

Building a Robust Regime on Anti-Money Laundering & Counter-Terrorist Financing

Hon Chan
Senior Manager (AML)

15 December 2011



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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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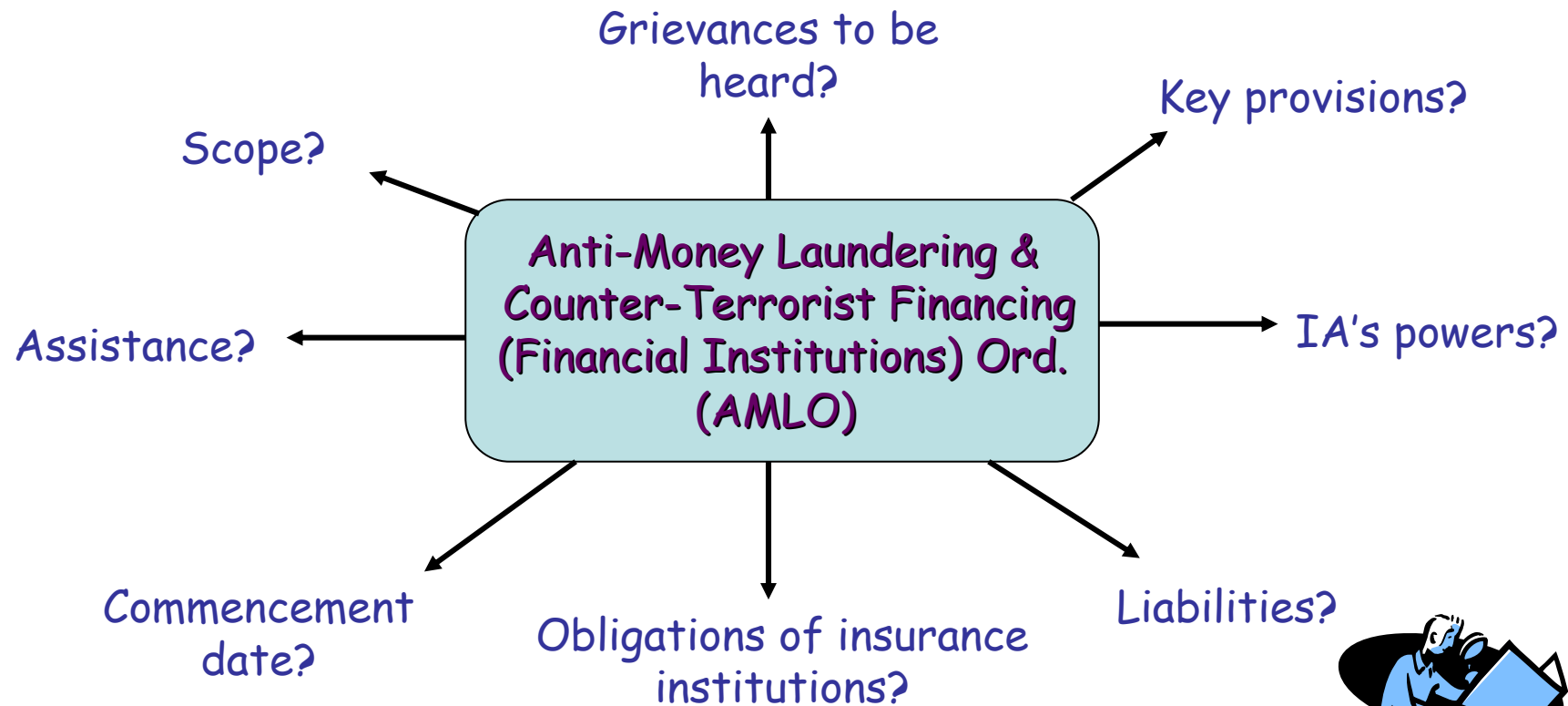
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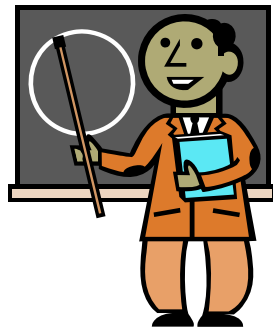
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Background to the AMLO



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Financial Action Task Force (FATF)

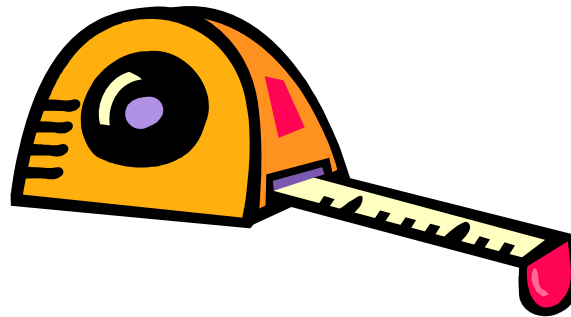
- Inter-governmental policy making body
- 40 Rec and 9 Special Rec on AML/CTF
- Mutual Evaluations



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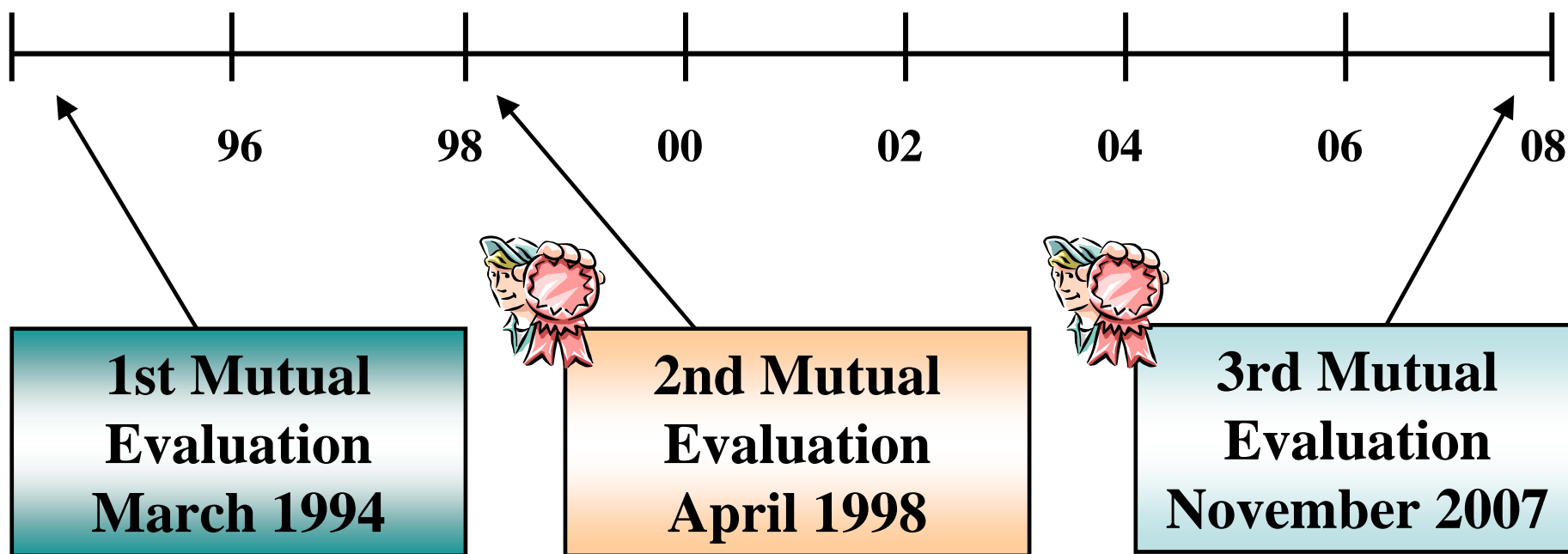


Mutual Evaluation on Hong Kong



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Mutual Evaluation on AML/CFT



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3rd Mutual Evaluation on Hong Kong

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



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3rd Mutual Evaluation on Hong Kong

6 Core Recommendations:

R1 , R13 , SRIV (LC)

R5 , R10 , SRII (PC)



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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**



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HK ME: Follow-up Process

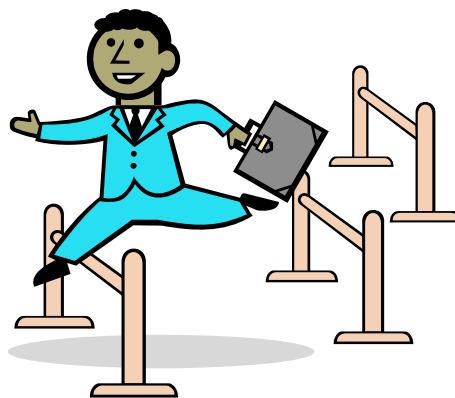


- Placed in **regular follow-up**
- **Report back** annually from Jun 10
- Expected to be **removed** from f/u process by Jun 2012
- If unsuccessful...





The Making of the AMLO



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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



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



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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)**



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AML/CTF Ordinance (AMLO)

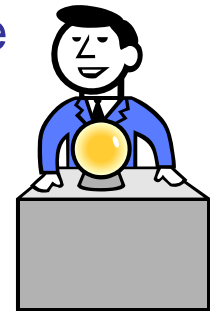
It consists of 8 Parts and 4 Schedules

Part 1. s1: commencement date

Part 2. s5: Sch 2 which contains the CDD and record-keeping requirements **has effect** with respect to **FIs**; 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



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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)

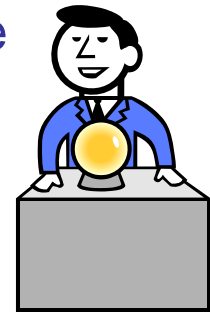
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AML/CTF Ordinance (AMLO)

It consists of 8 Parts and 4 Schedules

Part 6. s55: Tribunal to **review RAs' decisions**
concerning the imposition of supervisory
sanctions

Part 7. s79: RAs may **prosecute** offences **in**
their own name



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AML/CTF Ordinance (AMLO)

It consists of 8 Parts and 4 Schedules

Schedule 1. Interpretation

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



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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 ▶



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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



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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

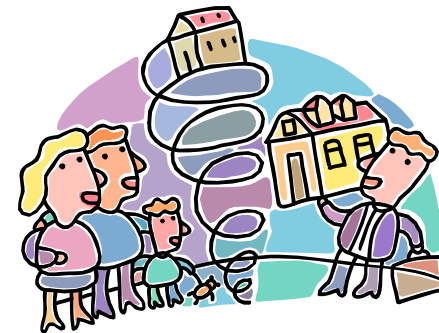
- a) A transaction takes place which is:-
 - **Unusual or suspicious** by virtue of the amount or nature
 - **Not consistent** with the financial institution's knowledge of the customer
- b) **Material change** occurs in respect of the operation of a customer's account.



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**



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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.



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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



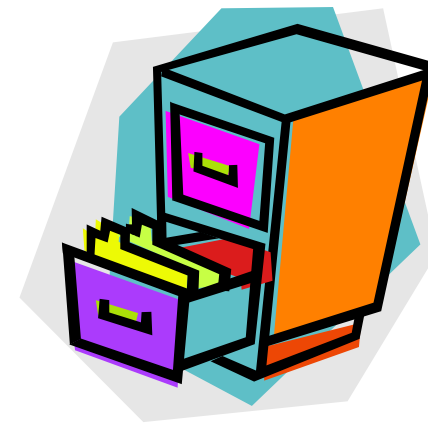
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Record-keeping

FI must keep records of the following for six years :

- Documents/information obtained during CDD
- Transaction records



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AML/CTF Ordinance (AMLO)

Schedule 2

Clause 2: **What** are CDD measures

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

Clause 18: **Reliance** on intermediaries

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



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AML/CTF Guideline

To assist FIs in compliance

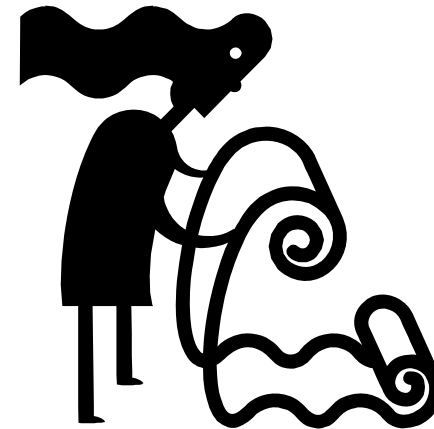
- **Consultation** from September to November 2011 completed
- Currently **being revised**
- To be gazetted in **January, 2012**



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Assistance in respect of compliance

- **AML/CTF Guideline**
- **Seminar**
- **AML corner - FAQs**
- **Circular and I lens**
- **Helpdesk enquiry**
- **Publicity**



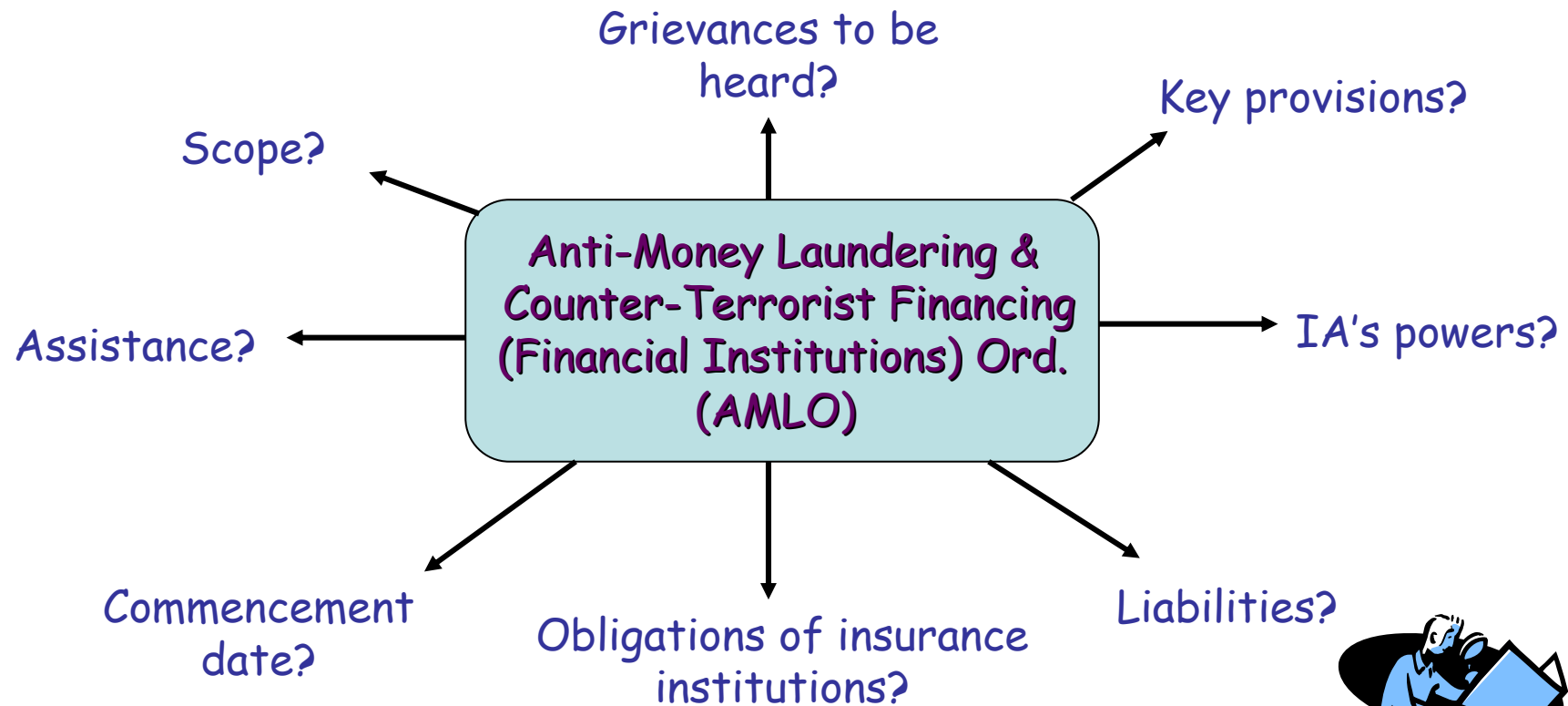
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Summary



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AML/CTF Ordinance (AMLO)

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)**



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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



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AML/CTF Ordinance (AMLO)

Obligations:

CDD and Record Keeping (Schedule 2)



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AML/CTF Ordinance (AMLO)

Liabilities:

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



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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



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AML/CTF Ordinance (AMLO)

For grievances:

Application to the Review Tribunal



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AML/CTF Ordinance (AMLO)

Commencement date:

1 April 2012



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Thank You



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