

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions)
(Amendment) Bill 2017

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

[Note: This draft is still subject to further refinement.]

| <u>Clause</u> | <u>Amendment Proposed</u> |
|--------------------|---|
| 8 ¹ | By deleting subclause (8) and substituting— “(8) After section 7(5)— Add “(5A) To avoid doubt, in relation to a legal professional, the power to publish guidelines under this section does not affect the sole discretion of the Law Society to determine the content of Practice Direction P as defined by section 9A(3) of the relevant Ordinance.”. |
| 8 | By deleting subclause (12). |
| 9(10) ² | In the proposed paragraph (i), by deleting “TSCP” and substituting “TCSP”. |
| 26 ³ | By adding— “(91A) Schedule 2, section 18(1)— Repeal “institution may” Substitute |

¹ Having regard to views raised by the Law Society of Hong Kong (“LSHK”), Clause 8 is to clarify that the LSHK may have regard to or take into account the Practice Direction P in providing guidance on anti-money laundering and counter-terrorist financing (“AML/CTF”) requirements under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (“AMLO”), and that the LSHK has the sole discretion to determine the content of Practice Direction P as defined under the Legal Practitioners Ordinance (“LPO”).

² Clause 9 is to amend a typo.

³ Having regard to views raised at the Bills Committee meetings, Clause 26 is (i) to allow designated non-financial businesses and professions to rely on intermediaries to conduct customer due diligence measures; and (ii) to amend the record-keeping requirement from six years to at least five years.

“institution or a DNFBP may”.

(91B) Schedule 2, section 18(1)(a)—

Repeal

“institution’s”

Substitute

“institution’s or the DNFBP’s”.

(91C) Schedule 2, section 18(1)(b)—

Repeal

“institution”

Substitute

“institution or the DNFBP”.

(91D) Schedule 2, section 18(2)—

Repeal

“institution”

Substitute

“institution or a DNFBP”.

(91E) Schedule 2, section 18(3)(a)—

Repeal

“institution”

Substitute

“institution or the DNFBP”.”.

26

By deleting subclause (92) and substituting—

“(92) Schedule 2, section 18(3)(a)—

Repeal subparagraphs (i), (ii), (iii) and (iv)

Substitute

“(i) an accounting professional;

(ii) an estate agent;

(iii) a legal professional;

(iv) a TCSP licensee;”.”.

26

By deleting subclause (93).

- 26 By deleting subclause (94) and substituting—
“(94) Schedule 2, section 18(3)(b)—
Repeal
“; or”
Substitute a semicolon.”.
- 26 By deleting subclause (96) and substituting—
“(96) Schedule 2, section 18(3)(c)(iii)—
Repeal
“authorities.”
Substitute
“authorities or the regulatory bodies (as may be applicable);
or”.”.
- 26(97) In the proposed section 18(3)(d), by deleting “an institution” and
substituting “in the case of a financial institution, an institution”.
- 26 By adding—
“(98A) Schedule 2, section 18(4)—
Repeal
“A financial institution”
Substitute
“A financial institution or a DNFBP”.
- (98B) Schedule 2, section 18(4)(a)—
Repeal
“institution”
Substitute
“institution or the DNFBP”.”.
- 26 By adding—
“(99A) Schedule 2, section 18(4)(b)—
Repeal
“institution” (wherever appearing)

Substitute

“institution or the DNFBP”.”.

26(101) In the proposed section 18(4)(c), by deleting “if” and substituting “in the case of a financial institution, if”.

26 By adding—

“(102A) Schedule 2, section 18(6)—

Repeal

“institution” (wherever appearing)

Substitute

“institution or a DNFBP”.”.

26(103) In the proposed section 18(7), by deleting the definition of *intermediary financial institution* and substituting—

“*intermediary financial institution* (中介人金融機構) means a financial institution mentioned in subsection (3)(b);”.

26 By adding—

“(110A) Schedule 2, section 20(2)—

Repeal

“6”

Substitute

“at least 5”.

(110B) Schedule 2, section 20(3)—

Repeal

“6”

Substitute

“at least 5”.”.

- 34(1)⁴ By deleting the proposed section 9A(1AA) and substituting—
- “(1AA) Without limiting subsection (1), where the Council considers that the conduct—
- (a) involves an alleged breach referred to in subsection (1AAB)(a) or (b); and
 - (b) is conduct that should be inquired into or investigated, the Council must submit the matter to the Tribunal Convenor for the purpose of inquiring into or investigating the conduct.”.
- 34(1) In the proposed section 9A(1AAB), by deleting “(1AA)” and substituting “(1AA)(a)”.
- 34(1) By deleting the proposed section 9A(1AAC) and substituting—
- “(1AAC) The Council must take into account Practice Direction P when considering a matter referred to in subsection (1AA)(a) or (b).”.
- 34(2) In the proposed section 9A(3), by adding in alphabetical order to the proposed definitions—
- “*Practice Direction P* (執業指引) means any practice direction issued by the Society for providing guidance in relation to the operation of AML/CTF requirements;”.

⁴ Having regard to views raised by the LSHK, Clause 34 is to clarify the consequential amendments to the LPO that the Council of the LSHK must take into account Practice Direction P and has the discretion in determining (i) whether a conduct involves an alleged breach of AML/CTF requirements and (ii) should be inquired into or investigated before the conduct can be referred to the Solicitors Disciplinary Tribunal for follow-up.

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill
2017

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

Marked-up Version

[Note: This marked-up version is for crude reference only. In case of doubt or discrepancy, the CSA version shall prevail.]

| | | | | |
|----------|-----|--|----------------|--------------|
| Chapter: | 615 | Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance | Gazette Number | Version Date |
|----------|-----|--|----------------|--------------|

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|----------|---|---|------------|------------|
| Section: | 7 | Guidelines for operation of Schedule 2 Relevant authority may publish guidelines | 15 of 2011 | 01/04/2012 |
|----------|---|---|------------|------------|

- (1) A relevant authority or a regulatory body may publish in the Gazette any guideline that it considers appropriate for providing guidance in relation to the operation of any provision of Schedule 2.
- (2) A guideline published by the Monetary Authority, Securities and Futures Commission ~~or Insurance Authority may~~, Insurance Authority or a regulatory body may incorporate or refer to a guideline or document, or any part of a guideline or document, from time to time issued or published by the Monetary Authority, Securities and Futures Commission, Insurance Authority or the regulatory body under or Insurance Authority under the relevant Ordinance.
- (3) A relevant authority or a regulatory body may from time to time amend the whole or any part of any guideline published under this section in a manner consistent with the power to publish the guideline under this section, and—
 - (a) the other provisions of this section apply, with necessary modifications, to the amendments to the guideline as they apply to the guideline; and
 - (b) any reference in this or any other Ordinance to the guideline (however expressed) is, unless the context otherwise requires, to be construed as a reference to the guideline as so amended.
- (4) A failure by any person to comply with a provision in any guideline published under this section does not by itself render the person liable to any judicial or other proceedings but, in any proceedings under this Ordinance before any court, the guideline is admissible in evidence; and if any provision set out in the guideline appears to the court to be relevant to any question arising in the proceedings, the provision must be taken into account in determining that question.
- (5) In considering whether a person has contravened a provision of Schedule 2, a relevant authority or a regulatory body must have regard to any provision in the guideline published under this section that is relevant to the requirement.

~~(5A) In relation to a person who is a legal professional, nothing in this section prevents the regulatory body, or another body whose function is to consider whether the person has contravened an AML/CTF requirement, from having regard to or taking into account any practice direction that—~~

 - ~~(a) is issued by the regulatory body; and~~
 - ~~(b) provides guidance in relation to—~~
 - ~~(i) the operation of any provision of Schedule 2 that applies to a legal professional; or~~
 - ~~(ii) compliance with an AML/CTF requirement.~~

(5A) To avoid doubt, in relation to a legal professional, the power to publish guidelines under this section does not affect the sole discretion of the Law Society to determine the content of Practice Direction P as defined by section 9A(3) of the relevant Ordinance.

(6) A guideline published under this section is not subsidiary legislation.

(7) In this section—

~~AML/CTF requirement (反洗錢及恐怖分子集資規定) means a requirement that—~~

~~(a) is set out in Part 2, 3 or 4 of Schedule 2; and~~

~~(b) applies under section 5A(3) to a legal professional;~~

relevant Ordinance (有關條例)—

(a) in relation to the Insurance Authority, means the Insurance Companies Ordinance (Cap 41);

(b) in relation to the Monetary Authority, means the Banking Ordinance (Cap 155); ~~and~~

(c) in relation to the Securities and Futures Commission, means the Securities and Futures Ordinance (Cap 571);

(d) in relation to the HKICPA, means the Professional Accountants Ordinance (Cap. 50);

(e) in relation to the Law Society, means the Legal Practitioners Ordinance (Cap. 159); and

(f) in relation to the Estate Agents Authority, means the Estate Agents Ordinance (Cap. 511).

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| Section: | 9 | Power to enter business premises etc. for routine inspection | 18 of 2015 | 13/11/2015 |
|----------|---|--|------------|------------|

(1) For the purpose of ascertaining whether ~~a financial institution or a TCSP licensee~~ **a financial institution** is complying or has complied with, or is likely to be able to comply with, the requirement specified under subsection (2), an authorized person may at any reasonable time—

(a) enter the business premises of ~~the financial institution or the TCSP licensee~~ **the financial institution**;

(b) inspect, and make copies or otherwise record details of, any record or document relating to the business carried on, or any transaction carried out, by ~~the financial institution or the TCSP licensee~~ **the financial institution**; and

(c) make inquiries of—

(i) ~~the financial institution or the TCSP licensee~~ **the financial institution**; or

(ii) subject to subsection (6), any other person, whether or not connected with ~~the financial institution or the TCSP licensee~~ **the financial institution**, whom the authorized person has reasonable cause to believe to have information relating to, or to be in possession of, any record or document referred to in paragraph (b),

concerning any record or document referred to in paragraph (b), or concerning any transaction carried out in the course of the business carried on by ~~the financial institution or the TCSP licensee~~ **the financial institution**.

(2) The specified requirement is the requirement not to contravene—

(a) any provision of this Ordinance;

(b) any notice or requirement given or imposed under this Ordinance;

(c) any of the conditions of any licence under this Ordinance; or

(d) any other condition imposed under this Ordinance.

(3) Subject to subsection (8), an authorized person in exercising any power under subsection (1)(b) may require—

(a) the financial ~~institution or the TCSP licensee~~ **institution**; or

(b) subject to subsection (7), any other person, whether or not connected with the financial ~~institution or the TCSP licensee~~ **institution**, whom the authorized person has reasonable cause to believe to have information relating to, or to be in possession of, any record or document referred to in subsection (1)(b),

to do any of the acts specified in subsection (4).

- (4) The specified acts are—
- (a) to give the authorized person access to any record or document referred to in subsection (1)(b), and produce the record or document within the time and at the place specified by the authorized person; and
 - (b) to answer any question regarding the record or document.
- (5) Subject to subsection (8), an authorized person in exercising any power under subsection (1)(c) may require the financial institution, the TCSP licensee or financial institution or the other person referred to in subsection (1)(c) to—
- (a) give the authorized person access to any record or document referred to in subsection (1)(b), and produce the record or document within the time and at the place specified by the authorized person; and
 - (b) answer any question raised for the purposes of subsection (1)(c).
- (6) An authorized person may only exercise the power under subsection (1)(c)(ii) if the authorized person has reasonable cause to believe that the information sought cannot be obtained by the exercise of the power under subsection (1)(c)(i).
- (7) An authorized person may only exercise the power under subsection (3)(b) if the authorized person has reasonable cause to believe that the record or document or the information sought cannot be obtained by the exercise of the power under subsection (3)(a).
- (8) This section is not to be construed as requiring a financial institution or a TCSP licensee ~~a financial institution~~ to disclose any information or produce any record or document relating to the affairs of any of its customers to an authorized person who is appointed by a relevant authority (referred to in this section as *other regulatory authority*) other than the relevant authority in relation to the financial institution or the TCSP licensee ~~the financial institution~~, unless the other regulatory authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of this section.
- (9) If a person gives an answer in accordance with a requirement imposed under subsection (3) or (5), the authorized person may in writing require the person to verify, within the time specified in the requirement, the answer by statutory declaration.
- (10) If a person does not give an answer in accordance with a requirement imposed under subsection (3) or (5) for the reason that the information concerned is not within the person's knowledge, the authorized person may in writing require the person to verify, within the time specified in the requirement, that fact and reason by statutory declaration.
- (11) A statutory declaration under subsection (9) or (10) may be taken by the authorized person.
- (12) A relevant authority may authorize in writing any person, or any person belonging to a class of persons, as an authorized person for the purposes of this section.
- (13) A relevant authority must provide an authorized person authorized by it with a copy of its authorization.
- (14) When exercising a power under this section, an authorized person must as soon as reasonably practicable produce a copy of the relevant authority's authorization for inspection.
- (15) In this section—

business premises (業務處所)—

- (a) in relation to an authorized institution, means any premises used by the institution in connection with its business, including—
 - (i) the institution's principal place of business in Hong Kong;
 - (ii) a local branch or local office established or maintained by the institution;
 - (iii) a place of business of the institution used solely for the purposes of—
 - (A) the administration of the affairs or business of the institution;
 - (B) the processing of transactions; or
 - (C) the storage of documents, data or records; and
 - (iv) a place of business of the institution, or a place of business of the institution belonging to a

- class of places of business, declared in a notice under section 2(14)(ca) of the Banking Ordinance (Cap 155) not to be a place of business, or a class of places of business, for the purposes of the definition of **local office** in section 2(1) of that Ordinance;
- (b) in relation to a licensed corporation, means its premises as approved by the Securities and Futures Commission under section 130(1) of the Securities and Futures Ordinance (Cap 571);
 - (c) in relation to an authorized insurer, means any premises at which the insurer carries on business;
 - (d) in relation to an appointed insurance agent, means—
 - (i) any premises at which the principal of the agent carries on business; and
 - (ii) if the agent carries on business in any non-domestic premises other than the premises referred to in subparagraph (i), the non-domestic premises;
 - (e) in relation to an authorized insurance broker, means any premises at which the broker carries on business;
 - (f) in relation to a licensed money service operator, means any premises at which the licensed money service operator may operate a money service as shown in the register maintained under section 27; (Amended 18 of 2015 s. 69)
 - (g) in relation to the Postmaster General, means—
 - (i) any premises at which the Postmaster General operates a remittance service; **and**
 - (ii) any premises at which the remittance service operated by the Postmaster General is managed; **and** (Amended 18 of 2015 s. 69)
 - (h) in relation to an SVF licensee, means any premises of the licensee that is used by the licensee in connection with its business; (Added 18 of 2015 s. 69); **and**
 - (i) in relation to a TCSP licensee, means any premises at which the ~~TSCPTCSP~~TCSP licensee carries on business, including a place of business used for the purpose of—**
 - (i) the administration of the affairs or business of the TCSP licensee;**
 - (ii) the processing of transactions; or**
 - (iii) the storage of documents, data or records;**

local branch (本地分行), in relation to an authorized institution, has the meaning given by section 2(1) of the Banking Ordinance (Cap 155);

local office (本地辦事處), in relation to an authorized institution, has the meaning given by section 2(1) of the Banking Ordinance (Cap 155).

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| Chapter: | 615 | Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance | Gazette Number | Version Date |
| Schedule: | 2 | Requirements Relating to Customer Due Diligence and Record-keeping | L.N. 16 of 2015 | 01/04/2015 |

Division 4

Miscellaneous

18. Carrying out customer due diligence measures by means of intermediaries

- (1) Subject to subsection (2), a financial ~~institution may~~institution or a DNFBP may carry out any customer due diligence measure by means of an intermediary specified in subsection (3) if—
 - (a) the intermediary consents in writing to be the financial ~~institution's—institution's or the DNFBP's~~DNFBP's intermediary; and
 - (b) the financial ~~institution—institution or the DNFBP~~ is satisfied that the intermediary will on

request provide a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out the customer due diligence measure without delay.

(2) A financial ~~institution~~ institution or a DNFBP that carries out a customer due diligence measure by means of an intermediary remains liable under this Ordinance for a failure to carry out that customer due diligence measure.

(3) The specified intermediary is—

(a) any of the following persons who is able to satisfy the financial ~~institution~~ institution or the DNFBP that they have adequate procedures in place to prevent money laundering and terrorist financing—

~~(i) an accounting professional;~~

~~(ii) a legal professional;~~

~~(iii) a TCSP licensee;~~

(i) an accounting professional;

(ii) an estate agent;

(iii) a legal professional;

(iv) a TCSP licensee;

~~(b) an intermediary financial institution;~~

~~(i) a solicitor practising in Hong Kong;~~

~~(ii) a certified public accountant practising in Hong Kong;~~

~~(iii) a current member of The Hong Kong Institute of Chartered Secretaries practising in Hong Kong;~~

(b) a financial institution that is an authorized institution, a licensed corporation, an authorized insurer, an appointed insurance agent or an authorized insurance broker; or;

(c) a lawyer, a notary public, an auditor, a professional accountant, a trust or company service provider or a tax advisor practising in an equivalent jurisdiction, or a trust company carrying on trust business in an equivalent jurisdiction, or an institution that carries on in an equivalent jurisdiction a business similar to that carried on by ~~an intermediary financial institution~~ intermediary financial institution mentioned in paragraph (b), that—

(i) is required under the law of that jurisdiction to be registered or licensed or is regulated under the law of that jurisdiction;

(ii) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and

(iii) is supervised for compliance with those requirements by an authority in that jurisdiction that performs functions similar to those of any of the relevant authorities or the regulatory bodies (as may be applicable); or authorities.

(d) an institution in the case of a financial institution, an institution that—

(i) is a related foreign financial institution in relation to the financial institution; and

(ii) satisfies the conditions in subsection (3A).

(3A) The conditions are that—

(a) the related foreign financial institution is required under group policy—

(i) to have measures in place to ensure compliance with requirements similar to the requirements imposed under this Schedule; and

(ii) to implement programmes against money laundering and terrorist financing; and

(b) the related foreign financial institution is supervised for compliance with the requirements mentioned in paragraph (a) at a group level—

(i) by a relevant authority; or

(ii) by an authority in an equivalent jurisdiction that performs, in relation to the holding company or the head office of the financial institution, functions similar to those of a relevant authority under this Ordinance.

(4) ~~A financial institution~~ **A financial institution or a DNFBP** that carries out a customer due diligence measure by means of an intermediary must—

(a) immediately after the intermediary has carried out that measure, obtain from the intermediary the data or information that the intermediary has obtained in the course of carrying out that measure, but nothing in this paragraph requires the financial ~~institution~~ **institution or the DNFBP** to obtain at the same time from the intermediary a copy of any document, or a record of any data or information, that is obtained by the intermediary in the course of carrying out that measure; **and**

(b) ensure that the intermediary will, if requested by the financial ~~institution~~ **institution or the DNFBP** within the period referred to in section 20(2) or (3) of this Schedule, as the case requires, provide to the financial ~~institution~~ **institution or the DNFBP** a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out that measure as soon as reasonably practicable after receiving the request; **and**

(c) **if in the case of a financial institution, if the intermediary is a specified intermediary under subsection (3)(d), take reasonable measures to mitigate the risk of money laundering or terrorist financing involved.**

~~—(5) Subsection (3)(a) expires at midnight on 31 March 2018.— (Amended L.N. 16 of 2015)~~

(6) Nothing in this section prevents a financial ~~institution~~ **institution or a DNFBP** from carrying out a customer due diligence measure by its agent but such a financial ~~institution~~ **institution or a DNFBP** remains liable under this Ordinance for a failure to carry out that customer due diligence measure.

(7) ~~In this section—~~

~~**group of companies** (公司集團) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);~~

~~**group policy** (集團政策) means a policy of the group of companies to which the financial institution belongs that applies to—~~

~~(a) the financial institution; and~~

~~(b) the relevant related foreign financial institution;~~

~~**holding company** (控股公司), in relation to a financial institution, means a holding company within the meaning of section 13 of the Companies Ordinance (Cap. 622);~~

~~**intermediary financial institution** (中介人金融機構) means a financial institution that is—~~

~~(a) an authorized institution;~~

~~(b) a licensed corporation;~~

~~(c) an authorized insurer;~~

~~(d) an appointed insurance agent; or~~

~~(e) an authorized insurance broker;~~

intermediary financial institution (中介人金融機構) means a financial institution mentioned in subsection (3)(b);

~~**related foreign financial institution** (相關外地金融機構), in relation to a financial institution, means another institution that—~~

~~(a) carries on, in a place outside Hong Kong, a business similar to that carried on by an intermediary financial institution; and~~

~~(b) falls within any of the following descriptions—~~

~~(i) it is within the same group of companies as the financial institution;~~

~~(ii) if the financial institution is incorporated in Hong Kong, it is a branch of the financial institution;~~

~~(iii) if the financial institution is incorporated outside Hong Kong—~~

~~(A) it is the head office of the financial institution; or~~

~~(B) it is a branch of the head office of the financial institution.~~

Part 3

Record-keeping Requirements

20. Duty to keep records

- (1) A financial ~~institution or a DNFBP~~ institution must—
 - (a) in relation to each transaction ~~the financial institution or the DNFBP~~ it carries out, keep the original or a copy of the documents, and a record of the data and information, obtained in connection with the transaction in accordance with Part 2 of this Schedule; and
 - (b) in relation to each ~~customer of its customers~~ customer, keep—
 - (i) the original or a copy of the documents, and a record of the data and information, obtained in the course of identifying and verifying the identity of the customer or any beneficial owner of the customer in accordance with Part 2 of this Schedule; and
 - (ii) the original or a copy of the files relating to the customer's account and business correspondence with the customer and any beneficial owner of the customer.
- (2) Records required to be kept under subsection (1)(a) must be kept for a period of **6-at least 5** years beginning on the date on which the transaction is completed, regardless of whether the business relationship ends during that period.
- (3) Records required to be kept under subsection (1)(b) must be kept throughout the continuance of the business relationship with the customer and for a period of **6-at least 5** years beginning on the date on which the business relationship ends.
- (4) ~~A relevant authority or a regulatory body~~ A ~~relevant authority~~ may, by notice in writing to ~~a financial institution or a DNFBP~~ a ~~financial institution~~, require ~~the financial institution or the DNFBP~~ ~~the financial institution~~ to keep the records relating to a specified transaction or customer for a period specified by ~~the relevant authority or the regulatory body~~ ~~the relevant authority~~ that is longer than that referred to in subsection (2) or (3), as the case requires, if—
 - (a) ~~the relevant authority or the regulatory body~~ ~~the relevant authority~~ is satisfied that the records are relevant to an ongoing criminal or other investigation carried out by it; or
 - (b) the records are relevant to any other purposes as specified by ~~the relevant authority or the regulatory body~~ ~~the relevant authority~~ in the notice.
- (5) A financial ~~institution or a DNFBP~~ institution to whom a notice is given under subsection (4) must keep the relevant records for the period specified in the notice.

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|----------|-----|--|----------------|--------------|
| Chapter: | 159 | LEGAL PRACTITIONERS ORDINANCE | Gazette Number | Version Date |
| Section: | 9A | Complaint about conduct of solicitor, foreign lawyer, etc. | E.R. 1 of 2015 | 29/01/2015 |

- (1) Where the Council considers that the conduct of a person who is, or was at the relevant time, a solicitor, a foreign lawyer, a trainee solicitor or an employee of a solicitor or foreign lawyer should be inquired into or investigated as a result of a complaint being made to it or otherwise, the Council shall submit the matter to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel. (Amended 60 of 1994 s. 13)

~~(1AA) Without limiting subsection (1), where the Council considers that the conduct involves an alleged breach referred to in subsection (1AAB), the Council must submit the alleged breach to the Tribunal Convenor for the purpose of inquiring into or investigating the conduct.~~

(1AA) Without limiting subsection (1), where the Council considers that the conduct—

(a) involves an alleged breach referred to in subsection (1AAB)(a) or (b); and

(b) is conduct that should be inquired into or investigated,

the Council must submit the matter to the Tribunal Convenor for the purpose of inquiring into or investigating the conduct.

~~(1AAB) An alleged breach for the purposes of subsection (1AA)(1AA)(a) is that a solicitor or foreign lawyer—~~

~~(a) failed to comply with an AML/CTF requirement; or~~

~~(b) while being a director of a corporation that is a TCSP licensee—~~

~~(i) caused or allowed a breach of an AML/CTF requirement by the corporation; or~~

~~(ii) failed to take reasonable steps to prevent such a breach.~~

~~(1AAC) Section 7(5A) of the AMLO applies in relation to an inquiry or investigation referred to in subsection (1AA).~~

(1AAC) The Council must take into account Practice Direction P when considering a matter referred to in subsection (1AA)(a) or (b).

(1A) Notwithstanding subsection (1), if the conduct involves an alleged breach of-

(a) a provision of this Ordinance;

(b) a practice direction issued by the Society; or

(c) a principle of professional conduct contained in The Hong Kong Solicitors' Guide to Professional Conduct,

prescribed in rules made by the Council, and the Council considers that that matter is suitable for disposal by the Tribunal Convenor under section 9AB, the Council may submit the matter to the Tribunal Convenor for such disposal subject to the conditions mentioned in subsection (1) of that section being satisfied. (Added 23 of 2002 s. 103)

(1B) In considering whether a matter is suitable for disposal by the Tribunal Convenor under section 9AB, the Council may take into account the following-

(a) whether the alleged breach is deliberate;

(b) whether the alleged breach has been committed with a dishonest intent;

(c) the gravity of the alleged breach;

(d) any other factor it considers relevant. (Added 23 of 2002 s. 103)

(2) Where a complaint is made to the Council and the Council does not submit a matter to the Tribunal Convenor under subsection (1) within 6 months after receiving the complaint the Chief Judge may, on application by any person or on his own initiative, submit the matter to the Tribunal Convenor if he considers that the Council ought to have done so. (Amended 23 of 2002 s. 103)

~~(3) In this section—~~

~~**AML/CTF requirement** (反洗錢及恐怖分子集資規定) means a requirement that—~~

~~(a) is set out in Part 2, 3 or 4 of Schedule 2 to the AMLO; and~~

~~(b) applies—~~

~~(i) for subsection (1AAB)(a)—under section 5A(3) of the AMLO to a legal professional; and~~

~~(ii) for subsection (1AAB)(b)—under section 5A(5) of the AMLO to a TCSP licensee;~~

~~**AMLO** (《打擊洗錢條例》) means the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615);~~

~~**director** (董事) has the meaning given by section 1 of Part 2 of Schedule 1 to the AMLO;~~

~~**legal professional** (法律專業人士) has the meaning given by section 1 of Part 2 of Schedule 1 to the AMLO;~~

Practice Direction P (執業指引) means any practice direction issued by the Society for providing guidance in relation to the operation of AML/CTF requirements;

~~**TCSP licensee** (信託或公司服務持牌人) has the meaning given by section 1 of Part 2 of Schedule 1 to the AMLO.~~