compliance with the AML requirements in Hong Kong and that appropriate resources had been deployed to execute such measures. This approach would follow the same spirit as the risk-based approach used for the AML



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measures proposed and be more appropriate for the Hong Kong market where players mainly have transactions with countries in Asia and not in Europe.

Third Party Reliance

Items 3.12 to 3.15 of the proposal allowed for reliance on third parties to conduct customer due diligence which was already permitted under existing guidelines issued by various financial regulators. The eligibility criteria was listed out in Item 10 of Annex A. For the same reasons as stipulated in the previous paragraph on Simplified Due Diligence, we would like to also to put forward for consideration including that an overseas FI which may not be in an equivalent jurisdiction but after assessment was deemed to have introduced measures in compliance with the AML requirements in Hong Kong and that appropriate resources had been deployed to execute such measures. This approach would also follow the same spirit as the risk-based approach used for the AML measures proposed and be more appropriate for the Hong Kong market where players mainly have transactions with countries in Asia and not in Europe.

Wire Transfers and Remittances

Items 3.18 to 3.20 of the proposed new legislation required FIs in Hong Kong to conduct customer due diligence on occasional electronic fund transfers of HK\$8,000 or above as well as for other forms of remittance transactions. This would apply to both outbound as well as inbound funds. FIs would therefore be obliged to refuse accepting incoming transfers in the absence of the relevant information.

After careful consideration of available banking systems and standard market practices, it was acknowledged that relevant information for incoming funds could often be hard to obtain immediately or even in the short run. In a normal functioning market, majority of incoming funds would be remitted by customers through telegraphic transfers, on-line facilities or local transfers. For such monies to be efficiently transferred from one party to another, agents or intermediaries would be involved and most often, computer systems would be relied upon rather than through mere manual intervention. Most of the systems used by local firms which had been highly computerized would not allow the transmission of originator's information as required in the proposed legislation. To comply with the proposed requirement, FIs would either be required to revert back to a largely manual system, which would effectively paralyze the market; or to undertake a substantial and universal change to their current computer systems, involving a significant amount of cost which would be difficult to justify.

In addressing this concern, IFPHK would propose that flexibility be introduced in situations of incoming fund transfers when the remitting party involved an authorized FI. This would ensure that the audit trail could still be made available and be effectively used to track illegitimate activities but without serious disruption to the market.



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Conclusion

The anti-money laundering provisions in Hong Kong had developed over the years and had been successfully monitored by the respective regulators across different sectors of the industry. Being a member of the FATF and an important player in the global financial system, IFPHK agreed that Hong Kong should comply with and adopt as much as possible mandatory recommendations suggested by the FATF in order to ensure our investment environment as well as financial status be competitive, stable, and secured. Whilst IFPHK endorsed the underlying principle of introducing statutory backing to the AML regime, and endorsed many of the measures to be introduced, we must ensure that measures introduced must not only be effective in preventing money laundering but also could be practiced without excessive disruption for the market. Hong Kong's competitive edge lies in its free market mechanisms backed by a strong enforceable legal framework, solid infrastructure and competent staff in the financial services sector. It would be critical not to compromise these characteristics in the introduction of any new legislation. IFPHK welcomed the risk-based approach which would be more suitable in a mature and developed financial market. The industry would also be confident that its work force would have the adequate knowledge, skills and experience to practice this effectively.