

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

Customer Due Diligence and Record Keeping Requirements for Legal Professionals

21 November 2022



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.



OUTLINE

1. Money laundering (ML) risks of Legal Professionals
2. Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022
3. AML/CFT Requirements under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (AMLO)
 - (a) Customer due diligence (CDD)
 - (b) Record-keeping (RK)
4. Targeted Financial Sanctions



1

Money Laundering (ML) Risks of Legal Professionals





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Money Laundering (ML) Risks of Legal Professionals

International typology

ML risk of legal professional service


 Buying and selling of real estate property

 Management of trusts and companies

 Making introductions for clients

 Creation of trusts and companies

 Managing client account

 Setting up and managing charities



1

Money Laundering (ML) Risks of Legal Professionals

Local context

Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report

**Medium
Low
Risk**

Ch. 3

overall
AML/CFT
framework

Ch. 4

threats
posed by
various
predicate
crimes

Ch. 5
to 8

sectoral
ML risks

Ch. 6

(legal
professionals
sector)

Ch. 9

proliferation
financing



Widely participating in trust or company service business

Conveyancing – transaction of real estate



1

Money Laundering (ML) Risks of Legal Professionals

Overall Risks in Hong Kong



Hong Kong is exposed to a **medium-high level of ML risk**, comprising a **medium-high level of threat** and a **medium level of vulnerability**.

1

Money Laundering (ML) Risks of Legal Professionals

**ML Risks for Legal Professionals Sector is
Medium-Low**

**ML Threats for Legal
Professionals Sector is
Medium-Low**



**ML Vulnerabilities for
Legal Professionals Sector is
Medium-Low**

1

ML Threats for Legal Professionals Sector (Medium-Low)

Expose to potential ML activities mainly through estate transactions and trust or company services

Crime proceeds may be converted into different types of assets, including estates

Diverse clientele subject to a cross-boundary ML threat

1

ML Vulnerabilities for Legal Professionals Sector (Medium-Low)

Effective entry controls and strong integrity

(must obtain a certificate from the LSHK to practice as a solicitor)

Supervision

(the LSHK conducts investigation and inspection)

Enhance AML Knowledge

(the LSHK introduced the Practice Direction P, conduct regular AML/CFT seminars)

Sanctions

(the LSHK investigates breaches of and take disciplinary action against non-compliance of AMLO, make referrals to Solicitors Disciplinary Tribunal to impose penalties)

1

Money Laundering (ML) Risks of Legal Professionals



Guidance for a Risk-Based Approach - Legal Professionals

- ◆ 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



1

Mutual Evaluation Report by Financial Action Task Force (FATF)



Access at -

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



1

Mutual Evaluation Report - Legal Professions

Take risk-based approach to mitigate their ML/Terrorist Financing (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



2

Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022



2

Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (AMLO) - Amendments of Provisions

Commencement Date: 1 June 2023

Items	Amendments
Politically exposed person	<p>To replace the <u>definition of “politically exposed persons”</u> under Schedule 2 of AMLO, as an individual who is or has been entrusted with a prominent public function in a place <u>outside Hong Kong</u></p> <p>Empowering regulatory authorities to make guidelines to allow the <u>exemption of enhanced CDD requirements</u> in respect of <u>former PEPs on a risk-sensitive basis</u></p>
Beneficial owner	<p>Aligning <u>the definition of “beneficial owner”</u> in relation to a trust under the AMLO with that of “controlling person” under the Inland Revenue Ordinance (Cap. 112 (i.e. where a <u>trust</u> is concerned, it includes <u>trustees, beneficiaries and class(es) of beneficiaries</u>)</p>
Digital identification systems	<p>Allowing the engagement of digital identification systems (i.e. <u>non face-to-face situations</u>)</p>



2

Two-Tier Registration Regime for Dealers in Precious Metals and Stones (DPMS)

Commencement Date: 1 April 2023

	Category A Registration	Category B Registration
Applicability	DPMS which – a) <u>will</u> engage in single transactions involving <u>non-cash</u> payment of <u>HK\$120,000 or more</u> ; and b) <u>will not</u> engage in any single transaction involving payment in <u>cash</u> of <u>HK\$120,000 or more</u>	DPMS which <u>will</u> engage in single transactions involving payment in cash of <u>HK\$120,000 or more</u>
Entry requirements	Subject to <u>simple</u> registration	Subject to <u>fit-and-proper test</u>
AML/CFT obligations	<u>No new additional obligations</u>	<u>Subject to the AML/CTF obligations set out in Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance</u> when engaging in a cash transaction at HK\$120,000 or more



3

Requirements under AMLO

- (a) Customer Due Diligence (CDD)
- (b) Record-keeping (RK)



3

Requirements under AMLO

❖ AMLO

- Amendments to the Ordinance passed on 24 January 2018
- Commenced on **1 March 2018**
- To extend statutory CDD and RK requirements to **four** Designated Non-financial Businesses and Professions (DNFBPs): legal professionals, accounting professionals, Trust and Company Service Providers (TCSPs) and real estate agents, when they engage in specified transactions
- To introduce a licensing regime for TCSPs administered by the Companies Registry

3

Requirements under AMLO - Legal Professionals

❖ Defined under Schedule 1, Part 2, Section 1 –

- a) a solicitor as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159); or
- b) a foreign lawyer as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159)



3

Requirements under AMLO

- Types of Activities for which CDD and RK are Required

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



3

Requirements under AMLO - CDD requirements

❖ Prescribed in Schedule 2 to AMLO

- identifying the **customer** and verifying the customer's identity [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.

3

Requirements under AMLO - When to Carry out CDD

- ❖ CDD measures must be carried out *[s.3, Schedule 2]* -
 - before establishing business relationship with the customer
 - before carrying out an occasional transaction involving \$120,000 or above
[Note: “occasional transaction” means a transaction with a customer with whom the legal professional does not have a business relationship]
 - when there is a suspicion that the customer or the customer’s account is involved in ML/TF
 - when there are doubts on the veracity or adequacy of the information obtained during CDD process
- ❖ If CDD requirements are not complied with, a business relationship 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]*

3

Requirements under AMLO - When to Carry out CDD

- ❖ Exceptional circumstances where identity of customer and any beneficial owner can be verified **AFTER** establishing a business relationship
[s.3 (2), Schedule 2] -
 - any ML/TF risk is effectively managed; and
 - it is necessary not to interrupt the normal conduct of business with regard to that customer; and
- ❖ The verification must be completed as soon as reasonably practicable
[s.3 (3), Schedule 2]

3

Requirements under AMLO - Ongoing due diligence

Continuously monitor business relationships

[s.5, Schedule 2]



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



Conducting appropriate scrutiny of transactions carried out for the customer to ensure that they are consistent with the nature of the business, the risk profile and source of funds



Identifying transactions carried out for the customer 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

Requirements under AMLO

- Special Requirements – Enhanced Due Diligence (EDD)

Customer is not physically present for identification purposes [s. 9, Sch. 2]

Further verifying the customer's identity on the basis of documents, data or information not previously used for the purposes of verification of the customer's identity;

OR

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

OR

Ensuring that the payment or the first payment made in relation to the customer's account is carried out through an account opened in the customer's name with an authorised institution, or a financial institution operating in an equivalent jurisdiction that has measures in place to ensure compliance with AML/CFT requirements similar to those in Schedule 2 and is supervised for compliance with those requirements by a designated authority

3

Requirements under AMLO

- Politically Exposed Persons (PEPs)

- ❖ Defined under Part 1 of Schedule 2 –
 - 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)



3

Requirements under AMLO - Special Requirements - EDD

- ❖ Politically Exposed Persons (PEPs) [*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 –
 - a. obtain approval from its senior management; and
 - b. take reasonable measures to establish the customer's or the beneficial owner's source of wealth and the source of the funds.



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Requirements under AMLO - Special Requirements - EDD

- ❖ Other high risk situations [*s. 15, Sch. 2*]
- ❖ Practice Direction "P":
 - complex, unusually large transactions, or an unusual patterns of transactions, which have no apparent economic or lawful purposes
 - overseas companies where corporate information is not readily accessible, or with nominee shareholders, or a significant portion of capital in the form of bearer shares
 - clients from or in non-cooperative countries and territories identified by FATF or other jurisdictions that are known to have insufficiently complied with FATF Recommendations
- ❖ AMLO:
 - Any other situation by its nature presenting a high risk of ML/TF (domestic PEPs may apply)

3

EDD – High Risk Jurisdictions

Democratic People's Republic of Korea

Iran

Myanmar

Home / Publications / High-risk and other monitored jurisdictions / High-Risk Jurisdictions subject to a Call for Action – 21 October 2022

High-Risk Jurisdictions subject to a Call for Action – 21 October 2022

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High-risk jurisdictions have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For all countries identified as high-risk, the FATF calls on all members and urges all jurisdictions to apply enhanced due diligence, and, in the most serious cases, countries are called upon to apply counter-measures to protect the international financial system from the money laundering, terrorist financing, and proliferation financing (ML/TF/PF) risks emanating from the country. This list is often externally referred to as the "black list".

Jurisdictions subject to a FATF call on its members and other jurisdictions to apply countermeasures

Since February 2020, in light of the COVID-19 pandemic, the FATF has paused the review process for Iran and DPRK, given that they are already subject to the FATF's call for countermeasures. Therefore, please refer to the statement on these jurisdictions adopted in 21 February 2020. While the statement may not necessarily reflect the most recent status of Iran and the Democratic People's Republic of Korea's AML/CFT regimes, the FATF's call to apply countermeasures^[1] on these high-risk jurisdictions remains in effect.

Democratic People's Republic of Korea (DPRK) (unchanged since February 2020)

The FATF remains concerned by the DPRK's failure to address the significant deficiencies in its anti-money laundering and combating the financing of terrorism (AML/CFT) regime and the serious threats they pose to the integrity of the international financial system. The FATF urges the DPRK to immediately and meaningfully address its AML/CFT deficiencies. Further, the FATF has serious concerns with the threat posed by the DPRK's illicit activities related to the proliferation of weapons of mass destruction (WMDs) and its financing.

The FATF reaffirms its 23 February 2011 call on its members and urges all jurisdictions to advise their financial institutions to give special attention to business relationships and transactions with the DPRK, including DPRK companies, financial institutions, and those acting on their behalf. In addition to enhanced scrutiny, the FATF further calls on its members and urges all jurisdictions to apply effective counter-measures, and targeted financial sanctions in accordance with applicable United Nations Security Council Resolutions, to protect their financial sectors from money laundering, financing of terrorism and WMD proliferation financing (ML/TF/PF) risks emanating from the DPRK. Jurisdictions should take necessary measures to close existing branches, subsidiaries and representative offices of DPRK banks within their territories and terminate correspondent relationships with DPRK banks, where required by relevant UNSC resolutions.

Iran (unchanged since February 2020)

In June 2016, Iran committed to address its strategic deficiencies. Iran's action plan expired in January 2018. In February 2020, the FATF noted Iran has not completed the action plan.^[2]

In October 2019, the FATF called upon its members and urged all jurisdictions to: require increased supervisory examination for branches and subsidiaries of financial institutions based in Iran; introduce enhanced relevant reporting mechanisms or systematic reporting of financial transactions; and require increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in Iran.

Now, given Iran's failure to enact the Palermo and Terrorist Financing Conventions in line with the FATF Standards, the FATF fully lifts the suspension of counter-measures and calls on its members and urges all jurisdictions to apply effective counter-measures, in line with Recommendation 19.^[3]

Iran will remain on the FATF statement on [High Risk Jurisdictions Subject to a Call for Action] until the full Action Plan has been completed. If Iran ratifies the Palermo and Terrorist Financing Conventions, in line with the FATF standards, the FATF will decide on next steps, including whether to suspend counter-measures. Until Iran implements the measures required to address the deficiencies identified with respect to countering terrorism-financing in the Action Plan, the FATF will remain concerned with the terrorist financing risk emanating from Iran and the threat this poses to the international financial system.

Jurisdiction subject to a FATF call on its members and other jurisdictions to apply enhanced due diligence measures proportionate to the risks arising from the jurisdiction

Myanmar

In February 2020, Myanmar committed to address its strategic deficiencies. Myanmar's action plan expired in September 2021.

In June 2022, the FATF strongly urged Myanmar to swiftly complete its action plan by October 2022 or the FATF would call on its members and urge all jurisdictions to apply enhanced due diligence to business relations and transactions with Myanmar. Given the continued lack of progress and the majority of its action items still not addressed after a year beyond the action plan deadline, the FATF decided that further action was necessary in line with its procedures and FATF calls on its members and other jurisdictions to apply enhanced due diligence measures proportionate to the risk arising from Myanmar. When applying enhanced due diligence measures, countries should ensure that flows of funds for humanitarian assistance, legitimate NPO activity and remittances are not disrupted.

Myanmar should continue to work on implementing its action plan to address these deficiencies, including by: (1) demonstrating an improved understanding of ML risks in key areas; (2) demonstrating that on-site/offsite inspections are risk-based, and handlers/operators are registered and supervised; (3) demonstrating enhanced use of financial intelligence in LEA investigations, and increasing operational analysis and discernment by the FIU; (4) ensuring that ML is investigated/prosecuted in line with risks; (5) demonstrating investigation of transnational ML cases with international cooperation; (6) demonstrating an increase in the freezing/seizing and confiscation of criminal proceeds, instrumentalities, and/or property of equivalent value; (7) managing seized assets to preserve the value of seized goods until confiscation; and (8) demonstrating implementation of targeted financial sanctions related to PF.

The FATF urges Myanmar to work to fully address its AML/CFT deficiencies and Myanmar will remain on the list of countries subject to a call for action until its full action plan is completed.

[1] The Interpretative Note to Recommendation 19 specifies examples of the countermeasures that could be undertaken by countries.

[2] In June 2016, the FATF welcomed Iran's high-level political commitment to address its strategic AML/CFT deficiencies, and its decision to seek technical assistance in the implementation of the Action Plan. Since 2016, Iran established a cash declaration regime, enacted amendments to its Counter-Terrorist Financing Act and its Anti-Money Laundering Act, and adopted an AML by-law.

In February 2020, the FATF noted that there are still items not completed and Iran should fully address: (1) adequately criminalizing terrorist financing, including by removing the exemption for designated groups "attempting to end foreign occupation, colonialism and racism"; (2) identifying and freezing terrorist assets in line with the relevant United Nations Security Council resolutions; (3) ensuring an adequate and enforceable customer due diligence regime; (4) demonstrating how authorities are identifying and sanctioning unlicensed money/value transfer service providers; (5) ratifying and implementing the Palermo and TF Conventions and clarifying the capability to provide mutual legal assistance; and (6) ensuring that financial institutions verify that wire transfers contain complete originator and beneficiary information.

[3] Countries should be able to apply appropriate countermeasures when called upon to do so by the FATF. Countries should also be able to apply countermeasures independently of any call by the FATF to do so. Such countermeasures should be effective and proportionate to the risks.



3

Requirements under AMLO - Special Requirements - EDD

- ❖ 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), Sch. 2]

3

Requirements under AMLO - 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 relationship

3

Requirements under AMLO - Simplified CDD Measures

- ❖ Simplified CDD : no need to identify and verify the beneficial owner when there are **reasonable grounds** to believe that the customer falls within the specified categories [s. 4(3), Schedule 2], or the product related to the transaction is a specified product [s. 4(5), Schedule 2]
- ❖ Other aspects of CDD measures must still be undertaken
- ❖ **Simplified CDD is not allowed when there are –**
 - suspicions of the customers involved in ML or TF
 - doubts on the veracity or adequacy of information obtained during the CDD process

3

Requirements under AMLO - Record-keeping

- ❖ Duty to keep records [*s. 20, Schedule 2*]
- ❖ In relation to a **transaction** –
 - original or a copy of the documents, and a record of the data and information, obtained in connection with the transaction
- ❖ For **transactions**, maintain records on transactions for at least **5 years** beginning on the date on which the transaction is completed

3

Requirements under AMLO - Record-keeping

- ❖ In relation to a **customer** –
 - original or a copy of the documents, and a record of the data and information, obtained in the course of identifying and verifying the identity of the customer or any beneficial owner of the customer
 - original or a copy of the files relating to the customer's account and business correspondence with the customer and any beneficial owner of the customer
- ❖ For **customers**, maintain records throughout the continuance of business relationship and for at least 5 years after the end of the business relationship



3

Requirements under AMLO - Reliance on Intermediaries to carry out CDD

- ❖ Legal professionals may carry out CDD measures by means of intermediaries [s. 18, Sch. 2]
- ❖ Intermediaries include –
 - an accounting professional;
 - an estate agent;
 - a legal professional;
 - a TCSP licensee;
 - an authorised financial institution; and
 - intermediaries in an equivalent jurisdiction, which are regulated under the law of that jurisdiction, have measures to ensure compliance with AML/CFT requirements and are supervised for compliance
- ❖ The legal professional remains liable under the AMLO for a failure to carry out CDD measure.

3

Requirements under AMLO - Sanctions

Non-compliance with the requirements will be handled in accordance with the prevailing investigation and disciplinary mechanism under the Legal Practitioners Ordinance (“LPO”), Cap. 159.

4

Targeted Financial Sanctions



4

Targeted Financial Sanctions - Terrorist Financing

Terrorist Financing Risk of Hong Kong

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


**Medium-low
Risk**

No confirmed
case of TF
activity

4

Targeted Financial Sanctions - Terrorist Financing



UNATMO



Under the UNATMO, the Government has implemented measures on prevention of terrorist acts, including –

- ✧ publishing in the Gazette a notice of persons or organizations designated by the UN or specified by the court as terrorists/terrorist associates
- ✧ freezing terrorist property
- ✧ prohibition on providing/collecting property to commit terrorist acts
- ✧ prohibition on making property/financial services available to or collecting property/soliciting financial services for terrorists/terrorist associates
- ✧ prohibition on dealing with specified terrorist property or property of specified terrorists/terrorist associates
- ✧ prohibition on providing/collecting property to finance or organizing/facilitating the travel of foreign terrorist fighters



4

Targeted Financial Sanctions

- Proliferation Financing of Democratic People's Republic of Korea (North Korea) and Iran

United Nations Sanctions Ordinance (Cap. 537)

- United Nations Sanctions (Democratic People's Republic of Korea) Regulation (Cap.537AE)
- United Nations Sanctions (Joint Comprehensive Plan of Action - Iran) Regulation (Cap.537BV)

Targeted Financial Sanctions:

- ✧ 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)**

4

Targeted Financial Sanctions - Terrorist Financing and Proliferation

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)

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.)

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>

Lists of individuals and entities designated by the United Nations Security Council

<https://www.cedb.gov.hk/en/policies/united-nations-security-council-sanctions.html>

THANK YOU

Narcotics Division, Security Bureau

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