

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

Customer Due Diligence and Record Keeping Requirements for Accounting Professional

17 December 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.



Content



01 ML risks – Accounting Professional

02 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)

03 Targeted Financial Sanctions

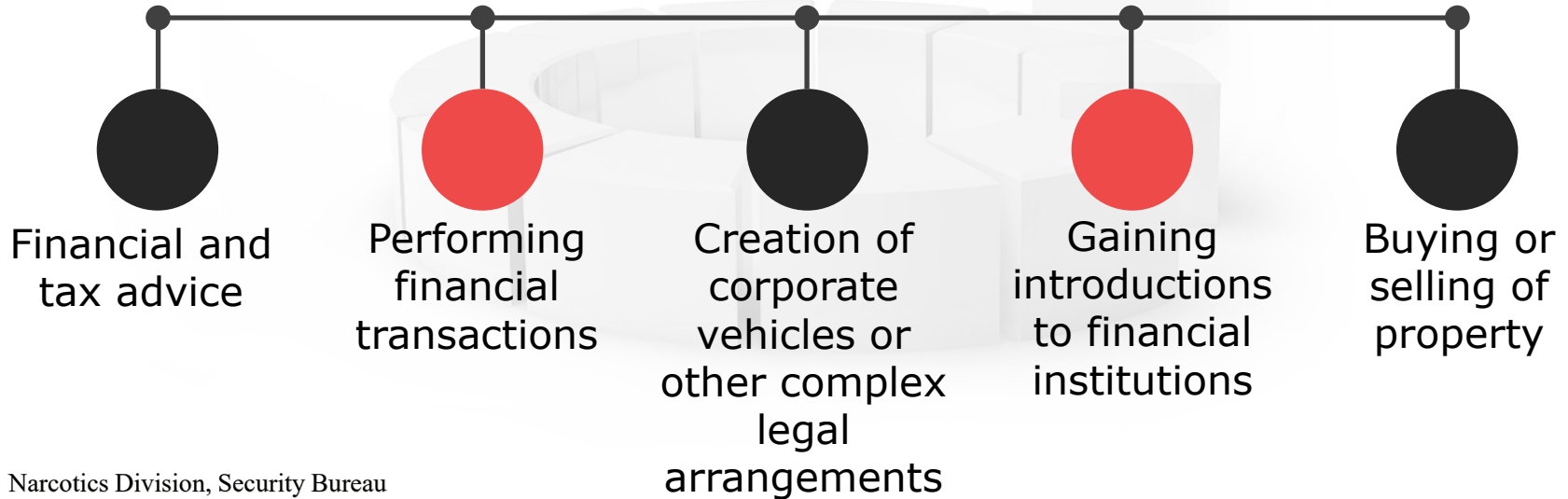


01 Money Laundering (ML) Risks of Accounting Professional



ML Risks of Accounting Professional

International typology



HONG KONG

MONEY LAUNDERING
AND TERRORIST FINANCING
RISK ASSESSMENT REPORT

April 2018

Local context

Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report

https://www.fstb.gov.hk/fsb/aml/en/doc/hk-risk-assessment-report_e.pdf



ML Risks of Accounting Professional

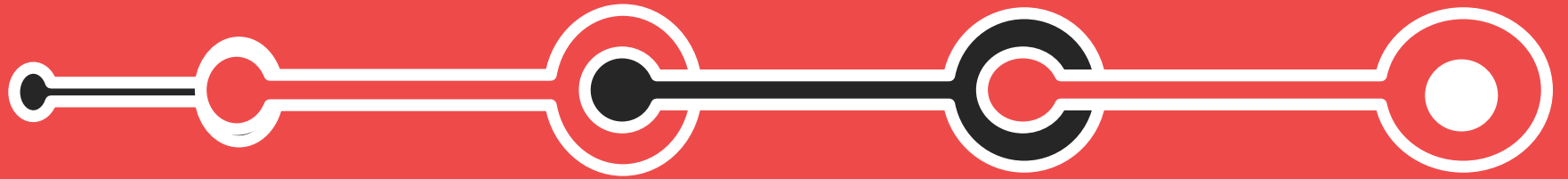
Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report

Chapter 4

Chapter 5 - 8

Chapter 6

Chapter 9



threats posed
by various
predicate crimes

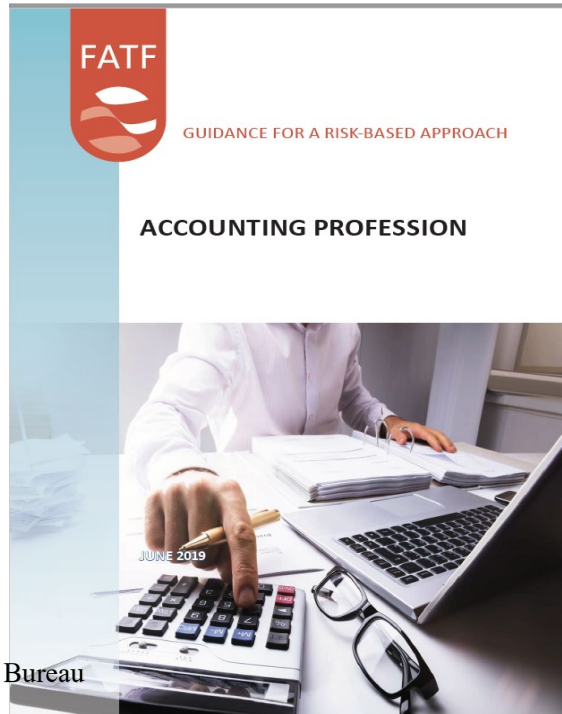
sectoral ML
risks

designated non-
financial
businesses and
professions

risk of financing
for terrorism



Guidance for a Risk-Based Approach – Accounting Profession



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



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



ME Assessment – Accounting Profession

Take risk-based approach to mitigate their ML/TF risks



Comprehensive understanding of ML/TF risks



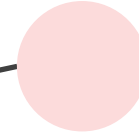
Good understanding of enhanced due diligence measures for higher risk situations



Applied internal controls and independent compliance officer



Low level of suspicious transaction reports



02 AML/CFT Requirements under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) (Cap. 615)



Requirements under AMLO



Commenced on
1 March 2018



Extends statutory CDD and RK requirements to **four** DNFBPs: legal professionals, accounting professionals, TCSPs and real estate agents, when they engage in specified transactions



Introduces a licensing regime for TCSPs administered by the Companies Registry

Requirements under AMLO

**Customer Due
Diligence**

Record-keeping





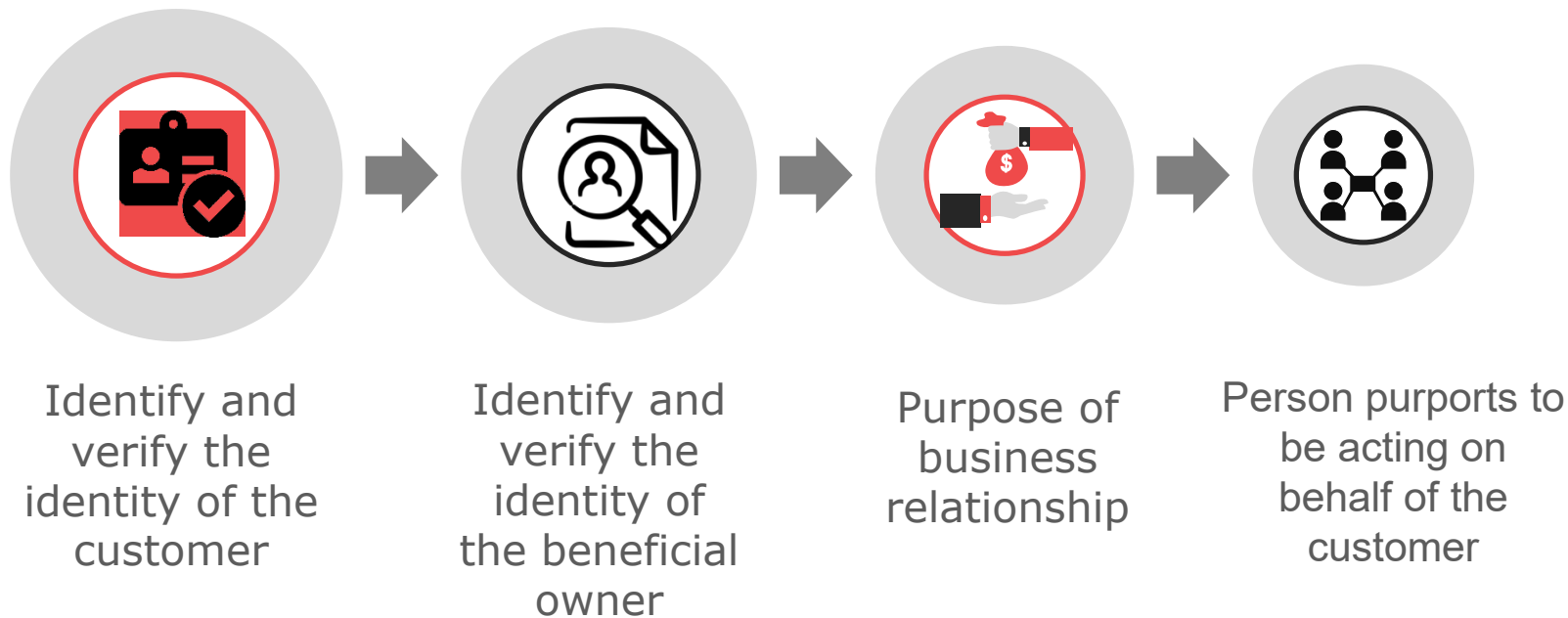
Under section 5A(3) of AMLO, an accounting professional should conduct CDD and keep records when, by way of business, the accounting professional in Hong Kong prepares for or carries out for a client a transaction concerning one or more of the following -

Specified Transactions

- 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 organisation 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



Customer Due Diligence



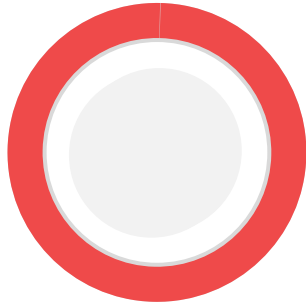
Customer Due Diligence

[Schedule 2 to AMLO]

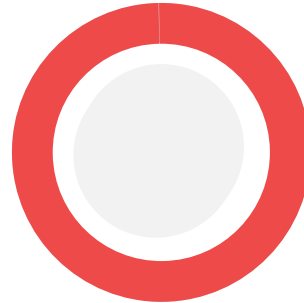
- ✓ Identifying and verifying the identity of the customer [s. 2(1)(a)]
- ✓ Identifying the **beneficial owner** and taking reasonable measures to verify the beneficial owner's identity [s.2(1)(b)]
- ✓ Obtaining information on the **purpose and intended nature of the business relationship**, if a business 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.

When to Carry Out CDD

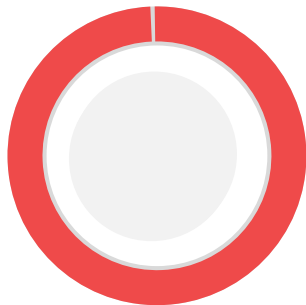
Conduct CDD when – *[s.3, Schedule 2]*—



before establishing
business
relationship with
the customer

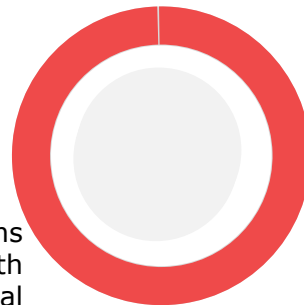


when there is a
suspicion that the
customer or the
customer's account
is involved in ML/TF



before carrying out an
occasional transaction
involving \$120,000 or
above

[Note: "occasional transaction" means
a transaction with a customer with
whom the accounting professional
does not have a business relationship]



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

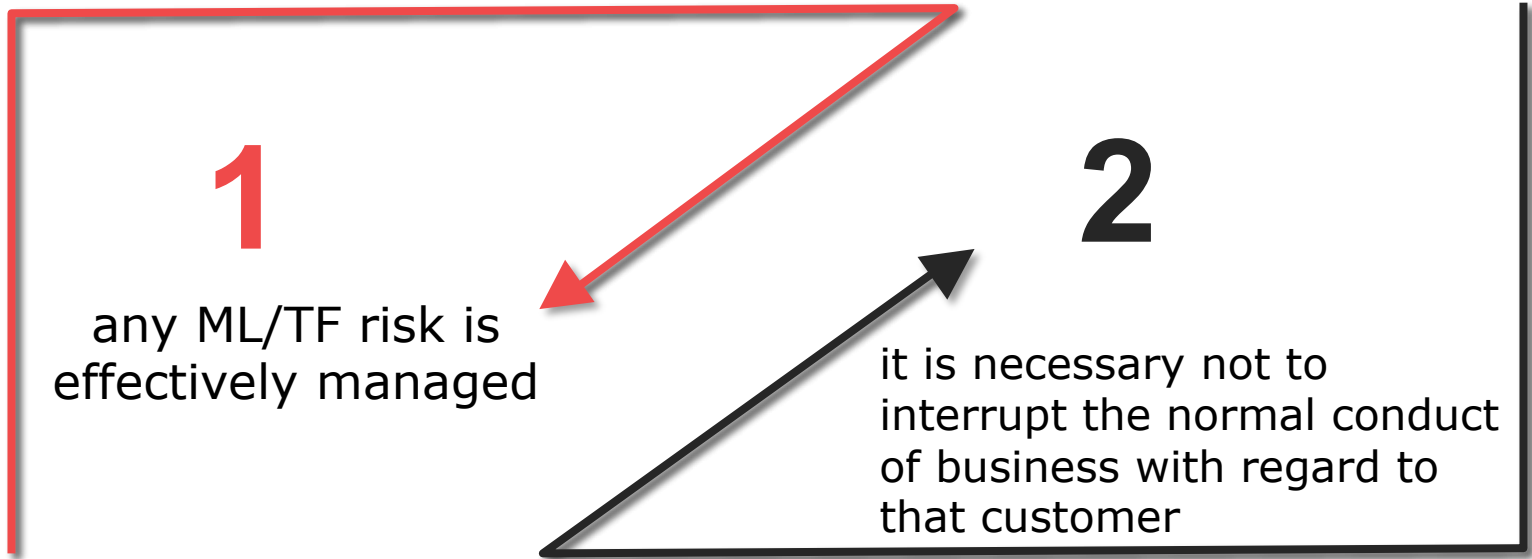


If CDD requirements are not complied with, a business relationship or an occasional transaction with that customer **MUST NOT** be established. If a business relationship has been established, it must be terminated as soon as reasonably practicable *[s.3(4), Schedule 2]*



When to Carry Out CDD

Exceptional circumstances where identity of customer and any beneficial owner can be verified **AFTER** establishing a business relationship



The verification must be completed as soon as reasonably practicable
[s.3 (3), Schedule 2]

Ongoing Due Diligence Requirement

Continuously monitor business relationships

[s.5, Schedule 2]

Identifying transactions 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

3



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

Monitoring the transactions conducted for the customer to ensure that they are consistent with the nature of the business, the risk profile and source of funds



When to Carry Out CDD



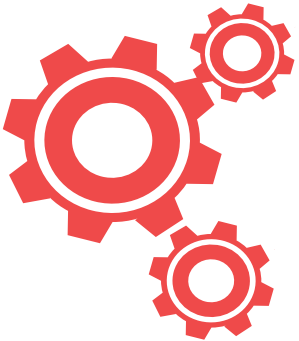
Enhanced Due Diligence (EDD)



Enhanced Due Diligence



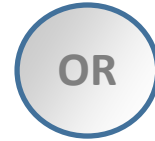
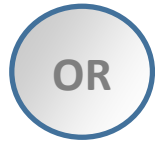
Customer is not physically present for identification purposes



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

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

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

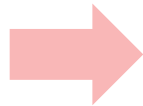


Enhanced Due Diligence

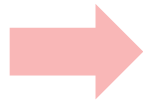
Politically Exposed Persons

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]



Enhanced Due Diligence

Politically Exposed Persons

[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 –



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 that are involved in the business transaction



Enhanced Due Diligence

Other high risk situations [s. 15, Schedule 2]

Guidelines on Anti-Money Laundering and Counter-Terrorist Financing for Professional Accountants

Risk Factors in
Appendix B



Enhanced Due Diligence

- ☑ 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), Schedule 2]



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 relations

[s. 5, Schedule 2]



Simplified Customer Due Diligence



when there are **reasonable grounds** to believe that the customer falls within the specified categories
[s. 4(3), Schedule 2],



the transaction belongs to specified products
[s. 4(5), Schedule 2]



No need to identify and verify the beneficial owner
[s. 4, Schedule 2]



Other aspects of CDD measures must still be undertaken

Simplified Customer Due Diligence



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), Schedule 2]



Record-keeping

Duty to keep records

[s. 20, Schedule 2]



Client



**Record
Period**



Transaction

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**



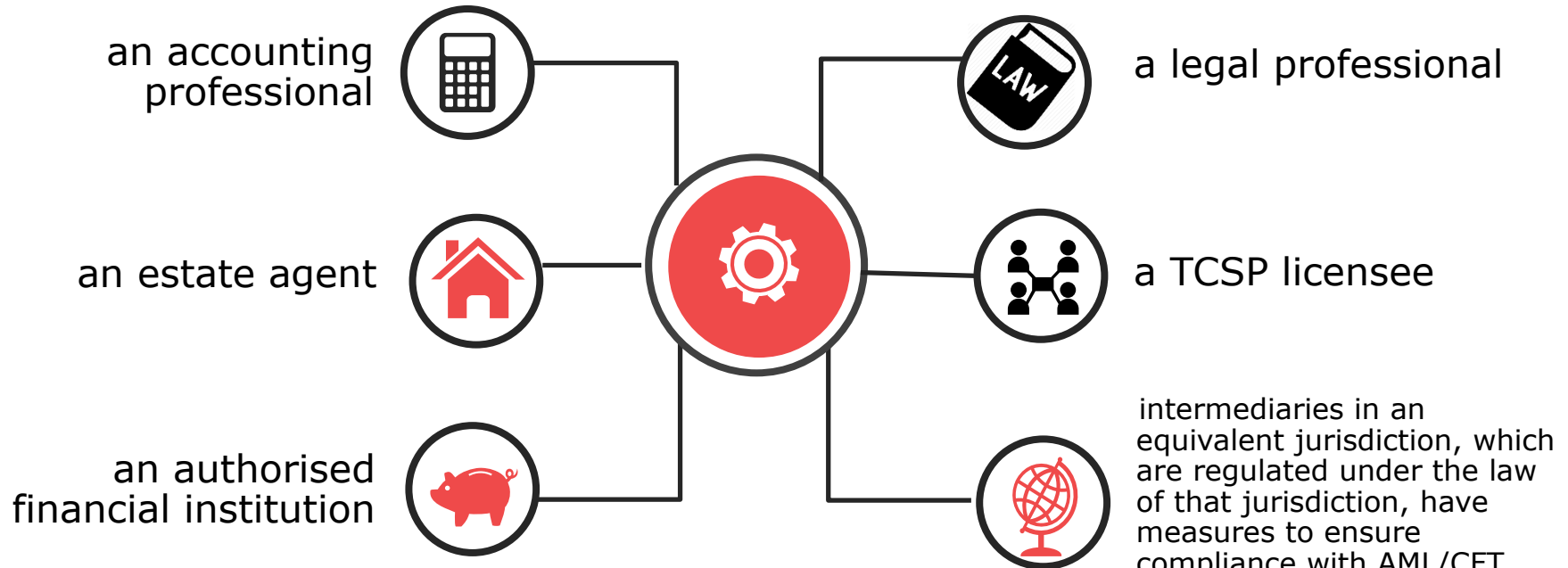
In relation to a Transaction

[s.20, Schedule 2]



Reliance on Intermediaries to carry out CDD

[s. 18, Schedule 2]



↑ The accounting professional remains liable under the AMLO for a failure to carry out CDD measure



Penalties

Non-compliance with the requirements will be handled in accordance with the prevailing investigation and disciplinary mechanism under the Professional Accountants Ordinance (PAO), Cap. 50 *[section 34(1)(a)(xiii) and (xiv), PAO]*

Effective on 1 March 2018

Guidelines on Anti-Money Laundering and Counter-Terrorist Financing for Professional Accountants

(These guidelines form part of the
code of ethics)

February 2018



Refer to the sector-specific guideline published by the Hong Kong Institute of Certified Public Accountants



“In considering whether a person has contravened a provision of Schedule 2, a relevant authority or a regulatory body must have regard to any provision in the guideline published under this section that is relevant to the requirement.” *[s. 7(5)]*



03. Targeted Financial Sanctions



Targeted Financial Sanctions



Hong Kong ML/TF Risk Assessment Report

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



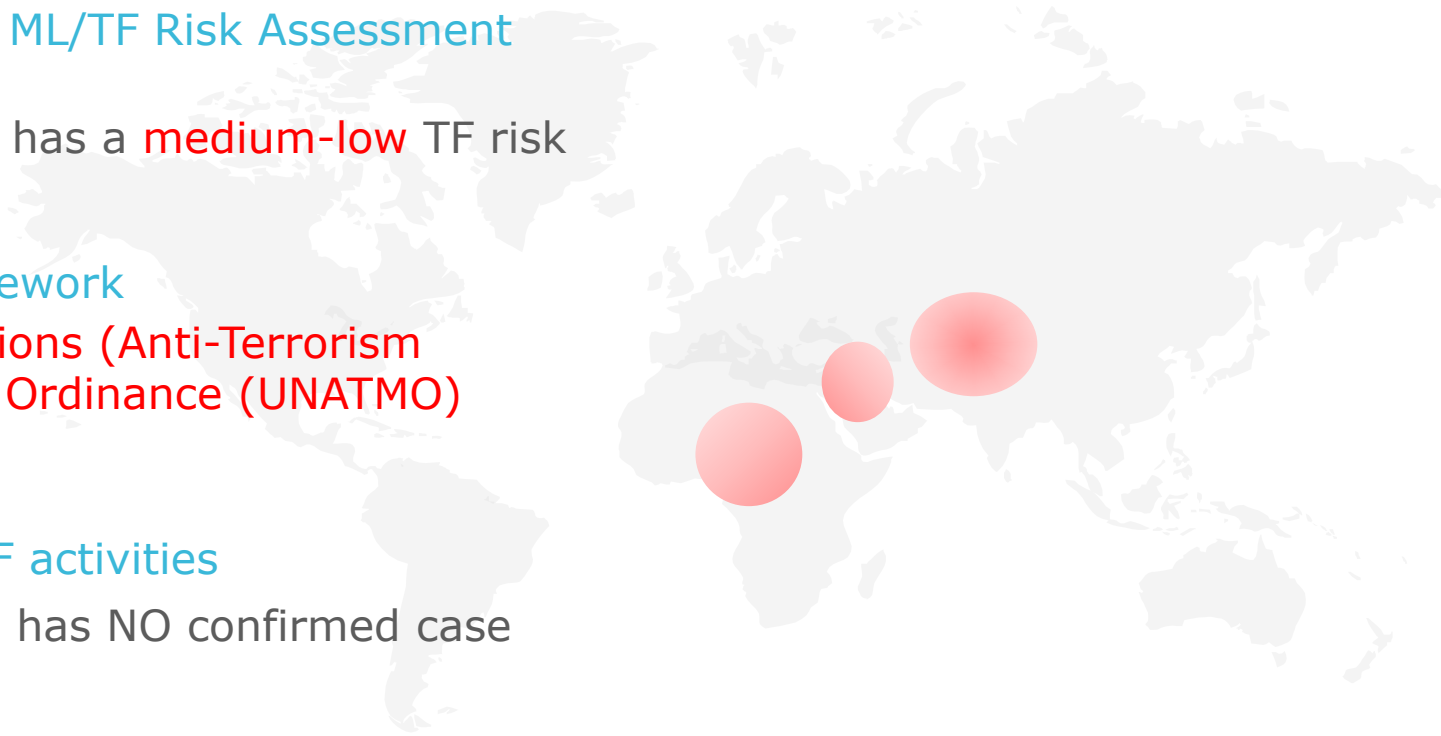
Legal framework

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



Cases of TF activities

Hong Kong has NO confirmed case





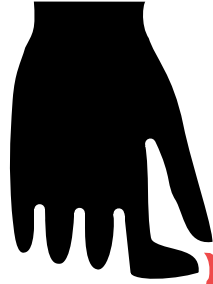
publishing in the Gazette a notice of persons or organizations designated by the UN or specified by the court as terrorists/terrorist associates



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

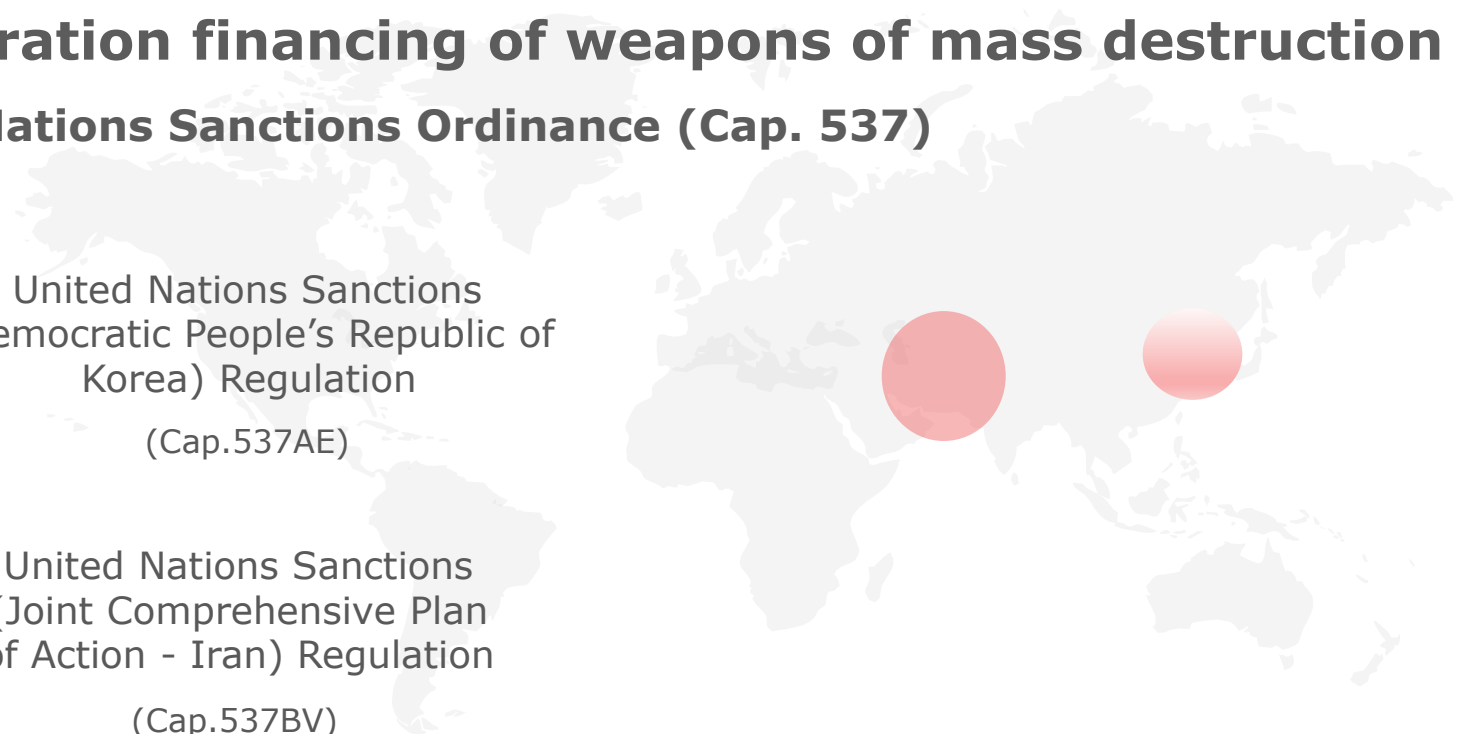
Proliferation financing of weapons of mass destruction United Nations Sanctions Ordinance (Cap. 537)

01

United Nations Sanctions
(Democratic People's Republic of
Korea) Regulation
(Cap.537AE)

02

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

United Nations Sanctions
(Joint Comprehensive Plan of Action - Iran) Regulation

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)***



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

<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.)

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/en/Policy_Responsibilities/united_nations_sanctions.html



Reference

Financial Action Task Force

www.fatf-gafi.org

Financial Services and the Treasury Bureau

www.fstb.gov.hk/

Narcotics Division, Security Bureau

www.nd.gov.hk

Joint Financial Intelligence Unit

www.jfiu.gov.hk



Thank You

