

ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING ORDINANCE

Customer Due Diligence and Record Keeping Requirements

25 October 2019





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 relevant requirements under the Ordinance. It should not be regarded as a substitute for seeking advice on any specific case from your own professional adviser.



Content

1 Money Laundering (ML) Risk of Estate Agents

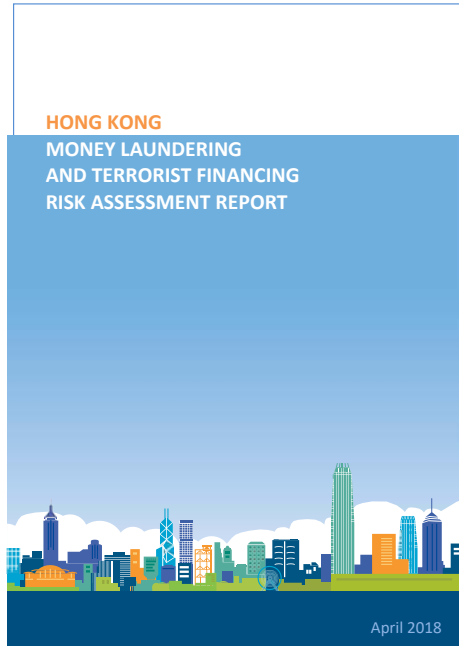
2 Requirements under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO), Cap. 615

- (a) Customers due diligence (CDD)
- (b) Record-keeping (RK)

3 Targeted Financial Sanctions



Money Laundering Risk of Estate Agents



Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report

Chapter 4 – threats posed by various predicate crimes

Chapters 5 to 8 – sectoral ML risks

Chapter 6 – Designated Non-Financial Businesses and Professions (including estate agents)

Chapter 9 – Terrorist Financing Risk



Money Laundering Risk of Estate Agents



Conversion of crime proceeds into real estate

Hong Kong has an active property market due to its open economy

Estate agent sector be one of the Hong Kong's gatekeepers in real estate transactions



Anti-Money Laundering and Counter-Terrorist Financing Measures — Mutual Evaluation Report of Hong Kong, China

- assesses the compliance and effectiveness of Hong Kong's anti-money laundering and counter-terrorist financing (AML/CTF) regime against the international standards
- Hong Kong's AML/CTF regime is assessed to be compliant and effective overall
- Hong Kong has a strong legal foundation and effective system for combating ML/TF
- particularly effective in the areas of risk identification, law enforcement, asset recovery, counter-terrorist financing and international co-operation



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



Requirements under AMLO



Customer Due Diligence

Record-keeping



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** DNFBPs: legal professionals, accounting professionals, TCSPs and real estate agents, when they engage in specified transactions



Legal
Professionals



Accounting
Professionals



When engaged in specified transactions



Estate
Agents



Trust or Company
Service Providers



Requirements under AMLO



Specified Transactions



Applies when the estate agent is involved, in Hong Kong, in a transaction concerning the buying or selling of real estate for a client

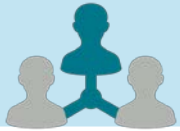
section 5A(4)



Customer Due Diligence



Identify and verify the identity of the customer



Identify and verify the identity of the beneficial owner



Purpose of business relationship



Person purports to be acting on behalf of the customer



Customer Due Diligence



What are CDD Measures *[Schedule 2 to AMLO]*

- ✓ Identifying and verifying the identity of the customer *[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.



Customer Due Diligence



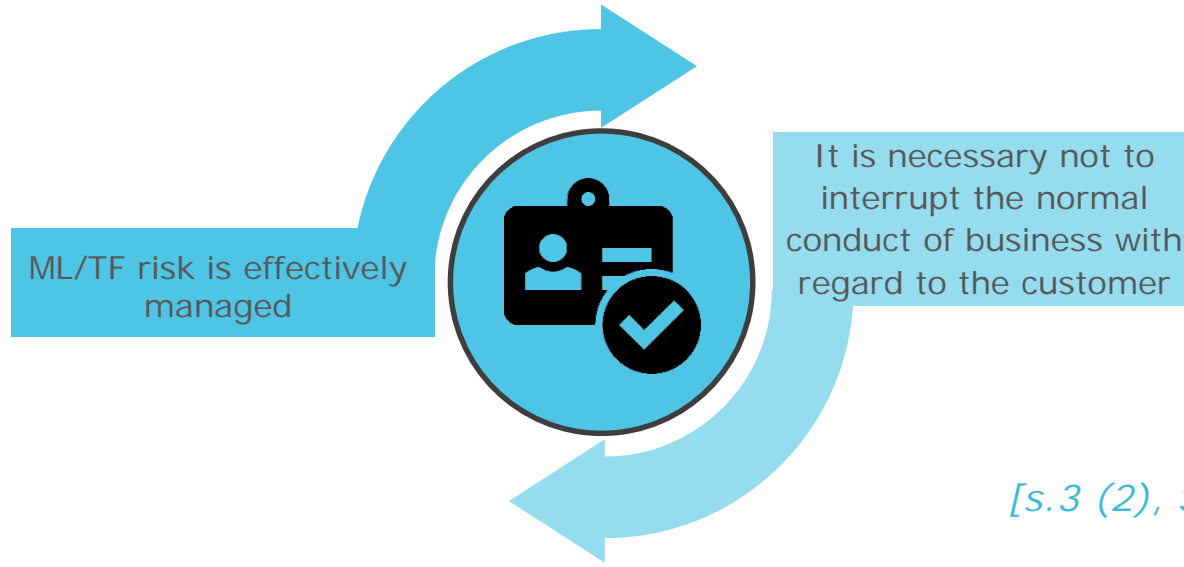
When to Carry Out CDD

- ☑ Conduct CDD *[s.3, Schedule 2]* —
 - ▶ before establishing business relationship with the customer
[Note: according to the guidelines of the Estate Agents Authority, a property viewing arranged by a licensee and attended by a prospective purchaser does not constitute 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 **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]*

Customer Due Diligence



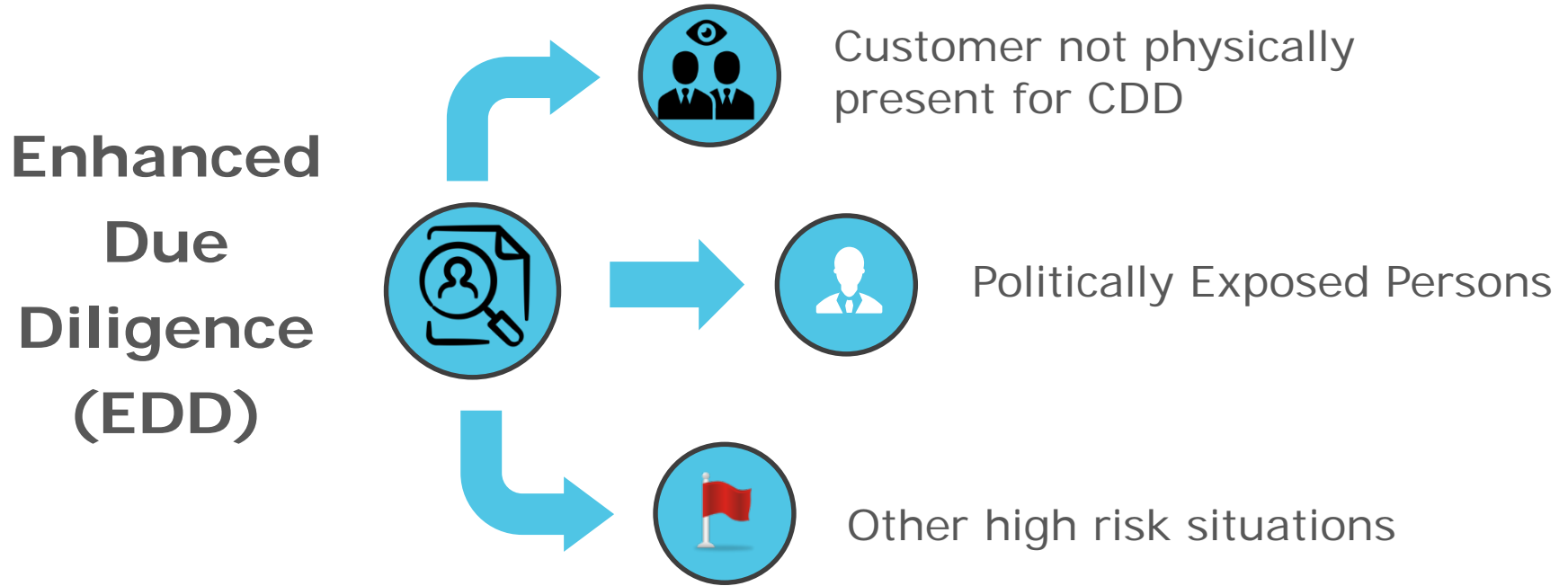
May verify the identity of customer and beneficial owner after establishing a business relationship if --



[s.3 (2), Schedule 2]



Customer Due Diligence - Special Requirements



Customer is not physically present for identification purposes



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 of the AMLO and is supervised for compliance with those requirements by a designated authority



Customer Due Diligence - Special Requirements



Politically Exposed Persons (PEPs)

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)

[Part 1, Sch. 2]



Customer Due Diligence - Special Requirements



Politically Exposed Persons (PEPs)

Knowing that the customer or beneficial owner is a PEP, carry out the following EDD measures -

- obtain approval from its senior management; and
- take reasonable measures to establish the customer's or the beneficial owner's source of wealth and the source of the funds.



[s. 10, Sch. 2]

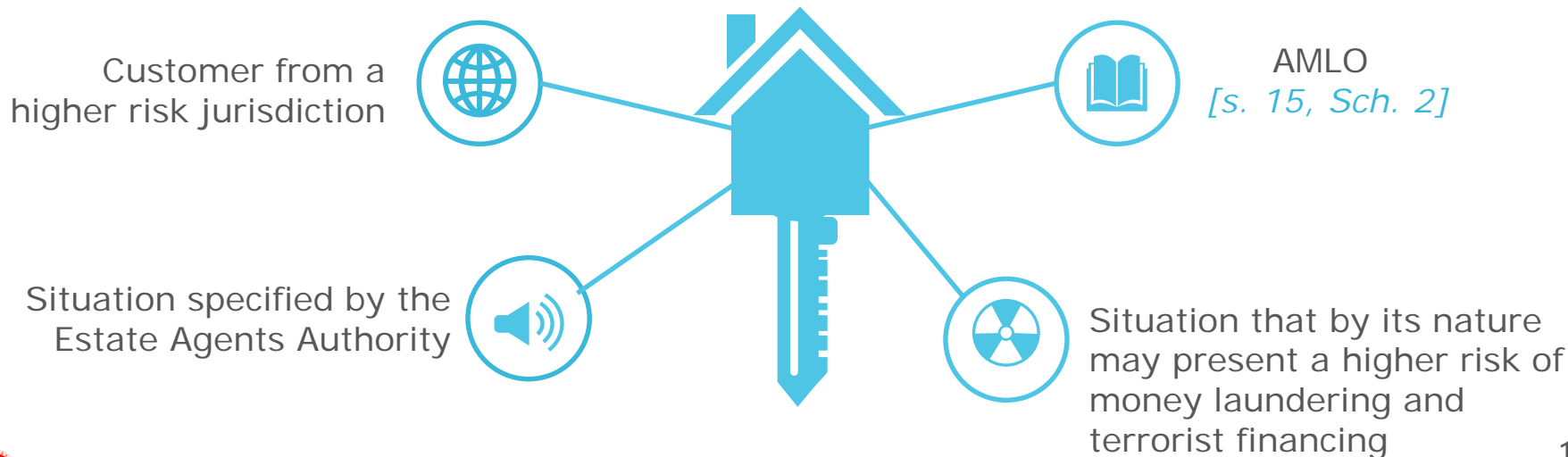


Customer Due Diligence - Special Requirements



Other high risk situations

Estate Agents Authority's *Guidelines on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for the Estate Agency Sector*
(Practice Circular No. 18-01(CR))



Customer Due Diligence - Special Requirements



Other high risk situations - Enhanced due diligence (EDD)

- ✓ obtain approval from its senior management to establish or continue the business relationship; and
- ✓ either—
 - a) 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
 - b) take additional measures to mitigate the risk of money laundering or terrorist financing involved

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



Customer Due Diligence – Special Requirements



Simplified Customer Due Diligence

When there are **reasonable grounds to believe** -



the customer falls within the specified categories

[s. 4(3), Sch. 2]



no need to identify and verify the beneficial owner

[s. 4, Sch. 2]

Customer Due Diligence – Special Requirements



Simplified CDD is not allowed when there are –



suspensions of the customers involved in money laundering or terrorist financing



doubts on the veracity or adequacy of information obtained during the CDD process

[s. 4(1), Sch. 2]



Record-keeping



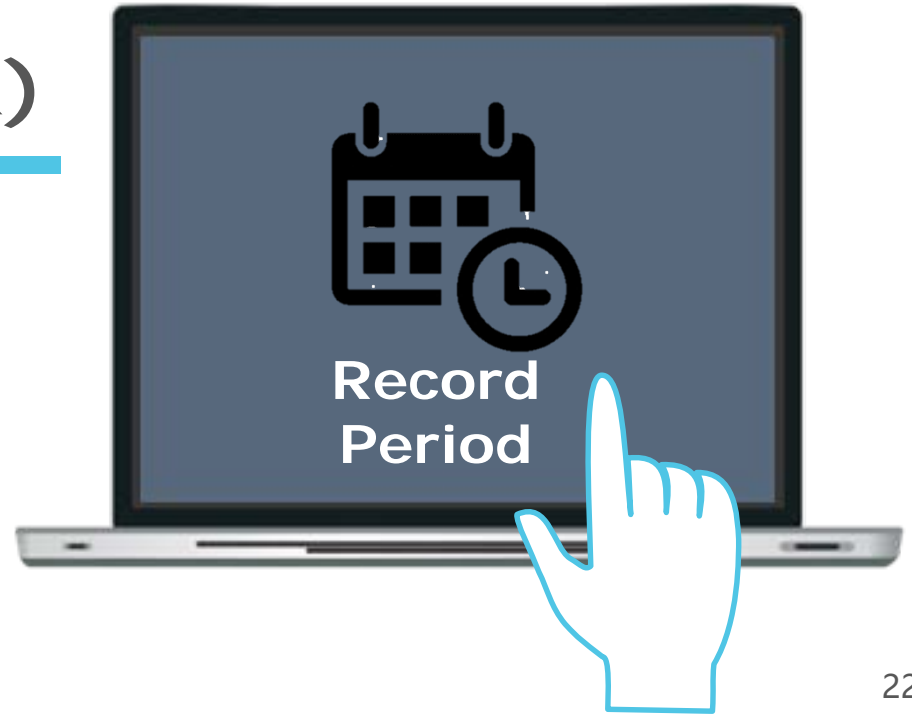
Record-keeping (RK)



Customers



Transactions



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

AND

original or a copy of the files relating to the **business correspondence** with the customer and any beneficial owner of the customer



maintain records for at least **5 years** beginning on the date on which **the business relationship ends**

original or a copy of the documents, and a record of the data and information, obtained **in connection with the transaction**

maintain **records on transactions** for at least **5 years**



In relation to a Transaction

[s. 20, Sch. 2]



Sanctions

Non-compliance with the requirements will be handled in accordance with the prevailing investigation and disciplinary mechanism under the Estate Agents Ordinance (EAO), Cap. 511

[sections 27(h), 28(1), 29(1)(e) and 30, EAO]



Targeted Financial Sanctions



Hong Kong ML/TF Risk Assessment Report

Hong Kong has a **medium-low** TF risk



Legal framework

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

Cases of TF activities

Hong Kong has **NO** confirmed case





publishing in the Gazette a notice of persons or organizations designated by the UN or specified by the court as terrorists/terrorist associates



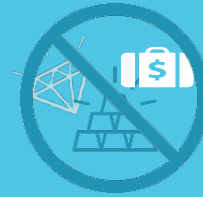
prohibition on providing/collecting property to commit terrorist acts



prohibition on dealing with specified terrorist property or property of specified terrorists / terrorist associates



United Nations (Anti-Terrorism Measures) Ordinance (UNATMO)



freezing terrorist property



prohibition on making property / financial services available to or collecting property/soliciting financial services for terrorists/terrorist associates



prohibition on providing/collecting property to finance or organizing/facilitating the travel of foreign terrorist fighters

Targeted Financial Sanctions

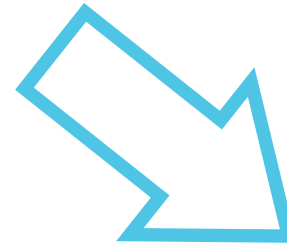


Proliferation financing of weapons of mass destruction

**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



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)***





United Nations Security Council Consolidated List

Generated on: 18 October 2019

"Generated on refers to the date on which the user accessed the list and not the last date of substantive update to the list. Information on the substantive list updates are provided on the Council / Committee's website."

Composition of the List

The list consists of the two sections specified below:

A. Individuals

B. Entities and other groups

Information about de-listing may be found at:

<https://www.un.org/securitycouncil/ombudsperson> (for res. 1267)

<https://www.un.org/securitycouncil/sanctions/delisting> (for other Committees)

<https://www.un.org/securitycouncil/content/2231/list> (for res. 2231)

A. Individuals

KPi.033 Name: 1: RI 2: WON HO 3: 4: na

Title: na **Designation:** DPRK Ministry of State Security Official **DOB:** 17 Jul. 1964 **POB:** na **Good quality a.k.a.:** na **Low quality a.k.a.:** na **Nationality:** Democratic People's Republic of Korea **Passport no.:** 381310014 **National identification no.:** na **Address:** na **Listed on:** 30 Nov. 2016 **Other information:** Ri Won Ho is a DPRK Ministry of State Security Official stationed in Syria supporting KOMID.

KPi.037 Name: 1: CHANG 2: CHANG HA 3: 4: na

Title: na **Designation:** President of the Second Academy of Natural Sciences (SANS) **DOB:** 10 Jan. 1964 **POB:** na **Good quality a.k.a.:** Jang Chang Ha **Low quality a.k.a.:** na **Nationality:** Democratic People's Republic of Korea **Passport no.:** na **National identification no.:** na **Address:** na **Listed on:** 30 Nov. 2016 **Other information:**

KPi.038 Name: 1: CHO 2: CHUN RYONG 3: 4: na

Title: na **Designation:** Chairman of the Second Economic Committee (SEC) **DOB:** 4 Apr. 1960 **POB:** na **Good quality a.k.a.:** Jo Chun Ryong **Low quality a.k.a.:** na **Nationality:** Democratic People's Republic of Korea **Passport no.:** na **National identification no.:** na **Address:** na **Listed on:** 30 Nov. 2016 **Other information:**

KPi.034 Name: 1: JO 2: YONG CHOL 3: 4: na

Title: na **Designation:** DPRK Ministry of State Security Official **DOB:** 30 Sep. 1973 **POB:** na **Good quality a.k.a.:** Cho Yong Chol **Low quality a.k.a.:** na **Nationality:** Democratic People's Republic of Korea **Passport no.:** na **National identification no.:** na **Address:** na **Listed on:** 30 Nov. 2016 **Other information:** Jo Yong Chol is a DPRK Ministry of State Security Official stationed in Syria supporting KOMID.

KPi.035 Name: 1: KIM 2: CHOL SAM 3: 4: na

Title: na **Designation:** Representative for Daedong Credit Bank (DCB) **DOB:** 11 Mar. 1971 **POB:** na **Good quality a.k.a.:** na **Low quality a.k.a.:** na **Nationality:** Democratic People's Republic of Korea **Passport no.:** na **National identification no.:** na **Address:** na **Listed on:** 30 Nov. 2016 **Other information:** Kim Chol Sam is a representative for Daedong Credit Bank (DCB) who has been involved in managing transactions on behalf of DCB Finance Limited. As an overseas-based representative of DCB, it is suspected that Kim Chol Sam has facilitated transactions worth hundreds of thousands of dollars and likely managed millions of dollars in DPRK related accounts with potential links to nuclear/missile programs.

Targeted Financial Sanctions

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)

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

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

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.)

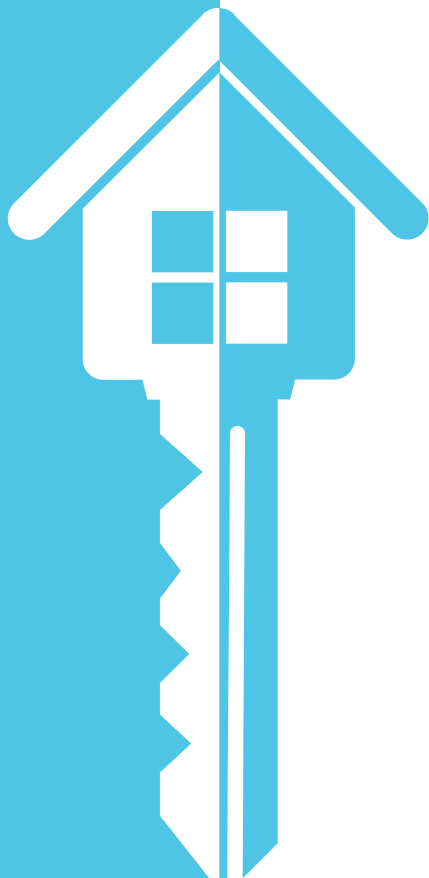
United Nations Sanctions Ordinance (Cap. 537)

*Lists of individuals and entities designated by the United Nations Security Council for financial sanctions against a number of jurisdictions (special attention to be paid to the lists on **DPRK and Iran** for their involvement of proliferation of weapons of mass destruction)*

https://www.cedb.gov.hk/citb/tc/Policy_Responsibilities/united_nations_sanctions.html



Reference



Financial Action Task Force

www.fatf-gafi.org

Financial Services and
the Treasury Bureau

[https://www.fstb.gov.hk/
fsb/aml/tc/overview.htm](https://www.fstb.gov.hk/fsb/aml/tc/overview.htm)

Narcotics Division
Security Bureau

www.nd.gov.hk

Joint Financial
Intelligence Unit

www.jfiu.gov.hk



Thank you

 Real Estate

