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Anti-money Laundering Bulletin

Frequently Asked Questions on
Suspicious Transaction Reporting

Supplement to AMLB1

HONG KONG INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Anti-Money Laundering/ Counter-Terrorist Financing Frequently asked questions on suspicious transaction reporting

This document supplements the revised [Anti-Money Laundering Bulletin \("AMLB1"\)](#) issued by the Institute in April 2015. It draws members' attention to some frequently asked questions on the obligations of suspicious transaction reporting in Hong Kong for anti-money laundering/ counter-terrorist financing. This document does not constitute legal advice to members. In case of doubt, members should seek their own legal advice.

Frequently asked questions on suspicious transaction reporting

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Frequently asked questions on suspicious transaction reporting

1. What are money laundering and terrorist financing?

Money laundering ("ML") includes of a wide range of activities and processes involving the proceeds of crime, which are often intended to alter the identity of the source of the proceeds in a manner that disguises their illegal origin. The relevant laws in Hong Kong make it an offence to deal with any property, knowing or having reasonable grounds to believe, that it represents the [proceeds](#) of drug trafficking or other [indictable offence](#). The proceeds involved could be in the possession of, or handled by, any person, corporation or other entity. "Proceeds" does not mean only cash or cash equivalent (see the Glossary).

Terrorist financing ("TF") includes the financing of terrorist acts, and of terrorists and terrorist organizations. The relevant laws in Hong Kong make it an offence to provide or collect funds, knowing, or with the intention, that the funds will be used to commit terrorist acts; or make any funds or financial services available to or for the benefit of a person, knowing or having reasonable grounds to believe that, that person is a terrorist or terrorist associate.

2. What are main offences relating to suspicious transaction reporting in respect of money laundering and terrorist financing?

The main offences include:

- (a) Failure to disclose (see questions 3 to 12)
- (b) Tipping off (see question 13)

3. What is a person's legal obligation or responsibility in respect of reporting money laundering or terrorist financing?

When a person knows or suspects that, any property represents:

- (a) the proceeds of drug trafficking or other indictable offences or was, or is intended to be, used in connection with such offences, or
- (b) [terrorist property](#),

he or she should, as soon as reasonably practicable, report his or her knowledge or suspicion to the Joint Financial Intelligence Unit ("JFIU") or compliance officer designated by his or her employer for anti-money laundering ("AML") purposes.

Such suspicious transaction reporting is a statutory obligation. For the statutory obligation to report to arise, it is not necessary to be able to identify or suspect:

- (a) the specific nature of the offence, or even to establish that an offence has, in fact, been committed or will be committed¹, or
- (b) the specific nature of the terrorist act which the property was, or is intended to be, used to finance, or that a particular person is, in fact, a terrorist or a terrorist associate.

4. What counts as suspicion?

A suspicion may be formed without knowing all the detailed elements that make up a particular criminal offence, or whether those elements have occurred, or without knowing the details of any plan for an act of terrorism. If a person has formed a suspicion, there is a duty to report on that suspicion.

The dictionary defines “suspicion” as implying a belief or opinion based upon facts or circumstances that do not constitute proof. Case law and other sources indicate that suspicion is more than speculation but less than proof or knowledge. Suspicion is personal and subjective but will generally be built upon some objective foundation.

5. Which legislation in Hong Kong imposes the statutory obligation of suspicious transaction reporting and what are the relevant sections?

In Hong Kong, the following legislation has been enacted, in part, to address the problems associated with ML/TF. Suspicious transaction reporting requirements were first introduced into the Drug Trafficking (Recovery of Proceeds) Ordinance ("DTROP") in 1989. Similar statutory reporting requirements were also included in the Organised and Serious Crimes Ordinance ("OSCO") and the United Nations (Anti-Terrorism) Measures Ordinance ("UNATMO"), enacted in 1994 and 2002 respectively.

- (a) [Section 25A](#) of DTROP (Cap.405)
- (b) [Section 25A](#) of OSCO (Cap.455)
- (c) [Section 12](#) of UNATMO (Cap.575)

6. Where can I find guidance on indicators of suspicious transactions?

JFIU has listed some [examples of suspicious transaction indicators](#) on its website. The Narcotics Division of the Security Bureau has published a booklet entitled, *A Practical Guide for Anti-money Laundering & Counter-Terrorist Financing* ("AML/ CTF"), which also provides some useful sector-specific [references](#).

7. What are the procedures to report suspicious transactions?

The agency to which suspicious transaction reports ("STRs") should be sent is the JFIU.

¹ NB Under the relevant legislation, the reporting obligation applies in relation to the proceeds of an indictable offence taking place in Hong Kong, or of conduct outside Hong Kong which would constitute an indictable offence were it to have occurred in Hong Kong.

The JFIU is a financial intelligence unit run jointly by the Hong Kong Police Force and the Hong Kong Customs and Excise Department. Please refer to the [JFIU](#) website for more information on:

- (a) [How to identify a "suspicion"?](#)
- (b) [When to submit an STR?](#)
- (c) [How to submit an STR?](#)
- (d) [What to report in an STR?](#)

8. Is it always necessary to report direct to the Joint Financial Intelligence Unit?

Under section 25A of DTROP/ OSCO and section 12 of UNATMO, an employee who discloses knowledge or suspicion to an appropriate person, in accordance with procedures established by the employer for the making of such disclosures, is regarded as discharging his/ her responsibilities under the law.

In other words, if an employer has designated a particular person as an AML compliance or reporting officer, to receive reports from staff, then it is sufficient for employees to make disclosures to that person. The compliance officer is responsible for making STRs to the JFIU. In order to be able to fulfil the role adequately, the compliance officer should be a person of sufficient seniority and authority within the organization.

9. What is the consequence of the failure to report a suspicious transaction?

Failure to report a suspicious transaction where a person has the requisite knowledge or suspicion is a criminal offence. The offence carries a maximum penalty of three months imprisonment and a fine of \$50,000 (level 5).

10. Is a person making a suspicious transaction report protected from prosecution when they have reported knowledge or suspicion of money laundering?

Yes, making an STR can protect a person from being subsequently prosecuted for the offence of dealing in property that is the proceeds of drug trafficking or an indictable offence, in the circumstances provided for under section 25 of DTROP/ OSCO.

11. Is the identity of the person filing a suspicious transaction report protected?

The identity of the person filing an STR is strictly confidential. Access to the disclosed information is restricted to financial investigating officers within the law enforcement agencies. Section 26 of DTROP/ OSCO, and section 12 of UNATMO, impose tight restrictions on revealing the identity of the person making the report. The law enforcement agencies have indicated that they consider that maintaining the integrity of the relationship, established between law enforcement agencies and the financial and non-financial sectors, to be of paramount importance.

12. Would making a suspicious transaction report be considered a breach of any restriction on disclosure of information?

A disclosure made in good faith to JFIU will not be treated as a breach of any contract, enactment, rule of conduct, or other provision restricting disclosure of information, and will not render the person making the disclosure liable in damages for any loss arising out of the disclosure. This is clear in section 25A of DTROP/ OSCO and section 12 of UNATMO.

13. What is tipping off and what is the consequence of tipping off?

Tipping off is where a person, knowing or suspecting that a disclosure has been made to the JFIU, or a compliance officer, discloses to another person any matter that is likely to prejudice an investigation that might be conducted as a result. Tipping off is a criminal offence under section 25A of DTROP/ OSCO and section 12 of UNATMO, which carries a maximum penalty, on conviction upon indictment, of three years imprisonment and a fine of \$500,000 (or imprisonment of one year and a fine of \$100,000 (level 6), upon summary conviction).

14. What is the Financial Action Task Force on Money Laundering and how is it relevant to Hong Kong?

The Financial Action Task Force or FATF is an international, inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. Hong Kong is a member of FATF.

The core [FATF Recommendations](#), which apply to accountants and other relevant non-financial businesses and professions, as well as financial institutions, relate to:

- Customer due diligence
- Record keeping
- Suspicious transaction reporting

As indicated above (question 5), suspicious transaction reporting requirements have been in the law in Hong Kong since 1989. [The Anti-Money Laundering and Counter-Terrorist Financing \(Financial Institutions\) Ordinance \(Cap. 615\)](#), which prescribes requirements on record keeping and customer due diligence for the financial services sector, was introduced in 2012. Legislation to prescribe requirements on record keeping and customer due diligence for non-financial business and professions, including accountants, is expected to be introduced in due course.

Although these core requirements have yet to be introduced into the law, members are advised to establish effective customer due diligence and record-keeping procedures for AML/ CTF. Adopting such procedures can help members avoid inadvertent involvement in ML/ TF activities and effectively manage the related risks. For more information see [AMLB1](#).

FATF has also issued [guidance](#) for accountants setting out risk categories and procedures for applying a risk-based approach to countering money laundering and the financing of terrorism.

15. What are some quick links to resources that can provide more information on this topic?

- (a) Institute's [AMLB1](#) on the requirements on anti-money laundering, anti-terrorist financing and related matters
- (b) Government's [guide](#) on anti-money laundering and counter terrorist financing
- (c) Government's information [leaflet](#) for accountants
- (d) [JFIU's website](#) on suspicious transaction reports and typologies
- (e) [Narcotics Division's website](#) on anti-money laundering and anti-terrorist financing
- (f) [FATF's](#) website for international guidance and statements

Glossary

Dealing includes:

- (a) receiving or acquiring the property
- (b) concealing or disguising the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise)
- (c) disposing of or converting the property
- (d) bringing into, or removing the property from Hong Kong
- (e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise)

Indictable offence is:

An offence that is tried on indictment and includes an offence that may be tried either summarily or on indictment (click for [examples of indictable offence](#)).

Proceeds include:

- (a) payments or other rewards received at any time in connection with the commission of that offence
- (b) property derived or realised, directly or indirectly, from any of the payments or other rewards
- (c) pecuniary advantage obtained in connection with the commission of that offence

Terrorist property is:

- (a) the property of a terrorist or terrorist associate; or
- (b) any other property consisting of funds that:
 - (i) is intended to be used to finance or otherwise assist the commission of a terrorist act; or
 - (ii) was used to finance or otherwise assist the commission of a terrorist act.

Some examples of indictable offences²

Ordinance	Offence	Section
Cap.32, Companies (Winding up and Miscellaneous Provisions) Ordinance	Offences by officers of companies in liquidation	s271
	Falsification of books	s272
	Responsibility of directors for fraudulent trading	s275
	Criminal liability for misstatements in prospectus	s342F
	For other offences, reference can be made to Schedule 12 of the Ordinance	
Cap.622, Companies Ordinance	Officer recklessly or knowingly making false statements, etc., to auditors	s413
Cap.112, Inland Revenue Ordinance	Fraud, etc. with intent to evade or assist any other person to evade tax	s82
Cap.134, Dangerous Drugs Ordinance	Trafficking in a dangerous drug, or offering to traffick in a dangerous drug or in a substance believed to be a dangerous drug, or doing/ offering to do acts for this purpose	s4
	Manufacturing a dangerous drug or doing/ offering to do an act preparatory to, or for the purpose of, manufacturing a dangerous drug	s6
Cap.210, Theft Ordinance	Theft	s9
	Fraud	s16A
	False accounting	s19
Cap.405, Drug Trafficking (Recovery of Proceeds) Ordinance	Reference can be made to Schedule 1 of the Ordinance	-

² N.B. This is not intended to be comprehensive list of indictable offences but only to provide some examples of the types of offences that are indictable offences under Hong Kong law.

Ordinance	Offence	Section
Cap. 455, Organized and Serious Crimes Ordinance	Reference can be made to Schedules 1 and 2 of the Ordinance	-
Cap.571, Securities and Futures Ordinance	Offence of insider dealing Offence of disclosure of information about prohibited transactions Offence of disclosure of false or misleading information inducing transactions	s291 s297 s298