

Building a Robust Regime

On

Anti-Money Laundering &

Counter-Terrorist Financing

Hon Chan

Senior Manager (AML)

15 December 2011

Office of the Commissioner of Insurance

The Government of the Hong Kong Special Administrative Region

6 Major Events/Developments

Jun 10: AML Team established

Oct 10: GN3 revised

Jul 11: AML/CTF Ordinance (AMLO) Gazetted

Sep 11: AML Webpage created

Nov 11: AML/CTF Guideline consultation ended

Ongoing: Helpdesk

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Anti-Money Laundering Counter-Terrorist Financing (Financial Institutions) Ord. (AMLO)

- Grievances to be heard?
- Key provisions?
- IA's powers?
- Liabilities?
- Obligations of insurance institutions?
- Commencement date?
- Assistance?
- Scope?

Background to the AMLO

Office of the Commissioner of Insurance
The Government of the Hong Kong Special Administrative Region

Financial Action Task Force (FATF)

- Inter-governmental policy making body
- 40 Rec and 9 Special Rec on AML/CTF
- Mutual Evaluations

Mutual Evaluation on Hong Kong

Office of the Commissioner of Insurance
The Government of the Hong Kong Special Administrative Region

Mutual Evaluation on AML/CFT

Office of the Commissioner of Insurance
The Government of the Hong Kong Special Administrative Region

3rd Mutual Evaluation on Hong kong

Rating	Number
Compliant	10
Largely Compliant	20
Partially Compliant (PC)	15
Non-Compliant (NC)	4
Total	49

3rd Mutual Evaluation on Hong Kong

6 Core Recommendations:

R1, R13, SRIV (LC)

R5, R10, SRII (PC)

HK ME Report (Jul 08)-recommendations

- AML/CFT regime is generally effective
- Customer due diligence (CDD) and record – keeping requirements to be set out in **law or regulation**
- **Inspection and investigation** powers
- **Sanctioning** powers

HK ME: Follow-up Process

- Placed in **regular follow-up**
- **Report back** annually from Jun 10
- Expected to be **removed** from f/u process by
Jun 2012
- If unsuccessful...

The Making of the AMLO

Office of the Commissioner of Insurance
The Government of the Hong Kong Special Administrative Region

AMLO

- To propose a new legislation to enhance the AML regulatory regime
- 2 rounds of public consultation on the legislative proposals (Jul and Dec 09)
- The Bill being introduced to LegCo in Nov 10
- 15 Bills Committee meetings to scrutinize the Bill
- **Gazetted** in Jul 11

Anti-Money Laundering & Counter-
Terrorist Financing (Financial
Institutions) Ord. (AMLO)

Office of the Commissioner of Insurance
The Government of the Hong Kong Special Administrative Region

Scope

- AMLO applies to Financial Institutions:
 - Authorized institutions (by HKMA)
 - Licensed corporations (by SFC)
 - Remittance agents & money changers (by C&E)
 - Insurers, insurance agents & brokers that carry on or advising on long term business (by OCI)

AML/CTF Ordinance (AMLO)

It consists of 8 Parts and 4 Schedules

Part 1 .s1: commencement date

Part 2.s5: Sch 2 which contains the CDD and record-keeping requirements **has effect** with respect to **Fls**: providing that a contravention of a specified requirement constitutes an **offence**

Part 3.s9: powers to conduct **routine inspections**

s11: **investigation** powers

Part 4:s21: **supervisory sanctions**-reprimand, order to take remedial actions and to pay pecuniary penalties

Criminal Offences

- Knowingly or with intent to defraud
- Maximum penalty: 7 years of imprisonment and a fine of HK\$1m
- Defence for employee: acted in accordance with policies and procedures

Supervision & Investigation

- Under AMLO, authorized person:-
 - Enter business premises
 - Inspect & make copies
 - Require FI/other person to give/produce document, answer question, answer by statutory declaration
 - Contravene-max penalty:
 - 7 years imprisonment and fine of \$1m

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AML/CTF Ordinance (AMLO)

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Part 6.s55: Tribunal to review RAs' decisions

concerning the imposition of supervisory
sanctions

Part 7.S 79: RAs may prosecute offences summarily in
their own name

AML/CTF Ordinance (AMLO)

It consists of 8 Parts and 4 Schedules

Schedule 1. Interpretation

Schedule 2. Detailed **CDD and record-keeping**
requirements

AML/CTF Ordinance (AMLO)

Schedule 2

Clause 2: **What** are CDD measures

Clause 3: **When** CDD measures must be carried out

Clause 5: **Ongoing monitoring**

Clause 6: **Pre-existing customers**

Clause 11: Special requirements for **insurance policies**

Clause 18: **Reliance** on intermediaries

Clause 20/21: Record-keeping requirements

CDD — what?

An FI is required to:

- **Identify** and **verify** the identity of the customer and, if applicable, the beneficial owner,
- Understand the **purpose and intended nature of** the business relationship
- Identify **person acting on behalf of a customer** and verify the person's authority

CDD — when?

- Suspect **ML/TF**
- **Doubt** the veracity or adequacy of information previously obtained
- **Before establishing** business relationship
- **After** establishing business relationship **if**
 - a) this is necessary not to interrupt the normal conduct of business and
 - b) the risk of ML/TF is effectively managed

Ongoing Monitoring

- Review from time to time CDD documents, data and information to ensure **up-to-date** and **relevant**
- **Scrutinize transactions** with customers to ensure they are consistent with the customer's risk profile
- **Identify transactions** that are complex, unusually large amount or unusual pattern, or no economic or lawful purpose

Pre-existing Customers

Carry out CDD when

- a) A transaction takes place which is:-
- **Unusual or suspicious** by virtue of the amount or nature
 - **Not consistent** with the financial institution's knowledge of the customer
- b) **Material change** occurs in respect of the operation of a customer's account.

Special Requirements

Insurance policy

- Identify a **beneficiary** by name or
- In the case of designation, the FI should establish the identity at the time the beneficiary exercises a right vested in the policy or at the time of first payout, **whichever is earlier**

CDD By Intermediaries

- An FI may carry out any CDD by means of an intermediary as long as the intermediary **consents in writing** and that it will provide a copy of any document in the course of carrying out such measures **without delay**.
- Such an **FI is still liable** for a failure to carry out such CDD.

CDD By Intermediaries

The intermediary could be any of the following:

- A solicitor, a certified public accountant, an auditor, a trust or company service provider or a tax advisor
- An FI that is an authorized institution, a licensed corporation, an authorized **insurer**, an **appointed insurance agent** or an **authorized insurance broker**

Record-keeping

FI must keep records of the following for six years:

- Documents/information obtained during
CDD
- Transaction records

AML/CTF Ordinance (AMLO)

Schedule 2

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Clause 20/21: **Record-keeping** requirements

AML/CTF Guideline

To assist FIs in compliance

- **Consultation** from September to November 2011 completed
- Currently **being revised**
- To be gazetted **in January, 2012**

Assistance in respect of compliance

- AML/CTF Guideline
- Seminar
- AML corner — FAQs
- Circular and letters
- Helpdesk enquiry
- Publicity

Summary

Office of the Commissioner of Insurance
The Government of the Hong Kong Special Administrative Region

Anti-Money Laundering Counter-Terrorist Financing (Financial Institutions) Ord. (AMLO)

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- Liabilities?
- Obligations of insurance institutions?
- Commencement date?
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carry on or advising on long term
business (by OCI)

AML/CTF Ordinance (AMLO)

Key provisions:

- Codifying the CDD and **record keeping** requirements
- Subjecting **specified FIs**, including insurers, agents and brokers that carry on or advise on long term business
- Empowering Relevant Authorities (RAs) including IA to **supervise compliance**
- Providing for **supervisory** and **criminal sanctions** for contravention of the statutory obligations
- Establishing the independent **Review Tribunal** to review decisions made by RAs to impose supervisory sanctions

AML/CTF Ordinance (AMLO)

Obligations:

CDD and Record Keeping (Schedule 2)

Office of the Commissioner of Insurance

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AML/CTF Ordinance (AMLO)

Liabilities:

**Maximum penalty: 7 years of
imprisonment and a fine of HK\$1m**

AML/CTF Ordinance (AMLO)

Powers for IA (to supervise compliance):

- **Enter business premises**
- **Inspect & make copies**
- **Require FI/other person to give/produce document, answer question, answer by statutory declaration**
- **Sanctions**-reprimand, order to take remedial actions and to pay pecuniary penalties
- **Prosecute** offences summarily

AML/CTF Ordinance (AMLO)

For grievances:

Application to the Review Tribunal

Office of the Commissioner of Insurance
The Government of the Hong Kong Special Administrative Region

AML/CTF Ordinance (AMLO)

Commencement date:

1 April 2012

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Thank You

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