



1 August 2017

To: Members of the Hong Kong Institute of CPAs  
All other interested parties

**Invitation to comment on Exposure Draft  
Guidelines on Anti-Money Laundering and Counter-Terrorist Financing  
for Professional Accountants**

**Comments to be received by 30 September 2017**

The Institute is seeking views on draft Guidelines on Anti-Money Laundering and Counter-Terrorist Financing ("Guidelines"). The Guidelines will be applicable mainly to member practices and members working in practices. They will also be relevant to members working in the trust or company service provider ("TCSP") sector, particularly members who are proprietors, partners or directors of TCSP entities.

The Institute proposes to issue the Guidelines as a local addition to the Code of Ethics for Professional Accountants and, as such, they will be enforceable.

*Background*

The government recently introduced [a bill](#) into the Legislative Council to amend the [Anti-Money Laundering and Counter-Terrorist Financing \(Financial Institutions\) Ordinance](#) (Cap. 615) ("AMLO"). The bill seeks to give effect in law to core elements of the [Recommendations](#), the international standards on AML issued by the Financial Action Task Force ("FATF"), as these apply to "designated non-financial businesses and professions (DNFBPs)", including accountants. It extends to DNFBPs a number of the statutory requirements under AMLO, which currently apply only to financial institutions, in particular the requirements in Schedule 2 of AMLO on customer due diligence ("CDD") and record keeping ("RK").

The bill imposes CDD and RK requirements on accountants when, by way of a business, they prepare for or carry out for clients transactions concerning one of more of the following services:

- (i) buying or selling of real estate;
- (ii) managing of client money, securities or other assets;
- (iii) management of bank, savings or securities accounts;
- (iv) organisation of contributions for the creation, operation or management of corporations;
- (v) creation, operation or management of legal persons or arrangements;
- (vi) buying or selling of business entities;
- (vii) any of the services listed in (a) - (e) below.

TCSPs, which form a separate category of DNFBPs, will also be required to comply with the CDD and RK requirements when, by way of a business, they prepare for or carry out for clients transactions concerning one of more of the following services:

- (a) forming of corporations or other legal persons;
- (b) acting, or arranging for another person to act, as a director or secretary of a corporation, a partner of a partnership, or in a similar position in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address for a corporation, a partnership or any other legal person or arrangement;
- (d) acting, or arranging for another person to act as a trustee of an express trust or similar legal arrangement;
- (e) acting, or arranging for another person to act as a nominee shareholder for a person other than a corporation whose securities are listed on a recognised stock market.



Although, in principle, TCSPs will be required to be licensed, and subject to supervision, by the Registrar of Companies, the Institute understands that, where the proprietors, partners or directors of a TCSP entity are members of the Institute, it is proposed that the Institute will also have a role in regulation.

Under section 7 of AMLO, as amended by the bill, relevant regulatory bodies, including the Institute, will be empowered to issue guidelines to their members to facilitate their members' compliance with the new requirements. The bill also includes consequential amendments to the Professional Accountants Ordinance (Cap. 50), under which a failure by a member to comply with AML requirements, among other things, will be grounds for initiating disciplinary action.

Guidelines issued under section 7 of AMLO are non-statutory and a failure to comply with a provision in such guidelines does not by itself render a person liable to any judicial or other proceedings. However, under AMLO, guidelines are admissible as evidence in court proceedings and, in determining a question in proceedings, the court will take into account any provision that appears to be relevant to that question. A regulatory body will also have regard to the guidelines in considering whether there has been a contravention of a requirement of Schedule 2 of AMLO.

It is against the above background that the Institute has drafted the Guidelines, which are aimed at facilitating members' compliance with AMLO, as well as with existing statutory requirements relating to suspicious transaction reporting<sup>1</sup>, which is another core area of the FATF Recommendations. They have been developed with the assistance of a working group, comprising members with knowledge and experience in the area of AML, from firms of different sizes. Sources of information referred to in developing the Guidelines include the AMLO (and the bill), the FATF Recommendations and the existing AML guidelines for financial institutions.

Subject to its passage through the Legislative Council, the commencement date of the bill will be 1 March 2018, and the Guidelines will need to be in place by that time.

Details of the Guidelines can be found via the following link:

[http://www.hkicpa.org.hk/file/media/section5\\_membership/Professional%20Representation/aml\\_con\\_sultation\\_draft\\_2017.pdf](http://www.hkicpa.org.hk/file/media/section5_membership/Professional%20Representation/aml_con_sultation_draft_2017.pdf)

The Institute invites members' comments on the Guidelines. One specific question on which the Institute would welcome comments is whether the all detailed material in the appendices should be retained in the Guidelines. The appendices primarily contain examples that aim to provide further assistance on steps members could take with regard to compliance with the AML requirements.

Comments should be supported by specific reasoning and should be submitted in written form on or before **30 September 2017**.

Comments may be sent by mail, fax or e-mail to:

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Comments will be acknowledged and may be made available for public review unless otherwise requested by the respondent.

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<sup>1</sup> Under the Organised and Serious Crimes Ordinance (Cap. 455), the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).