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Corporate Counsel

Anti-Money Laundering

Hong Kong Gets Tough: Proposed SFC Guideline on Anti-Money Laundering and Counter-terrorist Financing



SNR DENTON 

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Introduction

Against a global anti-terrorist backdrop, Hong Kong is soon to have an enhanced anti-money laundering/counter-terrorist financing (AML/CTF) regime for its financial sectors. The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO)¹ goes into effect on April 1, 2012, to meet requirements set by the Financial Action Task Force (FATF), an inter-governmental body promoting national and international policies to combat money laundering and terrorist financing. The ordinance will better align Hong Kong with prevailing AML/CTF

international standards, especially in regard to customer due diligence (CDD) and record-keeping, and help strengthen Hong Kong's status as an international financial center.

The FATF advised that Hong Kong should have statutory backing and appropriate sanctions for CDD and record-keeping requirements for financial institutions, and put in place an anti-money laundering regulatory framework for remittance agents and money changers.² Prior to the AMLO, the CDD and record-keeping requirements by financial institutions were implemented mainly through guidelines issued by the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC) and the Insurance Authority (IA).

AMLO Requirements and Guidelines

The AMLO establishes a licensing regime for remittance agents and money changers. The ordinance also sets out provisions that provide for relevant supervisory and enforcement powers for the regulators, including orders for remedial actions, fines, public reprimands, and criminal sanctions for cases of intentional non-compliance. Under the AMLO, the HKMA, the SFC, the IA and the Customs and Excise Department may issue appropriate guidelines relating to CDD and record-keeping and issue supplementary or sector-specific guidance as necessary or appropriate.

The SFC has prepared a proposal and has put forward for public consultation a Guideline on Anti-Money Laundering and Counter-Terrorist Financing (the Guideline),³ effective on April 1, 2012, to assist licensed securities/futures firms and their officers and staff in complying with the AMLO. This Guideline offers guidance to financial institutions and their senior management in implementing appropriate internal policies, procedures and controls to mitigate the risks of money laundering and terrorist financing. The Guideline also stresses the need for effective controls covering senior management oversight, the compliance and audit function, and staff screening and training, as well as the appointment of a compliance officer and a money

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laundering reporting officer. The Guideline will replace the existing Prevention of Money Laundering and Terrorist Financing Guidance Note published by the SFC, which currently applies to licensed corporations. Although failure to comply with any provisions of the Guideline does not itself make a person subject to judicial or other proceedings, failure to comply will be admissible as evidence in proceedings initiated under the AMLO and the Securities and Future Ordinance (SFO); may reflect adversely on the fitness and properness of SFC-licensed corporations and licensed representatives; and may be deemed misconduct.

Highlights of AMLO Guideline

The following paragraphs highlight key provisions of the Guideline:

– Measures Against Businesses Conducted Outside Hong Kong

Financial institutions with overseas branches and subsidiary undertakings should put in place group anti-money laundering and counter-terrorist financing policies with requirements similar to those imposed under the AMLO to the extent permitted by the law of a particular locality.

– Risk-Based Approach

Financial institutions should adopt a risk-based approach to CDD and ongoing monitoring to ensure that risks against money laundering and terrorist financing are effectively managed. The extent of this approach depends on the background of the customer, the business relationship with that customer, and the product, transaction or service used by that customer.

– Customer Due Diligence

CDD should include a verification of the customer's and beneficial owner's identity using reliable, independent source documents, data or information; the purpose and intended nature of the business relationship (if any) established with the financial institution; and the identity and authority of the person purporting to act on behalf of the customer.

The CDD requirements should be applied: (1) at the outset of a business relationship, (2) prior to conducting any occasional transaction (including wire transfers, currency exchanges, purchase of cashier orders, etc.) that equals or exceeds an aggregate value of HK\$120,000, a wire transfer that equals or exceeds HK\$8,000 in a single operation, or several operations that appear to be linked; (3) when the financial institution suspects the customer or its accounts are involved in money laundering or terrorist financing; or (4) when the financial institution has doubts as to the veracity or adequacy of information previously received from the customer.

– Ongoing Monitoring

Financial institutions must continuously monitor their business relationships with customers by regularly reviewing documents and information to ensure timeliness and relevance; reviewing business activities to ensure consistency with the nature of the business and the source of funds; and identifying transactions that are unusual, complex, large or have no apparent economic or lawful purpose.

– Financial Sanctions and Terrorist Financing

Financial institutions are required to maintain databases of names and particulars of terrorist suspects and designated parties or make arrangements to access such databases maintained by third-party service providers.

– Suspicious Transaction Reports

A money laundering reporting officer should serve as the point person for reporting suspicious transactions. In the event that money laundering or terrorist financing is suspected, disclosure to appropriate authorities should be made as soon as is reasonably practical, even when no transaction has been conducted by or through the financial institution. Financial institutions should also take precautions, so that their investigation of a suspicious matter or line of inquiry is not construed as a tip-off to the customer.

– Record-Keeping

All documents and information related to a customer should be kept throughout the business relationship and for six years after the end of the relationship.

– Staff Training

Financial institutions should ensure that members of their staff are made aware of the relevant statutory obligations, internal policies and procedures, and any new methods and trends with respect to AML/CTF.

– Wire Transfer

Generally all wire transfers of amounts equal to or exceeding HK\$8,000 (or its equivalent) must be accompanied by the originator's name, plus originator's account maintained with the financial institution from which the money for wire transfer is paid. If the originator is an individual, the financial institution should have a record of the originator's date and place of birth. For wire transfers equal to or exceeding HK\$8,000, the recipient's institution should verify his or her identity through an identity card or travel document.

HKMA has written to banks and other authorized institutions,⁴ and the Commissioner of Insurance has written to authorized insurers,⁵ to alert the relevant parties of the implementation of the AMLO.

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¹ See Gazette Published on Friday, 8/7/2011 No. 27 Vol. 15 - Legal Supplement 1, at <http://www.gld.gov.hk/>

² See FATF-GAFI, Third Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, Hong Kong, China (Jul. 11, 2008).

³ See Securities and Futures Commission, Consultation Paper on (1) the Proposed Guideline on Anti-Money Laundering and Counter-Terrorist Financing and (2) the Proposed Prevention of Money Laundering and Terrorist Financing Guideline Issued by the Securities and Futures Commission for Associated Entities (Sept. 2011).

⁴ See letter dated 8 July 2011 from Hong Kong Monetary Authority to all authorized institutions.

⁵ See letter dated 15 July 2011 from the Office of the Commissioner of Insurance to all authorized insurers carrying on long term business.