

**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 21 December 2017**

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

1. The Administration is requested to re-consider a member's suggestion of reducing the record-keeping requirement in the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO") from six years to five years so as to align with the corresponding requirement of the Financial Action Task Force ("FATF").
2. The proposed new section 5A(4) of AMLO provides that an AML/CTF requirement that applies to a DNFBP who is an estate agent only applies when the estate agent is involved, in Hong Kong, in a transaction concerning the buying or selling of real estate for a client (as defined by section 2(1) of the Estate Agents Ordinance (Cap. 511)). The Administration is requested to clarify whether the section covers a transaction with real estate outside Hong Kong.
3. The proposed new section 39A to AMLO requires a licensed money service provider to display the original of the licence in a conspicuous place at the licensed premises. The Administration is requested to explain the rationale of adding this section, and consider whether licensed trust or company service providers ("TCSPs") should be subject to the same requirement under the proposed licensing regime under the proposed new Part 5A.

Power of authorized persons and investigators under the Anti-Money
Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance

4. Section 9 of AMLO sets out the power of authorized persons to enter business premises etc. for routine inspection. The Administration is requested to review the drafting of the proposed new section 9(15)(i) to address members' concern that:

- (a) the section may allow authorized persons to enter the residential premises of a TCSP if the TCSP operates in the form of home-office; and
 - (b) the section cannot cater for the situation where TCSPs conduct their businesses through mobile operations.
5. According to the Administration, section 12 of AMLO provides for the power of investigators to require production of records or documents from a licensed TCSP, and the proposed section 53ZF relates to the application of a Magistrate's warrant to enter the premises of a suspected unlicensed TCSP and seize the records or documents therein. The Administration is requested to consider members' suggestion to require investigators under section 12 to obtain a Magistrate's warrant in discharging their duties under certain scenarios (e.g. when carrying out inspections of non-domestic premises).

Regulation of trust or company service providers

6. The proposed new section 53B(2) of AMLO provides that the Secretary for Financial Services and the Treasury may by regulation prescribe a class or description of persons that can be exempt from the proposed licensing regime for TCSPs. According to the Administration, the regulation is subject to negative vetting of the Legislative Council ("LegCo"). The Administration is requested to explain the rationale of providing section 53B(2), and consider a member's suggestion of deleting the section or subjecting the regulation made to positive vetting of LegCo.
7. Under the proposed new section 53I(b)(iii) of AMLO, the Registrar of Companies ("Registrar"), in determining whether a person is a fit and proper person for granting a TCSP licence, must have regard to, among other things, whether the person has a conviction in a place outside Hong Kong for an offence for which it was found that the person had acted fraudulently, corruptly or dishonestly. The Administration is requested to address a member's concern about the extensive scope of section 53I(b)(iii) which may cover relatively minor offences convicted outside Hong Kong.
8. The proposed new section 53J of AMLO provides that, the Registrar may on granting a TCSP licence, impose any condition that the Registrar considers appropriate. The Administration is requested to set out the conditions that may be imposed by the Registrar which are (a) necessary; and (b) optional under FATF recommendations, and consider the need of specifying such conditions in the AMLO Bill.

9. The proposed new section 53Q(1)(b) provides that the Registrar may, in a situation specified in subsection (2), suspend a licensee's licence: (i) for a period specified by the Registrar; or (ii) until the occurrence of an event specified by the Registrar. The Administration is requested to review the drafting to enhance the clarity of the section (e.g. specifying the timeframe of the Registrar's action). The Administration is also requested to review the corresponding section for money service licensees (i.e. the existing section 34 of AMLO).
10. Under the proposed new section 53X of AMLO, a TCSP licensee has to notify the Registrar of the cessation of business before the intended date of cessation. The Administration is requested to: (a) explain the policy objective of the provision; (b) consider specifying the required notification period for the TCSP licensee to inform the Registrar of the cessation of business; (c) consider whether there should be requirement for the TCSP licensee to inform its clients before it ceases its business, and the relevant notification period required; (d) whether there should be restrictions on the TCSP licensee's business after it has notified the Registrar of its intended cessation of business; and (e) explain the measures to ensure the compliance of TCSP licensees with the notification requirement and the business restriction requirement (if any).

Transitional arrangements of the proposed licensing regime for trust or company service providers

11. Under the transitional arrangements for TCSPs in the proposed new section 53ZQ of AMLO, a provider carrying on a trust or company service business is deemed to have been granted a licence ("a deemed licensee"), and is required to apply for a TCSP licence within 120 days from the commencement of the AMLO Bill if it wishes to continue with the business. The Administration has explained that the deemed licence ceases if the application of the deemed licensee is rejected by the Registrar. The Administration is requested to consider a member's suggestion of allowing the deemed licensee to continue carrying on TCS business until its appeal against the Registrar's decision has been determined.