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Panel on Financial Affairs

Special meeting on 11 June 2009

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

Purpose

This paper recapitulates the background of the legislative proposal to enhance the anti-money laundering (AML) regulatory regime in respect of the finance sectors. It also summarizes Members' views on the regulatory regime during discussions at meetings of Committees of the Legislative Council.

Background

2. The Financial Action Task Force (FATF) is an inter-governmental body which sets international AML and counter financing of terrorism (CFT) 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/CFT 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 ME Report on Hong Kong highlighted that the existing AML/CFT 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 non-financial businesses and professions such as accountants and lawyers, the lack of statutory backing for customer due diligence 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.

4. In view of the findings of the ME Report on Hong Kong, 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/CFT 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.

Major views and concerns expressed by Members

5. At the meeting of the Panel on Financial Affairs (FA Panel) on 7 May 2007, members discussed with the Administration and deputations services provided by banks RAMCs. Panel members noted that while RAMCs played an important intermediary role in the financial system of Hong Kong, there was growing international concern about the high risks of the RAMC business in the context of combating money laundering. As such, banks might have certain unease in their business dealings with RAMCs given that the latter often handled a large amount of cash and there was difficulty for banks to verify the information on the customers of RAMCs. Based on the experience in overseas jurisdictions (such as the United States, the United Kingdom and Singapore), measures to strengthen regulation of RAMCs such as enhancing the licensing system for RAMCs and imposing requirements on RAMCs to conduct money laundering checks would help strengthen the confidence of banks in doing business with RAMCs. Panel members were concerned about the provision of banking services to RAMCs for their continued operation, and noted that RAMCs had indicated their willingness to comply with enhanced regulation to address the concerns of banks in doing business with them. The Panel requested the Administration to review the existing regulatory regime on the operation of RAMCs and the operation of banks in their business relationship with RAMCs to see if additional safeguards should be introduced to strengthen banks' confidence in providing services to RAMCs.

6. At the FA Panel meeting on 21 November 2008, the Administration consulted the Panel on the proposal to create a supernumerary post of Administration Officer Staff Grade C (AOSGC) to undertake the enhancement of AML/CFT regime in Hong Kong, and follow-up the recommendations of the ME Report by FATF. During the discussion, there were concerns about the introduction of regulatory guidelines for the legal profession and there might involve new requirements for client identification and information gathering. Apart from practical difficulties in information gathering (particularly where overseas clients were involved), members were concerned that such requirements might infringe on personal data privacy. The Panel noted that AML/CFT regulation for legal profession would not be covered in the proposed legislative work. The Security Bureau, which oversaw AML/CFT matters concerning the designated non-financial businesses and professions, would suitably follow up the concerns of legal practitioners on compliance with the AML/CFT guidelines. Some Panel members did not support the staffing proposal as they considered the workload involved did not justify the creation of one AOSGC post. They

suggested the Administration make alternative arrangements to absorb the workload.

7. The staffing proposal was considered by the Establishment Subcommittee on 14 January 2009. While some Subcommittee members queried whether the workload involved in the follow-up of the ME Report justified the creation of a dedicated directorate post, some members appreciated the significance of enhancing the AML/CFT regime of Hong Kong, which was part of Hong Kong's international obligations and was crucial to maintaining Hong Kong's status as an international financial centre. A Subcommittee member pointed out that the proposal of putting in place a proper regulatory regime for RAMCs was made years ago. It was necessary to provide staffing support to enable timely follow-up on the recommendations of the ME Report. Moreover, the modern financial systems were facing increasing threats of being abused by criminals for money laundering and other illicit purposes and enhancing AMC/CFT regulatory regime for the financial sectors would be important. The member also opined that the Administration should consult the RAMC industry in formulating the regulatory regime. The proposal was approved by the Finance Committee on 13 February 2009.

Recent development

8. The Administration will brief the FA Panel on the proposal to provide statutory backing for customer due diligence and record keeping requirements for financial institutions and put in place an AML/CFT regulatory framework for RAMCs at the meeting on 11 June 2009.

References

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

Minutes of FA Panel meeting on 7 May 2007

<http://www.legco.gov.hk/yr06-07/english/panels/fa/minutes/fa070507.pdf>

Administration's paper for the FA Panel meeting on 21 November 2008

<http://www.legco.gov.hk/yr08-09/english/panels/fa/papers/fa1121cb1-179-4-e.pdf>

Minutes of FA Panel meeting on 21 November 2008

<http://www.legco.gov.hk/yr08-09/english/panels/fa/minutes/fa20081121.pdf>

Minutes of ESC meeting on 14 January 2009

<http://www.legco.gov.hk/yr08-09/english/fc/esc/minutes/esc20090114.pdf>

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