

ANTI-MONEY LAUNDERING (AML) / COUNTER-FINANCING OF TERRORISM (CFT)

Customer Due Diligence and Record Keeping Requirements for Legal Professionals

4 November 2021



Disclaimer

This presentation is intended to provide the audience with information of a general nature that is not based on any specific circumstances. It is not intended to cover all requirements that are applicable to your firm. It should not be regarded as a substitute for seeking advice on any specific case.



OUTLINE

1. Money laundering (ML) risks of Legal Professionals
2. AML/CFT Requirements under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) (Cap. 615)
 - (a) Customer due diligence (CDD)
 - (b) Record-keeping (RK)
3. Targeted Financial Sanctions

1


Money Laundering (ML) Risks of Legal Professionals

1


Money Laundering (ML) Risks of Legal Professionals

International typology

ML risk of legal professional service


 Buying and selling of real estate property

 Management of trusts and companies

 Making introductions for clients

 Creation of trusts and companies

 Managing client account

 Setting up and managing charities

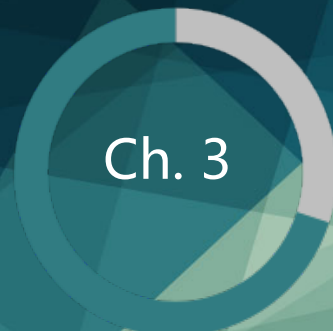


1

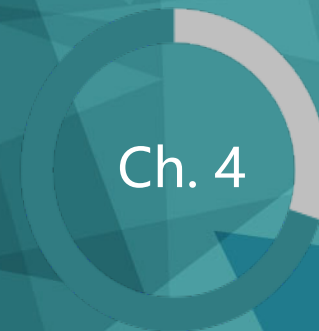
Money Laundering (ML) Risks of Legal Professionals

Local context

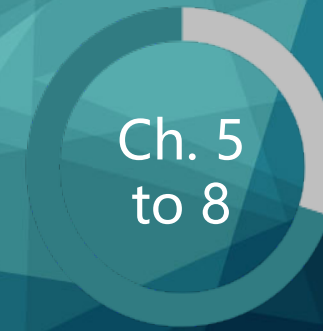
Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report



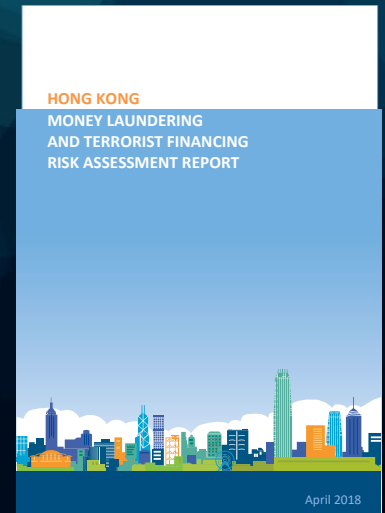
overall
AML/CFT
framework



threats posed
by various
predicate
crimes



sectoral ML
risks



Widely participating in trust or company service business

Conveyancing – transaction of real estate

1

Money Laundering (ML) Risks of Legal Professionals



Guidance for a Risk-Based Approach - Legal Professionals

- ◆ Section III – Guidance for Practitioners
 1. Risk identification and assessment
 2. Variables of risk assessment
 3. Documentation of risk assessment
 4. Risk management and mitigation



Mutual Evaluation Report by Financial Action Task Force (FATF)



Access at -

www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Hong-Kong-2019.pdf

Mutual Evaluation Report - Legal Professions

Take risk-based approach to mitigate their ML/Terrorist Financing (TF) risks

Comprehensive understanding of ML/TF risks

Good understanding of enhanced due diligence measures for higher risk situations

Applied internal controls and independent compliance officer

2

Requirements under AMLO

- (a) Customer Due Diligence (CDD)
- (b) Record-keeping (RK)

2

Requirements under AMLO

❖ AMLO

- Amendments to the Ordinance passed on 24 January 2018
- Commenced on **1 March 2018**
- To extend statutory CDD and RK requirements to **four** Designated Non-financial Businesses and Professions (DNFBPs): legal professionals, accounting professionals, Trust and Company Service Providers (TCSPs) and real estate agents, when they engage in specified transactions
- To introduce a licensing regime for TCSPs administered by the Companies Registry

2

Requirements under AMLO - Legal Professionals

❖ **Defined under Schedule 1, Part 2, Section 1 –**

- a) a solicitor as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159); or
- b) a foreign lawyer as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159)

2

Requirements under AMLO

- Types of Activities for which CDD and RK are Required

- ❖ Under section 5A(3) of AMLO, a legal professional should conduct CDD and keep records when, by way of business, the legal professional in Hong Kong prepares for or carries out for a client a transaction concerning one or more of the following -
 - a. the buying and selling of real estate
 - b. the managing of client money, securities or other assets
 - c. the management of bank, savings or securities accounts
 - d. the organization of contributions for the creation, operation or management of corporations
 - e. the creation, operation or management of –
 - i. legal persons; or
 - ii. legal arrangements
 - f. the buying or selling of business entities
 - g. a service specified in the definition of trust or company service in section 1 of Part 1 of Schedule 1 to the AMLO

2

Requirements under AMLO - CDD requirements

❖ Prescribed in Schedule 2 to AMLO

- identifying the customer and verifying the customer's identity [s. 2(1)(a)]
- identifying the beneficial owner and taking reasonable measures to verify the beneficial owner's identity [s.2(1)(b)]
- obtaining information on the purpose and intended nature of the business relationship, if a business relationship is to be established [s.2(1)(c)]
- if a person purports to act on behalf of the customer [s.2(1)(d)] -
 - a) identifying the person purporting to act on behalf of the customer and taking reasonable measures to verify the person's identity; and
 - b) verifying the person's authority to act on behalf of the customer.

2

Requirements under AMLO - When to Carry out CDD

- ❖ CDD measures must be carried out *[s.3, Schedule 2]* -
 - before establishing business relationship with the customer
 - before carrying out an occasional transaction involving \$120,000 or above
[Note: “occasional transaction” means a transaction with a customer with whom the legal professional does not have a business relationship]
 - when there is a suspicion that the customer or the customer’s account is involved in ML/TF
 - when there are doubts on the veracity or adequacy of the information obtained during CDD process
- ❖ If CDD requirements are not complied with, a business relationship or an occasional transaction with that customer **MUST NOT** be established. If a business relationship has been established, it must be terminated as soon as reasonably practicable *[s.3(4), Schedule 2]*

2

Requirements under AMLO - When to Carry out CDD

- ❖ Exceptional circumstances where identity of customer and any beneficial owner can be verified **AFTER** establishing a business relationship
[s.3 (2), Schedule 2] -
 - any ML/TF risk is effectively managed; and
 - it is necessary not to interrupt the normal conduct of business with regard to that customer; and
- ❖ The verification must be completed as soon as reasonably practicable
[s.3 (3), Schedule 2]

2

Requirements under AMLO - Pre-existing customers

- ❖ Pre-existing customers (i.e. business relationship established before the commencement of amended AMLO on 1 March 2018) [s.6, Schedule 2]
- ❖ Conduct CDD when –
 - an unusual or suspicious transaction takes place; or
 - a transaction not consistent with the legal professional's knowledge of the customer or the customer's business or risk profile, etc., takes place; or
 - a material change occurs in the way in which the customer's account is operated.

2

Requirements under AMLO - Pre-existing customers

If the legal professional fails to comply with the CDD requirements in respect of pre-existing customers, it must terminate the business relationship *[s.6, Schedule 2]*



2

Requirements under AMLO - Ongoing due diligence

Continuously monitor business relationships

[s.5, Schedule 2]



Reviewing from time to time the documents, data and information relating to the customer obtained for the purpose of complying with Part 2 of Schedule 2 to ensure they are up-to-date and relevant



Conducting appropriate scrutiny of transactions carried out for the customer to ensure that they are consistent with the nature of the business, the risk profile and source of funds



Identifying transactions carried out for the customer that are complex, large or unusual or patterns of transactions that have no apparent economic or lawful purpose, and examining the background and purposes of those transactions and setting out its findings in writing

2

Requirements under AMLO

- Special Requirements – Enhanced Due Diligence (EDD)

Customer is not physically present for identification purposes [s. 9, Sch. 2]

Further verifying the customer's identity on the basis of documents, data or information not previously used for the purposes of verification of the customer's identity;

OR

Taking supplementary measures to verify all the information provided by the customer;

OR

Ensuring that the payment or the first payment made in relation to the customer's account is carried out through an account opened in the customer's name with an authorised institution, or a financial institution operating in an equivalent jurisdiction that has measures in place to ensure compliance with AML/CFT requirements similar to those in Schedule 2 and is supervised for compliance with those requirements by a designated authority

2

Requirements under AMLO

- Politically Exposed Persons (PEPs)

- ❖ Defined under Part 1 of Schedule 2 –
 - an individual who is or has been entrusted with a prominent public function in a place **outside** the People’s Republic of China and—
 - a) includes a head of state, head of government, senior politician, senior government, judicial or military official, senior executive of a state-owned corporation and an important political party official; but
 - b) does not include a middle-ranking or more junior official of any of the categories mentioned above;
 - a spouse, a partner, a child or a parent of an individual falling within paragraph (a), or a spouse or a partner of a child of such an individual; or
 - a close associate [s. 1(3), Part 1, Schedule 2] of an individual falling within para. (a)



2

Requirements under AMLO - Special Requirements - EDD

- ❖ Politically Exposed Persons (PEPs) [*s. 10, Sch. 2*]
 - Before establishing a business relationship; or continuing an existing business relationship where the customer or the beneficial owner is subsequently found to be a PEP, carry out the following EDD measures –
 - a. obtain approval from its senior management; and
 - b. take reasonable measures to establish the customer's or the beneficial owner's source of wealth and the source of the funds.

2

Requirements under AMLO - Special Requirements - EDD

- ❖ Other high risk situations [*s. 15, Sch. 2*]
- ❖ Practice Direction "P":
 - complex, unusually large transactions, or an unusual patterns of transactions, which have no apparent economic or lawful purposes
 - overseas companies where corporate information is not readily accessible, or with nominee shareholders, or a significant portion of capital in the form of bearer shares
 - clients from or in non-cooperative countries and territories identified by FATF or other jurisdictions that are known to have insufficiently complied with FATF Recommendations
- ❖ AMLO:
 - Any other situation by its nature presenting a high risk of ML/TF (domestic PEPs may apply)

2

Requirements under AMLO - Special Requirements - EDD

- ❖ Obtain approval from its senior management to establish or continue the business relationship; and
- ❖ either—
 - take reasonable measures to establish the customer's or beneficial owner's source of wealth and the source of the funds that will be involved in the business relationship; or
 - take additional measures to mitigate the risk of money laundering or terrorist financing involved

[s.15(a), Sch. 2]

2

Requirements under AMLO - On-going Due Diligence under High Risk Situations

- ❖ If customer is -
 - not physically present; or
 - a PEP; or
 - involved in other high risk situations
- ❖ Additional measures to compensate for ML/TF risk in monitoring business relationship

2

Requirements under AMLO - Simplified CDD Measures

- ❖ Simplified CDD : no need to identify and verify the beneficial owner when there are **reasonable grounds** to believe that the customer falls within the specified categories [s. 4(3), Schedule 2], or the product related to the transaction is a specified product [s. 4(5), Schedule 2]
- ❖ Other aspects of CDD measures must still be undertaken
- ❖ **Simplified CDD is not allowed when there are –**
 - suspicions of the customers involved in ML or TF
 - doubts on the veracity or adequacy of information obtained during the CDD process

2

Requirements under AMLO - Record-keeping

- ❖ Duty to keep records [*s. 20, Schedule 2*]
- ❖ In relation to a **transaction** –
 - original or a copy of the documents, and a record of the data and information, obtained in connection with the transaction
- ❖ For **transactions**, maintain records on transactions for at least **5 years** beginning on the date on which the transaction is completed

2

Requirements under AMLO - Record-keeping

- ❖ In relation to a **customer** –
 - original or a copy of the documents, and a record of the data and information, obtained in the course of identifying and verifying the identity of the customer or any beneficial owner of the customer
 - original or a copy of the files relating to the customer's account and business correspondence with the customer and any beneficial owner of the customer
- ❖ For **customers**, maintain records throughout the continuance of business relationship and for at least 5 years after the end of the business relationship

2

Requirements under AMLO - Reliance on Intermediaries to carry out CDD

- ❖ Legal professionals may carry out CDD measures by means of intermediaries [*s. 18, Sch. 2*]
- ❖ Intermediaries include –
 - an accounting professional;
 - an estate agent;
 - a legal professional;
 - a TCSP licensee;
 - an authorised financial institution; and
 - intermediaries in an equivalent jurisdiction, which are regulated under the law of that jurisdiction, have measures to ensure compliance with AML/CFT requirements and are supervised for compliance
- ❖ The legal professional remains liable under the AMLO for a failure to carry out CDD measure.

2

Requirements under AMLO - Sanctions

Non-compliance with the requirements will be handled in accordance with the prevailing investigation and disciplinary mechanism under the Legal Practitioners Ordinance (“LPO”), Cap. 159.

3

Targeted Financial Sanctions

3

Targeted Financial Sanctions - Terrorist Financing

Terrorist Financing Risk of Hong Kong

United Nations
(Anti-Terrorism
Measures)
Ordinance
Cap. 575


**Medium-low
Risk**

No confirmed
case of TF
activity

3

Targeted Financial Sanctions - Terrorist Financing



UNATMO



Under the UNATMO, the Government has implemented measures on prevention of terrorist acts, including –

- ✧ publishing in the Gazette a notice of persons or organizations designated by the UN or specified by the court as terrorists/terrorist associates
- ✧ freezing terrorist property
- ✧ prohibition on providing/collecting property to commit terrorist acts
- ✧ prohibition on making property/financial services available to or collecting property/soliciting financial services for terrorists/terrorist associates
- ✧ prohibition on dealing with specified terrorist property or property of specified terrorists/terrorist associates
- ✧ prohibition on providing/collecting property to finance or organizing/facilitating the travel of foreign terrorist fighters

3

Targeted Financial Sanctions

- Proliferation Financing of Democratic People's Republic of Korea (North Korea) and Iran

United Nations Sanctions Ordinance (Cap. 537)

- United Nations Sanctions (Democratic People's Republic of Korea) Regulation (Cap.537AE)
- United Nations Sanctions (Joint Comprehensive Plan of Action - Iran) Regulation (Cap.537BV)

Targeted Financial Sanctions:

- ✧ NOT to make available or deal with economic assets of:
 - (i) individuals or entities **designated** by the United Nations Security Council, and
 - (ii) individuals or entities **acting on behalf of, or at the direction of, or owned or controlled by (i)**

3

Targeted Financial Sanctions - Terrorist Financing and Proliferation

UNITED NATIONS (ANTI-TERRORISM MEASURES) ORDINANCE
(Chapter 575)

Updating of specification of names of persons designated as
terrorists or terrorist associates by the
Committees of the United Nations Security Council established pursuant to
the Resolutions 1267 (1999), 1989 (2011) and 2253 (2015),
as well as the Resolution 1988 (2011)
(the Committees)

*Publishing in the Gazette a notice of
persons or organisations designated
by the United Nations as terrorists /
terrorist associates*

<https://www.sb.gov.hk/eng/special/terrorist/terrorist.html>

**List of relevant persons and relevant entities published under section 31 of
the United Nations Sanctions (Democratic People's Republic of Korea)
Regulation**

(updated on 9 August 2018, 10:00 a.m.)

*Lists of individuals and entities
designated by the United Nations
Security Council*

www.cedb.gov.hk/citb/en/Policy_Responsibilities/united_nations_sanctions.html

THANK YOU

Narcotics Division, Security Bureau

www.nd.gov.hk

