THE HONG KONG ASSOCIATION OF BANKS
香港銀行公會

CB(1)1926/09-10(07)

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14 May 2010

By email: zyhtong@legco.gov.hk

Mr Noel Sung
for Clerk to Panel
Panel on Financial Affairs
Legislative Council
Legislative Council Building
8 Jackson Road Central
Hong Kong

Dear Mr Sung

Panel on Financial Affairs - Special Meeting on Monday, 24 May 2010
Proposed New Anti-money Laundering Legislation for Financial Institutions

Thank you for your letter to our Chairman dated 30 April 2010.

We support the Administration's policy intention that the future anti-money laundering (AML) regulatory regime should enable Hong Kong to meet the standards set by the Financial Action Task Force on AML practices, whilst at the same time minimising the potential impact of the AML legislation on the financial sectors. Our detailed comments are set out in the attached submission to the Financial Services and the Treasury Bureau dated 5 February 2010 regarding its consultation on the proposed new AML legislation for financial institutions.

The Chairman of our AML Committee, Mr Vincent Li, will be pleased to represent the Hong Kong Association of Banks to attend the special meeting on 24 May 2010. Please find attached the completed reply slip as requested. Should you have any further questions, please do not hesitate to contact us.

Yours sincerely

Rita Liu
Secretary

Enc.

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5 February 2010

Professor K C Chan, SBS, JP
Secretary for Financial Services and the Treasury
Financial Services and the Treasury Bureau
Room 831, West Wing, Central Government Offices
Lower Albert Road
Central
Hong Kong

Dear Professor Chan

Consultation Paper: Proposed New Legislation on the Customer Due Diligence and Record-Keeping Requirements for Financial Institutions ("FIs") and the Regulation of Remittance Agents and Money Changers – Detailed Proposals (7 December 2009)

We refer to the above consultation paper issued by the Financial Services and the Treasury Bureau ("**FSTB**") for comment by 6 February 2010 (the "**Second CP**"), which followed the "Consultation Paper - Conceptual Framework of Legislative Proposal to Enhance the Anti-Money Laundering Regulatory Regime in respect of the Financial Sectors (9 July 2009)" (the "**First CP**") that we responded to on 8 October 2009 (our "**First Response**). We reiterate our support for the Administration's policy intention that the future anti-money laundering ("**AML**") regulatory regime should enable Hong Kong to meet the standards set by the Financial Action Task Force ("**FATF**") on AML practices, whilst at the same time minimising the potential impact of the AML legislation on the financial sectors.

In line with the above statement the 19-member AML Committee of The Hong Kong Association of Banks **("HKAB")**, composing of representatives from member banks of different sizes and whose core business covers retail, commercial, investment and/or private banking, has carefully reviewed the legislative proposals contained in the Second CP. As a result of that review we are making this submission, comprising the content of this letter and the enclosed table setting out our detailed comments in relation to each of the legislative proposals (our "**Detailed Submissions**"). In particular we would like to highlight the following issues, which are of special concern to the HKAB:

1 The majority of HKAB members are part of international banking groups which operate in various jurisdictions. Thus it is important that the new AML legislation harmonises with the legislative provisions adopted in other leading financial centres, especially for HKAB members that adopt group policies and practices in Hong Kong. As a matter of principle, the new legislation should not go beyond the requirements of FATF's 40+9 Recommendations and international standards, nor impose an excessive legal and regulatory burden on financial institutions ("**FIs**").

2 We welcome the FSTB's statement in paragraph 3.26 of the Second CP that the AML guidelines to be issued by relevant authorities should be synchronized and that those authorities should jointly produce a generic set of guidelines that will apply to all relevant financial sectors. As stated in our First Response, HKAB considers this to be of the utmost importance to ensure consistency and a level playing field across the various financial services sectors, as although primarily supervised by the Hong Kong Monetary Authority ("**HKMA**") it is not uncommon for an AI to also engage in business that is supervised by the Securities and Futures Commission ("**SFC**") and/or the Hong Kong Insurance Authority ("**IA**"). Additionally there are a number of particular scenarios that we accept are too specific to be covered within the legislation itself, but in relation to which appropriate guidance on the way that the legislation should be applied will be critical. With that in mind we strongly believe that the early involvement of the HKAB and other relevant stakeholder groups in the drafting process for the standards and guidelines is essential to ensure that they are both feasible for FIs and effective.

3 We strongly recommend that the effective date of the new legislation be postponed until at least one year after the issuance of the generic set of guidelines and sectoral guidelines by the relevant authorities. Such an extension is necessary in order to allow sufficient time for FIs to undertake preparatory compliance work (including any system changes required) and for any outstanding interpretation issues in the legislation to be resolved in the guidelines. We urge the Government and the HKMA to consult HKAB and other stakeholder groups in developing a practicable implementation timetable.

4 With respect to our Detailed Submissions we would particularly like to draw your attention to the following points:

4.1 The adoption of a risk-based approach in the context of applying all of the Customer Due Diligence ("CDD") and record keeping measures set out in the legislation will in our view be vital, particularly for FIs in connection with the opening and closing of bank accounts before a customer's identity has been verified under proposals 4(c) and 12.

4.2 We feel very strongly that the requirement under proposal 7 for FIs to review and update the CDD records for all existing customers within 2 years of the legislation's implementation should not be adopted. Instead existing customers should be grandfathered into the new regime, after which they will be subject to CDD on an ongoing basis in accordance with proposal 6. This would be consistent with the position taken in other equivalent jurisdictions.

4.3 We strongly urge that proposal 16, relating to the extraterritorial application of the legislation to branches and subsidiaries of FIs be deleted, as it is inconsistent with the position in a number of other equivalent jurisdictions as well as the FATF Recommendations. Further, criminal sanctions should not be applied to FIs that are unable to satisfy the requirement given the potential lack of legal and/or practical control they may have over whether particular subsidiaries or branches adhere to a particular legislative provision.

4.4 We feel very strongly that proposal 17, which imposes specific obligations on the officers of FIs, should be deleted on the basis that no such obligations are laid down in the FATF requirements or in any of the legislation in equivalent jurisdictions.

4.5 With respect to the criminal sanctions outlined under proposal 37 and the supervisory sanctions outlined under proposal 32, we strongly believe that extending the scope of such sanctions to individuals is neither appropriate nor necessary; i.e. any civil and criminal sanctions as may be ultimately introduced by the legislation should apply only to FIs and not to individuals.

We hope that the content of this letter, together with our comments on the proposals set out in the Detailed Submissions, are helpful. We strongly believe that co-operation between the Administration, the HKMA and ourselves in relation to the implementation of the new AML legislative framework is vital to ensuring that the regime is practical to apply and effective. As such representatives of the HKAB would be very pleased to meet with the Administration and the HKMA to discuss the implications of the proposals on authorised institutions further. Furthermore the HKAB's AML Committee would welcome the opportunity to work with you to develop the legislative provisions and supplementary guidelines and agree on a workable implementation timeline.

Yours sincerely

Benjamin Hung
Chairman

Enc.

c.c. Chief Executive, Hong Kong Monetary Authority

Appendix

The Hong Kong Association of Banks

Response to the Financial Services and the Treasury Bureau ("FSTB") Second Round Consultation: Proposed New Legislation on the Customer Due Diligence and Record-Keeping Requirements for Financial Institutions and the Regulation of Remittance Agents and Money Changers – Detailed Proposals (the "Consultation")

Consultation Reference: ANNEX A – Detailed Legislative Proposals (the "Proposals").

Proposal Reference	Legislative Proposal	HKAB Response
1	The legislation will cover financial institutions (FIs) which mean: (a) authorized institutions within the meaning of the Banking Ordinance (BO), Cap 155; (b) licensed corporations within the meaning of the Securities and Futures Ordinance (SFO), Cap 571; (c) insurers authorized under the Insurance Companies Ordinance (ICO), Cap 41; (d) appointed insurance agents and authorized insurance brokers as defined in ICO; and (e) remittance agents and money changers (RAMCs) licensed under this legislation.	As highlighted in our submission to the first round consultation, we support the policy intention of introducing anti-money laundering ("**AML**") legislation in Hong Kong in order for us to meet the international standards as set out by the Financial Action Task Force ("**FATF**"). However, it is of the utmost importance that the final draft of the legislation mirrors but does not go beyond the scope of the FATF's 40+9 Recommendations ("**FATF Recommendations**") to ensure that Hong Kong remains competitive as an international financial centre. We appreciate that it is important for Hong Kong to align and adopt a consistent approach with the AML principles adopted in other overseas jurisdictions such as those in UK, Singapore and the US, but we should not be obliged to replicate every legislative requirement. Instead, we submit that the AML legislative framework in equivalent jurisdictions should be used as a reference point for the legislative process in Hong Kong where equivalent legislative provisions are deemed relevant to and appropriate for the market in Hong Kong.

Proposal Reference	Legislative Proposal	HKAB Response
2	Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC), the Insurance Authority (IA) and the Customs and Excise Department (C&ED) will be designated as the authorities to regulate the banking, securities, insurance and RAMC sectors respectively and enforce the obligations on these sectors under this legislation.	We support the proposal on the designation of AML regulators. However, to ensure consistency and a level playing field among different FIs, we submit that it is imperative that these regulators should jointly develop one set of generic guidelines to provide practical guidance on compliance with the legislation. To the extent that there are any transaction or sector specific concerns within a particular industry (for example, trade finance, credit cards, correspondent banking, etc.), we submit that these would be best addressed in sectoral guidelines, which would supplement the generic guidelines. In the case of authorised institutions ("**AIs**") there are a number of particular scenarios that we accept are too specific to be covered within the legislation itself, but in relation to which appropriate guidance on the way that the legislation should be applied will be critical. Therefore, it is most important that these sectoral/industry guidelines are developed in thorough consultation with relevant industry participants such as ourselves to ensure that these guidelines are practically effective and feasible. Please refer to proposal 18 below for further discussion on the drafting of guidelines.
3	An FI is required to undertake customer due diligence (CDD): (a) before establishing a business relationship; (b) before carrying out an occasional transaction amounting to $120,000 or more, whether conducted as a single transaction or several transactions that appear to be linked; (c) before carrying out an occasional transaction which is a domestic or international wire transfer amounting to $8,000 or	While we support the proposals under 3(a), (d) and (e) and have no comments on the thresholds proposed under 3(b) or 3(c), we are of the view that the current language under 3(b) and (c) implies that FIs will have to conduct a full CDD on any occasional transactions that meet the relevant threshold. We believe this obligation is too onerous from a cost-benefit perspective, therefore we submit that a full CDD should not be required for 3(b) and (c). Instead, verification of the identity of the non-account holder by reference to their identification

Proposal Reference	Legislative Proposal	HKAB Response
	more, whether conducted as a single transaction or several transactions that appear to be linked; (d) when there is a suspicion of money laundering or terrorist financing; or (e) when the FI has doubts about the veracity or adequacy of previously obtained customer identification data.	documents should be sufficient. This approach is also consistent with the current HKMA Guidelines of the Prevention of Money Laundering, the Supplement and Interpretative Notes to the HKMA Guidelines (the "**HKMA Guidance**"), which requests only that the identity of the non-account holders be verified and transaction particulars be recorded (see HKMA Guidance, paragraphs 5.26 and 5.27 and Annex 8]. We also have concerns over the interpretation of occasional transactions conducted as 'several transactions that appear to be linked'. From members' experience, it is often impossible to determine whether random transactions are linked, especially when these transactions are conducted in different branches, as no records are kept for a non-account holder. Given the risk of criminal consequences for non-compliance with the legislation, we submit that it is not appropriate to include the words '*whether conducted as a single transaction or several transactions that appear to be linked*' under 3(b) and 3(c) in the legislation. However, in order to be consistent with the FATF Recommendations, we would recommend that this matter is addressed in the guidelines. Furthermore, we also submit that it should be made clear that 3(b) excludes wire transfer transactions as these are already covered under 3(c). With respect to 3(d) although we fundamentally support CDD being undertaken in these circumstances HKAB members believe that it will be important for the supplementary guidelines to set out the criteria that they will be expected to consider when forming a suspicion about whether a person may be engaging in money laundering or terrorist

Proposal Reference	Legislative Proposal	HKAB Response
		financing.
4	Subject to the following, an FI must verify the identity of a customer before establishing a business relationship or carrying out an occasional transactions: (a) The verification process may be completed after the establishment of a business relationship if this is necessary not to interrupt the normal conduct of business and there is little risk of money laundering or terrorist financing. (b) The verification of the identity of the beneficiary under a life insurance policy may take place after the business relationship has been established provided that it takes place at or before the time of payout or at or before the time the beneficiary exercises a right vested under the policy provided that the verification is completed as soon as practicable and the money laundering or terrorist financing risks are effectively managed. (c) The verification of the identity of a bank account holder may take place after the bank account has been opened provided that there are adequate safeguards in place to ensure that the account is not closed and transactions are not carried out by or on behalf of the account holder before verification has been completed.	We broadly support the proposal under 4(a). With respect to 4(c) we strongly believe that being unable to carry out any transactions by or on behalf of the account holder before verification has been completed will be extremely problematic for FIs. Additionally the inclusion of this proposal would also create an unlevel playing field, given that 4(c) only relates to bank accounts and thus will only impact on AIs. Currently the HKMA Guidance states that "it may be acceptable to allow an account to be opened pending completion of the verification of identity provided that the necessary evidence of identity is promptly obtained. In such a case an AI should not allow funds to be paid out of the account to a third party before the identity of the customer is satisfactorily verified". However the HKMA Guidance provides a carve out which states that payments to third parties may be permitted where there is no suspicion of money laundering, the risk of money laundering is assessed to be low, the transaction is approved by senior management (who should take account of the nature of the business of the customer before approving the transaction), the names of recipients do not match with watch lists (such as those for terrorist suspects and PEPs) and the verification process should be completed within one month from the date the business relationship was established" [see the July 2009 Supplement to the HKMA Guidance , paragraphs 3.6 and 3.7 and Interpretative Note 8]. We submit that it is very important for AIs that the carve out currently provided for under the HKMA Guidance, which is compatible with a risk-based approach to CDD, is preserved.

Proposal Reference	Legislative Proposal	HKAB Response
		Turning to the requirement under proposal 4(c), that adequate safeguards be put in place to ensure that an account is not closed before verification has been completed, this goes far further than the current requirement in the HKMA Guidance discussed above, which only stipulates that funds should not be paid out of an account to a third party until verification is completed. Additionally it is also inconsistent with proposal 12, which states that where an FI is unable to apply CDD measures it must not establish a business relationship or carry out an occasional transaction with the customer and must terminate any existing business relationship with the customer. Whilst we acknowledge the need to ensure that funds that may be linked to money laundering or terrorist financing should not be returned, it is unreasonable to expect individual AIs to maintain accounts containing such funds indefinitely. Finally for the reasons set out above and on the basis that proposal 4(c) is not a FATF requirement and relates specifically to AIs, we strongly believe that it should not be covered in the legislation but should instead form part of the supplementary guidelines that will be issued in relation to 4(a).
5	CDD measures to be carried out include: (a) identifying the customer and verifying his identity on the basis of documents, data or information obtained from a reliable and independent source; (b) identifying the beneficial owner, where relevant, and take reasonable measures to verify his identity, including, where the customer is a legal person or a legal arrangement, reasonable	We support the proposal that an FI should determine the extent of CDD measures to be applied based on a risk-based approach, as set out in the third paragraph of proposal 5. However we submit that the drafting in the final legislation should make clear that the application of a risk-based approach is a core principle that should be observed in relation to all aspects of the CDD process and is not restricted to the specific examples set out in proposal 8 on simplified due diligence and proposal 9 on enhanced due diligence below. As such, a risk based

Proposal Reference	Legislative Proposal	HKAB Response
	measures to understand the ownership and control structure of the legal person or arrangement; and (c) obtaining information on the purpose and intended nature of the business relationship. An FI must determine the extent of CDD measures to be applied based on a risk-based approach depending on the type of customer, business relationship, product or transaction, and must be able to demonstrate to the relevant authority that the extent of the measures is appropriate having regard to the risks of money laundering and terrorist financing. An FI must put in place a system to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person (PEP). For the purpose of deciding whether a person is a known close associate of a person, an FI need only have regard to information which is in his possession or is publicly known.	approach should generally be applied by FIs in the context of the legislation and guidance associated with it. As such we strongly feel that the requirement to apply a risk based approach should be set out in a standalone provision at the beginning of the legislation. Furthermore for the sake of clarity the language in 5(b) should be amended to make clear that the measures it sets out should be applied in the context of a risk based approach. We also believe that the legislation should make clear that 5(c) will only need to be applied where the nature of the business relationship is not self evident. For example in the case of a credit card customer we would submit that the business relationship between the customer and the AI is clear and that therefore no further information needs to be obtained. With respect to PEPs, we believe that the reference to putting in place a "system" should be replaced with putting in place a "risk management process" so as to be consistent with the overarching risk based approach to CDD outlined above.
6	Business relationship maintained by an FI must be subject to ongoing due diligence, having regard to the size and complexity of the transactions. Ongoing due diligence includes: (a) scrutinizing transactions to ensure that they are consistent with the FIs' knowledge of the customers, their business and risk profile, and where necessary, the source of funds; and (b) reviewing existing records to ensure that identification and verification data, information and documents obtained are kept up-to-date and relevant, particularly for higher risk categories of	We agree with proposal 6, but as with proposal 5 in relation to initial CDD measures, we submit that the final legislation should make clear that FIs should perform ongoing due diligence in accordance with a risk-based approach. For example it will not always be practical or necessary for FIs to review their existing records as required by 6(b) in the case of every transaction and every existing customer. The application of a risk-based approach would allow FIs to determine where such a review is absolutely necessary in the context of the particular customer and the relevant transaction. Furthermore, in accordance with criteria 5.17 of the Methodology for Assessing Compliance with the FATF 40 Recommendations and FATF 9 Special

Proposal Reference	Legislative Proposal	HKAB Response
	customers or business relationships.	Recommendations ("**FATF Methodology**"), it is also recommended that application of CDD requirements to existing customers should be done on the basis of materiality and risk and at appropriate times, e.g. on the occurrence of triggering events set out in the supplementary guidelines.
7	For business relationships entered into prior to the commencement of the legislation, on-going due diligence must be conducted upon the occurrence of one of the triggering events, including transactions of significance, substantial changes to customer documentation standards, material changes in the way the account is operated or the FI becomes aware that it lacks sufficient information about an existing customer. However, notwithstanding the non-occurrence of the above triggering events, an FI is required to apply CDD requirements to all existing accounts within 2 years upon the commencement of the legislation.	We feel very strongly that proposal 7 should not be adopted in the final legislation on the basis that: (a) The implementation of the two year review period under the proposal, which would require an FI to review and update its CDD records for all customers within 2 years of the legislation's implementation, would be a very time consuming and costly exercise for FIs and is not a requirement under the FATF Recommendations. In fact for some FIs, given the number of customers that they have, the 2-year review period is very short and even if work were to begin immediately following the legislation's implementation it might still not be possible to complete the review process within the timeframe required. Furthermore the imposition of such a requirement is inconsistent with the approach taken in a number of equivalent jurisdictions, including Singapore, the UK and the US. (b) With respect to triggering events for on-going due diligence, whilst we acknowledge that such events should be clearly defined we believe that they should be set out in supplementary guidelines rather than in the legislation, on the basis that appropriate triggering events are likely to vary depending on the type of customer. Additionally going forward any changes to prescribed triggering events that are deemed

Proposal Reference	Legislative Proposal	HKAB Response
		necessary as a result of external factors, for example in the event of any future changes to FATF standards, can then be implemented by the appropriate relevant authorities without the need for direct amendment to the CDD and record keeping legislation. In light of this we strongly believe that the regulation should permit existing customers to be grandfathered into the new regime, after which they will be subject to CDD on an ongoing basis in accordance with proposal 6 and the triggering events specified in the supplementary guidelines applicable to a relevant FI from time to time. This approach to existing customers would be consistent with the position taken in a number of equivalent jurisdictions.
8	An FI may apply simplified due diligence when the FI has reasonable ground to believe that the customer or the product falls under one of the following categories: (a) an FI as defined in item 1(a), (b), (c) and (e) or an overseas regulated FI from an equivalent jurisdiction except insurance agents and insurance brokers; (b) a listed company that is subject to regulatory disclosure requirements; (c) a government or government related organization in an equivalent jurisdiction which exercises public functions; (d) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme;	We broadly support the categories identified under this proposal. However, we believe it would be beneficial to provide for some flexibility in the legislation and hence we recommend that an additional category to be added to include any additional situations, as specified by the relevant authority from time to time, where simplified due diligence is deemed appropriate. This would avoid the complications and the delay that would arise from the need to amend the legislation should one or more other relevant categories evolve. In relation to 8(a), we submit that the carve-out for 'insurance agents and insurance brokers' should be deleted as there is no equivalent carve-out under the FATF Recommendations. Since insurance agents and brokers are also regulated entities, we believe there is no reason for them to be excluded under 8(a). With respect to 8(c), we submit that this category should be expanded to include 'state-owned enterprises', as many of the PRC government

Proposal Reference	Legislative Proposal	HKAB Response
	(e) an investment vehicle where the manager is an FI supervised by a Hong Kong authority or is incorporated outside Hong Kong and subject to and supervised for compliance with requirements consistent with the requirements under this legislation; (f) an insurance policy for pension schemes if there is no surrender clause and the policy cannot be used as collateral; or (g) a life insurance policy where the annual premium is no more than HK$8,000 or a single premium of no more than HK$20,000. "Simplified due diligence" involves identifying the customer and verifying his identity on the basis of documents, data or information obtained from a reliable and independent source and obtaining information on the purpose and intended nature of the business relationship.	enterprises would fall within this category. In respect of the measures required for 'simplified due diligence', we submit that these should not be defined in the legislation but instead be dealt with in the supplementary guidelines to be issued by the relevant authorities. This would provide for flexibility in the interpretation of 'simplified due diligence' which is particularly important given that the measures to be undertaken could vary depending on the status of the particular FIs and types of customers.
9	An FI must carry out enhanced due diligence in accordance with measures stated for that category where the customer or the transaction falls into the following- (a) where the customer has not been physically present for identification purposes, one or more of the following measures must be taken: (i) establishing the customer's identity by additional documents, data or information; (ii) taking supplementary measures to verify or certify the documents supplied; and (iii) ensuring that the first payment is carried out through an	We agree with the three proposed categories for enhanced due diligence. However, we stress again that it is important to ensure the drafting of the final legislation should reflect a risk-based approach. As such, all non face-to-face customers under 9(a) or all correspondent banks referred to under 9(b) should not automatically be treated as high risk customers. For example, it would be impractical to conduct enhanced due diligence with every correspondent bank, especially when there is no real benefit in doing so if such correspondent bank is from a FATF member state or equivalent jurisdiction and hence is already subject to stringent AML standards. Another example is that credit card business is generally conducted on a non face-to-face basis, although the money laundering risk is relatively lower and hence credit card customers should not be automatically classified as

Proposal Reference	Legislative Proposal	HKAB Response
	account opened in the customer's name with an FI. (b) where an FI which has or proposes to have a correspondent banking relationship, it must do the followings: (i) gathering sufficient information about the respondent institution to understand fully the nature of its business; (ii) determining from publicly-available information the reputation of the respondent institution and the quality of its supervision; (iii) assessing the respondent institution's anti-money laundering (AML) and counter financing of terrorism (CFT) controls; (iv) obtaining approval from senior management before establishing a new correspondent banking relationship; (v) documenting the respective responsibilities of the parties; (vi) be satisfied that, in respect of those of the respondent institution's customers who have direct access to accounts of the FI, the respondent has verified the identity of and conducts ongoing monitoring in respect of such customers and is able to provide to the FI, upon request, the documents, data or information obtained when applying CDD measures and ongoing monitoring (c) where an FI proposes to have a business relationship or carry out an occasional transaction with a PEP or seeks to continue the business relationship with an existing customer who is	higher risk. We would also recommend that an additional fourth category for enhanced due diligence be added to include any other customer/transactions that are specified by the relevant authority from time to time. With respect to 9(a)(iii), we are concerned that the current language is too restrictive as it only permits such payments to be made through an account opened with FIs. We submit that this should be expanded such that the first payment should also be allowed to be carried through an account opened with any financial institution established in a FATF member state or equivalent jurisdiction. As for 9(c), we submit that it should be made clear that enhanced due diligence is only triggered when the occasional transaction meets the thresholds set out under 3(b) and 3(c). Furthermore, under 9(c)(ii), we submit that the term 'adequate' measures should be replaced with the term 'reasonable' measures, in line with FATF's Recommendation 6. We are also of the view that, in order to provide for some certainty, the types of 'other situation which by nature can present a higher risk of money laundering or terrorist financing' should not be specified in written communications from the relevant authority, but instead be

Proposal Reference	Legislative Proposal	HKAB Response
	subsequently found to be a PEP or in any other situation which by its nature may present a higher risk of money laundering or terrorist financing, an FI must: (i) have approval from senior management for carrying out an occasional transaction, establishing a business relationship or continuing with the business relationship with that person; (ii) take adequate measures to establish the source of wealth and source of funds which are involved in the occasional transaction, proposed business relationship or existing business relationship; and (iii) conduct enhanced ongoing monitoring of the relationship where the business relationship is entered into. "Other situation which by nature can present a higher risk of money laundering or terrorist financing" includes those types of customers/institutions/transactions which are specified in written communications from the relevant authority.	dealt with by updating the supplementary guidelines as and when required. This is because it is important for FIs to be able to rely on the latest set of guidelines to ensure that, when assessing whether a situation is of high risk, they capture all relevant situations that need to be taken into account. It would be very difficult to do this if FIs needed to refer to multiple communications issued by the relevant authority over time. Finally, in respect of the various measures to be undertaken under each of the proposed categories, we would recommend adopting the same approach as the FATF Recommendations, such that the legislation should not list out each of the respective measures currently set out under each subsection that must be undertaken where enhanced due diligence is required. We believe it is more appropriate for these to be dealt with in the supplementary guidelines as this would allow the FIs the flexibility to carry out alternative measures that are deemed to be equally effective by the relevant authority without the risk of non-compliance of the law. Should the FSTB ultimately insist that the legislation list out specific measures to be undertaken under each of the proposed categories then the HKAB strongly submits that the relevant provisions should be constructed so that it is clear that those measures are not definitive, e.g. an FI must comply with the measures specified by the relevant authority, which may include the particular measures set out under the legislation.

Proposal Reference	Legislative Proposal	HKAB Response
10	On the premises that the FI remains liable for any failure to apply CDD measures, it may rely on a third party to conduct CDD provided that: (a) the other person consents to being relied on; (b) the FI immediately obtains from the other person the necessary information relating to CDD requirements; (c) the FI is satisfied that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the other person upon request without delay; (d) the FI is satisfied that the other person has measures in place to comply with the requirements under this legislation; and (e) the other person falls under one of the following categories: (i) an FI covered under this legislation, with the exception of RAMCs; (ii) a person who carries on business in Hong Kong who is- (A) a lawyer, auditor, accountant, trust company or chartered secretary; (B) subject to mandatory professional registration, licensing or regulation recognized by law; (C) subject to requirements equivalent to those laid down in this legislation; and (D) supervised for compliance with those requirements;	FIs often seek to rely on highly reputable professional services firms to conduct CDD in non-equivalent jurisdictions. These professional services firm are usually part of a global network headquartered in a FATF jurisdiction and hence will apply AML standards and requirements that are broadly equivalent to those to be laid down in the legislation. However, we are concerned that none of the currently listed categories provide for this type of organisation. Accordingly, we submit that 10(e)(iii) be amended as follows: "(iii) a person who carries on business ~~in an equivalent jurisdiction~~ who is- (A) a financial institution, lawyer, notary public, auditor, accountant, tax advisor, trust company or chartered secretary; (B) subject to mandatory professional registration, licensing or regulation recognized by law; (C) subject to requirements <u>or applies requirements</u> equivalent to those laid down in this legislation; and (D) supervised for compliance with those requirements; or" Further we submit that the legislation should include an additional sub-section under 10(e) that enables each of the relevant authorities to designate additional third parties under the relevant supplementary guidance to the legislation issued by them. This will ensure that, if deemed appropriate, additional third parties can be added in the future without amendments to the legislation being necessary.

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	(iii) a person who carries on business in an equivalent jurisdiction who is- (E) a financial institution, lawyer, notary public, auditor, accountant, tax advisor, trust company or chartered secretary; (F) subject to mandatory professional registration, licensing or regulation recognized by law; (G) subject to requirements equivalent to those laid down in this legislation; and (H) supervised for compliance with those requirements; or (iv) a person who carries on business in Hong Kong who is a lawyer, auditor, accountant, trust company or chartered secretary who is able to demonstrate to that FI that they have adequate procedures to prevent money laundering. (*This sub-clause (iv) shall expire at a date to be appointed by SFST by notice in the Gazette) This does not prevent an FI from applying CDD measures by means of an outsourcing service provider or agent provided that the FI remains liable for any failure to apply CDD measures.	
12	Where an FI is unable to apply CDD measures required under this legislation, it must not establish a business relationship or carry out an occasional transaction with the customer and must terminate any existing business relationship with the customer.	We broadly support this proposal on the understanding that it will only apply to an FI where it is unable to apply the CDD measures that it has determined are required for a particular customer in accordance with its risk-based approach. However we note that this proposal is

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		inconsistent with proposal 4(c), which in the case of AIs would prohibit those AIs from closing bank accounts opened for customers where verification has not been completed. We therefore refer you to our comments in relation to proposal 4(c), which should not in our view be included in the legislation for a number of reasons, one of which is its incompatibility with this provision.
13	When undertaking wire transfers equal to or above $8,000, an FI shall: (a) identity and verify the identity of the originator; (b) obtain and maintain the account number of the originator or, in the absence of an account number, a unique reference number; (c) obtain and maintain the originator's address or, in the absence of address, the identity card number or date and place of birth; and (d) (i) for cross-border wire transfers, include information from (a) to (c) in the message or payment form accompany the transfer; (ii) for domestic wire transfers, include the originator's account number or a unique identifier in the message or payment form, provided that the information from (a) to (c) above can be made available to the beneficiary FI and to the relevant authority within three business days of receiving a request. An FI is not required to verify the identity of a customer with which it has an existing business relationship, provided that it is satisfied that it already knows and has verified the true identity of the customer. When an FI acts as an intermediary in a chain of remittances, it shall retransmit all of the information it received with each of the	The language of this proposal seem to suggest that it is intended to apply to all wire transfers meeting the threshold (although we note that para 3.18 of the Consultation indicates it is referring to occasional wire transfers only), we recommend that the following points be reflected in the legislation: (1) The obligations under this proposal should apply to the FIs taking the order from the originator only. (2) In respect of 13(b), we submit that the requirement to obtain and maintain a unique reference number should only apply where the relevant wire transfer transaction actually contains a specific reference number. Where FIs cannot practically obtain such number (e.g., for non-account holders), this requirement should not apply. (3) As for 13(d)(ii), we submit that it should made clearer that information required under 13(a) and (c) need not be included in the domestic wire transfer message provided that this information can be made available to the beneficiary FI and to the relevant authority within three business days of receiving a request. (4) In relation to the requirement that FIs should obtain and verify missing information and refuse acceptance of the transfers with missing information, we are of the view that this is more onerous than the recommendations set out in FATF Special Recommendations

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	remittances. For individual transfers from a single originator bundled in a batch file, the ordering FI only needs to include the originator's account number or unique reference number on each individual wire transfer, provided that the batch file contains full originator information that is fully traceable within the recipient jurisdiction. This requirement shall not be applicable to transfers executed as a result of credit card or debit card transactions, provided that the credit card or debit card number accompanies the transfer resulting from the transaction, nor shall they apply to transfers between FIs acting for their own account. However, when credit or debit cards are used as a payment system to effect a money transfer, they are covered by this requirement, and the necessary information from (a) to (c) should be included in the message. If the FI receives wire transfers that do not contain the complete originator information required, it shall take measures to obtain and verify the missing information from the ordering institution or the beneficiary. Should they not obtain the missing information they shall refuse acceptance of the transfers.	("**FATF SR**") and the current HKMA Guidance, which has already been implemented by AIs. Accordingly, we strongly recommend removing this strict application requirement in favour of a more flexible, risk-based approach similar to that recommended in FATF SR VII. Otherwise, an imposition of this requirement would place a huge financial and administrative burden on FIs as it would be likely to require the implementation of a large scale technology solution to provide real time monitoring of all wire transactions (in particular if receipt of meaningless information is considered to be missing information), that is neither cost-effective nor efficient for FIs (indeed for certain products it would likely lead to longer processing times and increased customer expense) and which we do not believe will have any tangible benefit in terms of preventing money laundering and terrorist financing.
14	When undertaking remittances other than wire transfers equal to or above $8,000, an FI shall- (a) identify the customer and record- (i) the currency and amount involved; (ii) date and time of receiving instructions and instructions details; and (iii) name, identity card number (or certificate of identity,	In common with our comment on proposal 13, we strongly believe that the obligations under this proposal should apply to the FIs taking the order from the originator only. We submit that it would be helpful to make it clear in the final draft of the legislation what 'remittances other than wire transfers' refers to. If the legislative intent under this proposal is to refer to paper-based fund transmissions, we suggest this should be made explicit in the

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	document of identity or travel document number with place of issue), telephone number and address of the customer. (b) verify the name and identity of the customer, by reference to his certificate of identity, document of identity, identity card or travel document.	legislation. Furthermore, we strongly recommend that the following paragraph be inserted at the end of proposal 14 so that it is in line with the principles set out under proposal 13: "An FI is not required to verify the identity of a customer with which it has an existing business relationship, provided that it is satisfied that it already knows and has verified the true identity of the customer."
15	An FI is required to maintain: (a) all necessary records on transactions, for six years following completion of the transaction regardless of whether the account or business relationship is ongoing or has been terminated; and (b) records of the identification data, account files and business correspondence, for six years following the termination of an account or business relationship, notwithstanding that the FI may have ceased his business subsequent to the transaction. An FI should ensure that all customer and transaction records and information are available on a timely basis to the relevant authority upon request. The relevant authority may require an FI to keep records beyond the specified period if the records relate to on-going investigations or transactions which have been the subject of disclosure, or any other purposes as specified by the relevant authority	We broadly support the proposal under 15. However, we believe the requirement to make available information and records on a 'timely basis' is too vague and is open to different interpretations. Accordingly, we submit that the requirement be amended so that FIs are obliged to ensure information is made available *as soon as reasonably practicable.* We believe this offers a better indication on timing.
16	An FI incorporated in Hong Kong must require its overseas branches and subsidiary to apply, to the extent permitted by the law of that	The requirement under this proposal for an FI to require its overseas branches and subsidiaries to apply measures at least equivalent to

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	jurisdiction measures at least equivalent to those set out under this legislation. Where the law of a jurisdiction does not permit the application of such equivalent measures by the branch or subsidiary located in that jurisdiction, the FI must inform the relevant authority accordingly; and take additional measures to handle effectively the risk of money laundering and terrorist financing.	those set out under the legislation goes beyond the requirement set out in FATF 40 Recommendation 22, which requires FIs to apply the same principles to their overseas branches and majority owned subsidiaries. We note that Singapore and the US do not require FIs incorporated in those jurisdictions to apply the CDD measures applicable to the FI locally to their overseas branches or subsidiaries. In the case of overseas subsidiaries (and to a lesser extent branches) we believe that it may be very difficult to impose the Hong Kong CDD measures on those entities, as they will each have their own corporate personality and corporate governance structure. Furthermore adoption of this proposal could result in the branches and subsidiaries of FIs incorporated in Hong Kong being placed at a competitive disadvantage to the branches and subsidiaries of FIs incorporated in other jurisdictions that do not apply such a requirement. In light of the above we would strongly urge that proposal 16 be deleted, on the basis that it is inconsistent with the position in other jurisdictions, the FATF Recommendation is currently reflected in the HKMA Guidance and that given the extraterritorial nature of this requirement it is a matter that should continue to be addressed within the supplementary guidelines rather than under the new legislation. However should it be determined that the proposal will be carried forward and incorporated in the legislation, then we strongly take the view that it should oblige FIs to apply the same principles rather than measures at least equivalent to those set out in the legislation and that given its extraterritorial effect FIs should only need to apply the requirement on a "best efforts" basis. In addition where an FI is unable

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		to apply the requirements to a branch or subsidiary for any reason they should be required to inform the relevant authority but should not be subject to criminal sanctions, in light of the potential lack of legal and/or practical control that an FI may have over whether particular subsidiaries or branches adhere to a request made in accordance with this proposal.
17	Every officer of an FI shall take all reasonable measures from time to time to ensure that proper safeguards exist to prevent the FI from acting in a way which would result in the FI breaching the requirements under this legislation.	We feel very strongly that this proposal should be deleted on the basis that neither the FATF requirements nor any of the legislation in the equivalent jurisdictions of Singapore, the UK or the US place such an obligation on the officers of FIs.
18	The relevant authority (i.e. HKMA, SFC, IA and C&ED) may issue guidelines to facilitate regulatees' compliance with the requirements under this legislation and any AML/CFT matters. Any failure on the part of any person to comply with the provisions relevant to the statutory obligations under this legislation set out in any guidelines that apply to him shall not by itself render him liable to any judicial or other proceedings, but in any proceedings under this legislation before any court the guidelines shall be admissible in evidence, and if any provision set out in the guidelines appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.	We broadly support proposal 18. As previously discussed under proposal 2, we submit that one generic set of guidelines should be issued jointly by the designated regulators to ensure consistency. We believe these guidelines will be useful in assisting with the interpretation and practical application of the legislation, but they should not impose additional requirements beyond those set out in the legislation. More importantly, we believe it is crucial that the relevant guidelines be endorsed by the industry association prior to their implementation and only after a reasonable period of time (e.g. 6-12 months) has been given for consultation. This would help to ensure any concerns raised by the relevant industry participants are properly addressed and acknowledged, thereby promoting compliance.
20	The relevant authority may at any reasonable time appoint authorized persons to conduct inspections by (a) entering into the premises of the FI;	We broadly agree to powers of the relevant authority under this proposal. However, we believe it is most important to ensure that there are effective checks and balances as well as proper safeguards to ensure that the exercise of these powers by the relevant authority is

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	(b) inspecting and making copies or record details of any records or document relating to the business, transaction or activity conducted by the FI; (c) making inquiries of the FI or any other person whom the relevant authority has reasonable cause to believe that he has information that cannot be obtained from the FI, and requiring the person subject to an inquiry to verify by statutory declaration answers given or to verify by statutory declaration that he was unable to give an answer in accordance with the relevant authority requirement for the reason that the answer was not within his knowledge.	properly monitored and controlled. A high degree of transparency in the powers of the relevant authority is also necessary and hence the legislation needs to clearly delineate the scope of powers conferred on the relevant authority. With respect to 20(a), we submit this is very powerful right and hence the legislation should stipulate that such power may only be exercised where the relevant authority can demonstrate that it has reasonable grounds to do so. In relation to 20(c), we submit that the relevant authority must request such information by written notice in a similar manner to that set out under section 37(1) and (4) of the UK Money Laundering Regulations 2007. We strongly believe that the legislation should specify that the notice must include the particulars of the information sought, the reasons for the request, together with the time and place where the relevant person is required to attend before an officer to answer questions. A reasonable period must also be given for providing such information. We further submit that requiring individuals to make a statement by way of a statutory declaration is excessively onerous and should be removed.
21	The relevant authority may initiate investigation if it has reasonable cause to believe that obligations under the legislation may have been breached by appointing one or more persons as investigators. The investigators can require the person under investigation or a person whom he has reasonable cause to believe has in his possession any	In common with our comments on proposal 20 above, we submit that a prior written notice must be served before a person can be required to produce the relevant information sought by the relevant authority. We are also of the view that the requirement for individuals to verify answers by way of statutory declaration is excessively onerous and

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	record or document which contains, or which is likely to contain, information relevant to the investigation to- (a) produce any record or document relevant to the investigation; (b) give explanations or further particulars in respect of records/documents produced; (c) attend before the investigator at the time and place required and answer any questions related to the matters under investigation; (d) give the investigator all assistance in connection with the investigation which he is reasonably able to give, including responding to any written question raised by the investigator; (e) verify by statutory declaration answers, explanation and statements; (f) verify by statutory declaration that he was unable to give an answer in accordance with the investigator's requirement for the reason that the answer was not within his knowledge.	should be removed. Additionally, we would recommend making it clear in the final draft of the legislation that the relevant authority's investigatory power is subject to a person's rights to legal professional privilege.
22	To enforce the inspection and investigation powers of the relevant authority, three tiers of criminal offences will be provided under the legislation- (a) failure to comply with the requirements imposed by the relevant authority without reasonable excuse; (b) knowingly or recklessly providing false or misleading information in purported compliance with a requirement imposed; (c) failure to comply with a requirement or providing false or misleading information or causing/allowing a corporation to do	In line with the concept of promoting transparency, we submit that the penalties for each of the three tiers of criminal offences should be clearly set out in the legislation.

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	the above, with an intent to defraud.	
23	The relevant authority may also make an application to the Court of First Instance for court orders to compel compliance with the requirements. Failure to comply with the order will be a contempt of court. No proceedings may be instituted against any person if criminal proceedings have previously been instituted against the person under item 22 and no proceedings may be instituted against any person under item 22 if an application to court has been made in relation to non-compliance with requirements.	We strongly dispute the need for the powers conferred under proposal 23 which are unjustifiably wide and should therefore be removed. The relevant authority's power to conduct inspection, compel production of records, search and seize information, as well as the criminal consequences of non-compliance, are in our opinion more than sufficient to ensure compliance by FIs. Moreover, given that AIs are already subject to the supervisory measures available to the HKMA, we believe the need for court orders to compel compliance is redundant.
30	A relevant authority may share information obtained under this legislation with overseas regulators which exercise similar functions if the overseas regulators are subject to adequate secrecy provisions and the sharing of the information is in the public interest. Onward disclosure of information related to individuals by overseas regulators is subject to consent of the relevant authorities.	We broadly support proposal 30, but would recommend the following changes: (i) information about FIs should only be shared with overseas regulators that have entered into a Memorandum of Understanding or treaties with the relevant authority in Hong Kong for legal assistance; and (ii) the meaning of "public interest" in this context must be clearly set out in the legislation. We believe it is important to protect the information provided by FIs to the regulator and hence the same should not be disclosed without good justifications and safeguards.
32	An FI which is found not in compliance with the statutory obligations under the legislation and an officer of the FI who has not taken reasonable measures to ensure FIs' compliance would be liable to supervisory sanctions to be imposed by the relevant authority.	We have serious concerns over the imposition of supervisory sanctions on officers of the FI for the reasons set out in relation to proposal 17 above. On that basis we submit that the proposed liability should not be extended to an officer of the FI.

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33	Supervisory sanctions include public reprimand, instructions to implement remedial actions or other specified actions related to the breach or pecuniary penalty not exceeding $10 million or three times the profit made or loss avoided for the conduct.	In line with our comments on proposal 32 above, we strongly disagree with the proposed imposition of pecuniary penalty on officers (i.e. individuals). Therefore we are of the view that any pecuniary penalties should only apply to FIs and not to their officers.
34	The FI or the officer ordered to pay a pecuniary penalty shall pay the penalty within 30 days or such further period as the relevant authority may specify. The pecuniary penalty shall be paid into the general revenue.	See our comments in relation to proposal 33 above.
35	Before exercising its power to impose supervisory sanctions, the relevant authority must first give the FI/person concerned a reasonable opportunity of being heard. The relevant authority must notify the FI/person concerned in writing the reasons for the proposed imposition of the supervisory sanctions, the time that the sanction will take effect and the details of the sanction to be imposed. The relevant authority must also publish guidelines to indicate the manner in which it proposes to perform its function to impose supervisory sanctions and have regard to such guidelines when using such powers.	We broadly support proposal 35. We would however ask that it be made clear that the relevant authority should not impose a penalty where there are reasonable grounds for it to be satisfied that the FI/officer has taken all reasonable steps and exercise all due diligence to ensure that the requirement would be compiled with. This would bring the Hong Kong process broadly in line with the position in certain other equivalent jurisdictions, e.g. the UK.
36	The relevant authority may disclose to the public details of the decision to impose supervisory sanctions, including the reasons for the decision and any material facts relating to the case.	We would request that this proposal be deleted on the basis that details of the decision might involve confidential or privileged information which would normally be subject to secrecy provisions under other laws and regulations in Hong Kong and/or other jurisdictions and hence disclosure of these to the public could risk a breach of those confidentiality requirements.
37	Any person who knowingly contravenes the statutory obligations under this legislation commits an offence and shall be liable to criminal sanctions (fine and/or imprisonment). Any person who contravenes the statutory obligations under this legislation with intent to defraud	We broadly support the introduction of criminal sanctions for FIs who knowingly contravene the statutory obligations under the proposed legislation, particularly where that contravention is with the intent to defraud. However we are strongly of the view that the proposal as

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	commits an offence and shall be liable to criminal sanctions (fine and/or imprisonment).	currently drafted is too broad in its application, as the criminal sanctions could be applied to individual employees of an FI as well as to the FI itself. This is inconsistent with the position in a number of equivalent jurisdictions, including Singapore and the UK, where if an FI has committed a criminal offence under the equivalent legislation criminal sanctions can be applied to the officers of an FI as well as the FI, but only where it can be demonstrated that the offence is shown to have been committed with the consent or the connivance of a particular officer or can be attributed to any neglect on his part. Therefore criminal sanctions cannot generally be applied to "persons" in those jurisdictions for a breach of CDD or record keeping requirements. FATF 40 Recommendation 17 requires that effective, proportionate and dissuasive sanctions should be available to deal with natural or legal persons that fail to comply with anti-money laundering and terrorist financing requirements. However the Recommendation states that such sanctions may be criminal, civil or administrative. In the context of the current regulatory regime for FIs and more particularly for AIs, whilst we agree with the introduction of criminal sanctions for FIs we are of the view that specific criminal sanctions for breach of CDD and record keeping measures by individuals are not appropriate or necessary. If specific sanctions against individuals are ultimately introduced we believe that those sanctions should be administrative rather than criminal and should be applicable only to an officer of an FI who knowingly contravenes a relevant CDD or record keeping requirement. The scope of such sanctions would then be

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		consistent with the position in a number of equivalent jurisdictions and would satisfy the relevant FATF requirement.
38	The Commissioner for Customs and Excise will be the licensing authority to administer the licensing regime for RAMCs and supervise the licensed RAMCs' compliance with the CDD and record-keeping obligations and licensing requirements. The licensing authority will be empowered under the legislation to take enforcement actions against unlicensed RAMC operations.	We agree with proposal 38. We would also submit that the bar for licensing of the RAMCs should be set sufficiently high so to ensure that those licensed will have acceptable means of complying with AML policies and measures. Furthermore, as highlighted in our first submission, since the transactions of an RAMCs' customers are conducted through bank accounts and AIs are not in a position to conduct due diligence on an RAMCs' customers, we believe that AIs should have the right to terminate its relationship with RAMCs customers who do not comply with the bank's requirements applicable to the RAMC.
40	Upon the commencement of this part, the registration regime under s24A to s24E of the Organized and Serious Crimes Ordinance, Cap.455 (OSCO) will be repealed. Thereafter, any person who carries on a business as an RAMC without a valid licence granted under this legislation or at any place other than the premises specified in the licence commits an offence. RAMC registered under the OSCO regime will be deemed to be licensed under this legislation until a new licence is issued or the licensing authority gives notice of his decision to refuse licence. The deeming provision will lapse 60 days from the commencement of this part if no application for licence is submitted within the transitional period.	While we have no comments on the transition procedures for the registration regime, we submit that it would be preferable to have a mechanism in the Commissioner for Customs and Excise's RAMC registers by which FIs can identify whether a RAMC licensee has a formal licence (and hence subject to fit and proper checking) or a deemed licence (which could have its licence refused by the licensing authority).
54	An independent appeals tribunal will be established under the legislation to review decisions made by the relevant authority, including the imposition of supervisory sanctions and the licensing	We fully support the proposal for the establishment of an independent appeal tribunal as this would provide FIs or aggrieved staff an opportunity to give reasons/justification for their acts/omissions to the

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	authority's decisions made on RAMC licensing matters.	relevant authority. However, we believe certain details of the procedures for review and appeal should be made clear in the legislation – please refer to our comments on proposal 56 below.
56	The appeals tribunal may, following the review of the specified decision of a relevant authority, confirm, vary or set aside the relevant decision or remit the matter to the relevant authority with any directions that it consider appropriate. In reviewing the decision, the appeals tribunal shall afford the applicant and the relevant authority an opportunity of being heard and may determine that any matter of fact has been established if it has been established on the basis of standard of proof applicable to civil proceedings in a court of law.	We broadly support the proposal under 56. However, we submit that the review procedures should be made very clear that where an application for review and/or an appeal has been made, the relevant penalty in respect of the non-compliance should be suspended until the appeal has been heard. Furthermore, sufficient time must also be given for the person subject to the sanction to review/ appeal the decision (e.g. within 45 days after the date on which the notice of the sanction is given).
61	The new legislation will commence one year after approval of the relevant bill by the Legislative Council.	We strongly recommend that the effective date of the new legislation be postponed until at least one year after the issuance of the generic set of guidelines and sectoral guidelines by the relevant authorities. Such an extension is necessary in order to allow sufficient time for FIs to undertake preparatory compliance work (including any system changes required) and for any outstanding interpretation issues in the legislation to be resolved in the guidelines.
beneficial owner	means (a) a natural person who ultimately owns or controls the rights to and/or benefits from property, including the person on whose behalf a transaction is conducted; (b) a person who exercise ultimate effective control over a legal person or legal arrangement; or (c) a beneficiary of a life or other investment linked insurance. A natural person is deemed to ultimately own or control rights to benefit from property within the meaning of (a) above when that person owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal entity 10% or more of the shares or voting rights	We strongly feel that the 10% threshold be increased to 25%, as this is the standard generally applied under the CDD and record keeping regimes in other equivalent jurisdictions, for example in Singapore and the UK.

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	of the entity or otherwise exercise control over the management of the entity.	
controller	means a person whose instruction the directors are accustomed to act upon or a person having more than 15% of voting power.	We are of the view that the voting power threshold for 'controller' should be consistent with that in the definition of 'beneficial owner'. Accordingly, in consistent with our submission in the definition of "beneficial owner", we submit that the 15% threshold should be increased to 25%..
customer	means any of the following: (a) the person for whom an account is opened or a transaction is arranged or undertaken; (b) a signatory to a transaction or account; (c) any person to whom an account or rights or obligations under a transaction have been assigned or transferred; (d) any person who is authorized to conduct a transaction or control an account; or (e) any person who attempts to take any of the actions referred to above.	Whilst we broadly support the inclusion of a definition of customer in the legislation we are of the view that such a definition will only be of value if it clear and precise and is consistent with the generally accepted understanding of the term in other jurisdictions. On that basis we would propose that the definition should be restricted to the wording set out in sub-section (a), with the other sub-sections deleted. This is because whilst all of the persons covered by sub-sections (b) to (e) will, where relevant, be caught by other provisions in the legislation and/or the associated guidance, for example by virtue of the fact that in most cases they will be connected persons, that does not mean that they should be classified as customers; indeed because the current proposed definition is so extensive does not work well with other proposals within the document, for example proposal 5, as its prescriptive nature does allow for the flexibility that is necessary in order for FIs to effectively employ a risk based approach. Furthermore the suggested restriction of the definition to sub-section (a) would broadly bring the Hong Kong definition of customer in line with the definitions in Singapore and the US. We would further submit that the word 'directly' be added immediately

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		before the phase 'arranged or undertaken' under (a) because we believe it is not uncommon that a transaction maybe arranged in Hong Kong but the relevant assets are booked in another jurisdiction. Hence, information concerning such transactions may not be readily available or accessible, or other jurisdictions may impose incompatible requirements and/or restrictions in relation to the collection and/or disclosure of such information (e.g. under local privacy laws). The proposed changes would assist in addressing this concern.
equivalent jurisdiction	means a jurisdiction that is a member of the Financial Action Task Force (FATF), or any jurisdiction considered by an FI, based on reasonable documented evidence, to have sufficiently apply the FATF Recommendations.	We strongly believe that the legislation should require that the relevant authorities publish a list of objective criteria within the supplementary guidelines that FIs can use in order to determine jurisdictional equivalence. Accordingly, we submit that the definition of 'equivalent jurisdiction' should be amended as follows: "means a jurisdiction that is a member of the Financial Action Task Force (FATF), or any jurisdiction considered by an FI, based on a list of objective criteria provided by the relevant authority and with reasonable documented evidence, to have sufficiently applied the FATF Recommendations."
politically exposed person	means a person who is an individual who is or has been entrusted with a prominent public functions in a place outside People's Republic of China, for example heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials, and his immediate family member and known close associate.	We broadly agree with the definition of PEP proposed, which reflects the definition set out under the FATF 40 Recommendations. However we believe that it is important that the definition should include not only a person who currently holds a prominent public function (or a person who is an immediate family member or known close associate of such a person), but also a person who has, or who is an immediate family member or known close associate of a person who has held a prominent public function within a specified time. We would suggest that an appropriate time limit would be one year from the date that

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		such a person leaves public office, which is in line with the position taken in the UK definition of PEP.