

The licensing regime and supervisory measures for money service operators (“MSOs”)

Having regard to the international standards on anti-money laundering and counter terrorist-financing (“AML/CFT”), the Government enacted the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (“AMLO”) (Cap. 615)¹ in 2012 to impose statutory customer due diligence and record-keeping requirements on financial institutions (including MSOs). The Ordinance also introduces a licensing regime for MSOs and empowers the Customs and Excise Department (“C&ED”) to supervise the compliance of MSOs.

2. Under the AMLO, any person who operates a money service business (including money changing service and/or remittance service) in Hong Kong must obtain a licence from the C&ED. The C&ED may grant a licence to an MSO applicant only if it is satisfied that the applicant and ultimate owners (if any) are fit and proper persons to operate a money service business. If the applicant is a corporation or a partnership, all directors, partners, and ultimate owners (if any) must be fit and proper persons. In deciding whether a person is fit and proper, the C&ED must have regard to whether the person has been convicted of an offence relating to money laundering or terrorist financing (including similar offences in other jurisdictions); whether he/she has persistently failed to comply with the AML/CFT requirements stipulated under the AMLO or the AML/CFT Guideline promulgated by the C&ED; whether he/she has been convicted for an offence for which it was necessary to find that the person had acted fraudulently, corruptly or dishonestly; whether the person, being an individual, is an undischarged bankrupt or is the subject of any bankruptcy proceedings; and whether the person, being a corporation, is in liquidation or is the subject of a winding up order, etc. In addition to the above, the C&ED may consider any other matter that it considers relevant in determining whether a person is fit and proper.

3. The AMLO aims to mitigate the money laundering risk faced by financial and designated non-financial sectors. On top of that, MSOs must comply with other legislations, including those relating to consumer protection, such as the Money Changers Ordinance (“MCO”) (Cap. 34) and Trade Descriptions Ordinance (“TDO”) (Cap. 362).

4. Under the MCO, MSOs that carry out an exchange transaction exceeding HK\$100,000 must provide transaction note to the customer in

¹ The Ordinance has since been renamed as the Anti-Money Laundering and Counter-Terrorist Financing Ordinance following its amendment in 2018.

a prescribed form, explain the transaction note to the customer, and indicate each detail of the exchange transaction set out in the transaction note, including the date of the transaction, the type and amount of currency tendered by the customer, the net rate of exchange (stated without reference to any charge or commission), the equivalent amount of currency to be issued to the customer, etc. Where an MSO contravenes such requirement in respect of an exchange transaction, the customer may rescind the transaction within three days. Further, the MSO must place a board in a well-lit place where the customer has an unobstructed view displaying the net rates of exchange in a clearly visible and legible manner. An MSO who contravenes this requirement commits an offence and is liable to a fine of \$5,000 and to imprisonment for six months. An MSO must also not make a false or a misleading statement as to the rate of exchange offered to a customer or potential customer, contravention against which is also punishable by a fine of \$5,000 and imprisonment for six months. If an MSO is suspected to have contravened the above requirements during an exchange transaction, a report may be made to the Police.

5. Under the TDO, any trader (including MSOs) who applies a false trade description to a service supplied or offered to be supplied to a consumer; or supplies or offers to supply to a consumer a service to which a false trade description is applied, commits an offence. If an MSO is suspected to have applied a false description or provided false, misleading, or incomplete information during the course of their business, a report may be made to the C&ED. Further, if an MSO or any trader is suspected of fraud or other criminal offences, a report may be made to the Police.

6. Law enforcement agencies, including the C&ED, will investigate complaints relating to MSOs. Depending on the substance of complaints, matters for investigation may include whether the relevant MSO's mode of business violates the TDO or the MCO, or whether the MSO has violated the AMLO. Aside from criminal prosecution under the said Ordinances, if an MSO is convicted of an offence for which it was necessary to find that the person had acted fraudulently, corruptly, or dishonestly, the C&ED will also consider whether the person remains a fit and proper person for operating a money service business under the AMLO, and revoke the MSO licence where appropriate.

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