FOREWORD

1. This paper is issued by the Financial Services and the Treasury Bureau (FSTB) to seek views on the detailed proposals on the new legislation on the customer due diligence (CDD) and record-keeping requirements for financial institutions (FIs) and the regulation of remittance agents and money changers (RAMCs).

2. FSTB welcomes written comments on or before **6 February 2010** through any of the following means:

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3. FSTB may, as appropriate, reproduce, quote, summarize and publish the written comments received, in whole or in part, in any form and use without seeking permission of the contributing parties.

4. Names of the contributing parties and their affiliation(s) may be referred to in other documents we publish and disseminate through different means after the consultation. If any contributing parties do not wish their names and/or affiliations to be disclosed, please expressly state so in their written comments. Any personal data provided will only be used by FSTB, other government departments/agencies for purposes which are directly related to this consultation.

GLOSSARY

AIs	Authorized Institutions
AML	Anti-money Laundering
BO	Banking Ordinance, Cap. 155
CCE	Commissioner of Customs and Excise
CDD	Customer Due Diligence
CFT	Counter Financing of Terrorism
C&ED	Customs and Excise Department
EDD	Enhanced Due Diligence
FATF	Financial Action Task Force
FIs	Financial Institutions
FSTB	Financial Services and the Treasury Bureau
HKMA	Hong Kong Monetary Authority
IA	Insurance Authority
ICO	Insurance Companies Ordinance, Cap. 41
LCs	Licensed Corporations
MCO	Money Changers Ordinance, Cap. 34
OSCO	Organized and Serious Crimes Ordinance, Cap. 455
PEPs	Politically Exposed Persons
RAMCs	Remittance Agents and Money Changers
SB	Security Bureau
SDD	Simplified Due Diligence
SFC	Securities and Futures Commission
SFO	Securities and Futures Ordinance, Cap. 571
SFST	Secretary for Financial Services and the Treasury

Note: "Relevant Authorities", when used in this document, refer to C&ED, HKMA, SFC and IA, which will be designated under the proposed legislation for supervising the compliance with the statutory obligations by FIs.

CONTENTS

CHAPTER 1

INTRODUCTION

Purpose

1.1 This consultation document sets out the detailed proposals on the new legislation on the customer due diligence (CDD) and record-keeping requirement for financial institutions (FIs) and the regulation of Remittance Agents and Money Changers (RAMCs). The detailed proposals are set out at **Annex A** to this document. Views and comments from members of the public, in particular the stakeholders concerned, on the proposals are welcome.

1.2 We also present the conclusions of the first-round consultation in **Annex B** to this consultation document.

Background

1.3 On 9 July 2009, the Financial Services and the Treasury Bureau (FSTB) launched a consultation to gauge the public views on the conceptual framework of the legislative proposal to enhance anti-money laundering (AML)[1] regulatory regime in respect of the financial sectors. The consultation ended on 8 October 2009.

1.4 We received many useful comments and feedback during the consultation. In gist, the majority of the respondents acknowledged the importance of Hong Kong to comply with the international AML standards in order to maintain our status as an international financial centre, and there is broad support for the Government's proposal to introduce new legislation to enhance our AML regulation for FIs and to put in place a licensing system to regulate RAMCs.

1.5 Taking into account the comments received in the first-round consultation, FSTB has drawn up a set of detailed legislative proposals to enhance the AML regime for FIs for further consultation.

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[1] For the purpose of this document, references to "AML" include the meaning of both anti-money laundering (AML) and counter financing of terrorism (CFT).

Consultation and Next Steps

1.6 As in the last round of consultation, we will arrange sectoral consultative sessions in January 2010 to hear views direct from practitioners of the relevant sectors.

1.7 Members of the public, in particular the concerned financial sectors, are invited to offer their views and comments **on and before 6 February 2010**. We will carefully consider the views and comments received in our preparation for the draft legislation. Subject to the progress of the legislative work, we aim to introduce a bill into the Legislative Council in the second quarter of 2010.

CHAPTER 2

SCOPE OF THE LEGISLATION AND DESIGNATED RELEVANT AUTHORITIES

Scope of the Legislation

2.1 We proposed in the previous consultation paper that the banking, securities and insurance sectors[2] and RAMCs should be subject to the requirements under the future legislation.

2.2 The consultation responses generally supported the proposed coverage of the future legislation. We have prepared legislative proposal in this respect accordingly. Please see item 1 of Annex A.

2.3 There were individual suggestions that certain activities, such as licensed corporations advising on corporate finance, market makers and reinsurers, should be excluded from the coverage of the legislation in view of the unique nature of their business and transactions. However, Financial Action Task Force (FATF)'s requirement does not exempt those activities from AML regulation. As such, we do not consider it appropriate to exclude them from the coverage of the proposed legislation.

Designation of Relevant Authorities

2.4 In line with the institution-based approach adopted in the regulation of financial markets, we propose to designate the Hong Kong Monetary Authority (HKMA), Securities and Futures Commission (SFC), Insurance Authority (IA) and the Customs and Excise Department (C&ED) as the relevant authorities for supervising AML compliance by the banking, securities, insurance and RAMC sectors respectively. Please see item 2 of Annex A.

2.5 Some respondents raised the issue of consistency in the regulatory approach given that a number of regulators would be involved in the future AML regime and there was a suggestion of establishing a single

[2] FIs to be covered include authorized institutions within the meaning of the Banking Ordinance (BO), Cap. 155; licensed corporations within the meaning of the Securities and Futures Ordinance (SFO), Cap. 571 and insurance institutions carrying on or advising on long term business (as defined in the Insurance Companies Ordinance (ICO), Cap. 41) in or from Hong Kong, and as required by FATF, these would include the relevant insurance companies, insurance agents and insurance brokers within the meaning of the ICO.

regulator for AML regulation was put forward. We consider it not appropriate to pursue the suggestion of a single AML regulator because AML compliance interlinks with the overall risk management and control systems of FIs and hence should best be supervised by the same regulators who are overseeing these institutions.

2.6 The future legislation will provide for a uniform set of requirements applicable to all sectors covered and the relevant authorities designated would be granted similar supervisory powers to supervise AML compliance. This will improve consistency when compared with the current supervisory approach which operates on the basis of guidelines issued by different regulatory authorities. There will be coordinated exchange programme or liaison platform amongst the relevant authorities to facilitate sharing of supervisory experience. The relevant authorities will also review the need to enhance the memoranda of understanding amongst themselves to ensure the above-mentioned consistency in compliance requirements and enforcement standards.

CHAPTER 3

OBLIGATIONS OF FINANCIAL INSTITUTIONS

Circumstances when CDD is Required and the CDD Measures

3.1 We set out in the previous consultation paper the broad framework of the CDD measures that FIs are required to undertake upon specified circumstances. Many respondents considered that such requirements should be clearly provided in the proposed legislation. The relevant proposals are set out in items 3 to 5 in Annex A.

3.2 In relation to the circumstances where CDD is required, we propose that the threshold for occasional transactions of wire transfers, i.e. domestic and international fund transfers through electronic platform, should be set at HK$8,000. As regards other types of occasional financial transactions conducted by FIs, including money changing transactions, a higher threshold at HK$120,000 will be provided. These proposed thresholds are the highest permitted levels under FATF's requirements. Our proposal would mean a relaxation of the existing threshold of HK$8,000 for money changing transactions to HK$120,000. We believe this would help alleviate the concerns of the RAMC sector over the proposed AML regulation and would also ensure that the new AML regime would not impact on the tourism industry.

3.3 Under the proposed CDD measures, FIs are required to identify the beneficial owners of legal persons and arrangements, understand the control and ownership structure, and obtain information on the intended nature of the business. In view of the difficulties in conducting the CDD measures to identify and verify all owners or vote-controllers for customers who are legal persons or arrangements, we propose to provide a threshold of beneficial ownership at 10% to give FIs a clear idea on which shareholders or owners behind the legal persons or arrangements should be subject to CDD under the proposed legislation (i.e. would be required to conduct CDD on those principal shareholders or owners who own or control 10% or more of votes or rights of the legal persons or arrangements.) The proposed 10% threshold is drawn from guidelines issued by HKMA, SFC and IA which provide guidance for their regulatees on CDD measures. Compliance with the guidelines so far has generally been satisfactory. The proposed definition of beneficial ownership is set out in "List of Definitions" in Annex A.

Simplified Due Diligence (SDD)

3.4 Some respondents raised that there was a need for specifying the requirements on SDD and the relevant criteria.

3.5 The conduct of the CDD measures should operate on the basis of a risk-sensitive approach under which the extent of such measures to be undertaken depends on the types of customers, business relationship or transactions and the associated risks. Under FATF's standards, jurisdictions can allow FIs to apply simplified CDD measures to certain categories of business which the jurisdiction considers to pose a lower risk. To encourage FIs to develop effective measures to assess money laundering risks under client acceptance policies and to reduce undue burden on FIs, we propose that FIs could apply SDD on low-risk cases with reference to a prescribed list of customers as specified in the proposed legislation. Please see item 8 of Annex A.

3.6 Customers eligible for SDD would include –

(a) FIs subject to AML regulation[3];
(b) listed companies;
(c) government or government-related organizations;
(d) pension schemes that provide retirement benefits to employees, where contributions are made by way of deduction of wages and assignment of schemes interests is not permitted;
(e) investment vehicles where managers are FIs supervised for AML compliance;
(f) an insurance policy for pension schemes if there is no surrender clause and the policy cannot be used as collateral; and
(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.

The required SDD measures are that FIs should obtain sufficient information to establish if the customer qualifies for SDD and be able to satisfy the relevant authorities, if requested, that they are acting in accordance with the proposed criteria.

Enhanced Due Diligence (EDD)

3.7 We outlined in the previous consultation paper the proposed requirement for EDD and highlighted the types of customers that EDD

[3] Insurance agents and insurance brokers are not included.

should be applied. The proposed arrangement for EDD is set out in item 9 of Annex A.

3.8 A number of respondents raised concerns about how best FIs could identify "Politically Exposed Persons" (PEPs), a category of high-risk customers who should be subject to EDD, and asked for clear guidance. We note that EDD requirement on PEPs is already a requirement in the existing guidelines issued by financial regulators, and FIs are expected to have put in place proper systems for compliance with them. As the proposed legislative proposal on PEPs is essentially the same as the ongoing requirement, we do not envisage those FIs already covered by the guidelines would need to revise substantially their systems for compliance with the proposed legislation. We note that it is not a common practice internationally for relevant authorities to provide PEP lists for CDD purpose. That said, we propose that the relevant authorities would provide guidance in this regard as appropriate in the future guidelines to help FIs conduct PEP checks. Our proposal on FI's obligations to identify PEPs and the relevant EDD requirement is set out in items 5 and 9(c) in Annex A.

3.9 A few respondents suggested to exclude non face-to-face transactions and correspondent banking relationship from the EDD requirement. However, non face-to-face transactions and correspondent banking relationship are considered high-risk activities in the context of prevention of money laundering and are highlighted in FATF's requirements concerning EDD. Therefore we propose that non-face-to-face transactions and correspondent banking relationship be retained as categories of high-risk customers subject to EDD in order to reflect the relevant FATF requirements. The details of the required measures for these types of activities are set out in item 9(a) and (b) in Annex A. The relevant authorities will provide guidance on the EDD requirements for these customers in their future guidance to facilitate compliance.

Ongoing Due Diligence

3.10 Bringing customers' information up-to-date is important in enabling FIs to review the risk profiles of customers and identify unusual transactions and activities in order to protect the institutions from money laundering abuses.

3.11 We propose in item 6 of Annex A that FIs should be required to conduct ongoing due diligence on existing business relationships by scrutinizing

transactions to ensure that they are consistent with FIs' knowledge of the customers, and reviewing existing customer identification records to ensure that they are kept up-to-date and relevant. Questions were raised in the consultation on whether FIs should take action to update their existing accounts to meet with the requirements in the proposed legislation. We propose that, on commencement of the proposed legislation, FIs should review their existing relationships upon the occurrence of certain triggering events, such as significant transactions or change to customer documentation standards, etc. Notwithstanding the occurrence of triggering events, FIs are required to review and update the customer identification records according to the new requirements within 2 years after the commencement of the legislation as proposed under item 7 of Annex A.

Third-party Reliance

3.12 While there was no specific mentioning in the previous consultation paper, some respondents raised the need for allowing FIs to rely on third-party intermediaries to conduct CDD and asked for clear criteria on eligible third parties permitted to be relied on.

3.13 As third-party reliance is currently permitted under the guidelines issued by financial regulators, we propose to retain such a permission in the future legislation with a list of clear eligibility criteria as set out in item 10 of Annex A in order not to cause undue inconvenience and business disruptions to FIs. While FIs may rely on a third party to conduct CDD, FIs retain the ultimate responsibility for undertaking the CDD obligations and any failure to comply with the CDD requirements.

3.14 In Hong Kong, lawyers, accountants, and trust and company service providers are common third parties that FIs rely on for conducting CDD, but they are not regulated for AML purpose to the extent as required by FATF. However, FATF requires that FIs can only rely on third parties that are regulated for AML purpose to conduct CDD on customers in introduction of business. Upon consideration, we propose to put in place a special arrangement to allow FIs to rely on lawyers, accountants and specified trust and company service providers (chartered secretaries and trust companies registered under the Trustee Ordinance, Cap 29) in Hong Kong in carrying out CDD provided that the FIs are satisfied that the intermediaries to be relied on have put in place adequate procedures to prevent money laundering. Similar arrangement is now provided in the guidelines of HKMA, SFC and OCI. Security Bureau (SB) is

liaising with the trade associations and relevant bodies of these non-financial sectors on the possible way forward.

3.15 This special arrangement will be time-limited and will lapse within a qualified period of, say, 3 years.

Equivalent Jurisdictions

3.16 The concept of equivalent jurisdictions is relevant to the obligations under SDD and third-party reliance. The guidelines issued by SFC have provided a definition of equivalent jurisdictions[4]. While the guidelines of HKMA and IA require FIs to apply SDD and/or third-party reliance obligations on specified customers or third parties from a jurisdiction that is a FATF member or that apply standards of prevention of money laundering and terrorist financing equivalent to those of FATF.

3.17 We propose to align the definition of equivalent jurisdictions in the proposed legislation. Under items 8 and 10 in Annex A, FIs are permitted to undertake SDD on customers or to rely on third parties from equivalent jurisdictions. We propose that "equivalent jurisdictions" under the proposed legislation should cover the member jurisdictions of FATF and any jurisdiction considered by an FI, based on reasonable documented evidence, to have sufficiently apply FATF requirements.

Wire Transfers and Remittance

3.18 We propose that FIs should conduct CDD on occasional electronic fund transfers of HK$8,000 or above and identify and verify the identity of the originators of such transfers and include the relevant information in the payment forms or messages accompanying the transfers. To enable FIs to effectively perform their role in guarding against money laundering risks, FIs may refuse to accept incoming fund transfers if any information on originators is missing.

3.19 As regards remittance transactions other than electronic fund transfers, we propose that FIs should identify and verify the customers' identity and record the details of the customers and the transactions. This

[4] Under SFC's guidelines, "equivalent jurisdictions" mean jurisdictions that apply standards of prevention of money laundering and terrorist financing equivalent to those of FATF. For the purpose of SFC's guidelines, all members of the European Union (including Gibraltar), Antilles and Aruba of the Kingdom of Netherlands, Isle of Man, Guernsey and Jersey are deemed to be equivalent jurisdictions.

requirement is the same as that currently provided under the Organized and Serious Crimes Ordinance, Cap. 455 (OSCO).

3.20 Relevant proposals are set out in items 13 and 14 in Annex A.

Record-keeping Requirement

3.21 Under the proposed legislation, FIs are required to maintain identification data, account files, business correspondence, records of both domestic and international transactions, for a period of six years[5]. The proposed record-keeping period ties in with the relevant period under the presumption provision in s. 9 of OSCO on assessing the value of defendant's proceeds of crime in a case where a confiscation order is made. Besides, six years is also the statutory limitation period for certain classes of claims under the Limitation Ordinance, Cap. 347. The proposal is set out in item 15 of Annex A.

Overseas Branches and Subsidiaries

3.22 FATF requires that FIs should ensure that their home AML requirements applicable to FIs are also applied to their branches and subsidiaries located abroad, especially in countries which do not or insufficiently apply the FATF standards, to the extent that local applicable laws and regulations permit. When local applicable laws and regulations prohibit this implementation, authorities in the jurisdictions of the parent institutions should be informed by the FIs.

3.23 To implement FATF's requirement, we propose that FIs which are incorporated in Hong Kong should require its overseas branches and subsidiaries to apply CDD and record-keeping measures at least equivalent to those set out under the proposed legislation. In the event that the laws of the jurisdictions do not permit the application of equivalent measures, FIs should inform the relevant authorities. The purpose is to bring Hong Kong's requirement in line with other FATF jurisdictions which require FIs to put in place a global policy to ensure consistency of AML control systems across their branches and subsidiaries. AML compliance of FIs' overseas branches and subsidiaries are subject to the regulation of the regulatory authorities in the places they operate. The parent FI would however be under an obligation and accountable for a failure to implement appropriate equivalent measures in their foreign branches and subsidiaries.

[5] The Guidelines issued by MA and IA require that records be kept for 6 years, while that issued by SFC require that the identification data be kept for 5 years and transaction records be kept for 7 years.

Officers' Duty

3.24 FIs' compliance with AML requirements relies greatly on the existence of proper control systems and internal policies. Since officers of FIs are the de facto corporate controlling minds under the proposed legislation and they have the governance responsibility to ensure that their FIs are law-abiding, we propose under item 17 of Annex A that officers of FIs be required to take all reasonable measures from time to time to ensure that their FIs are in compliance with the statutory CDD and record-keeping requirements. This requirement is in line with officers' ongoing duties.

Guidelines on Statutory Requirements

3.25 While the proposed legislation will set out the CDD and record-keeping requirements, feedback from the first-round consultation indicated that FIs would expect relevant authorities to provide clear guidance on compliance.

3.26 We propose under item 18 of Annex A that relevant authorities should be empowered to issue guidelines to FIs under their respective regulation to facilitate AML compliance. To enhance consistency, we agree that the AML guidelines to be issued by relevant authorities should be synchronized. The relevant authorities will produce a generic set of guidelines which will be applicable to all relevant financial sectors. Individual authorities will draw up their own sectoral guidelines to cover measures relevant to transactions specific to their respective regulated sectors.

3.27 Such guidelines are non-statutory in nature. Similar to the current guidelines issued by SFC under s. 399 of the Securities and Futures Ordinance, Cap. 571 (SFO), the guidelines issued under the proposed legislation will have evidential value in determining whether the obligations have been breached. A breach of the guidelines itself will not attract criminal sanctions. Please see item 18 of Annex A.

CHAPTER 4

POWERS OF THE REGULATORY AUTHORITIES

Powers of the Relevant Authorities

4.1 We proposed in the previous consultation paper that the supervisory and enforcement powers of the relevant authorities under the proposed legislation would be modeled on the existing powers available to SFC under Part VIII of SFO, which is the latest piece of legislation on financial regulation examined and enacted by the LegCo.

4.2 Feedback for the previous consultation generally agreed to the proposed powers of the relevant authorities. We propose under items 20 to 31 in Annex A that following the provisions in SFO the relevant authorities should be empowered -

(a) to appoint authorized persons to conduct inspections by entering into the premises of FIs, inspect and make copies of books and records, make inquiries of FIs or other persons if the relevant authorities have reasonable cause to believe that the information sought cannot be obtained from the FIs, and require 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 authorities' requirement for the reason that the answer was not within his knowledge;

(b) to initiate investigation if they have 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 the person who is suspected to have in his possession to produce any record or document relevant to the investigation, give explanations or further particulars in respect of records/documents produced, attend before the investigator at the time and place required and answer any questions related to the matters under investigation. Investigators can require the person giving or making on explanation to verify by statutory declaration answers, explanation and statements or to verify by statutory declaration that he was unable to give an answer in accordance with the investigators' requirement for the reason that the answer was not within his knowledge;

(c) to apply to a Magistrate for a warrant to search for, seize and remove any records, document or items to be produced to the relevant authorities;

(d) to prosecute summarily offences under this legislation in their own names; and

(e) to share information 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. Disclosure of information related to individuals provided by overseas regulators will be subject to consent of the relevant authorities.

4.3 The production of records or documents by FIs required by the relevant authorities in the course of investigation and inspection shall not be affected by any lien claimed and no fees shall be payable by the relevant authorities for the production. Self-incrimination would not be a lawful excuse for not producing any record or document or not giving any answers and explanations. It will be a criminal offence if a person destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document required to be produced by the relevant authorities.

4.4 To ensure that relevant authorities' inspections and investigations can be smoothly conducted, criminal offences will be provided under the legislation if a person in question fails to comply with the requirements imposed by the relevant authorities without reasonable excuse, knowingly or recklessly provides false or misleading information in purported compliance with a requirement, or fails to comply with a requirement, or provides false or misleading information or causes/allows a corporation to do so, with an intent to defraud. In addition, the relevant authorities may also make an application to the Court of First Instance for court order to compel compliance with the reasonable requirements imposed by the relevant authorities.

4.5 The exercise of the powers of the relevant authorities are subject to appropriate procedural safeguards, including inspections could only be carried out at a reasonable time during ordinary business hours, an inspector or investigator must provide evidence of authorization, search and seizure could only be done upon court warrants, self-incriminating evidence shall not be used against a person in criminal proceedings where the person has claimed privilege against self-incrimination

(subject to certain exceptions) and inspectors/investigators are obliged to inform or remind a person required to provide answers, statements, information, explanations of the provisions concerning the use of the self-incriminating evidence.

Interface with SFO

4.6 To ensure that SFC can effectively deal with cases in which multiple non-compliant acts are involved, we propose to amend the SFO to include AML obligations under "relevant provisions" in Schedule 1 under SFO to allow SFC to enforce AML obligations using its current powers where appropriate. Noting that the powers to be provided to the relevant authorities under the legislation are essentially the same as those available to SFC under Part VIII of SFO, there should be minimal impact on licensed corporations (LCs) which are subject to investigation by SFC.

CHAPTER 5

SUPERVISORY SANCTIONS AND OFFENCES

Supervisory Sanctions

5.1 As highlighted in the previous consultation paper, FATF requires that the range of sanctions available should be broad and proportionate to the severity of the AML breaches. We last consulted the public on the proposed supervisory sanctions that relevant authorities could impose for breaches of the statutory requirements, which include public reprimand, partial/full suspension or revocation of licence/authorization, issue of directions for remedial actions and supervisory fines. We also mentioned that reference would be made to the level of the disciplinary fines that may be imposed by SFC under s. 194 of SFO in deciding the maximum level of supervisory fines under the proposed legislation.

5.2 Respondents generally considered supervisory sanctions were effective tools to ensure compliance. On the basis of the approach set out in the previous consultation paper, we propose to provide for a range of supervisory sanctions for relevant authorities under the proposed legislation which include supervisory fines, public reprimands and directions for remedial actions when they find that FIs are not complying with the statutory obligations under the legislation and officers of the FIs are not taking reasonable measures to ensure compliance. Please see items 32 and 33 in Annex A. The proposed supervisory sanctions seek to rectify the non-compliant behaviours. The imposition of such sanctions is subject to the civil standard of proof of preponderance of probability and regulatory proceedings.

5.3 In determining the maximum level of supervisory fines, we are mindful that it should be proportionate to the breach while at the same time produces appropriate deterrent impact to prevent future non-compliance. We propose that the relevant authorities may impose supervisory fines up to three times of the profits gained or loss/costs avoided or a maximum limit of HK$10 million, same as s. 194 of SFO. The exact level of fines to be imposed will be considered on the merits of the case by relevant authorities, taking into account the scale of the FI, the severity of the non-compliance, desirable level of deterrents and other relevant circumstances.

5.4 The legislation will mandate the relevant authorities to give the institution/person concerned a reasonable opportunity of being heard in exercising their powers to impose supervisory sanctions. We propose that the relevant authority must notify the institution/person concerned in writing the reasons for the imposition of the supervisory sanctions, the time that the sanction will take effect, and the details of the sanction to be imposed. Relevant authority will publish guidelines in this regard. Please see item 35 of Annex A.

5.5 Relevant authorities' decisions on imposition of supervisory sanctions are subject to review by an independent appeals tribunal to be established under the proposed legislation. Details of the proposed tribunal will be discussed in Chapter 7 of this document.

5.6 We suggested in the previous consultation paper that relevant authorities should be able to revoke or suspend the authorization/licence of FIs on serious non-compliance which poses significant money laundering/terrorist financing risks. We propose that the relevant authorities should resort to their existing regulatory powers where necessary to revoke/suspend licence/authorization under their respective governing ordinances. In the case of RAMCs, the proposed legislation will provide for a new licensing regime to be administered by C&ED who will also be empowered to revoke/suspend licences where necessary.

Criminal Offences

5.7 We set out in the previous consultation paper certain proposed criminal liabilities which may be applicable to FIs, their officers and staff, as appropriate.

5.8 Some respondents questioned the need for criminal liability under the proposed legislation, noting that supervisory sanctions would be provided for to deal with non-compliance. We have carefully considered these comments. FATF requires that effective, dissuasive and proportionate sanctions, including civil, administrative or criminal penalties should be put in place to deal with non-compliance. While the supervisory sanctions provided under the legislation are effective regulatory tools to promote compliance and we envisage that most of the breaches will be dealt with through the supervisory route, we consider that criminal offences will provide additional deterrence and are justified if serious harm to our financial system are caused by ineffective CDD and record-keeping systems which would undermine

our status as an international financial centre. Following the example of other jurisdictions including the UK, the US, Singapore, Italy and Norway, all of which have provided for criminal offences under their legislation in dealing with breaches of statutory CDD and record-keeping requirements, we propose to maintain the original proposal in the previous consultation paper that the new legislation would provide for both criminal sanctions and supervisory sanctions.

5.9 There were comments in the last consultation about the proper mental elements involved in the proposed criminal liabilities, which should not be intended to catch breaches committed out of inadvertence. Taking into account the views and concerns raised, we propose to provide for a single category of personal criminal liability with a high threshold for mental element such that only those persons who knowingly contravene the statutory obligations commit an offence and shall be liable to criminal fines and/or imprisonment upon summary conviction or indictment. If the offence is committed with intent to defraud, a more severe level of criminal sanction will be imposed. Please see item 37 of Annex A.

CHAPTER 6

REMITTANCE AGENTS AND MONEY CHANGERS

Licensing Regime

6.1 We proposed in the previous consultation paper to set up a new licensing regime for RAMCs to replace the existing registration system under OSCO.

6.2 The feedback from the consultation generally agreed to the proposal. Our detailed proposals for the new licensing regime for the RAMC sector are set out in items 38 to 53 in Annex A.

6.3 The Commissioner of Customs and Excise (CCE) will be the authority to administer the licensing regime for RAMCs and supervise the licensed RAMCs' compliance with the CDD and record-keeping obligations and other licensing requirements. CCE will also be empowered under the legislation to take enforcement action against unlicensed RAMC operations.

Coverage

6.4 We propose to adopt the current definitions of "remittance agent" and "money changer" under OSCO and the Money Changers Ordinance, Cap. 34 (MCO) respectively in the proposed legislation. This will ensure that the coverage under the future licensing regime is the same as that of the existing RAMC registration system. In line with the current definitions for remittance agent and money changer where only those businesses providing remittance and currency exchange services as a business will be covered, the proposed definitions under the new legislation and the RAMC licencing regime will not apply to entities which provide such services incidental to their principal activities, such as retail outlets accepting Renminbi and giving back changes in local currency in retail transactions; companies arranging sending/receipt of money and currency exchange transactions for trading purposes, such as ordering goods from overseas and selling products to places outside Hong Kong; and the business activities of LCs, insurers, insurance agents and insurance brokers in connection with the settlement of securities transactions or payment of insurance premium.

6.5 As under the current registration system for RAMCs, we propose that AIs and hotels, which currently are providing money changing and/or remittance services, should be exempted from the licensing requirements. AIs will be subject to AML regulation by HKMA under the proposed legislation. As provision of money changing services by hotels is already subject to the requirements under MCO including the restrictions on provision of money changing services to hotel guests and one-way transactions from foreign customers to local currency only, and taking into account the low risks involved in such transactions, we propose that the existing exemption given to hotels be continued under the future licensing regime.

6.6 We propose that the proposed legislation should apply to the Post Office as it offers remittance services to the general public.

"Fit and Proper" Criteria

6.7 There was general support in the first-round consultation for putting in place "fit and proper" criteria for RAMC licensees. We propose that applicants shall meet a set of prescribed criteria provided under the legislation in order to obtain a RAMC licence or have their licences renewed. Licensing criteria include the "fit and proper" requirements covering criminal conviction and bankruptcy records of the applicant/beneficial owner/director/controller, previous records of compliance with AML requirements as well as assessment of risks of money laundering and terrorist financing. The proposed "fit and proper" criteria are set out in item 44 of Annex A. RAMC licensees should seek CCE's prior approval for changing or adding beneficial owner/partner/director/controller of business. CCE shall refuse the application for such change/addition if the new beneficial owner/partner/director/controller is not a fit and proper person.

6.8 There were suggestions that other factors, such as education attainment and place of residency, should be included as licensing criteria. We do not consider such criteria to be relevant indicators to the fitness and properness status of the licensees and hence do not adopt such suggestions.

Licence Fee

6.9 Consultation responses agreed that it is fair to determine the RAMC licence fee on a cost recovery principle. We propose to empower CCE to prescribe the licence fee, taking into account the costs to be involved

in administering the licensing regime and supervising RAMCs' compliance with the statutory obligations. The fee schedule will be a subsidiary legislation subject to Legislative Council's negative vetting.

Powers of the Licensing Authority

6.10 We propose that CCE may grant, renew, refuse, suspend, or revoke a licence; and impose or vary the conditions on a licence. In exercising its powers to revoke or suspend a licence, the person concerned will be given a reasonable opportunity to be heard before the licensing authority invokes such power. The licensing authority shall inform the person by notice in writing the reasons for which the decision is made, the time at which the decision is to take effect, and the term of the revocation or suspension of licences.

6.11 Under the proposed regime, CCE may exercise the regulatory powers for monitoring compliance with the CDD and record-keeping requirements (inspection, investigation and prosecution) to enforce the licensing requirements and regulations made for RAMCs.

6.12 CCE's decisions made pursuant to his powers set out under paragraphs 6.10 and 6.11 above are subject to review by the independent tribunal to be established under the proposed legislation.

6.13 To ensure the integrity of the licensing regime, CCE will be empowered under the proposed legislation to take enforcement actions against unlicensed RAMC operations. Noting that the unlicensed RAMCs are highly mobile and usually operated in covert locations, we propose that the licensing authority be empowered to arrest and detain any persons who operate RAMCs without a valid licence and enter/search any premises other than domestic premises and seize documents, records, items, etc. found on premises. Such powers are currently available to the Police under OSCO to enforce against unlicensed RAMC operations.

Migration Arrangement

6.14 Some RAMCs proposed in the first-round consultation that a migration arrangement should be provided for to facilitate the existing RAMC registrants to move over to the new licensing regime. To facilitate a smooth migration, we propose that the new legislation will provide for an arrangement whereby the registered RAMCs under the OSCO regime shall submit applications for RAMC licence to the CCE within

60 days upon the implementation of the licensing regime, whilst at the same time registered RAMCs will be deemed to be licensed under the new legislation until new licences are issued or CCE gives notices of his decision to refuse licence. Our proposal is set out under item 40 of Annex A.

CHAPTER 7

APPEALS

7.1 We proposed in the previous consultation paper to set up an independent appeals tribunal to allow aggrieved parties to appeal against relevant authorities' decisions made pursuant to the new legislation. There was broad support for this proposal in the last consultation. Details of the legislative proposal are set out in items 54 to 60 in Annex A. The legislative proposals set out the matters relating to the composition, functions, procedures and powers of the tribunal.

7.2 The proposed tribunal will be empowered to review decisions of the relevant authorities made under the proposed legislation, including the imposition of supervisory sanctions[6] and decisions made on RAMC licensing matters.

7.3 The proposed tribunal will comprise a Chairman, who should be a person qualified for appointment as a judge of the High Court[7] and is not a public officer, and not less than 2 members who are not public officers. The appointments are to be made by SFST. The term of each appointment should not exceed 3 years.

7.4 The tribunal will be empowered to review relevant decisions made by the relevant authorities. It may confirm, vary or set aside the decisions and remit the matter to the relevant authorities with any directions that it may consider appropriate. In reviewing a decision, the tribunal will give both the applicant and the relevant authority an opportunity of being heard and may determine any matter of fact on the basis of standard of proof applicable to civil proceedings in a court of law.

7.5 The decisions of the tribunal are subject to review by the Court of Appeal.

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[6] As mentioned in paragraph 5.6, we propose that revocation/suspension of licence/authorization for FIs should be dealt with under BO, SFO and ICO respectively. Relevant authorities' decisions on revocation/suspension of licence/authorization will be subject to review under the appellant channels provided under these Ordinances.

[7] Section 9 of the High Court Ordinance contains detailed provisions on the eligibility for appointment as a judge of the High Court.

CHAPTER 8

COMMENCEMENT

8.1 The previous consultation paper mentioned that the Government would consider providing for a transitional period where circumstances of individual sectors warrant.

8.2 We received suggestions for a transitional period of 6 months to 2 years between enactment and commencement of the new legislation, to allow FIs to make necessary preparation including system enhancement etc. for meeting the new requirements.

8.3 We propose that the new legislation will commence one year after approval of the relevant bill by LegCo. During the transitional period, we will work closely with the relevant authorities which will arrange workshops and training seminars to facilitate FIs to familiarize with the new requirements. Mass publicity will be arranged to enhance public awareness of the new requirements.

Annex A

DETAILED LEGISLATIVE PROPOSALS

Part 1 – Coverage[1]	
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[2] and money changers (RAMCs) licensed under this legislation. For insurers, insurance agents and insurance brokers, only transactions/ business relationships related to the long term insurance business will be subject to the requirements under this legislation.
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.
Part 2 – Obligations[3]	
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 more, whether conducted

[1] The meaning of financial institutions (FIs) and designation of relevant authorities will be set out in a Schedule to the new legislation, which may be amended by the Secretary for Financial Services and the Treasury (SFST) by notice in the Gazette.

[2] Please refer to the "List of Proposed Definitions" at the end of this proposal for definition of terms underlined.

[3] Requirements under items 3 to 17 will be provided in a Schedule to the new legislation, which may be amended by SFST by notice in the Gazette.

	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.
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.
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 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.
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 customers or business relationships.
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.
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; (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.
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 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 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.
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; (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 equivalent to those laid down in this legislation; and (D) 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.
11.	An FI shall not keep anonymous accounts or accounts in fictitious names and shall not enter into, or continue, a correspondent banking relationship with a shell bank.
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.
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 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.
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, 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.
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.
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 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.
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.
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.
19.	In exercising their power to impose supervisory sanctions, any failure on the part of any person to comply with the provisions relevant to the statutory obligations under this legislation set out in the guidelines that apply to him shall be considered by the relevant authorities in deciding whether any statutory obligations under this legislation has been breached.
Part 3 – Powers of the Relevant Authority	

20.	The relevant authority may at any reasonable time appoint authorized persons to conduct inspections by (a) entering into the premises of the FI; (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.
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 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.
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 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.
24.	Inspectors/investigators are obliged to inform or remind a person of the limitations on the admissibility in evidence of the explanation, statement, further particulars and answer, etc. Self-incriminating evidence shall not be used against a person in criminal proceedings where the person has claimed privilege against self-incrimination (except where the person is charged with an offence set out in item22, or under Part V of the Crimes Ordinance (Cap 200), or for perjury, etc.)
25.	The production of records or documents by an FI required by the relevant authority in the course of an investigation and inspection shall not be affected by any lien claimed and no fees shall be payable by the relevant authority for the production. Any power to require production of records or documents includes the power to require the production of a reproduction of the recording of the information or matter in a legible form.
26.	Where an inspector/investigator has taken possession of any record or document, he shall, subject to any reasonable conditions he imposes, permit a person who would be entitled to inspect the record or document to inspect it and to make copies or otherwise record details of it.
27.	A relevant authority may apply to a Magistrate for a warrant to search for, seize and remove any records or documents required to be produced if there are reasonable grounds to suspect that there is, or is likely to be, on the premises specified any record or document required to be produced under this part. The person authorized above may require any person on the premises to produce any record or document which is in the possession of the person, and may prohibit any person on the premises from removing any record or document, erasing, adding to or otherwise altering an entry or other particulars in the record or document. Any record or document removed under this item by the authorized person may be retained for any period not exceeding 6 months beginning on the day of its removal or such longer period as may be necessary for the purposes of

	criminal proceedings or any other proceedings under this legislation. Any person who would be entitled to inspect the record or document removed may be permitted to inspect the record or document and to make copies or otherwise record details of it at all reasonable times. A person who without reasonable excuse fails to comply with a requirement or prohibition or obstructs a person exercising a power under this item commits an offence.
28.	A person commits an offence if he, with intent to conceal, destroys, falsifies, conceals or disposes any record or document required to be produced.
29.	A relevant authority may prosecute offences under this legislation in its own name summarily.
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.
31.	The definition of "relevant provisions" in Schedule 1 under SFO will be amended to include AML obligations under this legislation.
<u>Part 4 – Sanctions</u>	
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.
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.
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.

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.
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.
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 commits an offence and shall be liable to criminal sanctions (fine and/or imprisonment).
<u>Part 5 – RAMCs</u>	
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.
39.	The licensing authority has a duty to maintain a register of licensed RAMCs which shall be kept at a location open for public inspection.
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.

41.	The Postmaster General will be subject to the CDD and record-keeping requirements under this legislation.
42.	An application for the grant or renewal of a RAMC licence is to be made in the manner prescribed by the licensing authority. A licence issued or renewed is subject to renewal at two years' intervals or some other period as may be specified by the licensing authority in respect of the individual license. The licensing authority shall notify the applicant of his decision and a decision to refuse to grant/renew a licence shall be provided with reasons. Any appeal against such decisions may be made to the independent appeals tribunal to be established under this legislation.
43.	A licencee may apply for the renewal of his licence within a specified period prior to the expiration thereof in the prescribed manner. Where a person submits an application for the renewal of his licence, his licence shall continue to be in force until the date on which the licence is renewed or the application for its renewal is refused.
44.	As part of the licensing criteria, the applicant and the beneficial owner or every partners in case of a firm or every director or controller in case of a corporation must be a fit and proper person. A person is not a fit and proper person for the purpose of this legislation if he- (a) has been convicted of a crime related to money laundering, terrorist financing or any other crimes involving fraud or dishonesty; (b) has been adjudged bankrupt and he has not been discharged; (c) has, in the opinion of the licensing authority, consistently failed to comply with the requirements under this legislation or the guidelines or regulation issued by the licensing authority under this legislation; or (d) is, in the opinion of the licensing authority, otherwise not a fit and proper person with regard to the risk of money laundering or terrorist financing.
45.	Before a licence is granted/renewed, the licence fee prescribed by the licensing authority must be paid. There shall be no refund of any licence fee paid in the event that a licence is revoked or suspended or when the licencee ceases to carry on business at any time prior to the expiry of the licence.
46.	A person who, in connection with an application for the granting of a licence or for the renewal of a licence, willfully provides information which is false or misleading in a material particular, knowing it to be false or misleading, or willfully omits to state any matter or thing without which the application is

	misleading in a material respect, commits an offence.
47.	The licensing authority may impose or vary the conditions on a licence.
48.	Where the licensing authority is of the opinion that a licencee (or in case of a firm every partner thereof or in case of a corporation every director or controller thereof) and the beneficial owner(s) of the business is not a fit and proper person to carry on business as an RAMC, he may revoke or suspend its licence. The person concerned will be given a reasonable opportunity to be heard before the licensing authority invokes such power. The licensing authority shall inform the person by notice in writing the reasons for which the decision is made, the time at which the decision is to take effect and the terms of the revocation and suspension.
49.	A licencee must notify the licensing authority in writing within one month- (a) of any material changes in the particulars submitted to the licensing authority in his application for licence; (b) of cessation of operation of the RAMC business. Failure to do so, without reasonable excuse, is an offence.
50.	A licencee must seek approval from the licensing authority before a change or an addition of beneficial owner/partner/director/controller is made. The licensing authority shall refuse the application if the new beneficial owner/partner/director/controller is not a fit and proper person. A person who contravenes the requirement without reasonable excuse commits an offence.
51.	The licensing authority will be empowered to exercise the regulatory powers for monitoring compliance with the CDD and record-keeping requirements (viz. inspection, investigation and prosecution) provided under the legislation to enforce the licensing requirements and the regulation made by the licensing authority.
52.	Authorized officers appointed by the licensing authority may arrest or detain for further enquiries without warrant any person whom he reasonably suspects of having committed the offence of unlicensed operations. Authorized officers may also on reasonable suspicion that an offence of unlicensed RAMC operations has been or is being committed enter and search any premises other than domestic premises and seize, remove or detain any records, documents and cash found on the premises.

53.	The licensing authority may by regulation prescribe requirements on AML matters for the compliance of the licensees. Breaches of the regulation or the licensing conditions may be considered as misconduct which may trigger imposition of the same range of supervisory sanctions as set out in item 33 above.
Part 6 – Appeals	
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 authority's decisions made on RAMC licensing matters.
55.	The proposed appeals tribunal will comprise a Chairman and not less than 2 members, as appointed by SFST. The Chairman shall be qualified for appointment as a judge of the High Court, and shall not be a public officer. The member shall not be public officers. The term of each appointment will be not more than 3 years.
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.
57.	A person is not excused from complying with an order, notice, prohibition or requirement of the appeals tribunal only on the ground that to do so might tend to incriminate the person. The appeals tribunal is not empowered to require the technical consultant or advisor of an applicant to disclose any information relating to the affairs of any person other than the applicant; or a solicitor or counsel to disclose any privileged communication, whether oral or written, made to or by him in that capacity.
58.	The legislation will provide for an offence where a person, without reasonable excuse: (a) fails to comply with an order, notice, prohibition or requirement of the appeals tribunal made or given; (b) disrupts or otherwise misbehaves during any sitting of the appeals tribunal; (c) having been required by the appeals tribunal to attend before the appeals

	tribunal, leaves the place where his attendance is so required without the permission of the appeals tribunal; (d) hinders or deters any person from attending before the appeals tribunal, giving evidence or producing any article, record or document, for the purpose of a review; (e) threatens, insults or causes any loss to be suffered by any person who has attended before the appeals tribunal, on account of such attendance; or (f) threatens or insults or causes any loss to be suffered by the Chairman, or any member, of the appeals tribunal at any time on account of the performance of his functions in that capacity.
59.	Where the appeals tribunal requires a person to give evidence or answer questions or provide information which might tend to incriminate the person, such evidence, answer or information shall not be admissible in evidence against the person in criminal proceedings in a court of law, other than proceedings in which the person is charged with an offence under item 58, Part V of the Crimes Ordinance, Cap 200 or for perjury, in respect of the evidence or information.
60.	A party to a review who is dissatisfied with a decision of the appeals tribunal relating to the review may appeal to the Court of Appeal. The Court of Appeal may, on application made to it by any party to the review proceedings, order a stay of the proceedings, or of execution of the determination of the appeals tribunal. The Court of Appeal may affirm, vary or set aside the determination of the appeals tribunal being appealed against by the relevant applicant or the relevant authority or to remit the matter to the appeals tribunal with any direction that it considers appropriate. The Court of Appeal may make such order for payment of costs as it consider appropriate.
<u>Commencement</u>	
61.	The new legislation will commence one year after approval of the relevant bill by the Legislative Council.

List of Proposed Definitions

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 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.
correspondent banking	means the provision of banking services by one bank to another bank to enable the latter to provide services and products to its own customers. Such services may include cash management, international wire transfers of funds, cheque clearing, payable-through accounts and foreign exchange services.
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.
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.
legal arrangement	refers to express trust or any other arrangement which has a similar legal effect.
legal person	refers to a body corporate, foundation, partnership, or association, or any similar body that can establish a permanent customer relationship with an FI or otherwise own property.
money changer	means a person who carries on in Hong Kong the business of exchanging currencies and does not include a business which is a service provided within a hotel premises primarily for the convenience of guests of the hotel and consists solely of transactions of other currencies in exchange for Hong Kong currency and does not include an authorized institution within the

	meaning of the BO.
occasional transaction	means a transaction with a customer who is neither an account holder nor in an established business relationship with the FI.
officers	means the following persons where the FI is not a natural person- (a) in relation to authorized institutions, a controller, director, chief executive, executive officer or manager within the meaning of the BO; (b) in relation to licensed corporations, a director, manager or secretary or any person involved in the management of the corporation within the meaning of SFO; (c) in relation to insurers, insurance agents and insurance brokers, a controller, director, manager, secretary or similar officer of the body corporate within the meaning of the ICO; (d) in relation to RAMCs, a controller, director or partner within the meaning of this legislation.
originator	means the account holder, or where there is no account, the person (natural or legal) that places the order with the FI to perform the wire transfer.
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.
remittance agent	means a person who provides a service to another person or persons as a business, of one or more of the following- (a) sending, or arranging for the sending of, money to; (b) receiving, or arranging for the receipt of, money from; or (c) arranging for the receipt of money in, a place outside Hong Kong. It does not include an authorized institution within the meaning of the BO.
wire transfer	means any transaction carried out on behalf of an originator through an FI by electronic means with a view to making an amount of money available to a beneficiary at another FI. The originator and the beneficiary may be the same person.

Annex B

CONSULTATION CONCLUSIONS – FIRST-ROUND CONSULTATION

Introduction

A.1 FSTB published a consultation paper on 9 July 2009 on a conceptual framework of a legislative proposal to enhance AML regulatory regime in respect of the financial sectors.

A.2 The proposed legislation seeks to address the deficiencies identified by FATF in the Hong Kong's AML regime. The conceptual framework of the legislation covers the following aspects:

- the financial institutions which would be subject to the proposed legislation;
- the customer due diligence (CDD) and record-keeping obligations that are required to be met;
- the powers of the regulatory authorities in supervising compliance with appropriate checks on the exercise of such powers;
- criminal and supervisory sanctions for breaches of the obligations; and
- a proposed licensing system applicable to entities engaging in remittance and money changing services for AML regulatory purpose.

A.3 The consultation period closed on 8 October 2009. Apart from the feedback we received through the seven sectoral consultative sessions which were attended by over 800 participants, we also received a total of 39 written responses to the consultation paper. Written responses are received from:

- Almighty Global Company
- Cheetah Investment Management Limited
- Clifford Chance
- David Ross
- Eddie S CHAN
- Global Witness
- Hong Kong Bar Association
- Hong Kong General Chamber of Commerce
- Hong Kong Investment Funds Association
- Hong Kong Securities Association
- Hong Kong Securities Professionals Association
- Hong Kong Trustees' Association (HKTA)

- ING Life Insurance Company (Bermuda) Limited
- Institute of Financial Planners of Hong Kong
- Ipac Financial Planning Hong Kong Limited
- Kelvin Ng
- Macquarie Services (Hong Kong) Limited
- R S Nair (Lotus Forex Limited)
- National Australia Bank (Hong Kong Branch)
- Optiver Trading Hong Kong Limited
- Retirement Scheme Subcommittee of HKTA
- Rodelo B Landicho
- Securities and Futures Commission Advisory Committee
- SmarTone Mobile Communication Ltd
- STEP Hong Kong Limited
- The Alternative Investment Management Association Ltd
- The Association of Remittance Agents and Money Changers
- The Deposit-taking Association
- The Hong Kong Association of Banks
- The Hong Kong Confederation of Insurance Brokers
- The Hong Kong Federation of Insurers
- The Law Society of Hong Kong
- TMF Group
- Travelex Hong Kong Ltd
- 謝健全、施金定

(Two respondents requested not to disclose their identity and there are two anonymous response)

Views and Comments

A.4 The comments received in the previous consultation are generally positive. Many respondents acknowledged the need for Hong Kong to comply with the international AML standards which was important for maintaining our status as an international financial centre. There was broad support for the Government's proposal to introduce legislation to enhance the AML regulation and introduce a licensing regime for RAMCs. Major views by topics with Government's response are summarized in the Appendix.

Appendix

SUMMARY OF MAJOR COMMENTS RECEIVED WITH THE ADMINISTRATION'S RESPONSE

Issues	Comments Received	Response from the Administration
Need for Legislation	• A number of respondents recognized the need for Hong Kong to meet the international obligations to maintain status as an international financial centre.	• Noted.
	• Some respondents considered it preferable to put the requirements in a regulation (instead of primary legislation) which is more flexible.	• We propose that the detailed CDD and record-keeping requirements be set out in a schedule to the proposed legislation. In case there are changes to the international standards which require amendments to the proposed legislation, Secretary for Financial Services and the Treasury (SFST) may amend the schedule by notice in Gazette which is subject to negative vetting by the Legislative Council.
Governing Principles	• A number of respondents supported the principle that impacts on the relevant financial sectors should be minimized as far as reasonably practicable, whilst one respondent considered that compliance cost is not relevant as the key is to comply with international requirements.	• Noted.
	• Some respondents asked that the obligations under the proposed legislation be proportionate to the Financial Action Task Force (FATF)'s requirements and be	• Noted.

	benchmarked against other competent international financial centres to maintain competitiveness, and not to impose additional onus and/or burden on daily business operations especially of those smaller establishments. • Some respondents commented that the proposal should be consistent with Personal Data (Privacy) Ordinance.	• We will seek Privacy Commissioner's advice, as appropriate, in preparing the legislation.
Coverage	• A few respondents suggested that the new legislation should not apply to the following categories of financial institutions (FIs): (a) Type 6 licensed corporations advising on corporate finance (b) Market makers (proprietary traders) (c) Reinsurance companies authorized under Insurance Companies Ordinance, Cap. 41 (ICO) • Some respondents pointed out that some businesses carrying out similar activities and are not regulated by the financial regulators yet (e.g. credit card issuers and money lenders) are not covered in the proposed legislation.	• According to FATF's requirements, these categories of FIs are not exempted from the customer due diligence (CDD) and record-keeping requirements. • FATF's last evaluation on Hong Kong in 2008 acknowledged that the impact of excluding money lenders and other peripheral financial activities from our anti-money laundering (AML) regime on Hong Kong's overall compliance should be "minimal". Separately, we will collate information and data on these sectors with a view to assessing

		the money laundering risks involved in these sectors.
Third-party reliance and regulation of Designated Non-Financial Business and Professions (DNFBPs)	• A number of respondents suggested that FIs should be allowed to rely on local third parties to conduct CDD, which is a common business practice for financial services. On the other hand, a respondent considered that the reliance on third parties should be tightened up.	• Taking into account the existing arrangement, we propose to allow FIs to rely on local third parties for CDD under specified circumstances. (See item 10 of the detailed legislative proposals)
	• Some respondents asked whether lawyers, accountants and trust service providers in Hong Kong can be relied on for CDD, given that they are not regulated for AML purpose at the moment, and some respondents suggested that the regulators should provide clear guidance and criteria on the eligibility of third parties to be relied upon.	• The relevant eligibility criteria are set out in item 10(e) of the detailed legislative proposals.
	• Some participants asked whether, for hedge funds that are regulated in another financial centre, FIs would be allowed to rely on them for conducting CDD measures on hedge fund clients.	• Yes, if the hedge funds satisfy the criteria set out under item 10(e) of the detailed legislative proposals.
	• Some respondents suggested that insurers should be allowed to rely on banks to conduct CDD for bancassurance.	• It would depend on the nature of the agreement between the banks and the insurers. Generally speaking, banks covered by the new legislation can be relied upon in conducting CDD, although the insurers would still be ultimately responsible for the CDD. (See

		item 10 of the detailed legislative proposals)
	• Although outside the scope of this consultation, it is noted that some respondents commented that there should be AML regulation of DNFBPs to ensure a comprehensive AML regime, and some industry associations commented that they are willing to come under AML regulation.	• Noted. The views were relayed to the Security Bureau which is responsible for AML regulation of DNFBPs.
Designation of Regulators	• Most of the respondents agreed to the proposed designation of regulators viz. Hong Kong Monetary Authority (HKMA), Securities and Futures Commission (SFC), Insurance Authority (IA) and Customs and Excise Department (C&ED). A few respondents commented on the appropriateness of designating C&ED as the regulator for remittance agents and money changers (RAMCs).	• It is appropriate for C&ED to take up the AML regulatory role for RAMCs, in view of its rich experience and expertise in law enforcement and conducting compliance inspection in trade and industry sectors. Resources and appropriate trainings on AML regulation will be provided to C&ED officers before commencement of the new legislation.
Regulatory Approach	• A number of participants of the consultative sessions for the banking sector suggested the single-regulator approach and requested that a high level of consistency in the enforcement by regulators should be maintained.	• AML compliance interlinks with the overall risk management and control systems of FIs and hence should best be supervised by the same regulators who are overseeing the prudential and/or statutory regulation of these sectors. The designated authorities will seek to enhance consistency in compliance requirements and enforcement standards, and synchronize their

		AML regulatory guidelines and enforcement guidance.
AML Guidelines	• Many respondents requested that the AML guidelines underpinning the implementation of the future statutory requirements should be consistent to ensure level playing field for all sectors, but on the other hand some respondents commented that the specific business characteristics of each sector should be taken into account in determining their obligations and the guidelines. • Many respondents supported a risk-based approach, whilst some respondents commented that since non-compliance would in future attract criminal liability, detailed and prescriptive guidelines should be provided by the regulators and aspects requiring FIs to exercise judgment and discretion should be minimized as far as possible.	• Please see our response under "regulatory approach". • Relevant authorities will provide appropriate guidance in their guidelines to be issued.
CDD requirements	• Some respondents enquired the definition of beneficial owners under the future legislation and suggested that the threshold for beneficial ownership should be increased from 10% to 25%. • Some respondents suggested to relax	• We propose to model on the current requirement under the guidelines issued by HKMA, SFC and IA, having regard to the risk associated with the use of offshore corporate vehicles and the satisfactory compliance record thus far, and adopt the existing 10% threshold for beneficial ownership. • Ongoing due diligence is a FATF

	the requirement for ongoing due diligence or apply this obligation only to new accounts. Some respondents suggested that a grace period of at least 12 months should be allowed for FIs to tackle their existing accounts, while a respondent suggested that records of existing customers should only need to be brought up to current CDD standards upon a triggering event.	requirement. Exempting all existing accounts for CDD measures will undermine the effectiveness of AML regime. We propose that FIs should review/update existing accounts upon a triggering event. To allow time for FIs to review and update all existing accounts, we propose to provide a transitional period of 2 years. (See item 7 of the detailed legislative proposals)
	• Questions were raised by some respondents from the banking sector on whether local FIs should keep records on those transactions booked overseas and conduct the CDD on such clients.	• We propose that when the Hong Kong branch conducts a transaction above the HK$120,000 threshold on behalf of a customer with an account booked in an overseas branch, CDD measures would be required.
	• Different views were expressed on whether the proposed threshold for occasional transactions of EUR/USD 15,000 is appropriate.	• The proposed threshold of HK$120,000 (EURO/US$15,000) is already the maximum threshold permitted by FATF for occasional transactions. FIs may set a lower (i.e. more stringent) threshold under their own internal policies having regard to the risks associated with their own businesses.
Requirements for RAMCs	• Different views were expressed on whether the current threshold (HK$8,000) for verification of customers' identity is appropriate.	• We propose to maintain the existing HK$8,000 threshold for wire transfers and remittances and to raise the threshold for money changing transactions to HK$120,000. (See items 3(c), 13

		and 14 of the detailed legislative proposals) These are the maximum levels permitted by FATF.
	• A number of respondents expressed concerns that RAMCs may have difficulties in complying with the proposed CDD requirements.	• To ensure integrity of new AML regime, RAMCs will be subject to the same requirements as other FIs. The licensing authority will provide training and other necessary technical assistance to RAMCs to help them familiarize with the statutory requirements and facilitate their compliance.
Risk-based approach	• Most respondents supported the adoption of a risk-based approach, but they also commented that there should be clear guidelines on how to apply a risk-based approach.	• Noted
	• Some respondents stated that there is a need for formal procedures for periodic appraisal and review of risks if a risk-based approach is applied.	• FIs will be required to apply ongoing due diligence measures by scrutinizing transactions and reviewing existing records. (See item 6 of the detailed legislative proposals)
Enhanced Due Diligence	• Many respondents expressed difficulties in identifying high-risk customers, e.g. Politically Exposed Persons (PEPs). Some asked for clear and detailed requirements and an exhaustive PEP list covering all jurisdictions from the regulators or Government.	• The definition of PEPs is set out at the "List of Definitions" in the detailed legislative proposals. It is not a common international practice for relevant authorities to provide exhaustive lists on PEPs. The regulators will provide guidance to FIs though their guidelines to help FIs to conduct PEP checks.

	• Some respondents considered that enhanced due diligence should not be required for non face-to-face customers (especially those involving credit cards, personal loan or telemarketing), and cross-border correspondence banking relationship which is considered to be of higher risk could be narrowed down to those incorporated in high-risk jurisdictions.	• Non face-to-face transactions and correspondent banking relationship are regarded as high-risk customers or transactions under FATF's requirements. There is no scope for provision of exemption for these categories of customers from enhanced due diligence.
Simplified Due Diligence	• Some respondents suggested that the following financial products should be eligible for simplified due diligence, regardless of the risk profile of the customers: (a) MPF products; (b) products which involved no cash benefits; and (c) protection type insurance products with sum insured of less than $100,000.	• Item 8 of the detailed legislative proposals sets out types of customers and products eligible for simplified due diligence.
Regulators' powers	• Respondents generally supported the proposals on regulators' powers, although there were concerns about whether there would be proper safeguards to ensure that regulators' exercise their regulatory powers properly.	• There will be appropriate safeguards in the detailed legislative proposals.
Supervisory Sanctions	• Most respondents agreed that supervisory sanctions are effective tools to ensure compliance. A few respondents disagreed with the provision of supervisory sanctions as	• Supervisory sanctions are particularly effective for dealing with non-compliance of less severity. The proposed legislation will empower the

	criminal sanctions alone would suffice.	relevant authorities to impose a range of supervisory sanctions upon breaches of the statutory requirements.
	• Some respondents agreed that the maximum fines can be the same as that under s194 of SFO, whilst some commented that a cap in an absolute amount may not fit all sectors.	• The legislation will only specify the maximum level of fines that may be imposed. The exact level of fines to be imposed for each case will be determined on a case-by-case basis having regard to all relevant factors.
	• Questions were raised as to how the authorities would determine whether to apply criminal and/or supervisory sanctions. Some considered that there should not be concurrent imposition of criminal and supervisory sanctions.	• Under the proposed AML regulatory regime, the regulatory authorities are empowered to investigate suspected breaches of the statutory CDD and record-keeping requirements. The regulator will, upon completion of the investigation, decide whether (a) to prosecute summarily the regulatee for the offence committed or refer to the Director of Public Prosecution for prosecution on indictment; and/or (b) to take actions to impose supervisory sanctions, taking into account relevant factors including the facts of the case, availability of sufficient evidence, and severity and nature of the breach concerned. In any event, as a criminal conviction may also affect the "fitness and properness" of the concerned regulatee, this should not preclude the regulators from imposing any other

		appropriate supervisory sanctions.
	• A few respondents commented that considerations for imposing different levels of sanctions should be clearly set out and revocation or suspension of licence should only be imposed upon very serious breach. The rationale for imposing a sanction should be transparent to the FI concerned and made known to other FIs as far as possible.	• The relevant authorities will publish guidelines on how they intend to use their power to impose supervisory sanctions (See item 35 of the detailed legislative proposals). The relevant authorities may disclose to the public the reason for imposing the sanctions. (See item 36 of the detailed legislative proposals)
Criminal liability for FIs	• A few respondents opined that extreme caution should be exercised on introduction of new criminal sanctions. A number of trade bodies as well as a few other respondents considered it not necessary for provision of criminal sanctions for FIs for breaches of CDD and record-keeping requirements.	• The current proposal is that any persons who knowingly contravene the statutory obligations will commit an offence. (See item 37 of the detailed legislative proposals)
	• Some respondents who raised no objection to the provision of criminal sanction suggested that there should be some form of knowledge or intent element for the offence. Some commented that it is unclear what would constitute a "reasonable excuse" against criminal liability, and a statutory defence for criminal liability should be provided, and some suggested to use "enforceable undertakings" (such as the regime under Personal Data (Privacy) Ordinance) in lieu of criminal	• Ditto

	offences.	
Personal Criminal liability	• Those respondents who raised no objection to personal criminal liability suggested that there should be a high mental threshold and that "officers" should be clearly defined to exclude mid-level executives. Consideration should be given to providing statutory defence such as "reasonable excuse". On the other hand, some other respondents considered it in appropriate to impose criminal liability on officers.	• The current proposal is that only those who knowingly contravene the statutory obligations will commit an offence. Breaches committed out of inadvertence will not be caught. The proposed formulation for criminal liability involves an element of knowledge or fraud. (See item 37 of the detailed legislative proposals)
Compliance Officers	• Some respondents suggested that the proposed legislation should require FIs to designate AML compliance officers to bear the primary responsibility for AML compliance. One participant of the consultative session suggested to put in place a registration system for frontline staff of FIs to ensure that they possess knowledge on AML requirements.	• A compulsory requirement for designation of AML compliance officers may create undue burden to some FIs, particularly those smaller establishments, and imposing a registration system for frontline staff of FIs will have significant impact on industry practitioners.
Transitional Period	• Most of the respondents suggested that at least 12 months is required to allow time for modification of internal rules and procedures, etc. A respondent suggested that a 2-year period is necessary. Another respondent opined that the obligations can be applicable to new businesses immediately while existing businesses may need 6-12 months for remediation.	• The suggestion for a transitional period is noted. The proposed legislation will commence one year after the approval of the bill by the Legislative Council. (See item 61 of the detailed legislative proposals)

RAMC licensing	• Most respondents welcomed the licensing regime while a respondent considered the replacement of registration regime with the proposed licensing regime unnecessary. A respondent suggested that only a limited number of licences should be issued to maintain the quality of the industry. • Most respondents have no objection to the need for renewal of licence although some commented that there should be automatic renewal. A respondent commented that renewal should be made at 3 years' interval to avoid undue inconvenience to business operators.	• Market force will determine the size of the RAMC sector. We see no strong policy ground to impose a quota on the number of licences issued. • Taking into account the need to ensure effective supervision and to avoid undue inconvenience to business operations, we propose that RAMC licences should be subject to renewal at two years' intervals. (See item 42 of the detailed legislative proposals)
Licensing Criteria for RAMCs	• Suggestions were made that business competence, knowledge of the business and education standards should be included as licensing criteria. A respondent further suggested that both licensees and employees should be required to pass examination.	• The desirability and feasibility of putting in place a trade examination may be considered in the longer run.
Licence Fee for RAMCs	• Some respondents considered that a licence fee determined on a cost recovery principle is generally fair, though a respondent suggested to set a token fee.	• Noted.
Unlicensed RAMCs	• Some participants of the consultative session requested the authorities to step up efforts against unlicensed RAMCs when the licensing regime is	• The new legislation will require C&ED to take enforcement actions against unlicensed RAMC operations. C&ED will be

	in place.	empowered to arrest and detain persons operating unlicensed RAMCs and search business premises and seize documents and records therein.
Migration from Registration to Licensing of RAMCs	• Some respondents suggested that there is no need for transitional arrangement. For those who considered a transition period necessary, a range of 1 to 3 years were suggested.	• We propose that existing RAMCs will have 60 days to apply for a licence upon the commencement of the relevant provisions, and they will be deemed licensed until their applications are approved/refused. (See item 40 of the detailed legislative proposals)
Appeal Mechanism	• Most respondents agreed with the proposed establishment of an independent appeals tribunal, though a respondent considered that there is no need for a separate tribunal as the reviews can be conducted by the Securities and Futures Appeals Tribunal. Some respondents commented that members of the appeals tribunal should include representatives from the industry.	• To achieve general consistency in review of decisions made by the relevant authorities on AML breaches, we propose to establish an independent tribunal under the proposed legislation.
Assistance from Government and the Regulators	• A number of respondents suggested that the regulatory authorities should set up enquiry hotlines as FIs may encounter difficulties in conducting CDD.	• The regulators will consider the relevant details in the implementation stage of the new legislation.
Training and publicity	• FIs would like the regulators to provide appropriate training to facilitate their compliance with the future requirements. In this respect,	• Relevant authorities will consider providing appropriate training upon enactment of the proposed legislation.

	some respondents considered that the current training efforts provided by financial regulators and the Police is adequate, while a respondent commented that training should be an ongoing process. • A number of respondents suggested that the regulatory authorities and the Government should launch mass publicity on the new CDD requirements so that members of the public will be more cooperative in the CDD process.	• Mass publicity will be arranged upon the enactment of the proposed legislation.