



保安局禁毒處
Narcotics Division,
Security Bureau

Anti-Money Laundering & Counter-Terrorist Financing

A Practical Guide for:
Accountants
Estate Agents
Precious Metals and Precious Stones Dealers
Trust and Company Service Providers

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PART 1

The Objectives



- 1.1** This guide is designed to help accountants, estate agents, precious metals and precious stones dealers and trust and company service providers, and their employees, gain a better understanding of the following:
- money laundering and terrorist financing;
 - suspicious transaction reporting and suspicious activity indicators;
 - customer due diligence and record keeping; and
 - international regulatory standards.
- 1.2** After reading this guide, you should be able to:
- understand your responsibilities in respect of anti-money laundering and counter-terrorist financing;
 - appreciate the risks of money laundering and terrorist financing specific to your sector;
 - identify suspicious transactions in the course of your business; and
 - understand your legal obligations to report suspicious transactions.
- 1.3** This guide consists of five parts. The first part (**The Objectives**) covers the objectives to be achieved. The second part (**International Standards and Way Forward**) covers the latest international developments and the way forward to comply with the international standards. The third part (**The Basics**) provides a basic introduction to anti-money laundering and counter-terrorist financing. The fourth part (**The Risks**) sets out examples of suspicious activity indicators specific to each sector; and explains, by means of case examples, how your sector can be abused for money laundering and terrorist financing. The last part (**Quiz**) comprises a short quiz of 25 questions to test how much you have learned from this guide.



PART 2

International Standards and Way Forward

2.1 The Financial Action Task Force on Money Laundering (FATF) is an inter-governmental body formed in 1989. It sets international standards, develops and promotes policies to combat money laundering and terrorist financing. It currently has 34 members and 30 international and regional organisations which are associate members or observers. Hong Kong has been a member of FATF since 1991.



2.2 The original FATF Forty Recommendations, which set the international standards against money laundering, were first drawn up in 1990. The Recommendations were revised in 1996 and 2003. In 2001, the FATF expanded its mandate to deal with the issue of the financing of terrorism, and introduced the Special Recommendations against terrorist financing. The latest version of the Forty Recommendations

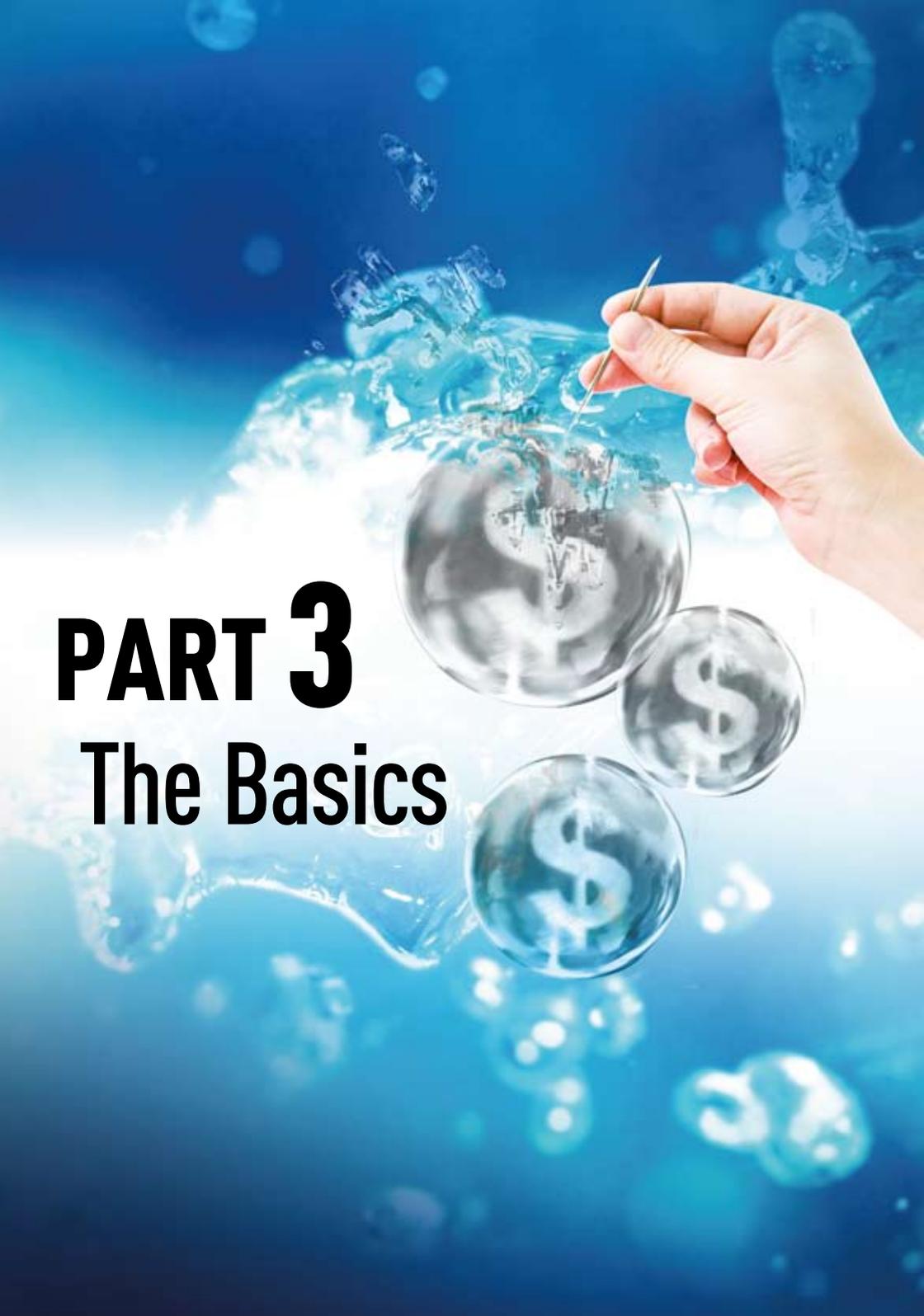
extend the anti-money laundering requirements to six Designated Non-financial Businesses and Professions, which include accountants, casinos, estate agents, lawyers, precious metals and precious stones dealers, and trust and company service providers. Similar to financial institutions, they are required to conduct **customer due diligence, record keeping and suspicious transaction reporting**. The Recommendations specifically require these three requirements to be stipulated in the laws of the member jurisdictions. While the suspicious transaction reporting obligation has already been set out in the relevant legislation of Hong Kong, legislation for the obligations of customer due diligence and record keeping would be our next task. You may then be required by law to, when doing a transaction with a customer, with or without a threshold:

- ask the customer to produce his/her proof of identity for your inspection;
- identify the beneficiary of the transaction (if the transaction is done through an agent or an intermediary); and
- keep record of each and every transaction for a specified period; etc.



- 2.3** You may also need to put in place anti-money laundering programme for your company and provide anti-money laundering training to your employees. Your company may be subject to compliance inspection by the authorities, and you may be sanctioned if you or your company fails to fulfil the legal obligations.
- 2.4** The Government is still deliberating the best regulatory model for your professions. At this stage, we consider a capacity building and educational approach rather than a punitive approach more appropriate. We will strike a good balance between compliance with international standards and your business interest, and we will certainly consult you before finalising the model.



A hand holding a needle over a globe of water with bubbles containing dollar signs. The background is a vibrant blue with water splashes and bubbles. A hand from the right side of the frame holds a thin needle, pointing it towards a large, clear bubble that contains a reflection of a globe. Below this bubble are two other bubbles, each containing a white dollar sign. The overall scene suggests a delicate balance between global economics and financial stability.

PART 3

The Basics

A. What is Money Laundering?

- 3.1** Put simply, “money laundering” covers all kinds of methods used to change the identity of illegally obtained money (i.e. crime proceeds) so that it appears to have originated from a legitimate source.
- 3.2** A money laundering scheme will therefore usually involve a combination of several different techniques and vehicles, which may not necessarily involve the conventional financial sector. Accountants, estate agents, precious metals and precious stones dealers and trust and company service providers, are all known to have been employed in money laundering schemes.
- 3.3** While the techniques for laundering funds vary considerably and are often highly intricate, there are generally three stages in the process:

- **Placement:** involves placing the crime proceeds in the financial system (e.g. depositing cash into a bank account, exchange currency of small denominations to currency of large denominations);



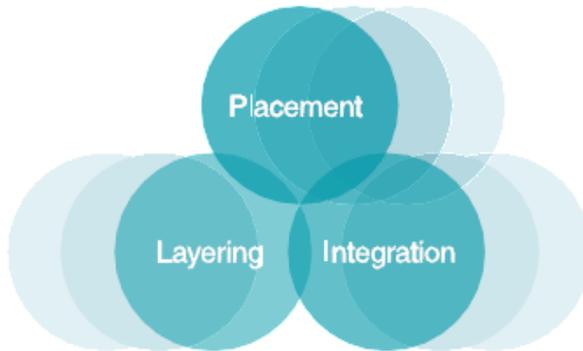
- **Layering:** involves converting the proceeds of crime into another form and creating complex layers of financial transactions to disguise the audit trail and the source and ownership of the funds (e.g. buying precious metals or stones with cash, buying and selling of stocks, commodities or properties; taking out and repaying a loan); and



- **Integration:** involves placing the laundered proceeds back in the economy under a veil of legitimacy.



- 3.4** These three stages are not distinct. They are very often overlapping with each other and repeated, making tracing of crime proceeds and their sources difficult.



- 3.5** In Hong Kong, crime proceeds are generated from various illegal activities. They can be derived from drug trafficking, smuggling, illegal gambling, bookmaking, blackmail, extortion, loan sharking, tax evasion, controlling prostitution, corruption, robbery, theft, fraud, copyright infringement, insider dealing and market manipulation.
- 3.6** When crime proceeds are laundered, criminals would then be able to use the money without being linked easily to the criminal activities from which the money was originated.

B. What is Terrorist Financing?

3.7 Terrorist financing can be defined in simple terms as the financial support, in any form, of terrorism or of those who encourage, plan, or engage in terrorism. Money laundering and terrorist financing manipulations are similar, mostly having to do with concealment and disguise.



3.8 Money launderers will send crime proceeds through legal channels in order to conceal its criminal origin, whilst terrorist financiers will transfer funds that may be **legal** or illicit in origin in such a way as to conceal their source and ultimate use, which is the support of terrorism.



C. Why is Anti-Money Laundering and Counter-Terrorist Financing Important to you?

3.9 As one of the major financial centres in the world, it is very important for Hong Kong to maintain an effective anti-money laundering (AML) and counter financing of terrorism (CFT) regime, which is vital for maintaining the integrity and stability of our financial system. Money laundering and terrorist financing can have devastating consequences to the whole community. If we do not put in place an effective regime in accordance with the international standards, we will open the floodgates to illicit funds and provide a good refuge for criminals and terrorists. They can then use the illicit funds to further their illegal activities. We will all suffer as a result of criminals or terrorists taking charge of our businesses and economic sanctions by the international community, which would adversely affect our livelihood.



- 3.10** Both money laundering and terrorist financing are criminal offences under the Laws of Hong Kong. According to the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap.405) and the Organized and Serious Crimes Ordinance (Cap.455), a person commits the offence of money laundering if he deals with any property, including money, which **he knows or has reasonable grounds to believe** to be proceeds of crime. Under the United Nations (Anti-Terrorism Measures) Ordinance (Cap.575), a person commits the offence of terrorist financing if he provides or collects funds **knowing or with the intention** that the funds will be used to commit terrorist act(s).
- 3.11** Taking an indifferent attitude or turning a blind eye to a transaction you know or have reasonable grounds to believe that crime proceeds/terrorist funds are involved, may result in your conviction for the above offences.

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LAWS OF HONG KONG

D. What Do You Need to Do?

- 3.12** Anti-money laundering and counter-terrorist financing is everyone's responsibility. However, some sectors face a greater risk of coming across crime proceeds or terrorist property than others, e.g. accountants, estate agents, precious metals and precious stones dealers and trust and company service providers, etc.
- 3.13** When you come across any property, which you **know or suspect** to be drug or crime proceeds or terrorist property, you should make a suspicious transaction report (STR) to the Joint Financial Intelligence Unit (JFIU).
- 3.14** Whilst there is no prescribed manner of reporting, it is advisable to make STRs in writing. A standard form has been designed to assist individuals in making STRs. The form can be downloaded from the JFIU website(www.jfiu.gov.hk). A STR should include the following information:
- Personal particulars and contact details of the individuals or entities involved in the suspicious activity;
 - Details of the suspicious activity;
 - The suspicious activity indicators observed; and
 - Any explanation provided by the subject of the STR when questioned about the transaction or activity.



- 3.15** Failing to report knowledge or suspicion of crime proceeds or terrorist property is a criminal offence. If you go on to deal with such property **knowing or having reasonable grounds to believe** that the property is crime proceeds, then you may have committed the offence of money laundering.
- 3.16** It should be noted that the crime from which the proceeds were derived does not need to have taken place in Hong Kong, e.g. if you come across certain property in Hong Kong, which you know or suspect is proceeds of drug trafficking in an overseas country, you should also report your knowledge or suspicion to the JFIU. Again, failure to report knowledge or suspicion of such property and dealing with such property are criminal offences.
- 3.17** To prevent your sector from exploitation by money launderers and terrorist financiers, and protect yourself from unwittingly committing the money laundering and terrorist financing related offences described above, in addition to reporting suspicious transactions, it is advisable that you should always conduct **Customer Due Diligence (CDD), maintain proper records of transactions and have in place a proper internal control system.**
- 3.18** Besides reporting suspicious transactions, CDD and record keeping are two of the “core” money laundering and terrorist financing counter-measures adopted by the international community and have been implemented in the banking, securities and futures, and insurance sectors in Hong Kong in compliance with the anti-money laundering guidelines issued by the respective sector regulators.

3.19 CDD means “Know Your Customers and their transactions” in general terms, i.e.:

- know who you are actually dealing with;
- know the beneficiaries of the transactions;
- know the purposes and nature of the transactions; and
- know the sources of the funds involved.

3.20 The ways of gathering this information may vary from business to business. For some businesses, the relevant information about the clients and the transactions may have been required by applicable



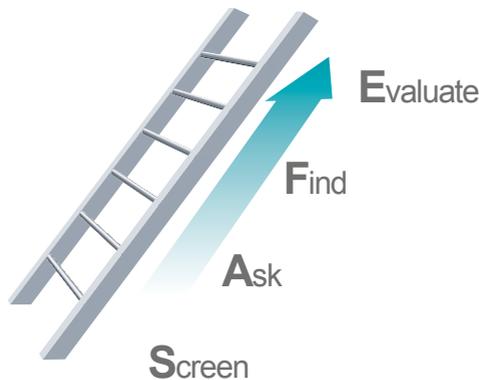
laws or established practices. For others, members of the trade may need to do their own checks. In most cases, asking the customers for the information skillfully would do, e.g. by tactfully posing questions in the midst of promoting products or services that may be of interest to the customers.

3.21 Persons engaged in legitimate business activity, generally, will have no objection to, or hesitation in answering such questions. Persons involved in illegal activity, however, are more likely to be evasive, to refuse to answer or provide a fabricated answer. The manner in which a customer answers such questions may be an indication of the suspicious nature of the transaction or activity.

3.22 The JFIU has developed a “SAFE” approach to assist you in identifying suspicious transactions and business activities.

- **S**creen the customer and transaction for suspicious activity indicators;
- **A**sk the customer appropriate questions to clarify suspicious circumstances;
- **F**ind out whether the transaction commensurates with what is expected from the customer by reviewing the information already known about the customer; and
- **E**valuate all the above information and decide whether the transaction relating to the customer is genuinely suspicious.

In case of doubt, the JFIU is happy to advise (Tel no.: 2866 3366, Fax no.: 2529 4013, Email: jfiu@police.gov.hk).



3.23 As for record keeping, many businesses may have the practice of keeping records of customers and transactions in accordance with applicable legal requirements, e.g. taxation etc. Record keeping is important to anti-money laundering investigation which allows for swift reconstruction of individual transactions and provides evidence for prosecution of criminal activities including money laundering.

- 3.24** In order to prevent money laundering and terrorist financing, it is important that businesses in various sectors should establish and maintain internal policies, procedures and controls. These policies, procedures and controls, which must be communicated to employees, should cover CDD, record keeping and suspicious transaction reporting.
- 3.25** At a minimum, businesses should designate an AML/CFT compliance officer at the management level, whose responsibilities should include overseeing the implementation of the above-mentioned internal policies, procedures and controls. To this end, the compliance officer and other appropriate staff should have timely access to information/data obtained in the CDD process, transaction records and other relevant information.
- 3.26** Independent audits should be carried out to test compliance with the internal policies, procedures and controls.
- 3.27** Induction and on-going employee training programmes should be introduced in order to establish and maintain employees' vigilance in AML/CFT matters, in particular, CDD, record keeping and suspicious transaction reporting.
- 3.28** Business should put in place screening procedures to ensure high standards in the recruitment process.



3.29 Though CDD, record keeping, suspicious transaction reporting and internal controls have been practiced in our banking, securities and insurance sectors for years, they are certainly new to your sectors and may present challenges to you. Apart from possible resource implications, management commitment, capacity building and culture change in your sectors and amongst your customers may be required. It may take some time to incorporate these measures in your daily practice. Most important of all is to start practicing them now:

- Customer Due Diligence
- Record Keeping
- Suspicious Transaction Reporting
- Internal Control



E. The Role of the Narcotics Division and the Joint Financial Intelligence Unit

- 3.30** The Financial Services and the Treasury Bureau (FSTB) is the overall co-ordinator for anti-money laundering and counter-terrorist financing policy in Hong Kong. It monitors the compliance of various sectors with the 40+9 Recommendations made by the Financial Action Task Force on Money Laundering (FATF).
- 3.31** The Narcotics Division (ND) of Security Bureau assists FSTB in overseeing the implementation of those FATF Recommendations that are related to the non-financial sectors and the non-profit organisations with a view to ensuring that the anti-money laundering/counter-terrorist financing measures taken by those sectors and organisations are in step with the established international standards. For more details of ND, please visit ND's website (www.nd.gov.hk).
- 3.32** The Joint Financial Intelligence Unit (JFIU) is jointly operated by the Police and the Customs and Excise Department. It is housed in the Police Headquarters. It was set up in 1989 to receive, analyse and disseminate STRs to four law enforcement agencies in Hong Kong, namely, the Police, the Customs and Excise Department, the Independent Commission Against Corruption and the Immigration Department, for investigation. Further details about the unit can be found at its website (www.jfiu.gov.hk).





PART 4

The Risks

4.1 In this part, suspicious activity indicators and case examples specific to individual sectors are presented. You may learn more about money laundering and terrorist financing risks specific to your sector by going through the information provided. **Though the information is sector specific, you are recommended to go through the case studies of the other three sectors as well. That will certainly enhance your understanding of money laundering and terrorist financing.** Please note that the suspicious activity indicators listed are not exhaustive. Suspicious transactions usually involve a number of indicators. In making assessment, businesses should not rely on this alone and should consider all pertinent information.

A. Accountants

4.2 The term “accountants” used in this guide refers to the definition adopted by the Financial Action Task Force on Money Laundering (FATF). The FATF employs an **“activity-based”** approach to determine the types of activities that accountants engage in should be subject to its Recommendations on Anti-Money Laundering and Counter Financing of Terrorism. In addition to complying with the other Recommendations that are applicable to Designated Non-financial Businesses and Professions, accountants who prepare for or carry out transactions for their clients concerning the following activities as stated in FATF’s Recommendation 12(d) are specifically subject to its Recommendations 5, 6 and 8 to 11:

- Buying and selling of real estate;
- Managing of client money, securities or other assets;
- Management of bank, savings or securities accounts;
- Organisation of contributions for the creation, operation or management of companies; and
- Creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

4.3 Following on from the above and for the avoidance of doubt, the term “accountants” used in this guide should **not** be confined to mean any particular types of accountants, such as certified public accountants, chartered accountants, management accountants, or cost accountants. The FATF definition includes those who work in the private sector whether or not they hold accounting qualifications from the professional bodies or institutes. It should be noted that “internal” professionals who are employees of other types of businesses, or professionals working for government agencies, who may already be subject to measures that would combat money laundering/terrorist financing, are excluded.

4.4 The accounting profession provides a wide range of services, including financial and tax advice, auditing, book-keeping, company formation and administration, trust, property transactions and introduction to banks, etc. While these activities have their legitimate purposes, they are a very attractive gateway which criminals/terrorists would want to use for laundering crime proceeds/financing terrorism.

4.5 Given the likelihood of being used for money laundering/terrorist financing purposes, accountants must be vigilant at all times and report anything suspicious to JFIU.

(a) Suspicious Activity Indicators

The following are some indications of potentially suspicious activities:

- (i) Clients come from jurisdictions which lack appropriate AML/CFT laws, regulations or other counter-measures;
- (ii) Clients come from jurisdictions where corruption or other criminal activities are of significant concern;

- (iii) Complex corporate structures which obscure the ultimate beneficial ownership;
- (iv) Frequent changes in the legal structure of a client's company which has no clear justifications;
- (v) The level of activities of a client's company does not match its volume/frequency of fund flows;
- (vi) Over/under invoicing of goods/services;
- (vii) Payments received from an un-related party without supporting business activities;
- (viii) Clients are "politically exposed persons" (PEPs) or their relatives/friends;
- (ix) A dormant client suddenly becomes active; and
- (x) Large/frequent international payments without underlying business transactions.



(b) Below are three case examples for illustration.

Case Example 1: Business entity misused for money laundering

Mr. X was a drug trafficker who had to dispose of a large amount of cash. He decided to employ an accountancy firm to set up a company, purportedly for trading purposes.

Through the introduction of the accountancy firm, company bank accounts were opened. Cash deposits were made into the bank accounts both by Mr. X and staff of the accountancy firm.

Some of the money was then used to invest in the local property market while certain amount was sent overseas for purchase of electronic components which were then shipped to the local market for sale.

By such activities, Mr. X successfully laundered over US\$500,000.

Key Message

Professional service of accountants and their professional standing may be seen by criminals as vehicles to be abused in order to launder crime proceeds.



Case Example 2: Establishment of company/trust for money laundering/terrorist financing purposes

Mr. J and Mrs. J are citizens of a western country. They visited Hong Kong and employed an accountancy firm to establish a limited company so that they can take advantage of the local property market slow down and purchase luxury property for long term investment purpose. They presented the firm with a US\$50 million cashier order issued by ABC Casino and requested the cashier order be deposited into the company account to be opened. They claimed that the money was won in ABC Casino. Additionally, they also requested to set up a trust for charitable purposes. It was intended that 5% of the money would be transferred to the trust.

Later on, the firm received instruction from the couple that they had changed their mind and wanted to invest the money elsewhere. They requested the money be telegraphic transferred to their bank account in another jurisdiction.

As to the money in the trust, Mr. J and Mrs. J requested that US\$2 million be split into four equal amounts and sent to charity organisations for medical relief purposes. Moreover, an amount of US\$5,000 be sent to a country of terrorist concern for charitable purpose.

Key Message

By abusing the professional service of the accountancy firm and the professional status of accountants, criminals could easily set up companies/trusts for money laundering/terrorist financing purposes. It should be noted that the amount of money required for terrorist financing could be comparatively small (e.g. it only takes a small amount of money to purchase the materials required to assemble a bomb).

Case Example 3: PEPs abuse accounting service for money laundering purpose

Mr. K was a senior government official of Jurisdiction A which has a major corruption problem. Through his corrupt activities, Mr. K had in his possession a large amount of cash that he wanted to launder.

Mr. K came to Hong Kong and asked a local accountancy firm to establish a limited company for him. After company bank accounts were opened, substantial deposits were made for the purchase of shares in the local stock market. The bank deposits were also used to purchase real estate in Hong Kong.

Through these activities, a total of US\$10 million was laundered.

Key Message

Accountants should exercise great care to prevent PEPs from abusing their professional services for money laundering purposes. They should conduct CDD and make STRs to JFIU if circumstances are suspicious.



B. Estate Agents

4.6 The purchase of real estate is commonly used as part of the last stage of money laundering (**integration**). Large amount of illicit funds can be concealed in such a purchase, which in turn projects an appearance of financial stability for the criminal. Hence, estate agents should be vigilant in exercising the CDD by obtaining customer's information and should comply with the record-keeping requirement and internal control procedures as stipulated by the Estate Agents Authority.

(a) Suspicious Activity Indicators

Customer Identification

- (i) Incommensurate background of property purchaser/seller (e.g. profession and age versus the value of transaction);
- (ii) Property purchaser/seller is a shell company/offshore company (residential address/registered in a tax haven e.g. British Virgin Islands); and
- (iii) Transactions conducted by a third party (e.g. under a power of attorney).



The Transaction

- (i) Cash transactions in large amounts;
- (ii) Substantial difference between the transaction price and the market price without apparent reason;
- (iii) Unknown source of funds for purchasing the property;
- (iv) Unusually short period for completion of sale and purchase;
- (v) The transaction proceeds are directly transferred between the purchaser and the seller, not routing through a law firm; and
- (vi) Unreasonably high commission is offered to the estate agent.

Others

- (i) The person who negotiates the transaction and the ultimate purchaser are not the same person;
- (ii) The property seller and the purchaser know each other but choose to act through an estate agent as if they did not know each other;
- (iii) Frequent sale and purchase of properties within related parties; and
- (iv) Unusual ownership history of a property.



(b) Below are four case examples for illustration.

Case Example 1: Use of shell company in sale and purchase of property to conceal crime proceeds

A drug trafficker Mr. X purchased a property at HK\$6.5 million. He made a downpayment of HK\$2.5 million in cash and took out a HK\$4 million mortgage. Three months later, he sold the property to a shell company Y, which he controlled. The company Y further sold the property to an innocent third party for the original purchase price in a month. By this means, Mr. X concealed his proceeds of crime in a shell company Y, and thereby attempted to disguise the origin of the original purchase funds.

Key Message

This case illustrates that the sale and purchase of property by a shell company could be used to conceal crime proceeds. The ownership history of a property can be an indicator of suspicion.



Case Example 2: Direct purchase of property to launder crime proceeds

A drug trafficker Mr. Z had made several investments in real estate and was planning to buy a hotel. An assessment of his financial situation did not reveal any legal source of income. He was subsequently arrested and charged with an offence of money laundering. Further investigation substantiated the charge that part of the invested funds were proceeds of his own drug trafficking.

Key Message

This case illustrates that the purchase of real estate is commonly used as part of the last stage of money laundering (**integration**). Such a purchase offers the criminal an investment which gives the appearance of financial stability. The purchase of a hotel has an added advantage for money laundering as hotel business is often a cash intensive business.



Case Example 3: Unusual property transactions between family members of a drug trafficker via a third party

A drug trafficker Mr. A was arrested. Fearing that his assets would be restrained and confiscated, he asked his wife to immediately arrange to sell their property to a friend, who would then sell the property back to his sister-in-law. It is worth noting that these consecutive sale and purchase transactions were arranged through the same estate agent who just turned a blind eye on the suspicious circumstances of these property transactions.

Key Message

This case illustrates that unusual property transactions would be an indicator for money laundering. The estate agent should have made a suspicious transaction report to the Joint Financial Intelligence Unit.



Case Example 4: Direct purchase of property to launder crime proceeds by family member

Mr. B in Country S was the leading member of a syndicate involving smuggling of refugees. From 1998 to 2003, Mr. B received 81 money orders for a total amount of HK\$40 million from 14 different individuals from four foreign countries. This money was believed to be derived from organising illegal migration. The main portion of this money remained in Country S and was used for investment into real estate and was also distributed among other syndicate members. In 2000 alone, Mr. B's wife who did not file an income tax statement for that year, used HK\$14 million to buy real estate. Investigation revealed that Mr. B and Mrs. B had made transactions representing several times their apparent incomes. They were finally charged and convicted, in connection with the amount of HK\$40 million, for organising illegal migration.

The case showed the following patterns:

- (i) Very high fees were paid for the money transfers which could have been executed at much lower costs; such economically illogical transactions are, as a rule, highly likely to be connected with money laundering; and
- (ii) The monies spent by Mrs. B to buy real estate amounting to HK\$14 million did not originate from her, but was given to her by Mr. B, who received it for organising illegal migration. In the real estate purchase contract, the buyer was Mrs. B. That was to conceal the source and the real beneficiary of the dirty money.

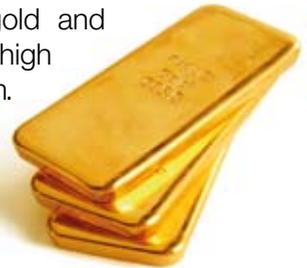
Key Message

This case illustrates that the purchase of real estate by relatives of criminals is not uncommon as a practice for money laundering.

C. Precious Metals and Precious Stones Dealers

4.7

Precious metals and stones, particularly gold and diamond, offer the advantage of having a high intrinsic value in a relatively compact form. They can be “cashed” easily in most areas of the world. Hence, they are vulnerable to be used in money laundering for their ease to be hidden and transported. Terrorist groups have engaged in the gemstone trade for a long time. Historically, they engaged extensively in the profit-making trade in diamond, tanzanite, amethyst, ruby and sapphire. However, according to recent intelligence, gemstones, diamonds in particular, are being used as a way of storing terrorist assets outside the formal financial sector. The aim is no longer only in turning a profit but also acquiring as many stones as possible with crime proceeds that are being kept out of banks and businesses.



(a) Suspicious Activity Indicators

For retail market

- (i) Incommensurate background of buyer (e.g. profession and age of buyer versus value of transaction and type of precious stones and metals involved);
- (ii) High value transactions conducted in cash but not in other popular and safe methods of payment (e.g. credit card or cashier order);

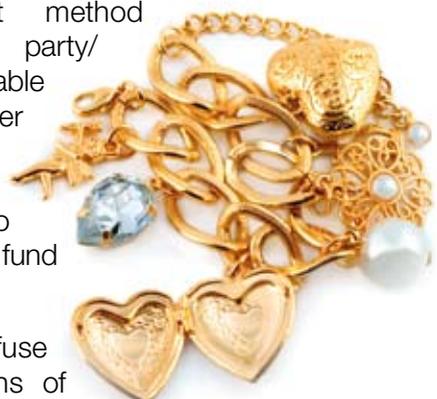
- (iii) Unusual payment method (payment by negotiable instruments in bearer form, e.g. travellers cheques and cashier orders so that the source of fund cannot be traced);
- (iv) Unusual buying behaviour/pattern (e.g. repeated purchases of luxury products without apparent reasons);
- (v) Unusual behaviour of the person or persons conducting the transactions (e.g. unusual nervousness); and
- (vi) Request for over/under-invoicing of purchases.

For wholesale market

- (i) Incommensurate background of buyer/seller (e.g. profession and age of buyers versus value of transaction and type of precious metals and stones involved);
- (ii) Unknown business background of buyer/seller;
- (iii) Transactions conducted by third party (e.g. under a power of attorney);
- (iv) Transactions conducted by shell company/offshore company (business address/registered in a tax haven e.g. British Virgin Islands);
- (v) Unknown source of precious metals/stones;
- (vi) Unknown purpose of transactions;



- (vii) Buyers/Sellers apparently not having reasonable expertise/experience in the precious metals/stones sector;
- (viii) Abnormally low pricing or with substantial discount in order to speed up transactions;
- (ix) Large amount transaction from an unfamiliar dealer;
- (x) Request for over/under-invoicing of purchases;
- (xi) Unusual payment method (payment by third party/ payment by negotiable instruments in bearer form, e.g. travellers cheques and cashier orders, so that the source of fund cannot be traced);
- (xii) Buyers/Sellers refuse to use other means of payment other than cash, while cash may be in foreign currencies (or in different foreign currencies) without apparent reasons; and
- (xiii) Unusual business pattern (e.g. business transactions of a particular dealer are rather frequent when compared to the trading history or to that of other dealers/a sudden increase in the trading volume without apparent reasons).



(b) Below are three case examples for illustrations.

Case Example 1: Retail gold purchases serve as direct method of laundering

A foreign national bought 265 ingots of gold with a total value of about US\$2.5 million and paid in cash in Country X. These transactions took place over a period of 18 months. The buyer, who did not have a bank account, alternated temporary jobs with periods of unemployment, claimed that he was acting on behalf of a third party, who was probably involved in organised and serious crimes.

Key Message

This case illustrates the direct purchases of precious metal by a buyer of incommensurate background to disguise the source of crime proceeds.

Case Example 2: Direct purchase of precious stones with crime proceeds

A lawyer of Country Y absconded with millions of US dollars from his “client escrow” account. Investigation revealed that part of these funds was used to purchase loose diamonds and jewellery from a local jeweller in Country Y.

Key Message

This case illustrates the use of direct purchase of precious stones to launder the crime proceeds. In particular, it shows the way for an absconder to conceal and move the proceeds of crime across different countries.



Case Example 3: Diamond trading used as a cover for laundering illicit funds

A company in Country Z, with its registered office in an offshore centre and diverse businesses, encompassed diamond trading. The account of this company in Country Z was found to have numerous international funds transfers in foreign currencies originating from a tax haven. The funds, in very large sums, were then systematically and immediately withdrawn in cash. These withdrawals were made in large denominations of foreign currencies by the authorised signatory of the account who was the director of a number of companies which were also active in diamond trading. Given the regularity of these systematic fund flows, which were deviated from the usual practice in the diamond sector, it appeared that this account was only used as a channelling account with the aim of disguising the origin and ultimate destination of the funds. Upon investigation, the funds were found to be associated with illicit activities.

Key Message

This case illustrates that the diamond trading may be used as a smokescreen for the laundering of crime proceeds.



D. Trust and Company Service Providers

4.8 Trust and corporate entities provide the basis for a range of economic activities in modern economies. Although they have many legitimate applications (such as business finance or estate and tax planning), they can be misused by criminals for illegal purposes such as hiding the ultimate beneficial ownership of assets, legitimatising the **integration** of crime proceeds with the financial system, or **layering** of crime proceeds through various forms of investment such as in the stock market.

4.9 Trust and corporate structures may be set up by terrorists and used wholly or partly for financing of terrorist activities. Trust, for example, may be established for charitable purposes and subsequently misused to finance terrorist activities.

4.10 In view of the risks involved, trust and company service providers must be vigilant at all times and report anything suspicious to JFIU.

(a) Suspicious Activity Indicators

The following are some indications of potentially suspicious activities:

- (i) Multi-jurisdictional and/or complex structure of corporate entities and/or trusts are established without valid grounds;
- (ii) Payments (local or foreign) are made or received without a clear connection to the actual activities of the corporate entity;
- (iii) Use of off-shore bank accounts without legitimate economic necessity;
- (iv) Customer's unwillingness or refusal to provide information/documentary proof on himself/herself or beneficial owner(s) of trusts/companies;

- (v) Sources and/or destinations of funds are unknown;
- (vi) Transactions are heavily cash-based which should normally be carried out through other payment facilities;
- (vii) Customer's background is not commensurate with the value of transactions carried out by the customer or on behalf of the company;
- (viii) A company is established primarily for the purpose of collecting funds from various sources which are then transferred to local/foreign bank accounts that have no apparent ties with the company;
- (ix) Incorporation of a company by a non-resident with no links or activities in the jurisdiction where the company is established; and
- (x) The money flow generated by a company is not in line with its underlying business activities.



(b) Below are four case examples for illustration.

Case Example 1: A structure of trusts misused for fraud

Mr. X was a trust service provider in Jurisdiction A. He established a number of domestic trusts to carry out a fraud scheme, defrauding over 500 investors of about US\$56 million.

The scheme involved Mr. X, in the name of the domestic trusts, wiring large amounts of money to domestic and off-shore bank accounts. The money came from the 500 odd innocent investors who were convinced to form trust organisations and to place their savings into these trusts, which were tied to the off-shore bank accounts. The investors were promised favourable returns and reduced tax liabilities as the money was deposited into off-shore bank accounts. Once the investors put in their money to the trusts, Mr. X would inform them that the money would be managed by an international investment agency. In fact, this has never happened and Mr. X and his associates defrauded the trust owners (investors).



Key Message

The above case illustrates that a structure of trusts together with off-shore bank accounts can give the appearance of a legitimate purpose, which can then be used to lure investment from innocent third parties for illegal purpose.

Case Example 2: Overseas trust to mask the beneficial owner of assets

An overseas resident (Mr. Y) living in Jurisdiction B opened a bank account for the purpose of receiving a substantial transfer from Jurisdiction C. The transfer originated from the closure of a bank account of an overseas trust, which has been in existence for one month and managed by lawyers in Jurisdiction C. As soon as the money was credited to the newly-opened bank account, Mr. Y requested to withdraw the amount in cash and close the bank account.

Key Message

The beneficial owner of the substantial sum of money was masked by the overseas trust. If the lawyers in Jurisdiction C have performed proper “customer due diligence”, the reasons for forming the trust and its subsequent closure should trigger suspicion for filing a “Suspicious Transaction Report” with the competent authority concerned.

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Case Example 3: Corporate vehicle misused to channel bribes

A railway builder (Company Z) in Jurisdiction K has employed a law firm to form a complex structure of companies so that bribes can be transferred through these companies' bank accounts to officials in various other jurisdictions to thank them in "facilitating" the award of contracts to Company Z. Whilst there was no legitimate business in these series of companies, the overseas money transfers were substantial. After the bribes were transferred, the companies and their bank accounts became dormant.

Key Message

Corporate vehicles were used to channel bribe payments so as to veil the connection between the party which offers bribe and their ultimate recipients.



Case Example 4: Multi-jurisdictional corporate structure to launder money

Mr. B traveled to Jurisdiction M and went to Notary A to set up a company solely for the purpose of buying real estate. The shareholders of the company were family members of Mr. B, who also resided abroad. Shortly after incorporation, Company X bought a luxury detached house in Jurisdiction M. The property was paid by several transfers from an overseas Company Y. Despite repeated requests, Mr. B refused to provide details of Company Y to Notary A.

Key Message

Multi-jurisdictional corporate structures and international movement of funds are readily available vehicles to conceal the source of money for investment and the beneficial owner of the assets.



PART 5

Quiz



5.1 Before concluding this guide, let's have a small test to see if you understand what we have just discussed.

A. General Questions

1. Which of the following acts does not constitute a money laundering offence?
 - a. Dealing with any property, knowing the property is proceeds of a crime
 - b. Dealing with any property, believing the property is proceeds of a crime
 - c. Dealing with any property, suspecting the property is proceeds of a crime

2. Which of the following is a statutory requirement?
 - a. Reporting a suspicious transaction
 - b. Reporting corruption
 - c. Reporting a crime



3. When should a suspicious transaction report be made when you deal with your customer?
 - a. Whenever there are suspicious activity indicators making the transaction with the customer suspicious
 - b. Whenever there are suspicious activity indicators and the transaction with the customer remains suspicious, after all the information has been reviewed and attempt to clarify the issues with the customer has failed
 - c. For all transactions of HK\$200,000 and above

4. To which organisation a suspicious transaction report should be made?
 - a. Narcotics Division, Security Bureau
 - b. Hong Kong Monetary Authority
 - c. Joint Financial Intelligence Unit

5. Which of the following is not normally required for “Customer Due Diligence”?
 - a. Know the spouse of the customer
 - b. Know the customer
 - c. Know the transaction

B. Sector Specific Questions

(a) *Accountants*

6. A walk-in customer, Mr. X, visited your accountancy firm. He handed you a bag of cash and asked that a company be set up and the money be deposited into the company bank account. What is the most appropriate course of action?
 - a. Refuse Mr. X's business as the circumstances are suspicious
 - b. Proceed with the business and conduct CDD on Mr. X
 - c. Proceed with the business but make a suspicious transaction report to JFIU because it looks suspicious

7. Following upon Q.6, you interviewed Mr. X with a view to conducting CDD. Mr. X was very evasive and claimed that the money was given to him by his wife and that he had no idea where did the money come from. He stated that his wife had returned to the Mainland to stay with her parents. She will not return to Hong Kong in the near future. What should you do?
 - a. Ask Mr. X to ascertain from his wife where does the money come from before you proceed with the business
 - b. Refuse the business as the circumstances are suspicious
 - c. Make a STR to JFIU in order to report your suspicion

8. Following upon Q.7, Mr. X and Mrs. X visited your accountancy firm. Mrs. X told you that she was a housewife for the past 20 years with no income. The cash, which amounted to HK\$2 million, was her savings and earnings from share trading. However, no documentary proof was given by Mr. X and Mrs. X. The couple requested you to go ahead setting up the company. What should you do?
- Refuse the business as the circumstances are suspicious
 - Make a STR to JFIU in order to report your suspicion
 - Proceed with the business as you have completed CDD with Mrs. X
9. Your accountancy firm established a trust for Mr. Z a few years ago for charitable purposes. The aim is to provide food and medical care for people who live in the remote and hilly area in western part of the Mainland. Regular donations were made to charitable organisations accordingly. A few years later, you received instructions from Mr. Z to remit US\$8,000 to a personal bank account in a jurisdiction in the Middle East which lacks AML/CFT legislations. Mr. Z explained that the money was for purchasing medicine for the local poor people to cure a mysterious disease. What is the most appropriate course of action?
- Refuse Mr. Z's instruction as it is not in line with the way that the trust has been operated.
 - Obtain further information from Mr. Z about the proposed transaction (e.g. details of the recipient of the remittance, details of the disease, etc)

- c. Make a STR to JFIU because the circumstances are suspicious
10. Following upon Q.9, Mr. Z stated that the recipient of the remittance was his personal friend. He provided you with the full name of his friend and asked you to proceed with the remittance. You checked the name against the Gazetted list of terrorists and found that it matched with a terrorist on the list. What should you do?
- a. Refuse to proceed with the remittance and take no further action
- b. Proceed with the remittance as a name hit does not mean that the transaction is terrorist financing-related
- c. Make a STR to JFIU because the circumstances are suspicious





(b) Estate Agents

6. You are approached by a walk-in customer who wishes to purchase a luxury apartment for HK\$8 million. Following a brief visit to the subject apartment, the customer offers HK\$2 million as initial deposit. Moreover, the customer requests a completion date as soon as possible. For the initial deposit, he declines to provide any other form of payment other than cash. If you were the agent, which of the following would be your best course of action in this situation:
- Ask for the reason(s) for the urgency for completion of the transaction and the abnormally high amount of initial deposit and advise the customer to use other form of payment such as a cheque or a cashier order as initial deposit
 - Accept the initial deposit and try to complete the transaction as soon as possible
 - Decline the transaction
7. Following upon Q.6, you have tried to conduct some “Know Your Customer” on your customer. However, the customer refuses to answer any of your enquiries and insists on paying cash as initial deposit. What will be your best course of action to take?
- Accept his request immediately for fear that the business will be lost
 - Decline the transaction and make a suspicious transaction report
 - Decline the transaction but do not make a suspicious transaction report as the predicate crime is not known

8. You are introduced to a new customer, Mr. Gold, who seems to be very affluent and is involved in property investment. Mr. Gold now offers very attractive commission for the sale of a number of properties. You hear from your friends that he is allegedly involved in triad activities including the sale of pirated discs. Now, Mr. Gold approaches you again and says that he would like you to be the agent for a chain transaction – he will sell a property to a third party who will then sell the property to his family member within nine months. A very attractive commission of 3.5% for each transaction is offered. What will be your best course of action upon his request?
- Accept the deal without hesitation
 - File a “Crime Information” to the Police alleging that the customer is a triad member
 - Make a suspicious transaction report to JFIU regarding this transaction and provide information you have regarding Mr. Gold
9. A month ago, a Mr. Hui purchased an investment property in the name of a British Virgin Islands (BVI) company, White Power Ltd., through your estate agency. The transaction was completed by means of a cash payment of HK\$4 million by Mr. Hui. You learned from the newspaper yesterday that Mr. Hui had been arrested for drug trafficking. What is the best course of action to be taken upon knowing the facts?
- Make a suspicious transaction report to the JFIU about the transaction and the BVI company
 - Make a report to the local police station about the transaction and the BVI company

- c. No action is needed as the transaction took place some time ago
10. Mr. Au has recently been arrested for organising a series of serious crimes. His wife, Mrs. Au, approaches you to urgently arrange the sale of her property (as you have been acting as their estate agent in the past). A very attractive commission and sale price are offered by Mrs. Au for speedy completion of the sale. However, you are aware that the property was actually purchased by Mr. Au four years ago as you were in fact involved in the transaction. The property was assigned to Mrs. Au as a gift following her marriage to Mr. Au. Should you accept the offer to act as her estate agent in this transaction?
- a. Yes. Mrs. Au is not arrested in this case. It should be legal to deal with her
- b. Yes. I just act as an agent to find a buyer for Mrs. Au and I should have no legal responsibility for such act
- c. No. The transaction may involve property derived from crime proceeds. I will also make a suspicious transaction report to JFIU regarding this transaction



(c) *Precious Metals and Precious Stones Dealers*

6. Mr. Kan approaches a jewellery retailer in order to purchase some loose diamonds. He requests 10 loose diamonds, each of around one carat, for a total purchase price of around HK\$800,000. Mr. Kan appears nervous, does not examine the diamonds in detail nor negotiates over the price. Upon payment, Mr. Kan insists on settlement in US banknotes. If you were the shopkeeper, which of the following would be the best description of the immediate action(s) you should take regarding the above situation:
- 
- a. Complete the deal as usual
 - b. Advise the customer to use other form of payment such as a credit card or a cashier order and obtain some information of Mr. Kan tactfully regarding his background and the purpose of his transaction
 - c. Decline the deal
7. Following upon Q.6, you try to ascertain more information, but Mr. Kan refuses to answer any of your questions and insists on using cash to settle payment. What will be your best course of action?
- a. Proceed with the deal immediately and make a suspicious transaction report afterward
 - b. Proceed with the deal immediately but do not make a suspicious transaction report as the predicate crime is not known
 - c. Decline the deal and make a suspicious transaction report

8. Your jewellery shop has a customer, Mrs. Tsao, who appears affluent and is interested in buying a number of luxury watches and jewellery accessories. You recently read an article in the newspaper suggesting Mrs. Tsao's husband is a prominent triad figure who has allegedly made a lot of money out of the sale of pirated discs and other counterfeit products. Mrs. Tsao has spent over HK\$6 million last year in your shop. All purchases are settled by personal cheques drawn on her husband's account. What will be your best action?
- a. Continue to do business with Mrs. Tsao as she is a VIP customer
 - b. Make a suspicious transaction report to the JFIU regarding these transactions and provide information you have regarding Mrs. Tsao
 - c. File a "Crime Information" to the Police alleging that Mr. Tsao is a triad member



9. A Mr. Chu who is unknown to you and claims to be engaged in precious stones trade, has offered a batch of high quality precious stones to you at a substantial discount. However, he requests the payment to be made in cash and refuses any other safer methods of payment. Which is the best course of action for you?
- Accept the deal as it will be a profitable business for you
 - Conduct more enquiries with Mr. Chu regarding the source of these precious stones and his background
 - Make a suspicious transaction report to JFIU immediately
10. During an exhibition and trade fair of jewellery and diamonds, a raw diamonds wholesaler, Mr. Shing approaches you and asks if you can act as a third party buyer and seller at the same time. He will sell a batch of raw diamonds to your company and you should then sell it to another designated British Virgin Islands company at his direction. He offers you a very attractive commission. What should be your immediate action in response to his request?
- Accept his request, as it is a quick and profitable transaction
 - Ask for more details regarding this wholesaler and the purpose of this transaction
 - Refuse the transaction immediately

(d) Trust and Company Service Providers

6. A walk-in customer, Mr. Roberts, came to your company which provides company service and asked to set up a limited company, Company A. He asked this to be done quickly because he will be returning to the United States soon. He provided the name of his wife as another shareholder of the company to be set up. He claimed that he would supply copies of both his and the wife's passport at a later stage. What is the most appropriate course of action?
- a. Refuse Mr. Roberts' business as the circumstances are suspicious
 - b. Proceed with the business and conduct CDD on Mr. Roberts and his wife
 - c. Proceed with the business but make a suspicious transaction report to JFIU because it looks suspicious



7. Following upon Q.6, you interviewed Mr. Roberts with a view to conducting CDD. He stated that he was a company director in the United States (with no further details provided) and claimed that he had not had his passport or picture ID with him. His wife was busy in the United States and could not travel to Hong Kong to sign the documents for setting up the company. Mr. Roberts stated that a “Power of Attorney” will be sent to your office by courier tomorrow so that he is properly authorised to act for his wife. He requested that action be taken now to set up a company in Hong Kong. What should you do?
- a. Ask Mr. Roberts to be patient and come back tomorrow with the proof of ID of himself and his wife as well as documentary proof of his directorship in the United States company
 - b. Refuse the business as the circumstances are suspicious
 - c. Make a STR to JFIU in order to report your suspicion



8. Following upon Q.7, Mr. Roberts told you that he came from the United States and would stay in Hong Kong for a few days only. He claimed that he wanted to deposit the proceeds of a declared dividend he obtained in the United States and invest in real estate in Hong Kong. As he is too busy to open a bank account, he requested to deposit the money (in traveller's cheques and cash) into your company's bank account so that the money could be transferred to the bank account of Company A for property investment. What should you do?
- Ask your staff to deposit the traveller's cheques and cash into your company's bank account and wait for further instruction from Mr. Roberts
 - Make a STR to JFIU as the circumstances are suspicious
 - Refuse the business but no need to make a STR to JFIU
9. Following upon Q.8, Mr. Roberts sent you a letter from the United States saying that as the Hong Kong property market seemed to go down, he had decided to change his investment plan. He requested your company to telegraphic transfer the money to his friends' bank accounts in the United States. What is the best course of action?
- Proceed with the transfer as the money belongs to Mr. Roberts
 - Refuse the request as you suspect that it is a money laundering scheme
 - Make a STR to JFIU to explain the suspicion you have in this case

C. Answers

General

1. Answer: c

*A person commits the offence of money laundering when he/she deals with any property **knowing** or **having reasonable grounds to believe** it to be crime proceeds or terrorist property. If a person **knows** or **suspects** any property to be crime proceeds or terrorist property, he/she should report his/her knowledge or suspicion to the Joint Financial Intelligence Unit. Failing to report is an offence.*

2. Answer: a
3. Answer: b
4. Answer: c
5. Answer: a

Sector Specific Questions

- (a) Accountants

6. Answer: b

You need to conduct “CDD” when establishing business relationship with your clients. If after CDD is conducted and you found it suspicious, you should then make a STR to JFIU.

7. Answer: a

You should continue your effort of conducting “CDD” on Mr. X. It may be premature at this stage to make a STR.

8. Answer: b

You should make a STR to JFIU because the circumstances are suspicious enough to warrant such action (e.g. no income but with substantial cash; no documentary proof to support the claim).

9. Answer: b

Although the proposed transaction is not in line with the normal activities of the trust, it is advisable to obtain further information from Mr. Z before you come to a decision whether you should make a STR to JFIU or not.

10. Answer: c

A name hit against the terrorist list should give rise to suspicion that the transaction may be terrorist financing-related. A report should be made to JFIU. It is up to the Police to investigate the case.

(b) Estate Agents

6. Answer: a

You need to “Know Your Customer” before deciding whether you should establish business relationship with the customer.

7. Answer: b

If you consider the case still suspicious even though you have done "Know Your Customer", it is better for you to decline the transaction and report your suspicion to the Joint Financial Intelligence Unit. In declining the transaction, you may explain to the customer that it is in accordance with the anti-money laundering practices of your company, that you need to be satisfied with the result of "Know Your Customer" before proceeding with the transaction for the customer. In making a report, there is no need for you to establish the predicate crimes.

8. Answer: c

There are reasonable grounds for you to suspect that his assets are proceeds of crimes.

9. Answer: a

There is no time limit for reporting a suspicious transaction. The report should be made as soon as practicable once you have the knowledge or suspicion.

10. Answer: c

The suspicious activity indicators include (i) husband arrested for crimes, (ii) urgent disposal of property, and (iii) transaction not consistent with normal business/commercial activities.

(c) Precious Metals and Precious Stones Dealers

6. Answer: b

You need to “Know Your Customer” when establishing business relationship with your customers. Mr. Kan’s response to your suggestion of changing the method of payment should form part of your “Know Your Customer” process.

7. Answer: c

There are suspicious circumstances, which you cannot clear after doing “Know Your Customer”. The suspicious activity indicators include (i) new customer and unusual purchase, (ii) cash of foreign currency in large amount, and (iii) suspicious demeanour of the customer and his evasiveness. In declining the deal, you may explain to the customer that it is in accordance with the anti-money laundering practices of your company, that you need to be satisfied with the result of “Know Your Customer” before proceeding with the transaction for the customer.

8. Answer: b

There are reasonable grounds for you to suspect that the property of Mrs. Tsao may be proceeds of crime. Suspicious activity indicators include (i) husband involved in crimes, and (ii) making purchases in large amount.

9. Answer: b

You need to “Know Your Customer” before deciding whether the offer should be accepted or a suspicious transaction report be made.

10. Answer: b

The proposed transaction has no business sense at all and more "Know Your Customer" is needed. Suspicious activity indicators include (i) transaction with no business sense, and (ii) British Virgin Islands company is involved.

(d) Trust and Company Service Providers

6. Answer: b

You need to conduct "CDD" when establishing business relationship with your customers. If after CDD is conducted and you found it suspicious, then you should make a STR to JFIU.

7. Answer: a

You should continue to conduct "CDD" with a view to getting more information on Mr. Roberts. It may be a bit too early to say that the case is so suspicious that a STR should be made.

8. Answer: b

The circumstances (e.g. dividend in the form of traveller's cheques and cash; request the money to go through your company account) are suspicious enough to warrant a STR to be made to JFIU.

9. Answer: c

Make a report to JFIU so that the case can be referred to the appropriate law enforcement agency for follow up action.

10. Answer: c

The transaction may be related to terrorist activities. A report should be made to JFIU.

So, what is your score?

Please see the scale below:



If you get five or more correct answers out of a total of ten questions in the general and industry-specific sections, then you pass the test. Otherwise, you may need to go over this guide again, refer to your training or compliance officer, or consult the JFIU for further assistance.

Reference Materials:

- *Legal bulletin of the Hong Kong Institute of Certified Public Accountants*
- *Anti-money Laundering and Counter Terrorist Financing Guidelines of the Hong Kong Institute of Chartered Secretaries*
- *Practice Circulars of the Estate Agents Authority*

Report Suspicious Transactions

Joint Financial Intelligence Unit

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