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**Panel on Financial Affairs**

**Meeting on 3 January 2017**

**Background brief on proposed amendments to the Anti-Money  
Laundering and Counter-Terrorist financing  
(Financial Institutions) Ordinance**

**Purpose**

This paper provides background information on the Administration's proposal to amend the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO") to prescribe statutory customer due diligence ("CDD") and record-keeping requirements applicable to designated non-financial business and professions ("DNFBPs"). It also provides a summary of the major views and concerns expressed on the subject by the Subcommittee on the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Amendment of Schedule 2) Notice 2015 ("the Subcommittee on the 2015 Notice").

**Background**

Enactment of the Anti-Money Laundering and Counter-Terrorist Financing  
(Financial Institutions) Ordinance

2. AMLO, which came into operation on 1 April 2012, stipulates a set of CDD and record-keeping requirements on financial institutions ("FIs")<sup>1</sup> in

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<sup>1</sup> According to Part 2 of Schedule 1 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615), financial institution ("FI") refers to (a) authorized institutions under the Banking Ordinance (Cap. 155); (b) licensed corporations under the Securities and Futures Ordinance (Cap. 571); (c) authorized insurers, appointed insurance agents, and authorized insurance brokers under the Insurance Companies Ordinance (Cap. 41); (d) licensed money service operators (i.e. money changers and remittance agents); or (e) the Postmaster General.

line with the recommendations of the Financial Action Task Force ("FATF"),<sup>2</sup> the standard-setting body for the global efforts in anti-money laundering and counter-terrorist financing. The CDD and record-keeping requirements, which are set out in Schedule 2 to AMLO,<sup>3</sup> are intended to make it more difficult for criminals to make use of the financial system for money laundering and terrorist financing activities; and preserve an audit trail and relevant transaction records and documents to facilitate subsequent law enforcement agencies' investigation into money laundering or other criminal activities if necessary.

### Designated non-financial business and professions

3. Section 18 of Schedule 2 to AMLO permits an FI 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 FI's intermediary; and
- (b) the FI 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 Schedule 2 to AMLO specifies the relevant "intermediary" whom an FI 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 FI that they have adequate procedures in place to prevent money laundering and terrorist financing:

- (a) a solicitor practising in Hong Kong;
- (b) a certified public accountant practising in Hong Kong;
- (c) a current member of The Hong Kong Institute of Chartered Secretaries practising in Hong Kong; and
- (d) a trust company registered under Part 8 of the Trustee Ordinance (Cap. 29) carrying on trust business in Hong Kong.

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<sup>2</sup> The Financial Action Task Force ("FATF") was established in 1989. Its recommendations are recognized by the International Monetary Fund and the World Bank as the international anti-money laundering and counter terrorist financing standards. Hong Kong has been a member jurisdiction of FATF since 1990.

<sup>3</sup> Under the customer due diligence measures, FIs are required to identify and verify the identity of customers and beneficial owners of legal persons and arrangements, understand the control and ownership structure, and obtain information on the intended nature of the business, etc.

5. Section 18(5) of Schedule 2 to AMLO provided that section 18(3)(a) would expire at the end of three years beginning on the date of commencement of AMLO (i.e. 31 March 2015). According to the Administration, such interim provision was intended to provide for the transition of the relevant four sectors mentioned above (i.e. DNFBPs in FATF's parlance) to a statutory anti-money laundering and counter-terrorist financing ("AML/CFT") regime on a par with the same applying to FIs in accordance with AMLO.

6. To allow more time to study and assess the developments in comparable markets and to consider when and how to bring the relevant DNFBPs into a statutory CDD and record-keeping regime as per the latest FATF recommendations, the expiry date of section 18(3)(a) of Schedule 2 to AMLO was extended by three years to 31 March 2018 by the Secretary for Financial Services and the Treasury making a notice under section 6 of AMLO to amend Schedule 2 in 2015. The 2015 Notice was gazetted on 23 January 2015 and tabled at the Legislative Council ("LegCo") of 28 January 2015. The 2015 Notice enabled FIs to continue relying on the four sectors to carry out CDD measures under AMLO.

### **Concerns and Views expressed by Members**

7. The major views and concerns expressed by the Subcommittee on the 2015 Notice are summarized in the ensuing paragraphs.

#### Regulation of the customer due diligence and record-keeping requirements for specified intermediaries

8. Members considered that an effective statutory AML/CFT regulatory regime for the relevant professional sectors that aligned with the relevant international standards would be conducive to maintaining Hong Kong's status as an international financial centre. They enquired about the time-frame for the transition of DNFBPs to a statutory AML/CFT regulatory regime and urged the Administration to formulate the implementation plan in the light of developments in other jurisdictions.

9. The Administration advised that as implementation of the FATF recommendations regarding the regulation of CDD and record-keeping requirements for DNFBPs was evolving in various financial centres, it was prudent to extend the interim arrangement until 31 March 2018 to continue allowing FIs to conduct CDD measures by means of intermediaries under specified conditions. The Administration would consider the way forward in consultation with the relevant sectors having regard to the fourth round of mutual evaluation on Hong Kong by FATF, which was expected to take place

around late 2017/early 2018. The Administration would also closely monitor compliance in other jurisdictions and continue to work with the relevant professional sectors to enhance and strengthen their AML/CFT compliance through, among other measures, the promulgation and implementation of relevant guidance documents by the professional bodies, and other forms of professional development and education work.

#### Legal liability for non-compliance with the customer due diligence requirements

10. Under section 18(2) of Schedule 2 to AMLO, an FI carries out a CDD measure through an intermediary remains liable for a failure to carry out the CDD requirements under AMLO. Some members were concerned about the liability of FIs for the CDD requirements upon the transition of DNFBPs to the AML/CFT regulatory regime, and considered it unfair to hold the FIs concerned liable for the failure of their intermediaries after the transition. Some members opined that the FIs should be relieved of the legal liability so long they had exercised due diligence in the selection and appointment of qualified intermediaries in accordance with AMLO.

11. The Administration explained that the existing provision for FIs to retain the legal responsibility for undertaking CDD obligations and be responsible for any failure in compliance with the CDD requirements were in line with FATF's requirements. This was to ensure due diligence on the part of FIs in the appointment, supervision and control of their intermediaries. The Administration would take into account members' views about the respective legal liabilities of FIs and the specified intermediaries when reviewing the relevant provisions.

#### Compliance burden on financial institutions

12. Members stressed the importance of striking a proper balance between regulatory oversight and compliance burden on FIs so as to ensure that the implementation of CDD and record-keeping requirements would not hamper the operation and efficiency of FIs. Some members enquired about the possible impact of the interim arrangement allowing FIs to rely on specified intermediaries to carry out CDD measures on the competitiveness and compliance costs of local FIs.

13. The Administration reiterated that the prescribed CDD measures and record-keeping requirements under AMLO were in line with FATF's recommendations and aligned with the prevailing international best practices. Hence, compliance with these measures would not render the local financial sectors less competitive than their counterparts in other jurisdictions nor undermine local FIs' competitiveness in the international arena. Continuation of the interim arrangement would cause the least disruptions to the operation

of the financial and professional sectors involved, and would facilitate FIs and relevant intermediaries to continue to work together where necessary to comply with the CDD requirements applying to FIs under AMLO. The Administration had consulted the relevant financial sectors, including the Hong Kong Association of Banks and the relevant professional bodies of the specified intermediaries. They did not have any objection to the extension of the interim provision.

#### Effectiveness of the anti-money laundering and counter-terrorist financing regulatory regime

14. Some members expressed concern about the effectiveness of the AML/CFT regulatory regime and the compliance performance of FIs and intermediaries. For instance, questions were raised as how a solicitor who might not have knowledge of a customer's sources and flow of funds could effectively detect suspicious transactions involving money laundering and terrorist financing activities.

15. The Administration responded that the CDD and record-keeping measures under AMLO had made it more difficult for criminals to use the financial system for money laundering and terrorist financing activities, and helped the detection of suspicious activities by FIs which had led to reports to the relevant authorities for further investigation. The audit trail and relevant transaction records kept by FIs could also facilitate follow-up by law enforcement agencies and be used as evidence in legal proceedings. The relevant financial regulators and relevant professional bodies had updated their supervisory guidelines from time to time to assist FIs and the specified intermediaries to enhance their internal control system and procedures for compliance. Moreover, under the Organized and Serious Crimes Ordinance (Cap. 455), all persons should report suspected money laundering cases to the Joint Financial Intelligence Unit. The Unit comprised of officers from the Hong Kong Police Force and the Customs and Excise Department was dedicated to analyzing suspicious transaction reports in relation to money laundering and terrorist financing activities and disseminating the intelligence to investigation units as appropriate. The Administration would closely liaise with the regulatory authorities, professional bodies and the industry to enhance the regulatory regime and review the compliance capability of FIs and specified intermediaries.

#### **Council questions**

16. During the Fifth LegCo, Members raised three questions relating to AMLO at the LegCo meetings of 31 October 2012, 9 April 2015 and 27 April 2016. Issues covered in the questions include measures adopted by the real property sector to combat money laundering activities, effectiveness of the

existing mechanism and legislation in combating banks' activities assisting their clients in money laundering activities, and measures to strengthen regulation of intermediaries in assisting their clients in money laundering activities. The questions and the Administration's responses are hyperlinked in **Appendix I**.

### **Latest development**

17. In order to ensure that the AML/CFT regulatory framework of Hong Kong is in line with the relevant global standards set by FATF, the Administration proposes to amend AMLO to prescribe statutory CDD and record-keeping requirements applicable to DNFBPs. The Administration will brief the Panel on Financial Affairs on the proposed amendments at the meeting on 3 January 2017.

### **References**

18. A list of relevant papers is at **Appendix I**.

Council Business Division 1  
Legislative Council Secretariat  
28 December 2016

## List of relevant papers

Date	Event	Papers/Minutes of meeting
31 October 2012	Written question raised by Hon Kenneth LEUNG on "Anti-money laundering measures concerning Designated Non-Financial Business and Professions"	<a href="#">Hansard</a> (pages 100-103)
10 February 2015	Subcommittee on Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Amendment of Schedule 2) Notice 2015	<a href="#">Report of the Subcommittee</a> (LC Paper No. CB(1)578/14-15)  <a href="#">Legislative Council Brief</a>  <a href="#">Legal Service Division report</a> (LC Paper No. LS34/14-15)
29 April 2015	Written question raised by Hon Frederick FUNG on "Controls and measures against money laundering and tax evasion"	<a href="#">Hansard</a> (pages 42-43)
27 April 2016	Oral question raised by Hon Kenneth LEUNG on "Handling of suspicious transaction reports"	<a href="#">Hansard</a> (pages 18-21)