

*Professional accountants
and anti-money laundering
– Experience Sharing*

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Agenda

- I. The Framework for Professional Accountants
- II. Client Due Diligence
- III. Record Keeping
- IV. Reporting Suspicions
- V. Examples

My focus is upon the barriers and practical difficulties faced by professional accountants in fulfilling their responsibilities in assisting the combating of money laundering and terrorist financing.

I. The Framework for Professional Accountants

- Generally acknowledged that FATF Recommendations provide the benchmark for effective AML regimes
- For professionals, including accountants, *in relation to specific service activities*, provisions covering:
 - Client due diligence
 - Record keeping
 - Reporting suspicions

I. The Framework for Professional Accountants

- FATF Recommendations not yet enshrined in either HK Law or professional guidance for accountants, except OSCO/DTROP/UNATMO
 - Prohibition on assisting a money launderer
 - Obligation to report suspicions of money laundering
- These provisions apply to all in HK, but higher expectations exist for professionals, including accountants
- A more extensive legal, regulatory or professional framework would be helpful
 - Provide practical guidance – what to do to meet expectations
 - Help persuade doubters that something is required

I. The Framework for Professional Accountants

- However, any reputable professional accountant should wish to mitigate the reputational risk of being found either to have assisted a money launderer or to have failed to report an illegal activity of which he had knowledge or should have been suspicious
- Risk management measures
 - Understanding of risk areas (what circumstances are more likely to expose the accountant to AML?)
 - Training/Awareness
 - Procedures (client due diligence, documentation standards etc)
 - Consultative and reporting mechanisms

I. The Framework for Professional Accountants

- Recently enacted Anti-money Laundering and Counter-terrorist Financing (Financial Institutions) Ordinance ('AMLO') and recently issued Guideline for FIs from the Four Relevant Authorities (and the Law Society guidelines) are potentially helpful
- AMLO enshrines relevant FATF Recommendations into law and introduces requirements for FIs
 - Client due diligence
 - Training
 - Record keeping
- Guidelines provide practical guidance and recommended procedures
- Similar legislation for Designated non-Financial Businesses and Professions will need to be enacted in due course (relatively soon)

II. Client Due Diligence

- Need to apply for all clients/all assignments?
 - FATF Recommendations apply to specific services but related guidance useful
- Consider
 - Who is my (prospective) client?
 - Does the individual with whom I'm dealing really represent the purported client?
 - Does the assignment, and related transaction make sense in the context of what I know about this client?
 - Do I understand the source of any funds involved?
 - Counterparties
 - Extended consideration in areas of perceived higher risk

II. Client Due Diligence

- Philosophical barriers to effective CDD
 - “I already know my client”
 - “My client won’t like me asking these questions”
 - “My competitors aren’t doing this”
 - “My business is fraud/tax minimalisation advice”
- Education is key (and a formal framework would help)
- Keep It Simple

II. Client Due Diligence

- Practical difficulties
 - Useful information is not readily available
 - Identification of UBO
 - Uncooperative (potential) clients
 - Inherent cultural inclination to secrecy – implications for UBOs
 - Private/public boundaries are obscured sometimes
 - Who are PEPs, in HK and China context?
 - How to assess if someone is PEP?
 - Is internet search adequate?
 - What records to maintain?

II. Client Due Diligence

- Response to practical difficulties
 - Standardise across the firm/profession, so clients know what to expect (guidelines helpful)
 - Risk-based approach – basic, simplified and enhanced procedures, dependent upon perceived risk
 - Approach endorsed by FATF
 - Centralise aspects using ‘experts’?
 - Can distance the client team from antagonism
 - But client team should know the client better
 - Onus on partner-led assessment/decision
 - Not a task for the most junior team member
 - either technically or relationship-wise

III. Record Keeping

- An FATF recommendation, and best practice
- Shouldn't be a challenge for professional accountants
- What is required/expected?
 - What would JFIU require in order to eliminate accountant from censure, to pursue a STR?
 - How long to retain?
- Avoid 'tick-lists', provide evidence
 - Centralise collection and maintenance of documentation?

IV. Reporting Suspicions

- Philosophical barriers
 - “But my business is tax advice – if my client knows I’m going to report our discussions, I’ll never have another client”
 - “Does the JFIU really want to know about this? It’s completely insignificant and my client has already dealt with it”

Make it easy for your partners and staff by requiring internal notification, consultation, decision making and liaison

IV. Reporting Suspicions

- Practical difficulties
 - What is ‘suspicion’?
 - Is this ‘use of proceeds’ - when does a predicate crime become money laundering?
 - No concept of materiality/threshold – one-tier reporting
 - Outside Hong Kong
 - Tax avoidance v tax evasion
- Training, Internal experts, FAQs, Case Studies
 - JFIU, HKICPA material exists and/or is being prepared

V. Examples

Example 1

Co. X is a UK incorporated private company referred by your contact in an investment bank. Co. X requires company formation and financial due diligence in support of a planned acquisition.

What client due diligence procedures should be performed (using Guideline for Financial Institutions for reference)?

V. Examples

Example 1

a) Identify and verify potential client's identity

- Company name, date and place of incorporation, registration / incorporation number, registered office and business address
- Copies of (a) certificate of incorporation and business registration, (b) company's memorandum and articles of association and (c) ownership and structure chart
- Names of all directors and verify identity based on risk based approach
- Company search / certificate of incumbency or similar document

b) Identify and verify any UBO

- Identify all UBO (>10% / exercise ultimate control over management / person on whose behalf the customer is acting) (including name, nationality, date of birth, identity document type and number and residential address)
- Verify identity of UBO >25% (>10% if high risk)
- Verify residential address based on risk based approach
- Identify intermediate layers of the company (including name, place of incorporation and rationale)

V. Examples

Example 1

- c) Understand the purpose and nature of the transaction/business relationship and the source of funds
- d) Identify and verify the person purporting to act on behalf of the potential client

V. Examples

Example 2

If Co. X is a UK listed company in UK, which of the CDD procedures can be omitted (simplified CDD)?

- a) Identify and verify customer's identity
- b) Identify and verify UBO
- c) Understand the purpose and nature of the business relationship and source of funds
- d) Identify and verify the person purports to act on behalf of the company

V. Examples

Example 2

If Co. X is a UK listed company in UK, which of the CDD procedures can be omitted (simplified CDD)?

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- b) **Identify and verify UBO**
- c) Understand the purpose and nature of the business relationship and source of funds
- d) Identify and verify the person purports to act on behalf of the company

Note: For verification of customer's identity, you are required to obtain proof of listed status on a stock exchange. You are not required to obtain copies of (a) certificate of incorporation and business registration, (b) company's memorandum and articles of association, (c) ownership and structure chart and company search / certificate of incumbency or similar document.

V. Examples

Example 3

If Company X has a UBO who is a PEP in UK, what additional procedures must you undertake (enhanced CDD)?

- a) Obtaining approval from senior management
- b) Taking reasonable measures to establish the customer's or the beneficial owner's source of wealth and the source of the funds
- c) Applying enhanced monitoring to the relationship

V. Examples

Example 3

If Company X has a UBO who is a PEP in UK, what additional procedures must you undertake (enhanced CDD)?

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- b) **Taking 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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V. Examples

Example 4

A walk-in prospective client, Mr X, visits your office. He hands you a substantial amount of cash and requests that you incorporate a company and deposit the cash into the company bank account. Should you:

- a) Proceed quickly and issue your fee-note?
- b) Decline Mr X's business as the circumstances are suspicious?
- c) Proceed with the business and conduct CDD on Mr X?
- d) Proceed but make a STR to the JFIU because it looks suspicious?

V. Examples

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V. Examples

Example 5

You interview Mr X as part of your CDD. He is evasive, claims that the cash was given to him by his wife and that he has no idea where it came from. He says that his wife has returned to the Mainland to stay with her parents (government officials) and will not return to HK for a while. Do you:

- a) Ask Mr X to make enquiries of his wife before proceeding with the business?
- b) Now proceed quickly and issue your fee-note?
- c) Decline the business because the circumstances are suspicious?
- d) Make a STR to the JFIU to report your suspicion?

V. Examples

Example 5

You interview Mr X as part of your CDD. He is evasive, claims that the cash was given to him by his wife and that he has no idea where it came from. He says that his wife has returned to the Mainland to stay with her parents (government officials) and will not return to HK for a while. Do you:

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- c) Decline the business because the circumstances are suspicious?
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V. Examples

Example 6

Mr and Mrs X attend your office and Mrs X says she is a housewife and has accumulated the cash from savings and successful share-trading but does not provide documentary proof. They request that you proceed to establish the company. Do you

- a) Decline the business as the circumstances are suspicious?
- b) Proceed with the business as you have now completed CDD?
- c) Make a STR to the JFIU to report your suspicion?

V. Examples

Example 6

Mr and Mrs X attend your office and Mrs X says she is a housewife and has accumulated the cash from savings and successful share-trading but does not provide documentary proof. They request that you proceed to establish the company. Do you

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V. Examples

Example 7

A few years ago your firm established a trust for Mr Z, for a specific charitable purpose, the provision of medical care for people living in a remote part of the Mainland. Regular donations have been made to charitable organisations accordingly. Recently Mr Z has instructed you to remit US\$10000 to a personal bank account in a jurisdiction which lacks AML legislation, explaining that the money is for medicine for the local poor to treat a mysterious disease. Do you

- a) Decline the instruction as being not in line with the way the trust has been operated?
- b) Seek further information from Mr Z, eg details of proposed recipient, details of the disease, etc?
- c) Make a STR to the JFIU?

V. Examples

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- c) Make a STR to the JFIU?

V. Examples

Example 8

Mr Z tells you that the proposed recipient is a personal friend, providing the full name, and asks you to proceed. You check the name against the gazetted list of terrorists and find a match. Do you

- a) Decline to proceed and take no further action?
- b) Proceed with the remittance because you can't be sure that the transaction is terrorist related?
- c) Make a STR to the JFIU?

V. Examples

Example 8

Mr Z tells you that the proposed recipient is a personal friend, providing the full name, and asks you to proceed. You check the name against the gazetted list of terrorists and find a match. Do you

- a) Decline to proceed and take no further action?
- b) Proceed with the remittance because you can't be sure that the transaction is terrorist related?
- c) **Make a STR to the JFIU?**

Thank you!

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