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財經事務及庫務局
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來函檔號 YOUR REF.:

24 December 2014

Ms Connie Szeto
Clerk to Panel on Financial Affairs
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Szeto,

Legislative Council Panel on Financial Affairs

**Anti-Money Laundering and Counter-Terrorist Financing
(Financial Institutions) Ordinance
(Amendment of Schedule 2) Notice 2015**

I enclose, for your circulation to Members, an information note on Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Amendment of Schedule 2) Notice 2015 (“the Notice”) which is intended to be made and gazetted by the Administration on 23 January 2015.

The Notice seeks to amend section 18(5) of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance to provide for the renewal of a sunset clause to facilitate financial institution to rely on a specified intermediary to carry out customer due diligence work.

The Administration would like to invite Members to note the legislative proposal. We stand ready to answer any query on relevant occasions or in written form.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'John Tse', written over a large, light-colored oval shape that serves as a background for the signature.

(John Tse)

for Secretary for Financial Services and the Treasury

For information

Legislative Council Panel on Financial Affairs

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Amendment of Schedule 2) Notice 2015

PURPOSE

This paper informs Members of the Administration's intent to gazette the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Amendment of Schedule 2) Notice 2015 ("the Notice"), for negative vetting by the Legislative Council, in relation to the operation of section 18 of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance ("AMLO", Cap. 615). The Notice seeks to enable financial institutions¹ to continue relying on certain specified intermediaries to carry out customer due diligence ("CDD") measures until 31 March 2018.

BACKGROUND

2. The AMLO came into operation on 1 April 2012. It stipulates a set of CDD measures and record-keeping requirements to be undertaken by financial institutions, in line with the recommendations of the Financial Action Task Force ("FATF"), the standard-setting body for the global efforts in anti-money laundering and counter-terrorist financing ("AML/CFT"). Such requirements are detailed in Schedule 2 to the AMLO².

3. Section 18 of Schedule 2 to the AMLO (at Annex) permits a financial institution to carry out any CDD measure by means of an intermediary specified in subsection (3) if –

- (a) the intermediary consents in writing to be the financial institution's intermediary; and

¹ In the context of the AMLO, "financial institutions" refer to (a) authorized institutions under the Banking Ordinance; (b) licensed corporations under the Securities and Futures Ordinance; (c) authorized insurers, appointed insurance agents, and authorized insurance brokers under the Insurance Companies Ordinance; (d) licensed money service operators (i.e. money changers and remittance agents); or (e) the Postmaster General.

² Section 6 of the AMLO provides that the Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Schedule 2.

- (b) the financial institution is satisfied that the intermediary will on request provide a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out the CDD measure without delay.

4. Section 18(3) of the same Schedule specifies the relevant “intermediary” whom a financial institution may rely on to complete the statutory CDD measure. With reference to section 18(3)(a), the specified intermediaries include, among others, any of the following persons who is able to satisfy the financial institution that they have adequate procedures in place to prevent money laundering and terrorist financing –

- (i) a solicitor practising in Hong Kong;
- (ii) a certified public accountant practising in Hong Kong;
- (iii) a current member of The Hong Kong Institute of Chartered Secretaries practising in Hong Kong;
- (iv) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) carrying on trust business in Hong Kong.

5. That said, section 18(3)(a) will expire after 31 March 2015 (i.e. at the end of 3 years beginning on the date of commencement of the AMLO), by virtue of section 18(5) (“the sunset clause”). The sunset clause was intended to provide for the transition of the relevant four sectors mentioned in paragraph 4 above to a statutory AML/CFT regime on par with the same applying to financial institutions in accordance with the AMLO.

LEGISLATIVE PROPOSAL

6. The Administration intends to amend section 18(5) of Schedule 2 to the AMLO to provide for the renewal of the sunset clause until 31 March 2018, so that relevant financial institutions may continue leveraging section 18 to carry out the CDD measure by means of a relevant intermediary specified in section 18(3)(a) .

7. In the meantime, the Administration will continue to work with the relevant professional sectors to enhance and strengthen their AML/CFT compliance through, among others, the promulgation and implementation of relevant guidance documents by the professional bodies, and other forms of professional development and education work. As the implementation of the FATF recommendations regarding the regulation of CDD and record-keeping requirements for the relevant professions (i.e. the “designated non-financial

businesses and professions”, or “DNFBPs”, in FATF’s parlance) is evolving in different financial centres, we will continue to study and assess the developments in comparable markets to consider when and how to bring the DNFBP sectors into the statutory CDD and record-keeping regime as per the latest FATF recommendations.

8. We believe the continuation of the interim arrangement set out in section 18(3)(a) of Schedule 2 to the AMLO, through the renewal of the sunset clause as proposed in paragraph 6 above, will facilitate financial institutions and relevant intermediaries to continue to work together to comply with the CDD requirements applying to financial institutions under the AMLO.

CONCLUSION

9. Members are invited to note the proposal set out in this paper. The Administration intends to gazette the Notice on 23 January 2015 for negative vetting by the Legislative Council.

Financial Services and the Treasury Bureau
24 December 2014

Section 18 of Schedule 2 to AMLO

Carrying out customer due diligence measures by means of intermediaries

(1) Subject to subsection (2), a financial institution may carry out any customer due diligence measure by means of an intermediary specified in subsection (3) if—

(a) the intermediary consents in writing to be the financial institution's intermediary; and

(b) the financial institution is satisfied that the intermediary will on request provide a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out the customer due diligence measure without delay.

(2) A financial institution that carries out a customer due diligence measure by means of an intermediary remains liable under this Ordinance for a failure to carry out that customer due diligence measure.

(3) The specified intermediary is—

(a) any of the following persons who is able to satisfy the financial institution that they have adequate procedures in place to prevent money laundering and terrorist financing—

(i) a solicitor practising in Hong Kong;

(ii) a certified public accountant practising in Hong Kong;

(iii) a current member of The Hong Kong Institute of Chartered Secretaries practising in Hong Kong;

(iv) a trust company registered under Part 8 of the Trustee Ordinance (Cap 29) carrying on trust business in Hong Kong;

(b) a financial institution that is an authorized institution, a licensed corporation, an authorized insurer, an appointed insurance agent or an authorized insurance broker; or

(c) a lawyer, a notary public, an auditor, a professional accountant, a trust or company service provider or a tax advisor practising in an equivalent jurisdiction, or a trust company carrying on trust business in an equivalent jurisdiction, or an institution that carries on in an equivalent jurisdiction a business similar to that carried on by a financial institution mentioned in paragraph (b), that—

(i) is required under the law of that jurisdiction to be registered or licensed or is regulated under the law of that jurisdiction;

(ii) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and

(iii) is supervised for compliance with those requirements by an authority in that jurisdiction that performs functions similar to those of any of the relevant authorities.

(4) A financial institution that carries out a customer due diligence measure by means of an intermediary must—

(a) immediately after the intermediary has carried out that measure, obtain from the intermediary the data or information that the intermediary has obtained in the course of carrying out that measure, but nothing in this paragraph requires the financial institution to obtain at the same time from the intermediary a copy of any document, or a record of any data or information, that is obtained by the intermediary in the course of carrying out that measure; and

(b) ensure that the intermediary will, if requested by the financial institution within the period referred to in section 20(2) or (3) of this Schedule, as the case requires, provide to the financial institution a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out that measure as soon as reasonably practicable after receiving the request.

(5) Subsection (3)(a) expires at the end of 3 years beginning on the date of commencement of this Ordinance.

(6) Nothing in this section prevents a financial institution from carrying out a customer due diligence measure by its agent but such a financial institution remains liable under this Ordinance for a failure to carry out that customer due diligence measure.

(7) In this section—

certified public accountant (會計師) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap 50).