

LEGISLATIVE COUNCIL BRIEF

Anti-Money Laundering and Counter-Terrorist Financing
(Financial Institutions) Ordinance (Chapter 615)

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

INTRODUCTION

The Secretary for Financial Services and the Treasury has made the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Amendment of Schedule 2) Notice 2015 (“The Notice”) (**Annex A**) to enable financial institutions¹ to continue to rely on certain specified intermediaries to carry out customer due diligence (“CDD”) measures until 31 March 2018. The Notice concerns the operation of section 18 of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (“AMLO”).

JUSTIFICATIONS

2. The AMLO came into operation on 1 April 2012. It stipulates a set of CDD and record-keeping measures 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 B**) permits a financial institution to carry out any CDD measure by means of an intermediary specified in subsection (3) if –

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.

- (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 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 measures. The intermediary specified in section 18(3)(a) is any of the following persons who are 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; and
- (iv) a trust company registered under Part 8 of the Trustee Ordinance (Cap. 29) carrying on trust business in Hong Kong.

5. 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). Section 18(5) 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.

6. The Administration intends to amend section 18(5) of Schedule 2 to the AMLO to provide for the extension of the expiry date of section 18(3)(a) until 31 March 2018, so that relevant financial institutions may continue to leverage section 18 to carry out the CDD measures 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 that the continuation of the interim arrangement set out in section 18(3)(a) of Schedule 2 to the AMLO, through the proposed amendment referred to 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.

THE NOTICE

9. The Notice seeks to provide for the extension of the expiry date of section 18(3)(a) of Schedule 2 to the AMLO for 3 more years until 31 March 2018, so that relevant financial institutions may continue to leverage section 18 to carry out relevant CDD measures by means of a relevant intermediary specified in section 18(3)(a).

LEGISLATIVE TIMETABLE

10. The Notice will be published in the Gazette on 23 January 2015, and tabled at the Legislative Council at its sitting of 28 January 2015. Subject to negative vetting by the Legislative Council, the relevant provisions will come into operation on 1 April 2015.

IMPLICATIONS OF THE PROSPOSAL

11. The Notice is in conformity with the Basic Law, including the provisions concerning human rights. The proposed amendments will not affect the current binding effect of the AMLO.

PUBLIC CONSULTATION

12. We have consulted the relevant financial sectors and the professional bodies covered in the relevant “specified intermediaries” set out in section 18(3)(a) of Schedule 2 to the AMLO. They do not have any objection to the proposed amendments.

13. We issued an information note to the Legislative Council Panel on Financial Affairs on 29 December 2014 to inform Members of the proposed amendments.

PUBLICITY

14. We will issue a press release upon the issuance of this Legislative Council brief. A spokesperson will be available to answer media enquiries.

ENQUIRIES

15. Enquiries should be directed to Mr. Jackie Liu, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2067.

Financial Services and the Treasury Bureau
21 January 2015

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

(Made by the Secretary for Financial Services and the Treasury under
section 6 of the Anti-Money Laundering and Counter-Terrorist Financing
(Financial Institutions) Ordinance (Cap. 615))

Secretary for Financial Services and
the Treasury

1. Commencement

This Notice comes into operation on 1 April 2015.

2015

**2. Anti-Money Laundering and Counter-Terrorist Financing
(Financial Institutions) Ordinance amended**

The Anti-Money Laundering and Counter-Terrorist Financing
(Financial Institutions) Ordinance (Cap. 615) is amended as set out
in section 3.

**3. Schedule 2 amended (requirements relating to customer due
diligence and record-keeping)**

Schedule 2, section 18(5)—

Repeal

“at the end of 3 years beginning on the date of commencement
of this Ordinance”

Substitute

“at midnight on 31 March 2018”.

Explanatory Note

Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) sets out the requirements relating to customer due diligence (**CDD**) and record-keeping for financial institutions. As an interim provision, a financial institution may carry out CDD measures by means of intermediaries in other local professional sectors that are specified in section 18(3)(a) of that Schedule on the condition that these intermediaries have adequate procedures in place to prevent money laundering and terrorist financing. This provision is due to expire after 31 March 2015 according to section 18(5) of that Schedule. This Notice amends that section 18(5) so that financial institutions may continue to carry out CDD measures through the relevant intermediaries for 3 more years until 31 March 2018.

Section 18 of Schedule 2 to Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance

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).