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Panel on Financial Affairs

Special meeting on 14 December 2009

Background brief on the proposed new anti-money laundering legislation for financial institutions

Purpose

This paper sets out the background of the legislative proposal to enhance the anti-money laundering (AML)¹ regulatory regime in respect of the financial sectors. It also summarizes Members' views on the regulatory regime during discussions at meeting of the Panel on Financial Affairs (the FA Panel).

Background

Mutual evaluation conducted by the Financial Action Task Force

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

3. FATF has been conducting ME on its member jurisdictions against the FATF Recommendations with a view to ascertaining the effectiveness of the AML systems of these jurisdictions and putting forward proposals on improvement measures. The ME on Hong Kong was conducted in November 2007 and the ME Report was published in July 2008. While the ME Report on Hong Kong highlighted that the existing AML regime is generally effective, it has identified certain deficiencies in Hong Kong's regime which include, among others, the lack of a proper regulatory regime for remittance agents and money changers (RAMCs) and the designated

¹ For the purpose of the legislative proposal, anti-money laundering includes the meaning of both anti-money laundering and counter financing of terrorism.

non-financial businesses and professions such as accountants and lawyers, the lack of statutory backing for customer due diligence (CDD) and record keeping requirements for financial institutions, and the gaps in its legal provisions to fully implement the United Nations Terrorist Financing Convention in Hong Kong, etc. Hong Kong is required to report to FATF on actions taken or planned to address the deficiencies identified in the ME on a regular basis, and the first progress report is due in the second quarter of 2010.

Review of the AML regulatory regime

4. At present, the basic requirements on CDD and record-keeping by financial institutions are implemented through guidelines issued by the financial regulators, viz. the Monetary Authority, Securities and Futures Commission and the Insurance Authority pursuant to their statutory powers respectively under the Banking Ordinance (Cap. 155), the Securities and Futures Ordinance (Cap. 571) and the Insurance Companies Ordinance (Cap. 41). Whilst currently there is no specific provision for sanctions against non-compliance, failure to comply with these guidelines will be taken into account in financial regulators' consideration of the "fitness and properness" of the regulatees.

5. RAMCs are currently subject to the statutory requirements under sections 24B and 24C of the Organized and Serious Crimes Ordinance (Cap. 455) to be registered with the Joint Financial Intelligence Unit of the Police, to verify customers' identity for transactions or wire transfers of HK\$8,000 or above and to keep records of such transactions for a specified period. There is however no statutory provision for the power to refuse registration and the power to access to RAMC's premises or books/records for routine compliance checks. FATF recommended enhancement of the AML regulation over this sector.

6. To address the deficiencies identified in the ME Report, the Administration undertakes a comprehensive review of the current legal and regulatory regime in Hong Kong and plans to introduce specific measures with a view to enhancing the capability to effectively prevent, detect, investigate, enforce and prosecute money laundering and terrorist financing activities. The initial phase of the review focus on the AML regulatory regime for the financial services sectors such as banking, securities, insurance and RAMCs. Legislative work will be undertaken to implement measures to improve the regime. To follow up the recommendations in the ME Report in a timely manner, the Administration has obtained approval of the Finance Committee on 19 February 2009 for creation of a supernumerary post of Administration Officer Staff Grade C for a period of two years to take forward the legislative work.

Broad framework of legislative proposal to enhance the anti-money laundering regulatory regime in respect of the financial sectors

7. On 11 June 2009, the Administration briefed the FA Panel on the upcoming consultation on the broad framework of a legislative proposal to enhance AML regulatory regime in respect of the financial sectors, which would commence in July 2009 and last for three months. The Administration plans to work out detailed

legislative proposals around late 2009/ early 2010 taking into account the comments received in the consultation exercise and brief the FA Panel again when the second-round consultation is launched. The proposal seeks to:

- (a) provide statutory backing for CDD and record-keeping requirements for financial institutions which are currently stipulated in guidelines issued by financial regulators;
- (b) provide a wider range of supervisory and enforcement powers to financial regulators in supervising financial institutions' compliance with the statutory requirement effectively;
- (c) provide for appropriate criminal sanctions or supervisory sanctions (which are civil in nature) for non-compliance; and
- (d) put in place an AML regulatory regime for RAMCs, and a licensing system for RAMCs which will be administered by the Customs and Excise Department.

Major views and concerns expressed by Members

8. At the special Panel meeting on 11 June 2009, while Members generally appreciated the merits of enhancing the AML regulatory regime in line with the international standard, some Members expressed the following concerns:

- (a) Given the relatively small scale of business operation of RAMCs, the proposed licensing requirements for RAMC might create excessive burden on RAMCs and reduce their room for survival. Some Members asked whether the Administration would allow a transitional period for RAMCs to implement the various new regulatory measures.
- (b) The Administration should examine in detail the proposed criminal liability and sanctions for non-compliance, the enforcement of the legislation by the regulatory authorities, and the need for a clear definition in the proposed legislation for the mental elements under which non-compliances would constitute criminal liability on the part of the financial institutions concerned.
- (c) Instead of criminal sanctions, the Administration should consider different regulatory sanctions such as fines or suspension of licence for non-compliance of financial institutions. Reference should be made to the international best practice in this regard.
- (d) The Administration should only impose on the financial institutions the minimum necessary AML regulatory requirements to achieve a proper balance between regulatory oversight and compliance burden on the institutions concerned.

Recent developments

9. On 9 July 2009, the Administration launched a three-month public consultation on the conceptual framework of the legislative proposal to enhance the AML regulatory regime in respect of the financial sectors. The consultation period ended on 8 October 2009. Taking into account the comments expressed in the consultation exercise, the Administration has drawn up a set of detailed legislative proposals in consultation with the regulators and issued a consultation document on 7 December 2009 to conduct a further round of consultation.

10. The Administration will brief the FA Panel on the second round consultation at the special meeting on 14 December 2009.

References

11. The relevant papers are available at the following links:

Administration's paper for the FA Panel meeting on 11 June 2009

<http://www.legco.gov.hk/yr08-09/english/panels/fa/papers/fa0611cb1-1829-2-e.pdf>

Background brief on the broad framework of legislative proposal to enhance the anti-money laundering regulatory regime in respect of the financial sectors prepared by the Legislative Council Secretariat

<http://www.legco.gov.hk/yr08-09/english/panels/fa/papers/fa0611cb1-1828-e.pdf>

Minutes of FA Panel meeting on 11 June 2009 (paragraph 15 to 26)

<http://www.legco.gov.hk/yr08-09/english/panels/fa/minutes/fa20090611.pdf>

Administration's consultation paper on the conceptual framework of the legislative proposal

<http://www.legco.gov.hk/yr08-09/english/panels/fa/papers/facb1-2247-e.pdf>