

**Bills Committee on Anti-Money Laundering and
Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill
2017 and Companies (Amendment) Bill 2017**

**List of follow-up actions arising from the discussion
at the meeting on 11 December 2017**

Approach in applying statutory customer due diligence and record-keeping requirements to the legal professionals

1. Under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 ("AMLO Bill"), the Law Society of Hong Kong ("LSHK") is entrusted with statutory supervisory oversight to ensure compliance by the legal professionals with the statutory customer due diligence ("CDD") and record keeping requirements in Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO"). According to the Administration, LSHK will have the discretion to promulgate guidelines to provide guidance for the legal professionals in implementing the statutory CDD and record keeping requirements taking into account any practice direction (including the Practice Direction P). The Administration is requested to consider members' suggestion to set out the above arrangements in the AMLO Bill clearly by introducing relevant Committee Stage amendments if necessary.

Issues relating to the implementation of requirements under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017

2. The Administration is requested to provide a comparison of the requirements in Schedule 2 to AMLO with those in the respective draft anti-money laundering and counter-terrorist financing guidelines to be issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA") and the Estate Agents Authority ("EAA"), and highlight the requirements in Schedule 2 to AMLO that are not covered by the draft guidelines concerned or vice versa.
3. The Administration is requested to consider a member's suggestion of reducing the record-keeping requirement in AMLO from six years to five years so as to align with the corresponding requirement of the Financial Action Task Force.

4. The Administration is requested to provide for members' reference the draft guidelines prepared by the Companies Registry ("CR") for trust or company service providers ("TCSPs"), including (a) explanation on when persons/companies providing TCS in Hong Kong are required to obtain licences; and (b) guidance for licensed TCSPs in implementing the statutory CDD and record keeping requirements.
5. The Administration is requested to further elaborate paragraph 8 of its response paper (LC Paper No. CB(1)331/17-18(02)) on the licensing regime for TCSPs, including (a) providing examples to illustrate the circumstances when a person acting as the trustee for a trust or a trust contained in a will would be regarded as providing the services "by way of business", thus requiring a TCSP licence; and (b) clarifying that one-off service provided by a person and do not involve commercial gain for a trust set up by a friend/under a family arrangement would not be caught by the licensing regime.
6. The Administration is requested to consider members' suggestion of allowing designated non-financial businesses and professions ("DNFBPs"), particularly real estate agents and TCSPs, to rely on other qualified DNFBPs as intermediaries to conduct CDD measures on their behalf. It is noted that similar arrangements have been incorporated in the regulatory regimes on DNFBPs of other jurisdictions.

Immunity for regulatory bodies of designated non-financial businesses and professions

7. Under the amended section 4 of AMLO, the regulatory bodies DNFBPs (i.e. LSHK, HKICPA and EAA) are given immunity from civil liability in respect of the performance of statutory functions under the Ordinance. The Administration is requested to consider a member's suggestion of establishing a mechanism for DNFBPs to claim losses arising from the mistakes of the regulatory bodies making reference to the relevant arrangements set out in the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).