

## FOREWORD

1. This consultative document is issued by the Financial Services and the Treasury Bureau (FSTB) to seek public views on the conceptual framework of a legislative proposal to enhance the anti-money laundering regulatory regime in respect of the financial sectors.
2. FSTB welcomes written comments on or before 8 October 2009 through any of the following channels:

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## **GLOSSARY**

AML	Anti-money Laundering
BO	Banking Ordinance, Cap. 155
CDD	Customer Due Diligence
C&ED	Customs and Excise Department
CFT	Counter Financing of Terrorism
FATF	Financial Action Task Force
FSTB	Financial Services and the Treasury Bureau
HKMA	Monetary Authority
IA	Insurance Authority
ICO	Insurance Companies Ordinance, Cap. 41
OSCO	Organized and Serious Crimes Ordinance, Cap. 455
RAMCs	Remittance Agents and Money Changers
SFC	Securities and Futures Commission
SFO	Securities and Futures Ordinance, Cap. 571

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# CHAPTER 1

## INTRODUCTION

### Purpose

- 1.1 This consultation document sets out the conceptual framework of a legislative proposal by the Financial Services and the Treasury Bureau (FSTB) to enhance the anti-money laundering (AML)<sup>1</sup> regulatory regime in respect of the financial sectors for consultation. Views and comments from members of the public, in particular the stakeholders concerned, are welcome to facilitate our preparation of detailed legislative proposals.

### Background

- 1.2 The Financial Action Task Force (FATF) is an inter-governmental body formed in 1989 that sets the international AML standards. Its mandate was expanded in October 2001 to combat the financing of terrorism. In order to ensure full and effective implementation of its standards at the global level, FATF monitors compliance by conducting evaluations on jurisdictions and undertakes stringent follow-up after the evaluations, including identifying high-risk and uncooperative jurisdictions which could be subject to enhanced scrutiny by FATF or counter-measures by FATF members and the international community at large.
- 1.3 Many major economies have joined FATF which has developed into a global network for international cooperation that facilitates financial exchanges between member jurisdictions. At present, FATF has 34 members. Many non-member states aspire to join FATF to secure better financial cooperation with the major economies.
- 1.4 As a member of FATF, Hong Kong is obliged to implement the AML requirements as promulgated by FATF. In 2003, FATF completed a

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<sup>1</sup> For the purpose of this paper, references to “AML” include the meaning of both anti-money laundering (AML) and counter financing of terrorism (CFT).

review of the international AML standards and introduced inter alia the requirements for customer due diligence (CDD) and record keeping for financial institutions. Subsequently, FATF completed an evaluation on Hong Kong's AML regime in 2008. While recognizing the strengths of Hong Kong's AML regime, FATF considered, inter alia, that the following are major deficiencies that should be addressed:

- (a) though comprehensive CDD and record-keeping requirements for financial institutions are provided in the guidelines issued by financial regulators, they are not stipulated in the statute as required by FATF;
- (b) there is a limited range of supervisory and enforcement powers available to some of the financial regulators in supervising compliance;
- (c) there is no designated criminal sanction or supervisory sanction (which is civil in nature) for non-compliance; and
- (d) there is no AML regulatory regime for remittance agents and money changers (RAMCs).

### **Need for New Legislation**

1.5 As a result of the outcome of the evaluation, Hong Kong has been subject to FATF's follow-up process and is required to report to FATF on actions taken or planned to address the deficiencies identified in the evaluation. The first report is due in the second quarter of 2010. According to FATF's procedure, Hong Kong is expected to have addressed the major deficiencies and seek removal from the follow-up process about three years after the evaluation, i.e. around 2011. Failure of a jurisdiction to achieve removal from the follow-up process within a reasonable period due to absence of significant improvements may entail more enhanced scrutiny and monitoring by FATF. This may necessitate other jurisdictions to exercise greater care and caution in handling transactions with financial institutions from the concerned

jurisdictions. Such enhanced measures, if applied to Hong Kong, would severely restrain the development of our financial services sectors and have negative impact on our status as an international financial centre.

- 1.6 After detailed discussions with the relevant regulators and authorities having regard to FATF's recommendations made upon its evaluation on Hong Kong, we propose that new legislation should be put in place to enhance the AML regulatory regime of the financial sectors by addressing the deficiencies set out in paragraph 1.4 above.

### **Consultation and Next Step**

- 1.7 We wish to engage the concerned sectors in the early stage of preparation for the future legislation. As a first step in the process, a conceptual framework of the legislative proposal has been drawn up to set out the key elements of the future legislation for consultation. The conceptual framework and specific consultation questions are set out in the ensuing chapters of this consultation document.
- 1.8 We have briefed the Financial Affairs Panel of the Legislative Council on the conceptual framework at its meeting on 11 June 2009. Members of the public, in particular the concerned financial sectors, are invited to offer their views and comments to us **on or before 8 October 2009**.
- 1.9 Taking into account the views and comments received, we will develop detailed legislative proposals for further consultation, tentatively scheduled for late 2009 / early 2010. Subject to progress in the preparatory work, we aim to introduce a bill into the Legislative Council in the second quarter of 2010.

## CHAPTER 2

### PROPOSED SCOPE OF THE FUTURE LEGISLATION

#### Background

2.1 At present, the Monetary Authority (HKMA), Securities and Futures Commission (SFC) and Insurance Authority (IA) regulate the banking/deposit-taking, securities and insurance sectors respectively. They also supervise the AML compliance of their regulatees in accordance with their guidelines issued pursuant to their governing ordinances.

#### Proposal

2.2 According to FATF's requirements on the types of business activities or operations which should be subject to adequate AML regulation by designated competent authorities, we propose that the following financial sectors should be subject to the requirements under the future legislation:

- (a) authorized institutions within the meaning of the Banking Ordinance (BO), Cap. 155;
- (b) licensed corporations within the meaning of the Securities and Futures Ordinance (SFO), Cap. 571;
- (c) insurance institutions carrying on or advising on long term business (as defined in the Insurance Companies Ordinance (ICO), Cap. 41) in or from Hong Kong, and as required by FATF, these would include the relevant insurance companies, insurance agents and insurance brokers within the meaning of the ICO; and
- (d) operators of the remittance and money changing businesses<sup>2</sup>.

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<sup>2</sup> We propose that a licensing system should be put in place for remittance and money changing businesses. An outline of the proposed licensing system is set out in Chapter 6 of this consultation document.

- 2.3 We propose that the future legislation will designate HKMA, SFC, IA and the Customs and Excise Department (C&ED) as the authorities to supervise the AML compliance of the banking/deposit-taking, securities, insurance and RAMC sectors respectively.
- 2.4 In drawing up the detailed legislative proposals, we will be guided by the principles that:
- (a) the future AML regulatory regime should enable Hong Kong to meet the FATF standards so as to maintain our competitiveness as an international financial centre;
  - (b) the impacts on the relevant financial sectors, including their compliance costs should be minimized as far as reasonably practicable; and
  - (c) there should be joint efforts by the relevant regulators, trade bodies and industry associations to assist market participants in the concerned financial sectors in complying with the legislative requirements.

*Consultation Questions:*

- Q2.1 Do you agree to the proposed designation of AML regulators for the banking/deposit-taking, securities, insurance and RAMC sectors as set out in paragraph 2.2?*
- Q2.2 Do you think that there are other important principles in addition to those set out in paragraph 2.4 that the Administration should adopt in working out the detailed legislative AML regime on CDD and record-keeping requirements? If so, what are they?*



## CHAPTER 3

### OBLIGATIONS OF FINANCIAL INSTITUTIONS

#### Background

- 3.1 CDD and record-keeping measures are the main strands of an effective AML regulatory regime to deter and disrupt money laundering activities and ensure the integrity of our financial systems. According to FATF's requirements, financial institutions should implement CDD measures to identify and verify customers, and maintain records on customer identification and transactions for at least 5 years. In addition, FATF requires that the CDD and record-keeping requirements should be set out in the statute.
- 3.2 At present, the CDD and record-keeping requirements for financial institutions are implemented through non-statutory guidelines issued by the financial regulators, viz. the HKMA, SFC and IA pursuant to their statutory powers respectively under their governing ordinances<sup>3</sup>. These guidelines set out specific CDD and record keeping measures that financial institutions should undertake in dealing with customers with different risk profiles. In addition, these guidelines also stipulate the period for which records should be kept by financial institutions. Under these guidelines, banks, deposit-taking companies and insurance companies and intermediaries are required to keep relevant records for six years, while securities companies are required to keep such records for seven years. The specified periods for record-keeping as required under the regulators' guidelines all meet FATF's requirement.
- 3.3 On the other hand, RAMCs are currently subject to certain CDD and record keeping requirements under the Organized and Serious Crimes Ordinance (OSCO), Cap. 455. They are required to verify customers'

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<sup>3</sup> Pursuant to section 7(3) of the BO, HKMA issued the "Guidelines on Prevention of Money Laundering" in 2000. A supplement was issued in 2006 to incorporate subsequent changes in FATF's AML requirements. SFC published under section 399 of the SFO the "Prevention of Money Laundering and Terrorist Financing Guidance Note" in 2006, while OCI issued the "Guidance Notes on Prevention of Money Laundering and Terrorist Financing" under section 4A of the ICO in 2005.

identity for transactions or wire transfers of HK\$8,000<sup>4</sup> or above and to keep records of such transactions for six years. FATF requires that the scope of the CDD and record keeping requirements applicable to RAMCs should be expanded in order to meet the international standards.

## **Proposal**

3.4 We propose that the following FATF requirements on CDD and record-keeping by financial institutions should be set out in the new legislation. It should be pointed out that these requirements are already stipulated in the current guidelines issued by HKMA, SFC and IA respectively. In essence, financial institutions:

- (a) should not open or maintain anonymous accounts or accounts in fictitious names. They should not establish or maintain relations with shell banks;
- (b) should undertake CDD measures, including identifying and verifying the identity of customers when:
  - (i) establishing business relations;
  - (ii) carrying out occasional transactions above a stated threshold (the threshold set by FATF is EURO/USD 15,000);
  - (iii) there are suspicions of money laundering/terrorist financing; or
  - (iv) there are doubts on veracity or adequacy on previously obtained customer identification data;

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<sup>4</sup> According to FATF's requirement, wire transfers, including remittance, involving money value above the threshold of US\$1,000 (approximately HK\$8,000) should be accompanied by accurate and meaningful originator information. The relevant requirement for RAMCs was introduced in 2007 under OSCO.

- (c) should undertake CDD measures, including:
  - (i) identifying the customer or any person purporting to act on behalf of the customer;
  - (ii) verifying customer's identity using documents, data or information from an reliable, independent source;
  - (iii) identifying the beneficial owner<sup>5</sup>, and take reasonable measures to verify the identity of the beneficial owner;
  - (iv) understanding the ownership and control structure of those customers who are legal persons or trusts (or other similar legal arrangements); and
  - (v) obtaining information for the purpose and intended nature of the business relationship; and

in case a financial institution is unable to complete the CDD measures in (i) – (v) above, they should not open the account, commence business relationship or perform transactions, or should terminate the business relationship and should consider making a suspicious transaction report to the relevant authority;

- (d) should conduct ongoing due diligence measures e.g. to scrutinize transactions to ensure transactions are in line with the institutions' knowledge of the customers, their business and risk profile, including, where necessary, the source of funds, and to ensure identification documents or data are up-to-date, etc;
- (e) should conduct enhanced CDD measures, (such as seeking additional information from the customers and mandating senior management approval before establishing business relationship,

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<sup>5</sup> According to FATF, a beneficial owner refers to the natural persons(s) who ultimately owns or controls a customer and /or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.

etc.), for higher-risk customers, business relationship and transactions, including for example, politically exposed persons<sup>6</sup>, non face-to-face customers, cross-border correspondent banking relationship, legal arrangements (such as trusts that are personal assets holding vehicles);

- (f) should maintain all relevant records on transactions, both domestic and international, for a specified period, regardless of whether the account or business relationship is ongoing or has been terminated;
- (g) should keep records including identification data, account files and business correspondence, for a specified period following the termination of accounts or business relationships; and
- (h) should ensure that all customer and transaction records and information are made available on a timely basis to the local regulatory authority upon request.

3.5 Financial institutions specified in paragraph 2.2 should bear the responsibility for ensuring compliance with the aforementioned obligations. Financial institutions will be liable to criminal as well as supervisory sanctions as provided in the new legislation in cases of breach of these requirements. Only under very restrictive circumstances as specified in paragraph 5.4(b) and (c) will the management and staff of these financial institutions have any personal liability in case of non-compliance by their financial institutions. The corporate and personal liability under the proposed legislation will be further discussed in Chapter 5 of this consultation document.

3.6 Under the future legislation, AML regulatory authorities would be empowered to issue guidelines to facilitate regulatees' compliance with

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<sup>6</sup> According to FATF, "politically exposed persons" are individuals who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials, etc., and business relationships with family members or close associates of politically exposed persons involve reputational risks similar to those with politically exposed persons themselves.

the requirements. Such guidelines would be taken into account in deciding whether there are breaches of the relevant statutory requirements.

- 3.7 Since 2005, the Government, financial regulators and the Police have been organizing free AML training seminars on a regular basis for voluntary participation by market practitioners. To assist the relevant financial sectors in understanding the statutory obligations under the proposed legislation and facilitate their compliance, the regulatory authorities will organize more focused training seminars before the commencement of the legislation for members of the relevant sectors.
- 3.8 In order that all the concerned sectors will be fully prepared before commencement of the new legislation, the Government will consider providing for a transitional period where circumstances of individual sectors so warrant.

#### *Consultation Questions*

- Q3.1 Do you agree that the CDD measures that should be undertaken by financial institutions should be subject to the risk profiles of the customers and that enhanced CDD measures should apply to higher-risk customers as set out in paragraph 3.4(e)?*
- Q3.2 Apart from the enhanced training to be provided to facilitate financial institutions' compliance with the statutory obligations as mentioned in paragraph 3.7, do you think that the Government, relevant regulators and concerned trade or professional bodies should also provide other assistance to facilitate compliance by the financial institutions? If so, what types of assistance should be provided?*
- Q3.3 What should be the appropriate length of the transitional period, if any, to be allowed for individual financial sectors concerned to get fully prepared before commencement of the new legislation?*

## **CHAPTER 4**

### **POWERS OF THE REGULATORY AUTHORITIES**

#### **Background**

- 4.1 According to FATF's requirements, the regulatory authorities should have adequate powers to monitor and ensure compliance by financial institutions with the CDD and record-keeping requirements, and the regulatory authorities should be authorized to compel the production of any information from financial institutions that is relevant to monitoring such compliance. The regulatory authorities should also be empowered to provide national and international cooperation, including sharing and exchange of supervisory information relating to AML purpose to the local and foreign regulatory/law enforcement authorities, upon request.
- 4.2 In conducting the evaluation on Hong Kong, FATF highlighted that it is important for the regulators to have the power for routine inspections to ensure effective supervision on AML compliance.

#### **Proposal**

- 4.3 We propose that the new legislation should confer appropriate powers to the authorities to supervise financial institutions' compliance with the statutory requirements effectively. The powers to be given to the authorities under the legislation will be generally in line with the range of powers available to financial regulators in prudential regulation, with suitable modifications where necessary to ensure that individual regulators are equipped with an appropriate range of supervisory powers as required by FATF.
- 4.4 For the purpose of exercising their functions under the legislation, AML regulatory authorities will be empowered to:
- (a) access to the financial institutions' business premises to conduct

inspection and examination;

- (b) access to and make copies of or extract from books/records and other relevant information maintained by financial institutions for inspection and examination;
- (c) require information and answers from the financial institutions, their staff and counterparties in response to their investigation into a suspected breach;
- (d) enter into and search a premises and seize documents/records and other items upon production of warrant;
- (e) impose supervisory fines as well as other supervisory sanctions for breaches of the statutory requirements;
- (f) prosecute offences summarily<sup>7</sup>; and
- (g) share information obtained in their regulatory actions with local and overseas regulators.

4.5 Suitable safeguards would be featured to avoid abuses. To ensure that there are proper checks and balances in the system, an independent statutory appeals tribunal would be established to allow aggrieved parties to appeal against the authorities' decisions made pursuant to the new legislation, including the appropriateness of supervisory fines and other supervisory sanctions imposed and decisions on matters relating to the licensing of RAMCs covered in Chapter 6 of this consultation document. This proposed appeals tribunal will be independent from the existing appeal mechanisms as provided under BO, SFO and ICO. Criminal sanctions imposed by the court under the legislation shall be dealt with in accordance with the well-established judicial system.

4.6 In drafting the detailed provisions, we will draw reference from the existing provisions on inspection, supervisory and enforcement powers

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<sup>7</sup> The Department of Justice will deal with prosecution of offences on indictment.

of the SFC and the relevant checks and balances in the SFO. They are most recently examined by the Legislative Council and enacted among the other legislation on financial regulation. The powers and safeguards provided under SFO have so far been working well. A gist of the relevant provisions in the SFO which the proposed AML regulatory regime would emulate is at **Annex**.

*Consultation Questions:*

*Q4.1 Do you think that the proposed inspection, supervisory and enforcement powers which are similar to SFC's existing powers in supervising the securities business, are appropriate for supervising the financial institutions' compliance with the statutory CDD and record-keeping requirements in paragraphs 4.4 and 4.6? If not, what modifications to these proposed powers should be made?*

*Q4.2 Do you consider that the establishment of an independent appeals tribunal to hear appeals against the regulators' decisions on supervisory sanctions and matters relating to the licensing of RAMCs is an appropriate check and balance arrangement (paragraph 4.5)? If not, what is the appropriate arrangement?*



## CHAPTER 5

### OFFENCES AND SANCTIONS

#### Background

- 5.1 FATF requires that effective, proportionate and dissuasive sanctions, whether criminal or supervisory, should be available to regulatory authorities to deal with breaches of the AML requirements. On supervisory sanctions, FATF looks for a “fit and proper” test on the regulatees and a range of other supervisory sanctions that enable effective implementation of the AML regime.
- 5.2 At present, the requirements on CDD and record-keeping in the banking/deposit-taking, securities and insurance sectors are implemented through non-statutory guidelines issued by the financial regulators. Whilst currently there is no specific statutory provision for sanctions against non-compliance, failure to comply with these guidelines will be taken into account in the financial regulators’ consideration of the “fitness and properness” of the concerned regulatees.
- 5.3 At present, RAMCs are required under OSCO to verify customers’ identity for transactions or wire transfers of HK\$8,000 or above and to keep records of such transactions for at least six years. Failure to comply with this requirement will be liable to a penalty maximum of \$100,000 fine and/or 3-month imprisonment.

#### Proposal

##### Offences

- 5.4 We propose that under the future legislation:
- (a) financial institutions which breach the CDD or record-keeping requirements without reasonable excuse would commit an

offence under the legislation and be liable to a fine and/or imprisonment;

- (b) if an offence has been committed by a financial institution under the legislation with the consent or connivance of, or is attributable to any recklessness on the part of the officers or managers<sup>8</sup> of the institutions, the individuals concerned would also commit an offence and be liable to a fine and/or imprisonment; and
- (c) any person who willfully breaches the statutory CDD and record-keeping requirements would commit an offence and be liable to a fine and/or imprisonment.

Under this proposal, a person will not be considered to have committed an offence if the breach is solely due to inadvertence on his/her part.

### Criminal Sanctions

5.5 In determining the maximum level for the criminal sanctions to be imposed on offences under the new legislation, we will draw reference from sanctions for offences of similar nature in other statutes. In this connection, it is noted that:

- (a) under s24C of OSCO, the maximum penalty for a RAMC who failed to verify the identity of the customer and keep proper records for transactions over \$8000 is a fine at level 6 (\$100,000) and imprisonment for 3 months;
- (b) under s151(5) of SFO, the penalty for failure to keep records is, on indictment, a fine of \$200,000 and imprisonment for 2 years or on summary conviction, a fine of level 6 (\$100,000) and imprisonment for 6 months; and

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<sup>8</sup> For insurance sector, the managers covered in paragraph 5.4(b) is not limited to the Managers of insurers appointed under section 35(2)(b) of ICO.

- (c) under s151(4) and (6) of SFO, the penalty for failure to keep records with intent to defraud is, on indictment, a fine of \$1,000,000 and imprisonment for 7 years, or on summary conviction, a fine of \$500,000 and imprisonment for 1 year.

### Supervisory Sanctions

- 5.6 Pursuant to FATF's requirements, we propose that the authorities should also be empowered to impose supervisory fines as well as other supervisory sanctions including public reprimand, partial / full suspension or revocation of licence, having regard to factors such as the fitness and properness of the regulatees, and issue directions to financial institutions concerned to implement remedial actions or other specified actions for breaches of the statutory obligations by the financial institutions, for example, where circumstances warrant, including requirement for an auditor review. We will make reference to the level of the disciplinary fines that may be imposed by SFC under S.194 of SFO for any breach of the licensing requirements for securities and futures intermediaries (i.e. \$10 million or three times of the gain made or loss avoided) in determining the maximum level of the supervisory fines that the regulatory authorities could impose for breaches of the statutory obligations under the AML regime.
- 5.7 At present, breaches of guidelines will affect the regulators' consideration as to whether the regulatee is "fit and proper" or is guilty of misconduct. We propose to stipulate clearly in the new legislation that any criminal or supervisory sanctions imposed under the legislation will affect the authorities' consideration of whether the concerned regulatees are "fit and proper" or are guilty of misconduct.
- 5.8 Under the proposed AML regulatory regime, the regulatory authorities are empowered to investigate suspected breaches of the statutory CDD and record-keeping requirements. The regulator will, upon completion of the investigation, decide whether (a) to prosecute summarily the regulatee for the offence committed or refer to the Director of Public Prosecution for prosecution on indictment; and/or (b)

to take actions to impose supervisory sanctions, taking into account relevant factors including the facts of the case, availability of sufficient evidence, and severity and nature of the breach concerned. In any event, as a criminal conviction may also affect the “fitness and properness” of the concerned regulatee, this should not preclude the regulators from imposing any other appropriate supervisory sanctions mentioned in paragraph 5.6. The supervisory sanctions imposed by regulators are appealable to the independent appeals tribunal referred to in paragraph 4.5. The regulatory authorities will provide internal guidelines and staff training to ensure proper exercise of their sanctioning powers, where appropriate.

*Consultation Questions:*

- Q5.1 Do you think it is appropriate to stipulate in the new legislation that an offence would be committed only if any of the circumstances set out in paragraph 5.4 (in underlined text) arises?*
- Q5.2 Do you agree that the new legislation should provide for supervisory fines and other supervisory sanctions, in addition to criminal sanctions, to deal with breaches of the statutory requirements (i.e., the imposition of criminal sanctions on any breach of the statutory requirements should not preclude the imposition of supervisory sanctions by the concerned regulatory authority and vice versa) on the basis that any such sanctions should be effective, proportionate and dissuasive in accordance with FATF’s requirement?*
- Q5.3 Do you think that the other supervisory sanctions (i.e. other than fines) should include public reprimand, partial / full suspension or revocation of licence, and issue of directions for remedial actions? Do you have views on other types of supervisory sanctions that the authorities should be empowered to impose under the new legislation?*

*Q.5.4 Do you agree that the maximum level of supervisory fines to be prescribed in the new legislation should be determined having regard to the maximum level of supervisory fines that may be imposed by SFC under S.194 of SFO as mentioned in paragraph 5.6?*

## CHAPTER 6

### LICENSING OF THE REMITTANCE AGENTS AND MONEY CHANGERS

#### Background

- 6.1 At present, RAMCs are required under OSCO to register with the Police within one month of commencing business. Non-compliance will attract a maximum penalty of a fine of HK\$50,000. The registration regime does not impose any registration criteria or “fit and proper” requirements on the part of the RAMC operators, and there is no legislative provision for refusal or revocation of registration. The Police have general powers for arrest and seizure to enforce the offences under OSCO, including operating remittance and money changing business without registration. Such powers are necessary to facilitate effective follow-up and investigation, upon detection of existence of unregistered RAMCs which are generally mobile and probably operating without a fixed location.
- 6.2 There are currently about 2,100 RAMCs on the Police’s register. Many registered entities provide both remittance and money changing services while some other specialize in either remittance or money changing business. Certain entities, mostly retail shops, provide limited money changing services in their transactions with customers.
- 6.3 FATF requires that financial institutions, including RAMCs, should be subject to adequate AML regulation and supervision and should effectively implement FATF’s requirements. The authorities should apply a “fit and proper” test on regulatees with a view to preventing criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a financial institution. Specifically, FATF requires that business providing a service of money or value transfer, or of money or currency changing, should be subject to effective systems for monitoring and ensuring compliance with the AML requirements.

6.4 This chapter focuses on the proposed licensing system for RAMCs. Powers of the future licensing authority of RAMCs should be the same as those for the other financial regulators concerning the other aspects of the proposed AML regime as referred to in Chapters 4 and 5 of this consultation document.

## **Proposal**

6.5 We propose to put in place a statutory licensing system for RAMCs, to be administered by C&ED. The key features of the proposed systems are:

- (a) with effect from a future date (to be determined) all operators carrying out remittance and money exchange services as a business would be required to possess a valid licence issued by C&ED.
- (b) upon implementation of the licensing system, any persons carrying out such services as a business without a valid licence would commit a criminal offence and be liable to a fine and/or imprisonment.
- (c) in order to maintain the integrity of the system, the future AML regulator for RAMCs, viz C&ED, would be provided with the powers of arrest and seizure, same as those provided for the Police in administering the existing RAMC registration scheme.
- (d) C&ED would be empowered to grant, renew, refuse, suspend or revoke a licence, or impose or vary the conditions on a licence. The new legislation would set out the factors to be considered by C&ED in considering the above. The proposed factors include:
  - (i) “fit and proper” test, by considering the criminal and bankruptcy records of the applicant (for natural persons) or the partners/directors/shareholders (in cases of

partnerships/legal persons), and failures to comply with the requirements under the new legislation and the AML guidelines issued by the C&ED;

- (ii) possession of a certificate of business registration;
- (iii) payment of a licence/renewal fee; and
- (iv) other relevant factors related to the risk of money laundering or terrorist financing of RAMCs.

Specifically for the renewal of licences, the applicant should be carrying out remittance and money changing business, i.e. inactive businesses would not be able to renew their licences.

- (e) granting of or renewal of RAMC licences would be subject to a specified fee, the level of which would normally be determined on the basis of the cost recovery principle.
- (f) The Commissioner of Customs and Excise would be empowered to make statutory regulations to prescribe the manner in which an application for licence should be made.
- (g) Similar to the other financial regulators, C&ED would be empowered to issue guidelines for providing guidance for the furtherance of its regulatory objectives. Breach of the guidelines would be taken into account in its determination of the “fitness and properness” of the concerned RAMCs.
- (h) Licensees will be required to notify C&ED of any change in business ownership and/or the identity of their partners/directors/shareholders in a timely manner.

6.6 The above licensing regime would replace the current registration scheme administered by the Joint Financial Intelligence Unit of the Police under OSCO. While the Police will cease to administer a registration system for RAMCs, they will continue to be responsible for



the investigation of money laundering and other offences under OSCO.

- 6.7 The Police have been providing regular training seminars to RAMCs to raise their general AML awareness. FSTB and C&ED will work closely to offer suitable and focused training for RAMCs before the commencement of the proposed legislation to facilitate the operators to understand the new statutory obligations and the licensing requirements applicable to them. We would welcome views from the industry on the need for any specific assistance that the industry may require to facilitate their compliance, especially in the initial phase. We will also consider suggestions on appropriate transitional arrangements to be put in place to help the industry to migrate towards the new regulatory regime.

*Consultation Questions:*

- Q6.1 Do you agree that all RAMCs currently covered by the registration system under OSCO should be required to obtain licences from C&ED and subject to the CDD and record-keeping requirements under the proposed legislation?*
- Q6.2 Do you agree that the criteria for determining “fitness and properness” as proposed under 6.5(e)(i) are appropriate? If not, what criteria should be included?*
- Q6.3 Do you agree that any persons who operate RAMCs business without a valid licence should be liable to criminal sanctions (including a fine and/or imprisonment)?*
- Q6.4 Do you agree that the licence/renewal fee should be determined on the basis of the cost recovery principle?*
- Q6.5 What is your view on the need or otherwise for transitional arrangements before RAMC licensing system is implemented? If so, what specific arrangements should be made?*

## SUMMARY OF CONSULTATION QUESTIONS

### *Consultation Questions:*

- Q2.1 Do you agree to the proposed designation of AML regulators for the banking/deposit-taking, securities, insurance and RAMC sectors as set out in paragraph 2.2?*
- Q2.2 Do you think that there are other important principles in addition to those set out in paragraph 2.4 that the Administration should adopt in working out the detailed legislative AML regime on CDD and record-keeping requirements? If so, what are they?*
- Q3.1 Do you agree that the CDD measures that should be undertaken by financial institutions should be subject to the risk profiles of the customers and that enhanced CDD measures should apply to higher-risk customers as set out in paragraph 3.4(e)?*
- Q3.2 Apart from the enhanced training to be provided to facilitate financial institutions' compliance with the statutory obligations as mentioned in paragraph 3.7, do you think that the Government, relevant regulators and concerned trade or professional bodies should also provide other assistance to facilitate compliance by the financial institutions? If so, what types of assistance should be provided?*
- Q3.3 What should be the appropriate length of the transitional period, if any, to be allowed for individual financial sectors concerned to get fully prepared before commencement of the new legislation?*
- Q4.1 Do you think that the proposed inspection, supervisory and enforcement powers which are similar to SFC's existing powers in supervising the securities business, are appropriate for supervising the financial institutions' compliance with the statutory CDD and record-keeping requirements in paragraphs 4.4 and 4.6? If not, what modifications to these proposed powers should be made?*

- Q4.2 Do you consider that the establishment of an independent appeals tribunal to hear appeals against the regulators' decisions on supervisory sanctions and matters relating to the licensing of RAMCs is an appropriate check and balance arrangement (paragraph 4.5)? If not, what is the appropriate arrangement?*
- Q5.1 Do you think it is appropriate to stipulate in the new legislation that an offence would be committed only if any of the circumstances set out in paragraph 5.4 (in underlined text) arises?*
- Q5.2 Do you agree that the new legislation should provide for supervisory fines and other supervisory sanctions, in addition to criminal sanctions, to deal with breaches of the statutory requirements (i.e., the imposition of criminal sanctions on any breach of the statutory requirements should not preclude the imposition of supervisory sanctions by the concerned regulatory authority and vice versa) on the basis that any such sanctions should be effective, proportionate and dissuasive in accordance with FATF's requirement?*
- Q5.3 Do you think that the other supervisory sanctions (i.e. other than fines) should include public reprimand, partial / full suspension or revocation of licence, and issue of directions for remedial actions? Do you have views on other types of supervisory sanctions that the authorities should be empowered to impose under the new legislation?*
- Q.5.4 Do you agree that the maximum level of supervisory fines to be prescribed in the new legislation should be determined having regard to the maximum level of supervisory fines that may be imposed by SFC under S.194 of SFO as mentioned in paragraph 5.6?*
- Q6.1 Do you agree that all RAMCs currently covered by the registration system under OSCO should be required to obtain licences from C&ED and subject to the CDD and record-keeping requirements under the proposed legislation?*

- Q6.2 Do you agree that the criteria for determining “fitness and properness” as proposed under 6.5(e)(i) are appropriate? If not, what criteria should be included?*
- Q6.3 Do you agree that any persons who operate RAMCs business without a valid licence should be liable to criminal sanctions (including a fine and/or imprisonment)?*
- Q6.4 Do you agree that the licence/renewal fee should be determined on the basis of the cost recovery principle?*
- Q6.5 What is your view on the need or otherwise for transitional arrangements before RAMC licensing system is implemented? If so, what specific arrangements should be made?*

**Key Provisions in the Securities and Futures Ordinance which the  
Proposed AML Regulatory Regime would Emulate**

Powers	Section Number	Provision
Inspection Power	s180	<ul style="list-style-type: none"> <li>• SFC may enter only the licensed corporations' premises approved for keeping records and documents. The inspection power can only be invoked for the purpose of supervision of compliance with relevant requirements by the licensed corporations or associated entities.</li> <li>• SFC can enter the premises of licensed corporations and their associated entities, to inspect and make copies of records relating to the business and transactions conducted, to make inquiries, etc.</li> </ul>
Investigation Power	s182	<ul style="list-style-type: none"> <li>• This power can only be invoked if SFC has reasonable cause to believe that such offences or misconduct, etc. have been committed.</li> <li>• SFC can investigate possible offences, defalcation, fraud, misfeasance and other misconduct, etc.</li> </ul>
	s183	<ul style="list-style-type: none"> <li>• This power can only be invoked when an investigator has been appointed under s182.</li> <li>• SFC can require the person under investigation or any person whom the SFC believes to have in his possession any information (including banks) to produce, explain the records and attend an interview to answer questions, etc.</li> </ul>
Enter into Premises with Warrant	s191	<ul style="list-style-type: none"> <li>• A magistrate must be satisfied by information on oath that there are reasonable grounds to suspect there is on the premises record or document required to be produced.</li> <li>• Upon the issuance of warrants by the</li> </ul>

		<p>magistrate, SFC can enter premises, on which required records are suspected to be stored, and to seize and remove records from the premises.</p>
Supervisory Fines and Sanctions	s194	<ul style="list-style-type: none"> <li>• If a regulated person is/was guilty of misconduct or is no longer considered to be a fit and proper person, SFC can impose (following disciplinary proceedings): <ul style="list-style-type: none"> <li>(a) the following supervisory sanctions: revocation/suspension of licence, revocation/suspension of approval for a responsible officer, public/private reprimand and prohibition from applying to be licensed/registered; and /or</li> <li>(b) pecuniary penalty of up to \$10,000,000 or three times the profit made/loss avoided, which ever is the greater.</li> </ul> </li> <li>• Under s 198 of SFO, SFC is required to inform the regulated person in writing of the proposed imposition of supervisory fines and sanctions and the regulated person should be given a reasonable opportunity of being heard.</li> </ul>
Prosecution of Summary Offences	s388	<ul style="list-style-type: none"> <li>• SFC can conduct, in its own name, summary criminal proceedings for any offence under the relevant provisions.</li> <li>• The responsibility for indictable prosecution of the offences under the relevant provisions rests with the DoJ.</li> </ul>
Sharing of Information	s378	<ul style="list-style-type: none"> <li>• SFC can share information with overseas regulators if it is satisfied that the overseas regulators perform functions similar to the local regulators and are subject to adequate secrecy provisions. It must also be the case that the disclosure of information is in the interest of the investing public, or that the disclosure will enable the recipient of</li> </ul>

		<p>information to perform its functions, etc.</p> <ul style="list-style-type: none"><li>• In compliance with s378 of SFO, SFC can share information obtained in performance of its functions with local and overseas regulators.</li></ul>
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