

# **Enhancing Anti-Money Laundering Regulation of Designated Non-Financial Businesses and Professions**

## **Consultation**

### **FOREWORD**

1. This consultation document is issued by the Financial Services and the Treasury Bureau (“FSTB”) for seeking views on the conceptual framework and key parameters of a legislative proposal to enhance anti-money laundering and counter-financing of terrorism (“AML/CFT”) regulation of designated non-financial businesses and professions (“DNFBPs”).
2. FSTB welcomes written comments on or before 5 March 2017 through any of the following channels –

By mail:     Division 5, Financial Services Branch  
                  Financial Services and the Treasury Bureau  
                  24/F, Central Government Offices  
                  Tim Mei Avenue, Tamar  
                  Central, Hong Kong

By fax:       (852) – 2527 0790

By email:     [aml\\_consultation@fstb.gov.hk](mailto:aml_consultation@fstb.gov.hk)

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4. Names of the contributing parties and their affiliations may be referred to in other documents we publish and disseminate through different means after the consultation. If any contributing parties do not wish to have their names or affiliations disclosed, please expressly state so in their written comments. Any personal data provided will only be used by FSTB, other government departments/agencies for purposes which are related to this consultation.

# CHAPTER 1

## INTRODUCTION

### **Purpose**

- 1.1 This document sets out for stakeholder consultation the conceptual framework and key parameters of a legislative proposal by the FSTB to enhance the regulation of DNFBPs in an effort to meet prevailing international standards to combat money laundering and terrorist financing. Views and comments from stakeholders concerned are welcome to facilitate our formulation of the details of the legislative proposals.

### **Background**

- 1.2 The Financial Action Task Force (“FATF”) is an inter-governmental body established in 1989 that sets international standards on combating money laundering and terrorist financing. Customer due diligence (“CDD”) and record-keeping requirements are among the main strands of an effective AML regulatory regime championed by the FATF to deter money laundering activities and ensure the integrity of financial systems.
- 1.3 The FATF recommends that financial institutions should implement CDD measures to identify and verify customers, and maintain records on customer identification and transactions for at least five years. Meanwhile, CDD and record-keeping requirements should be codified into the statute.
- 1.4 Financial institutions apart, the FATF considers that DNFBPs which engage in specified transactions should also be subject to similar statutory CDD and record-keeping requirements. In the FATF parlance, DNFBPs cover casinos, dealers in precious metals and stones, real estate agents, lawyers, notaries, accountants, and trust or company service providers (“TCSPs”). Specified transactions include real estate transactions; management of client money, securities or other assets; management of bank, savings or securities accounts; company formation and management; and buying and selling of business entities.
- 1.5 The FATF also requires that competent authorities or self-regulatory bodies with adequate powers be designated to monitor and ensure compliance of the relevant DNFBP sectors with AML/CFT requirements, and to apply a range

of proportionate and dissuasive sanctions (whether criminal, civil or administrative) to deal with non-compliance.

## **The Need for Change**

- 1.6 Hong Kong has been a member of the FATF since 1991. We enacted the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) (“AMLO”) in April 2012 to implement the relevant FATF recommendations in respect of financial institutions. Under the AMLO, specified financial institutions, including banks, securities firms, insurance companies and intermediaries, and remittance agents and money changers, have a statutory obligation to conduct CDD on their customers and keep the relevant records for a specified period. Non-compliance may render them liable to supervisory and criminal sanctions.
- 1.7 A regulatory gap remains, however, in respect of DNFBPs. As the international community strengthens regulation in accordance with the FATF recommendations, Hong Kong is obliged to implement a credible regime to enhance regulation of DNFBPs, so as to safeguard the integrity of our financial markets, and to ensure that our reputation as an international financial centre is reinforced by a clean and safe business environment.
- 1.8 As a member of the FATF, Hong Kong will undergo a mutual evaluation conducted by other member jurisdictions in respect of our efforts to combat money laundering and terrorist financing, the extent of our compliance with the FATF recommendations, and the effectiveness of our implementation of the relevant regimes. The upcoming mutual evaluation on Hong Kong is scheduled for 2018. As a matter of priority, we need to rein in DNFBPs under the AMLO, so as not to adversely affect the overall rating of Hong Kong in the mutual evaluation. Our compliance in this respect has a bearing on our hard-earned reputation as a major international financial and business centre in the world.

## CHAPTER 2

### CONCEPTUAL FRAMEWORK OF THE LEGISLATIVE PROPOSAL

#### Principles

- 2.1 Hong Kong is an open, trusted and competitive place to invest and do business. Underpinning our status as an international financial centre is a robust AML/CFT regime which we have built over the years. It helps prevent illicit activities, improve corporate accountability, and inspire confidence in investors that Hong Kong is a clean and safe place for doing business. This in turn enhances the competitiveness of Hong Kong as recognised globally by renowned international institutions.
- 2.2 Financial institutions and DNFBP sectors are fundamental lines of defence against illicit financial transactions undermining the international financial system. Since implementation from April 2012, the CDD and record-keeping requirements under the AMLO have significantly mitigated money laundering and terrorist financing risks in financial institutions operating in Hong Kong.
- 2.3 There remain concerns that criminals may use DNFBP practitioners to conceal the origins of criminal proceeds, legitimise accounts, add layers of anonymity when laundering criminal finances, or arrange illicit transactions via a variety of ways (such as through company or trust formation, providing false accounts or purchase of properties). Our DNFBP sectors are vulnerable if their compliance with AML/CFT requirements are not adequately supervised or regulated, even though the DNFBP sectors are relatively small in terms of the monetary volume of transactions vis-à-vis financial sectors.
- 2.4 As a member of the FATF, it is incumbent upon Hong Kong to join the international community to combat money laundering and terrorist financing. Having regard to the FATF's defined scope of DNFBP coverage and the nature of business engaged by the corresponding professions in Hong Kong, we propose expanding the scope of the AMLO to subject solicitors, accountants, real estate agents and TCSPs<sup>1</sup> to the CDD and

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<sup>1</sup> As there are no casinos in Hong Kong, the relevant FATF recommendations are only applicable to the other five sectors in the Hong Kong context. For barristers and notaries in Hong Kong, as they do not engage in transactions as specified by the FATF, they are also not relevant in our context. As regards dealers in precious

record-keeping requirements thereunder.<sup>2</sup>

- 2.5 We consider that a balanced approach to legislation should be adopted, complementing the need to have an effective system for tackling AML/CFT risks in the DNFBP sectors, whilst addressing concerns to minimise regulatory burden and compliance cost on businesses. The regulatory measures to be introduced should be commensurate with the risks that they seek to mitigate, without imposing undue burden on DNFBP practitioners being regulated. It is with this consideration that we put forward the proposals set out in this consultation document.
- 2.6 In drawing up the legislative proposals (detailed in the next chapter), we will be guided by the following principles –
- (a) The amended AML/CFT regulatory regime should enable Hong Kong to meet the FATF standards so as to maintain our competitiveness as an international financial centre;
  - (b) The regulatory burden and compliance costs on businesses should be minimised as far as reasonably practicable; and
  - (c) The relevant industry regulators should, as far as possible, assist practitioners in the concerned DNFBP sectors in complying with the

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metals and stones, they are covered under the FATF recommendation of DNFBPs because they are involved in cash-based transactions that may be used by criminals to hide proceeds in valuable commodities such as gold, jewellery or diamonds. We understand from the trade, however, that cash transactions are no longer common as in the old days. According to the Hong Kong Police Force, no dealer has been found linked to or convicted for money laundering offences over the past five years. Its assessment is that the sector does not pose insurmountable risks in the overall AML/CFT institutional framework in Hong Kong requiring immediate mitigation. This notwithstanding, the Government has been stepping up education in this sector to raise the AML awareness through capacity-building seminars and the issuance of guidelines. While it takes time to prepare the sector for undertaking statutory AML responsibilities (given the absence of a sector-specific authority), we suggest covering those DNFBP sectors that are more ready in the current legislative exercise. This will be a more proportionate and pragmatic response in light of the risk-based approach advocated by the FATF. We will keep in view international development and review the need to subject these dealers to regulation under the AMLO in future.

- 2 Schedule 2 to the AMLO prescribes the circumstances under which the CDD measures must be carried out, the required steps to complete the due diligence (including identifying and verifying a customer's identity and his/her beneficial owners, monitoring business relationship continuously, etc.), as well as the duty of keeping relevant transaction records for a period of six years. The record-keeping period ties in with the relevant period under the presumption provision in the Organised and Serious Crimes Ordinance (Cap. 455) on assessing the value of defendant's proceeds of crime in a case where a confiscation order is made. It is also the statutory limitation period for certain classes of claims under the Limitation Ordinance (Cap. 347). The Schedule provides a ready basis for extending CDD requirements to cover DNFBPs in the current proposal.

legislative requirements.

## **Legislative Framework**

- 2.7 According to the FATF’s requirements, DNFBPs should implement CDD measures to identify and verify customers and maintain records on customer identification for at least five years. In addition, the FATF requires that the CDD and record-keeping requirements should be set out in the statute.
- 2.8 In accordance with the FATF requirements, we propose amending the AMLO to –
- (a) prescribe statutory CDD and record-keeping requirements applicable to solicitors, accountants, real estate agents and TCSPs when these professionals engage in specified transactions; and
  - (b) introduce a licensing regime for TCSPs for the purpose of overseeing their compliance with AML/CFT requirements, whereby they will be required to apply for a licence from the Registrar of Companies and satisfy a “fit-and-proper” test before they provide trust or company service as a business for the public.

### Solicitors, Accountants and Estate Agents

- 2.9 For solicitors, accountants and real estate agents, they are currently subject to professional self-regulation by the respective regulatory bodies, which have promulgated guidelines on CDD and record-keeping procedures for voluntary or mandatory compliance by members. The Law Society of Hong Kong, the Hong Kong Institute of Certified Public Accountants (“HKICPA”) and the Estate Agents Authority (“EAA”) enjoy broadly similar powers under their respective Ordinances to deal with professional misconduct of registered professionals.
- 2.10 To minimise the compliance burden on these sectors, and having regard to the principle of professional autonomy, we intend to leverage on the existing regulatory regimes applicable to the three sectors under the Legal Practitioners Ordinance (Cap. 159), the Professional Accountants Ordinance (Cap. 50) and the Estate Agents Ordinance (Cap. 511) respectively to enforce the statutory CDD and record-keeping requirements. The Law

Society, the HKICPA and the EAA will take on statutory oversight for monitoring and ensuring compliance of their respective professions with the AMLO requirements. Non-compliance with the requirements will be handled in accordance with the prevailing investigation, disciplinary and appeal mechanisms under the three Ordinances governing professional misconduct.

- 2.11 The Legal Practitioners Ordinance, the Professional Accountants Ordinance and the Estate Agents Ordinance have already stipulated a set of appropriate disciplinary and sanction measures ranging from reprimands, orders for remedial actions, to civil fine<sup>3</sup>, and suspension or revocation of licence. This should arguably provide sufficient deterrent effect in terms of the proportionality and dissuasiveness of relevant sanctions applying to the three sectors. We do not intend to propose further criminal sanctions on non-compliances, having regard to the inherent risks concerning these DNFBP sectors vis-à-vis financial institutions.<sup>4</sup>

#### Trust or Company Service Providers

- 2.12 Unlike solicitors, accountants and estate agents, at present there is no statutory regulatory regime for firms or body corporates providing trust or company formation services in Hong Kong. Having regard to our experience of regulating money service operators under the AMLO, we propose introducing a licensing regime to enforce the codified CDD and record-keeping requirements applicable to TCSPs.
- 2.13 TCSPs will be required to apply for a licence from the Registrar of Companies before they can provide trust or company service as a business for the public. It will be a criminal offence to operate a TCSP business without a licence. The licensing requirements, mainly involving a “fit-and-proper” test for applicants, and the proposed sanctions for operation without a licence, will be modelled on the licensing regime for money service

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<sup>3</sup> Under the respective Ordinances, the civil penalty that may be imposed by the Law Society and HKICPA is at a level not exceeding \$500,000, while that for EAA is \$300,000.

<sup>4</sup> The maximum criminal sanctions for a contravention by a financial institution and its employees of the Schedule 2 requirements are a fine of \$1 million and imprisonment of seven years under the AMLO. Alternative to the criminal route, the AMLO empowers relevant authorities to take a range of disciplinary actions, including public reprimand, remedial orders, a civil penalty not exceeding \$10 million or three times the amount of profit gained or costs avoided as a result of the contravention (whichever is higher).

operators under the AMLO.<sup>5</sup>

- 2.14 On enforcement, the Registrar of Companies will be empowered to investigate any non-compliance in relation to licensed TCSPs and impose disciplinary sanction on them, in line with the maximum level of civil sanction that may be triggered against solicitors and accountants. Appeals can be made to a review tribunal against decisions of the Registrar in implementing the licensing and disciplinary regime.
- 2.15 We also do not plan to introduce criminal offences for any non-compliance by a TCSP with a statutory CDD and record-keeping provision, having regard to the risk of this sector and the need to maintain some degree of consistency among the DNFBP sectors.

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<sup>5</sup> The licensing regime for money service operators is operated by the Customs and Excise Department (“C&ED”). In determining whether a person is a fit and proper person, C&ED shall consider, among other things, whether the person has been convicted of an offence in Hong Kong or persistently failed to comply with any requirement imposed under the AMLO or other relevant legislation. A person who operates a money service without a licence is liable on conviction to a fine at level 6 (i.e. a maximum of \$100,000) and to imprisonment for six months.



## **CHAPTER 3**

### **KEY PARAMETERS OF THE LEGISLATIVE PROPOSAL**

#### **Scope of Coverage**

- 3.1 At present, Schedule 2 to the AMLO prescribes the circumstances under which the CDD measures must be carried out by financial institutions, the required steps to complete the due diligence (including identifying and verifying a customer's identity and his/her beneficial owner(s), monitoring business relationship continuously, etc.), and the duty of keeping relevant transaction records for a specified period of six years. It also provides for special requirements to deal with industry-specific matters (such as CDD measures concerning insurance policies, wire transfers, remittance transactions, and correspondent banking relationship).
- 3.2 We propose extending Schedule 2 to cover solicitors, accountants, real estate agents and TCSPs, such that these DNFBP sectors will be subject to the statutory CDD and record-keeping requirements thereunder when engaging in specified transactions. The AMLO will be renamed as the Anti-Money Laundering and Counter-Terrorist Financing Ordinance to reflect the expanded scope.

#### **Circumstances Requiring the Conduct of CDD**

- 3.3 With the application of Schedule 2, DNFBPs will be required to undertake CDD measures, including identifying and verifying the identity of customers when –
  - (a) establishing business relationship;
  - (b) carrying out occasional transactions above a stated threshold (HK\$120,000);
  - (c) there are suspicions of money laundering and/or terrorist financing; or
  - (d) there are doubts on veracity or adequacy on previously obtained customer identification data.

- 3.4 DNFBPs will be defined to cover solicitors<sup>6</sup>, accountants, real estate agents and TCSPs when they engage in the following specified transactions as stipulated by the FATF –
- (a) Real estate agents – when they are involved in transactions for their clients concerning the buying and selling of real estates;
  - (b) Solicitors and accountants – when they prepare for or carry out transactions for their clients concerning –
    - (i) the buying or selling of real estates;
    - (ii) the managing of client money, securities or other assets;
    - (iii) management of bank, savings or securities accounts;
    - (iv) organisation of contributions for the creation, operation or management of companies;
    - (v) creation, operation or management of legal persons or arrangements; and
    - (vi) the buying or selling of business entities; and
  - (c) TCSPs – when they prepare for or carry out transactions for a client concerning –
    - (i) the forming of companies or other legal persons;
    - (ii) acting, or arranging for another person to act, as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
    - (iii) providing a registered office, business address, correspondence or administrative address or other related services for a company, a partnership or any other legal person or arrangement; and
    - (iv) acting, or arranging for another person to act, as a trustee of an express trust or similar legal arrangement, or a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

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<sup>6</sup> These include solicitors, foreign lawyers, trainee solicitors, and employees of a solicitor or foreign lawyer, who are subject to regulation under the Legal Practitioners Ordinance.

## **Risk-based Approach for Applying CDD Measures**

- 3.5 In accordance with the risk-based approach advocated by the FATF for combating money laundering, we consider that the conduct of CDD measures should operate in a risk-sensitive manner, whereby the extent of such measures to be undertaken should depend on the types of customers, business relationship or transactions and the associated risks.
- 3.6 Unless otherwise provided in the AMLO, we propose that, as in the case of financial institutions, DNFBPs should undertake the following **customary CDD** measures in usual circumstances –
- (a) Identifying the customer or any person purporting to act on behalf of the customer;
  - (b) Verifying the customer’s identity using documents, data or information from a reliable, independent source;
  - (c) Identifying a beneficial owner where there is one, and take reasonable measures to verify the identity of the beneficial owner;
  - (d) Understanding the ownership and control structure of those customers who are legal persons or trusts (or other similar arrangements); and
  - (e) Obtaining information for the purpose and intended nature of the business relationship.
- 3.7 Under the AMLO, financial institutions are allowed to apply **simplified CDD** measures when dealing with specified categories of business which are considered to pose a lower risk. Financial institutions may identify and verify a customer’s identity only, irrespective of whether the customer has any beneficial ownership.
- 3.8 As specified in the AMLO, financial institutions can adopt simplified CDD measures when dealing with the following customers or products –
- (a) Financial institutions subject to AML regulation;
  - (b) Listed companies;

- (c) Government or government-related organisations;
  - (d) Pension schemes that provide retirement benefits to employees, where contributions are made by way of deduction of wages and assignment of schemes interests is not permitted;
  - (e) Investment vehicles where managers are financial institutions supervised for AML/CFT compliance;
  - (f) An insurance policy for pension schemes if there is no surrender clause and the policy cannot be used as collateral; and
  - (g) A life insurance policy where the annual premium is no more than HK\$8,000 or a single premium of no more than HK\$20,000.
- 3.9 To encourage DNFBPs to develop effective measures to assess money laundering risks and to reduce undue burden on DNFBPs, we propose that DNFBPs be allowed the flexibility to apply simplified CDD on low-risk cases with reference to the prescribed list of customers and products stipulated in the AMLO.
- 3.10 We reckon that DNFBPs differ from financial institutions in terms of their nature of business and interface with customers. We are therefore open to views on whether there are any other justified categories of business peculiar to the DNFBP sectors which would warrant addition to the above eligibility list for simplified CDD measures.
- 3.11 Under the AMLO, financial institutions are required to conduct **enhanced CDD** measures when dealing with situations presenting a high risk of money laundering or terrorist financing (such as when a customer is a politically exposed person or is not physically present for identification purpose). In addition to conducting customary CDD measures, a financial institution is expected to obtain management approval for establishing or continuing a business relationship, and taking additional measures to mitigate the risk such as enquiring with the customers about the source of funds. We propose that DNFBPs be subject to the same enhanced CDD requirements when dealing with high-risk situations.

3.12 DNFBPs should also undertake ongoing due diligence measures, such as to scrutinise transactions to ensure that they are in line with their knowledge of the customers, their business and risk profile (including the source of funds where necessary), and to ensure that identification documents or data are up-to-date.

- **Do you agree with the application of a risk-sensitive approach, whereby the CDD measures to be undertaken by DNFBPs should be commensurate with the risk profiles of customers?**
- **Do you agree that DNFBPs should be subject to enhanced CDD measures when dealing with customers presenting a high risk of money laundering or terrorist financing?**
- **Do you think DNFBPs should be allowed the flexibility to undertake simplified CDD measures on low-risk cases, with reference to the list of eligible customers and products as specified in the AMLO?**
- **Do you think there are other justified addition to the specified list of customers and products eligible for simplified CDD treatment under the AMLO by DNFBPs? If so, what are they; and what are the justifications (please support with statistics where applicable)?**

### **Record-keeping Requirements**

3.13 We propose requiring DNFBPs to maintain identification data, account files, business correspondence and records of transactions for a period of six years. The proposed record-keeping period is in line with that currently required of financial institutions under the AMLO which, when introduced in 2012, sought to align with the relevant period as required under other legislation, such as the Organised and Serious Crimes Ordinance (Cap. 455) and the Limitation Ordinance (Cap. 347).

- **Do you agree that DNFBPs should be subject to a six-year record-keeping requirement on a par with financial institutions?**

## **Designation and Powers of the Regulatory Authorities**

3.14 We propose to designate the following regulatory bodies as the respective authorities to enforce the statutory CDD and record-keeping provisions under the AMLO for DNFBPs –

- (a) The Law Society of Hong Kong – for solicitors;
- (b) HKICPA – for accountants;
- (c) EAA – for estate agents; and
- (d) The Registrar of Companies – for TCSPs (see paragraph 3.21 below).

3.15 The Legal Practitioners Ordinance, the Professional Accountants Ordinance and the Estate Agents Ordinance will be amended accordingly such that any non-compliance by solicitors, accountants and estate agents with the CDD and record-keeping requirements prescribed in the AMLO will trigger the prevailing investigation, disciplinary and appeal mechanisms under the three Ordinances governing professional misconduct.

3.16 We have considered the option of introducing one new single regulatory body for DNFBPs in respect of the AML/CFT regulatory regime. We are however mindful of the administrative burden and compliance cost implications for the respective professions, which are already subject to a rigorous professional regulatory system under the respective Ordinances. Having regard to the principle of professional autonomy, and considering that the professional regulators have already established an AML/CFT regime for the respective professions, we believe it more appropriate to ask the Law Society, the HKICPA and the EAA to take on the statutory role of overseeing AML/CFT compliance.

- **Do you agree with the proposed designation of the respective regulatory authority for solicitors, accountants, real estate agents and TCSPs in paragraph 3.14?**
- **Do you agree that, instead of introducing one new single regulatory body for solicitors, accountants and estate agents, the prevailing investigation, disciplinary and appeal mechanisms under the respective governing Ordinances of the professions should be relied**

**upon to enforce the statutory CDD and record keeping requirements?**

### **Supervisory Sanctions**

- 3.17 The Legal Practitioners Ordinance, the Professional Accountants Ordinance and the Estate Agents Ordinance have already stipulated a set of measures and sanctions ranging from reprimands, orders for remedial actions, to civil fine, and suspension from practice or revocation of licence (as the case may be) for handling professional misconduct. We propose that the Law Society of Hong Kong, the HKICPA and the EAA shall continue to rely on the applicable disciplinary and sanction measures to process non-compliances under the AMLO. The exact level of sanction will be considered with reference to the merits of the case by relevant authorities, taking into account the nature and severity of non-compliance, desirable level of deterrents and other relevant circumstances.
- 3.18 We do not intend to propose further criminal sanctions on non-compliances, having regard to the lesser risks concerning these DNFBP sectors vis-à-vis financial institutions.
- 3.19 At present, the AML/CFT regulatory authorities for overseeing compliance of financial institutions (such as the Hong Kong Monetary Authority, the Securities and Futures Commission) are empowered under Part 3 of the AMLO to appoint authorized persons to enter business premises of financial institutions for conducting routine inspections (such as inspecting and making copies of books and records, making inquiries of financial institutions or other persons, and requiring the person subject to an inquiry to verify any answers given). We do not propose to entrust similar powers to the relevant authorities under the AMLO for regulating solicitors, accountants and real estate agents, considering the relatively low risks of DNFBP sectors vis-à-vis financial institutions, and that the proposed DNFBP regulators are already empowered under their respective Ordinances to conduct investigations. We believe this is a more proportionate response in accordance with the risk-based approach advocated by the FATF.
- 3.20 To facilitate AML/CFT compliance by DNFBPs, we propose that relevant authorities should be empowered to issue guidelines to DNFBPs under their respective regulations to provide clear guidance on compliance. Individual authorities will draw up their own sectoral guidelines to cover measures

relevant to transactions specific to their respective regulated sectors. While such guidelines are non-statutory in nature, they will have evidential value in determining whether the relevant obligations have been met.

- **Do you consider it necessary to introduce new criminal sanctions for non-compliance with the statutory CDD and record-keeping requirements under the AMLO by DNFBPs?**
- **Do you think that the Law Society, the HKICPA and the EAA should be given inspection and search powers similar to those available to AML regulatory authorities for financial institutions under Part 3 of the AMLO?**

### **Licensing Regime for TCSPs**

- 3.21 For the purpose of enforcing codified CDD and record-keeping requirements for TCSPs, we propose that a licensing regime similar to that for money service operators under the AMLO be instituted for TCSPs, to be administered by the Registrar of Companies.
- 3.22 With effect from a future date to be determined, which we propose to be 90 days upon commencement of operation of the licensing regime, all operators carrying out TCSP services as a business will be required to possess a valid licence issued by the Registrar of Companies. Any persons carrying out such services as a business without a valid licence would commit a criminal offence.
- 3.23 Licensees will be required to obtain approval from the Registrar of Companies in respect of any person proposing to be the licensee's partners/directors/ultimate owner and report any change in reported particulars in a timely manner.
- 3.24 Like other DNFBPs, TCSPs will be subject to the CDD and record-keeping requirements stipulated in Schedule 2 to the AMLO.
- **Do you agree with the provision of a 90-day transitional period for existing TCSP operators to migrate to the new licensing regime?**



## **Power of the Licensing Authority**

- 3.25 The Registrar of Companies will be empowered to grant, renew, refuse, suspend or revoke a licence, or impose or vary the conditions on a licence. A licence will be valid for three years, and renewable on application upon expiry. The Registrar of Companies will consider the following factors in processing an application –
- (a) A fit-and-proper test, by considering the criminal and bankruptcy records of the applicant (for natural persons), any ultimate owners, or the partners/directors/shareholders (in cases of partnership/legal persons), and where the applicant is a corporation, whether it is in liquidation or receivership and any failure to comply with the requirements under the AMLO and guidelines to be issued by the Registrar;
  - (b) Possession of a certificate of business registration;
  - (c) Payment of a licence/renewal fee; and
  - (d) Other relevant factors related to the risk of money laundering or terrorist financing of TCSPs.
- 3.26 To maintain the integrity of the licensing system, the Registrar of Companies will be provided with the powers to appoint an authorised person to enter premises of TCSPs for conducting investigation and seizure with warrant issued by the magistrate, same as those provided to the Customs and Excise Department for administering the money service operator licensing regime under the AMLO.
- 3.27 The Registrar of Companies will be empowered to make statutory regulations to prescribe the manner in which an application for licence should be made. The granting or renewal of TCSP licences will be subject to a specified fee.
- 3.28 The Registrar will also be empowered to issue guidelines for providing guidance for the furtherance of its regulatory objectives. Breach of the guidelines will be taken into account in the determination of the “fitness and properness” of the concerned TCSPs.

- **Do you think the criteria for determining the fitness and properness of TCSPs appropriate? If not, what criteria should be included or excluded?**
- **Do you agree with the three-year validity of a TCSP licence (renewable on application)? If not, what should be the validity period?**

### **Supervisory and Criminal Sanctions**

- 3.29 We propose that it would be a criminal offence for any person or corporation providing trust or company service as a business to the public without a licence. On conviction of an offence, one is liable to a fine at level 6 (a maximum of \$100,000) and to imprisonment of six months. The proposed offence and sanctions are comparable to those applicable to the money service operator regime under the AMLO.
- 3.30 A person commits an offence if the person in connection with an application for the grant or renewal of a licence makes a false or misleading statement in a material particular. The person will be liable on conviction to a fine at level 5 (\$50,000) and to imprisonment for six months.
- 3.31 Non-compliance of the licensed TCSPs with the statutory CDD and record-keeping requirements will be disciplined and subject to a range of supervisory sanctions, including public reprimand, remedial order and a pecuniary penalty not exceeding \$500,000, in line with the maximum level of civil sanction that may be triggered against solicitors and accountants.
- 3.32 We do not intend to introduce criminal offences for any non-compliance by a TCSP with a statutory CDD and record-keeping provision, having regard to the risk of this sector and the need to maintain some degree of consistency among the DNFBP sectors.
- **Do you agree that any persons operating TCSP business without a valid licence should be liable to criminal sanctions (including a fine at level 6 and/or imprisonment of up to six months)?**

- **Do you agree with the proposed supervisory sanctions for TCSPs in respect of non-compliance with statutory CDD and record-keeping requirements?**

### **Statutory Appeal**

3.33 We propose amending Part 6 of the AMLO to expand the scope of reviewable decisions of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal to cover appeals against future decisions made by the Registrar of Companies in implementing the licensing and disciplinary regime for TCSPs. The Tribunal will be renamed as the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal to reflect the expanded scope.

- **Do you agree with the re-constitution of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal to cover appeals against future decisions of the Registrar of Companies in respect of the licensing and disciplinary regime for TCSPs?**

### **Related Amendments**

3.34 The Companies Registry Trading Fund (Cap 430B) will be amended to expand the functions of the Companies Registry to supervise and regulate TCSPs under the licensing regime.

3.35 When the AMLO was enacted back in 2012, the definition of “beneficial owner”, in relation to a corporation, means an individual who owns or controls, directly or indirectly, not less than 10% of the issued share capital of the corporation, or who is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights at general meetings of the corporation, or who exercises ultimate control over the management of the corporation. Having reviewed the latest FATF requirement and the prevailing practice of other jurisdictions, we propose to adopt a threshold of more than 25% for defining beneficial ownership in a separate exercise to require companies incorporated in Hong Kong under the Companies Ordinance to identify and maintain beneficial ownership information. We will take this opportunity to align the threshold for

determining beneficial ownership under the AMLO with the proposed threshold of more than 25% to be adopted under the Companies Ordinance.

- **Do you agree that the threshold for determining controlling interest of beneficial ownership under the AMLO should be revised from not less than 10% to more than 25%, to align with the future requirement under the Companies Ordinance?**

### **Consultation and Next Steps**

- 3.36 We wish to hear views from the concerned sectors in formulating our future legislation. We have therefore set out in this consultation document the conceptual framework and key parameters of the legislative proposal as well as the specific questions for consultation.
- 3.37 Stakeholders concerned are invited to offer their views and comments to us by 5 March 2017. Taking into account the views and comments received, and subject to progress in the preparatory work, we aim to introduce a bill into the Legislative Council in the second quarter of 2017.

## CHAPTER 4

### OVERVIEW OF CONSULTATION QUESTIONS

- 4.1 Do you agree with the application of a risk-sensitive approach, whereby the CDD measures to be undertaken by DNFBPs should be commensurate with the risk profiles of customers?
- 4.2 Do you agree that DNFBPs should be subject to enhanced CDD measures when dealing with customers presenting a high risk of money laundering or terrorist financing?
- 4.3 Do you think DNFBPs should be allowed the flexibility to undertake simplified CDD measures on low-risk cases, with reference to the list of eligible customers and products as specified in the AMLO?
- 4.4 Do you think there are other justified addition to the specified list of customers and products eligible for simplified CDD treatment under the AMLO by DNFBPs? If so, what are they; and what are the justifications (please support with statistics where applicable)?
- 4.5 Do you agree that DNFBPs should be subject to a six-year record-keeping requirement on a par with financial institutions?
- 4.6 Do you agree with the proposed designation of the respective regulatory authority for solicitors, accountants, real estate agents and TCSPs?
- 4.7 Do you agree that, instead of introducing one new single regulatory body for solicitors, accountants and estate agents, the prevailing investigation, disciplinary and appeal mechanisms under the respective governing Ordinances of the professions should be relied upon to enforce the statutory CDD and record keeping requirements?
- 4.8 Do you consider it necessary to introduce new criminal sanctions for non-compliance with the statutory CDD and record-keeping requirements under the AMLO by DNFBPs?
- 4.9 Do you think that the Law Society, the HKICPA and the EAA should be given inspection and search powers similar to those available to AML

regulatory authorities for financial institutions under Part 3 of the AMLO?

- 4.10 Do you agree with the provision of a 90-day transitional period for existing TCSP operators to migrate to the new licensing regime?
- 4.11 Do you think the criteria for determining the fitness and properness of TCSPs appropriate? If not, what criteria should be included or excluded?
- 4.12 Do you agree with the three-year validity of a TCSP licence (renewable on application)? If not, what should be the validity period?
- 4.13 Do you agree that any persons operating TCSP business without a valid licence should be liable to criminal sanctions (including a fine at level 6 and/or imprisonment of up to six months)?
- 4.14 Do you agree with the proposed supervisory sanctions for TCSPs in respect of non-compliance with statutory CDD and record-keeping requirements?
- 4.15 Do you agree with the re-constitution of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal to cover appeals against future decisions of the Registrar of Companies in respect of the licensing and disciplinary regime for TCSPs?
- 4.16 Do you agree that the threshold for determining controlling interest of beneficial ownership under the AMLO should be revised from not less than 10% to more than 25%, to align with the future requirement under the Companies Ordinance?