

*Mr. Ho Kee Fu, Member of Anti-money Laundering Guidelines Working Group, and
Partner, Regulatory Advisory Services, PricewaterhouseCoopers
Mr. Peter Tisman, Director, Advocacy and Practice Development, HKICPA
Mr. Eric Chiang, Deputy Director, Advocacy and Practice Development, HKICPA*

7 September 2017

Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Guidelines for professional accountants



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Guidelines for professional accountants

- I. Introduction and Background**
 - FATF Recommendations and AML legislation

- II. AML Guidelines**
 - Context and objectives
 - Scope and definitions
 - Principles and key concepts

- III. The Next Steps**



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

I. Introduction and Background

- AML essentially involves measures to prevent and detect efforts to disguise the source of property that is the proceeds of serious crime. Unfortunately, serious crime is unlikely to diminish and with the advent of cyber-crime it is becoming more complex, and calls for greater vigilance
- It goes without saying that terrorist activities are an increasing threat to society. While Hong Kong may have been spared from terrorist activity, as a major international financial centre with huge flows of capital everyday, it is a potential location for both the financing of terrorist activities and the laundering of the proceeds of crime
- The focus of combating terrorist financing is less on the source of funds and more on their intended use, i.e., for terrorism-related activities



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

I. Introduction and Background (Cont'd)

- "If you know there's no landing space to land your plane, you don't take off in the first place. It's the same with money: if there is nowhere to land it once you've stolen it, you can't steal it."
(Quotation from a Nigerian anti-corruption investigator cited by Transparency International)
- The case of the man who found HK\$1.8m at a taxi rank



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

I. Introduction and Background (Cont'd)

Basel AML Index 2017 (Source: Basel Institute on Governance):

https://index.baselgovernance.org/sites/index/documents/Basel_AML_Index_Report_2017.pdf

- *"To date the Basel AML Index remains the only index issued by an independent, not-for-profit organisation ranking countries according to their risk of money laundering and terrorist financing. The Basel AML Index is used by the private sector as an established AML country risk rating tool for compliance purposes, and in the public sector, by NGOs and academia for research and policy measures.*
- *The Basel AML Index 2017 edition covers 146 countries and provides risk ratings based on the quality of a country's framework for AML and countering terrorism financing (AML/CFT) and related factors such as perceived levels of corruption, financial sector standards and public transparency.*
- *The results of the Basel AML Index....are derived from 14 indicators using publicly available sources such as the Financial Action Task Force (FATF), Transparency International, the World Bank and the World Economic Forum. The scores are aggregated as a composite index using a qualitative and expert-based assessment"*



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

5

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

I. Introduction and Background (Cont'd)

MEDIA RELEASE, Basel, 16 August 2017

- *"Since its first release in 2012 the Index has not seen significant changes in terms of countries occupying the top ten risk positions; yet, in the 2017 Basel AML Index we observe that the average country risk level has been deteriorating at least during the last three years. While the global average risk scores were 5.82 in 2015 and 5.85 in 2016, the average risk score this year is equal to 6.15 (on a scale of 0 = low risk to 10 = high risk)"*
- Rankings/ scores in 2017:
 - Top 3: 146 – Finland (3.04), 145 – Lithuania (3.67), 144 – Estonia (3.83)
 - Bottom 3: 1 - Iran (8.60), 2 - Afghanistan (8.38), 3 - Guinea Bissau (8.35)
 - 89 - Hong Kong (5.54), 51 - China (6.53)
 - Others: 118 - UK (4.81), 117 - Singapore (4.83), 116 - US (4.85)



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

6

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

FATF Recommendations and relevant legislation

- Hong Kong is member of the Financial Action Task Force (FATF), which spearheads the fight against ML/ TF internationally. It was formed in 1989 by the G7 group of countries, but its reach has become wider and it now has 37 members. It has global impact. (C.f. the OECD's base erosion and profit shifting initiative (BEPS) in tax.)
- FATF issued the 40 Recommendations (Rs), originally only on AML but later 9 Special Recommendations on CFT were added after 9/11. The combined document known just as the Recommendations have become the international standard
- Originally the Rs covered only financial institutions (FIs) but they were subsequently extended to "designated non-financial businesses and professions (DNFBPs)", including accountants lawyers, trust and company service providers (TCSPs) and estate agents.



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

7

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

FATF Recommendations and relevant legislation (Cont'd)

- Major FATF Rs include those covering customer due diligence (CDD), making suspicious transaction reports (STRs), record keeping (RK) and controls and monitoring
- FATF members, including Hong Kong, are obliged to implement certain fundamental Rs in legislation, namely CDD, STRs and RK
- FATF conducts peer reviews known as Mutual Evaluations (MEs). The current round of MEs is reviewing not only the legal and regulatory framework for AML/CFT, but also the effectiveness of implementation. Hong Kong will undergo an ME in 2018



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

8

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

FATF Recommendations and relevant legislation (Cont'd)

- Legislation to implement CDD and RK for FIs was passed in 2012: Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615)(AMLO)
- Legislation covering STRs has been around for a number of years:
 - (i) Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)(DTROP) [1989]
 - (ii) Organised and Serious Crimes Ordinance (Cap. 455)(OSCO) [1994]
 - (iii) United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)(UNATMO) [2002]
- Once AMLO was passed it was only a matter of time before legislation for DNFBPs was introduced, although until last year no timetable for this had been confirmed



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

II. Guidelines – context and objectives

- Knowing that DNFBPs, including accountants, in Hong Kong were expected to comply with the FATF Rs, the Institute formed an AML working group ("AMLWG"), with members from CPA firms of different sizes – big 4, mid-size and smaller practices. The AMLWG updated the AML information bulletin in mid-2015 and then started to think about developing more detailed GLs.
- In the second half of 2016, we learned that the government planned to introduce legislation on DNFBPs. The Institute's CE issued an update on 18 Jan. 17 drawing members' attention to two government consultations on:
 - (i) Enhancing Anti-Money Laundering Regulation of DNFBPs
 - (ii) Enhancing Transparency of Beneficial Ownership of HK Companies



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

II. Guidelines – context and objectives (Cont'd)

- The CE issued a further update on 14 June 2017, drawing members' attention to the consultation conclusions
- Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 (AMLO Bill) and the Companies (Amendment) Bill 2017 were subsequently introduced into the Legislative Council on 28 June 2017
- AMLO Bill mainly extends the CDD and RK requirements in Schedule 2 of AMLO to DNFBPs. It also introduces a regulatory regime for TCSPs
- The bill designates the Institute as the regulatory body for accountants. A regulatory body is empowered to "*publish in the Gazette any guideline that it considers appropriate for providing guidance in relation to the operation of Schedule 2*"



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

II. Guidelines – context and objectives (Cont'd)

- A guideline published under section 7 of AMLO is not subsidiary legislation
- "*A failure by any person to comply with a provision in any guideline published under this section does not by itself render the person liable to any judicial or other proceedings but, in any proceedings under this Ordinance before any court, the guideline is admissible in evidence; and if any provision set out in the guideline appears to the court to be relevant to any question arising in the proceedings, the provision must be taken into account in determining that question*"
- "*In considering whether a person has contravened a provision of Schedule 2, a relevant authority [or a regulatory body] must have regard to any provision in the guideline published under this section that is relevant to the requirement*"



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

II. Guidelines – context and objectives ***(Cont'd)***

- AMLWG looked at various sources both overseas and local. Some interesting overseas examples, but the law differs in different jurisdictions. Relevant sources were found in the GLs for FIs in Hong Kong, our own information bulletin and the FATF Rs
- The guidelines for FIs were based around AMLO and the FATF Rs. AMLWG anticipated that legislation for DNFBPs would be similar to AMLO and so the GLs for FIs would be a useful reference. As it turned out the government is now proposing to use the same legislation and extend AMLO to cover DNFBPs
- We have modified our draft GLs for the profession, where possible, and tried to make them more concise and readable. AMLO itself dictates that GLs cannot consist of high-level principles alone because Schedule 2 contains quite detailed requirements
- The published version may need further revision based on the final AMLO amendments and also on the comments from members



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

13

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

II. Guidelines – context and objectives ***(Cont'd)***

Aims of the GLs:

- Summarise relevant legislative provisions on AML/CFT and provide general guidance on the requirements under AMLO and also other relevant legislation (mainly DTROP/OSCO and UNATMO)
- Provide guidance on applying the relevant FATF Rs
- Require compliance by practices with prescribed requirements to prevent ML/TF activities
- Offer some general guidance to practices in designing and implementing their own policies, procedures and controls for AML/ CFT, appropriate to the nature of their business



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

14

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

Guidelines - Scope and definitions

To whom do the GLs apply?

- *"They [these Guidelines] apply primarily to member practices and members working in practices. In the Guidelines, reference to "practices" includes practice units under the Professional Accountants Ordinance (Cap. 50) and also trust or company service providers (TCSPs), where the proprietors, partners or directors are members. Reference to 'practices' should also be taken to include references to members working in practices, where the context may be so construed. The Guidelines should also provide useful information for members generally"* (Source: Draft AML Guidelines)
- The GLs do not constitute legal advice

Guidelines - Scope and definitions (Cont'd)

- As explained, TCSPs are a category of DNFBPs
- Although under the AMLO Bill, the Registrar of Companies ("R of C") will be the main regulator for TCSPs, the intention is to avoid regulatory overlaps
- Our current understanding is that for TCSP entities comprising all CPA partners/directors, regulatory responsibility for the individual members involved will be with the Institute, although TCSP companies (not corporate practices) will still need to obtain a licence from, and will be regulated by, R of C. Where there are CPA and non-CPA directors/partners, the TCSP entity will need to obtain a licence from R of C and the non-CPAs will be subject to enforcement action by R of C. The CPAs will be subject to the authority of the Institute. This may or may not be the final position
- The Professional Accountants Ordinance will be amended as part of the AMLO Bill to make non-compliance with AML/CFT requirements grounds for the Institute to take disciplinary action

Guidelines – Principles and some key concepts

Areas covered in the GLs:

- Section 1 Overview and application
 - Section 2 AML/CFT policies, procedures and systems
 - Section 3 CDD
 - Section 4 Ongoing monitoring
 - Section 5 Making STRs
 - Section 6 Financial sanctions and terrorist financing
 - Section 7 RK
 - Section 8 Staff hiring and training
-
- Key principles are set out in the summary at the front of the GLs



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

Guidelines – Principles and some key concepts (Cont'd)

Also five appendices:

- Appendix A - Further information on the FATF, ML/ TF and relevant legislation
- Appendix B - Examples of possible risk factors when adopting a risk-based approach
- Appendix C - Examples of sources and content of information for client identification and verification purposes
- Appendix D - Suspicious transaction indicators and examples of situations that could give rise to suspicions
- Appendix E - Glossary of key terms, abbreviations and definitions



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

Guidelines – Principles and some key concepts (Cont'd)

Category of HKICPA members	AML/CTF policies, procedures and controls (section 2)	CDD, RK and ongoing monitoring (sections 3, 4, 7)	Making STRs and financial sanctions (sections 5, 6)	Staff training and hiring (section 8)
Practices:				
When providing any service specified in paragraphs 1.2.1 or 1.2.2	Mandatory	Mandatory	Mandatory	Mandatory
When providing services other than those specified in paragraphs 1.2.1 or 1.2.2	Mandatory	Good practice	Mandatory	Good practice

Guidelines – Principles and some key concepts (Cont'd)

Section 2: AML/CFT policies, procedures and controls

Under the FATF Rs, the requirement for AML/CFT policies, procedures and controls is a general requirement, covering:

- Risk assessment and management
- CDD
- RK
- STRs
- Employee training programme
- Compliance management arrangements, including the appointment of a compliance officer at the management level
- Hiring, e.g., an adequate screening procedures to ensure high standards when hiring employees
- An independent audit function, to test the system
- Group policy, where appropriate

Guidelines – Principles and some key concepts (Cont'd)

Adopting a risk-based approach

"The type and extent of measures to be taken in relation to the items in paragraph 2.1.1 above should be appropriate and reasonable having regard to the risk of ML/TF and the size and nature of the business, that is, practices should adopt a risk-based approach"

(Source: Draft AML Guidelines)

Main areas of risk:

- Client risk
 - Service risk
 - Delivery channel risk
 - Country risk
-
- Further information on risk factors is contained in Appendix B



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

Guidelines – Principles and some key concepts (Cont'd)

Section 3: CDD

Following the FATF Rs, under AMLO, the detailed CDD (and RK) requirements apply in relation to specified activities, namely:

- For CPAs: When they prepare for or carry out transactions for their clients concerning:
 - (a) buying or selling of real estate;
 - (b) managing of client money, securities or other assets;
 - (c) management of bank, savings or securities accounts;
 - (d) organisation of contributions for the creation, operation or management of companies;
 - (e) creation, operation or management of legal persons or arrangements;
 - (f) buying or selling of business entities; and
 - (g) TCSP specified services



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

Guidelines – Principles and some key concepts (Cont'd)

- For TCSPs: When they prepare for or carrying out transactions for a client concerning:
 - (a) forming of companies or other legal persons;
 - (b) acting, or arranging for another person to act, as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, a partnership or any other legal person or arrangement;
 - (d) acting, or arranging for another person to act, as a trustee of a express trust or similar legal arrangement; and
 - (e) acting, or arranging for another person to act as, a nominee shareholder for a person other than a company whose securities are listed on a recognised market.



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

23

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

Guidelines – Principles and some key concepts (Cont'd)

CDD requirements in more detail:

- Comes down to knowing who your clients are and understanding the nature of their business, so that the practice will be aware if anything clearly out of the ordinary or expected occurs
- If e.g., someone comes to your house claiming to be from the cable company wanting to upgrade your TV box, would you just let him in? Most likely, you would ask for ID. If you had doubts you might phone the company to verify. If, once inside, he behaved suspiciously, you may ask more questions about his credentials, as his actions seem not to accord with his stated business. If you knew that his employer had new owners, you might also want to check them out too. If later you saw him hanging around outside the building for no reason, you might contact the management, or even the police
- You should not be less vigilant protecting your business than your home. Instead of your possessions, your professional reputation and good name are at stake; and potentially even your freedom. The penalties for involvement in ML are severe and cases show that this applies to turning a blind eye as well as intent



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

24

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

Guidelines – Principles and some key concepts (Cont'd)

CDD requirements in more detail (cont'd):

- Identify the client and verify the client's identity using documents, data or information provided by a government body or other reliable, independent source
- Where there is a beneficial owner in relation to the client (subject to some exceptions), identify and take reasonable measures to verify the beneficial owner's identity, including, in the case of a legal person or trust, measures to understand the ownership and control structure
- Definition of "beneficial owner"
 - a) In relation to a corporation,
 - i. means an individual who—
 - A. owns or controls, directly or indirectly, including through a trust or bearer share holding, more than 25% of the issued share capital of the corporation;
 - B. is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights at general meetings of the corporation; or
 - C. exercises ultimate control over the management of the corporation; or
 - ii. if the corporation is acting on behalf of another person, means that person;



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

25

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

Guidelines – Principles and some key concepts (Cont'd)

Definition of "beneficial owner" (cont'd)

- b) in relation to a partnership—
 - i. means an individual who—
 - A. is entitled to or controls, directly or indirectly, more than a 25% share of the capital or profits of the partnership;
 - B. is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights in the partnership; or
 - C. exercises ultimate control over the management of the partnership; or
 - ii. if the partnership is acting on behalf of another person, means that person;
- c) in relation to a trust, means—
 - i. an individual who is entitled to a vested interest in more than 25% of the capital of the trust property, whether the interest is in possession or in remainder or reversion and whether it is defeasible or not;
 - ii. the settlor of the trust;
 - iii. a protector or enforcer of the trust; or
 - iv. an individual who has ultimate control over the trust



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

26

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

Guidelines – Principles and some key concepts (Cont'd)

CDD requirements in more detail (cont'd):

- Understand and, as appropriate, obtain information on the purpose and intended nature of the business relationship (if any) to be established with the practice
- If a person purports to act on behalf of the client (i) identify the person and take reasonable measures to verify the person's identity using documents, data or information provided by a government body or other reliable and independent source; and (ii) verify the person's authority to act on behalf of the client
- Practices should adopt enhanced CDD measures (e.g., obtaining the approval of senior management to continue the relationship) in relation to high-risk clients (including foreign "politically exposed persons") and may adopt simplified CDD measures (e.g., not identifying the beneficial owner) in certain specified circumstances



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

27

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

Guidelines – Principles and some key concepts (Cont'd)

When CDD requirements should generally be applied:

- Before establishing a business relationship with a client;
- Before carrying out for the client an occasional transaction involving an amount equal to or above \$120,000 or an equivalent amount in any other currency, whether the transaction is carried out in a single operation or in several operations that appear to be linked;
- Where there may be a suspicion of ML/TF; or
- When there is doubt about the veracity or adequacy of any information previously obtained for the purpose of identifying the client or for the purpose of verifying the client's identity



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

28

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

Guidelines – Principles and some key concepts (Cont'd)

Section 4: Ongoing monitoring

- Effective ongoing monitoring is vital for understanding clients' business and an integral part of effective AML/CFT controls. It helps practices to know their clients and to detect unusual or suspicious activities.
- Practices should monitor their business relationships with clients by:
 - a) reviewing from time to time documents, data and information relating to the client to ensure that they are up to date and relevant;
 - b) paying attention to the business activities of clients to ensure that they are consistent with what the practice understands to be the nature of business, the risk profile and source of funds. An unusual activity may be in the form of one that is inconsistent with the expected pattern for that client, or with the normal business activities for the type of product or service that is being delivered; and
 - c) identifying activities that are complex, involve unusually large sums or unusual patterns of activities that have no apparent economic or lawful purpose and which may indicate ML/TF



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

Guidelines – Principles and some key concepts (Cont'd)

Section 5: Making STRs

- Section 25A of DTRAP/ OSCO requires a person to report if he/she knows or suspects any property to be the proceeds of drug trafficking/ other indictable offence. Section 12(1) of UNATMO requires the same in relation to terrorist property. Criminal sanctions apply for failing to report
- The requirement to make STRs is not limited to the specified services
- Once knowledge or suspicion of an ML/TF transaction or activity has been established, the following general principles should be applied:
 - a) Practices should make a report to an authorised officer or the practice's designated Money Laundering Reporting Officer, even where no service has been provided
 - b) the report should be made as soon as is reasonably practical after the suspicion or knowledge is first established; and
 - c) practices should ensure that they have in place internal controls to prevent any management or staff committing the offence of "tipping off" the client, or any other person who is the subject of the report.



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

Guidelines – Principles and some key concepts (Cont'd)

Making STRs (cont'd)

- If a person who has made a disclosure contravenes section 25(1) of DTROP/OSCO, on dealing with property that represents the proceeds of drug trafficking/ other indictable offence, or section 7 or 8 of UNATMO (on the provision or collection of property to commit terrorist acts, or making property available to, or collecting for, terrorists or terrorist associates) and the disclosure relates to that act, he/she does not commit an offence, if the disclosure is made:
 - a) before he/she acts, and that act is done with the consent of an authorised officer; or
 - b) after he/she acts, and the disclosure is made on his/her own initiative, as soon as it is reasonable for him/her to make it
- "Authorised officer": In practice this generally refers to an officer of the Joint Financial Intelligence Unit, a joint team of the Police and Customs and Excise Department ("JFIU") (<http://www.jfiu.gov.hk/index.html>)



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

Guidelines – Principles and some key concepts (Cont'd)

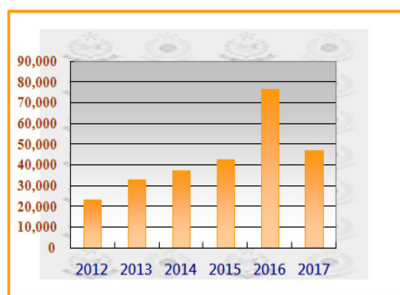
Making STRs (cont'd)

- A disclosure under the relevant sections of DTROP/OSCO or UNATMO will not be a breach of contract, enactment, rule of conduct, or provision restricting disclosure of information. The person making the disclosure will not be liable in damages for loss arising out of the disclosure
- Once an employee has reported his suspicion internally (to a designated Money Laundering Reporting Officer) in accordance with the procedure established by his/her employer for the making of such disclosures, he/she has satisfied the statutory obligation



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

STRs made in Hong Kong



2012	23282
2013	32007
2014	37188
2015	42555
2016	76590
2017*	46799

*as at 2017-07-31

No. of STRs

Source: http://www.ifiu.gov.hk/en/statistics_str.html



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

Sector	No. of STR received in 2016	Percentage (%)
Banks	68,745	89.76
Insurance	928	1.21
Securities	1,423	1.86
Money Service Operator	2,554	3.33
Money Lender	24	0.03
Stored Value Facilities Licensees	67	0.09
Real Estate	58	0.08
Dealers in Precious Products	59	0.08
Legal	969	1.27
Accounting	3	0.00
Trust & Corporate Services	27	0.04
Others	1,733	2.26
Total	76,590	100

STRs by sector in 2016: (Lawyers - 969, even though legal privilege applies)

33

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

STRs made in the UK by sector Oct 2014 to Sept 2015

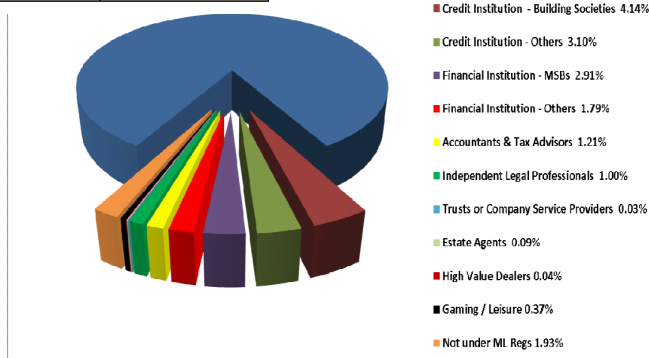
Oct 2014 to Sept 2015	Volumes	% of total	% comparison to 2013-14
Credit institution – banks	318,445	83.39%	+9.41%
Credit institution – building societies	15,806	4.14%	+23.16%
Credit institution – others	11,828	3.10%	+17.18%
Financial institution – MSBs	11,120	2.91%	-25.82%
Financial institution – others	6,835	1.79%	-0.48%
Accountants and tax advisers	4,618	1.21%	-6.33%
Independent legal professionals	3,827	1.00%	+6.01%
Trust or company service providers	101	0.03%	-42.94%
Estate agents	355	0.09%	+98.32%
High value dealers	135	0.04%	-59.21%
Gaming (including casinos)/leisure (including some not under ML Regulations ⁴)	1,431	0.37%	+52.40%
Not under ML Regulations	7,381	1.93%	-9.76%
Total	381,882	100%	+7.82%

Source: Suspicious Activity Reports (SARs) Annual Report 2015, National Crime Agency, UK

If the figures for the HK accounting profession were comparable with UK, we would expect around 928 STRs in HK



Hong Kong Institute of
Certified Public Accountants
香港會計師公會



34

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

Guidelines – Principles and some key concepts (Cont'd)

Section 6: Financial sanctions and terrorist financing

- Practices should be aware of and comply with their legal obligations under Hong Kong's financial sanctions regime, which may include considering the need to make STRs
- The United Nations Sanctions Ordinance (Cap. 537) requires the Hong Kong chief executive to make regulations to implement sanctions decided by the Security Council of the United Nations against places outside the People's Republic of China, including targeted sanctions against designated individuals or entities
- Sanctions include financial sanctions which prohibit making funds available or dealing with any funds, or economic resources, for the benefit of, or belonging to, a designated individual or entity. In addition to FIs, these are also relevant to DNFBPs, including accountants, and practices should take steps to keep themselves informed of the latest list of designated individuals and entities, proscribed parties, etc.



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

35

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

Guidelines – Principles and some key concepts (Cont'd)

Financial sanctions and terrorist financing (cont'd)

- The UN Security Council passed UN Security Council Resolution (UNSCR) 1373 (2001), which calls on all member states to act to prevent and suppress the financing of terrorist acts
- UNATMO was enacted in 2002 to give effect to the mandatory elements of UNSCR 1373 and the FATF's Special Rs on terrorist financing.
- The UN has also published the names of individuals and organisations subject to UN financial sanctions in relation to involvement with terrorism. All UN member states are required under international law to freeze the funds and economic resources of any legal person(s) named in this list and to report any suspected name matches to the relevant authorities.



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

36

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

Guidelines – Principles and some key concepts (Cont'd)

Section 7: Record keeping

- *"Where applicable, practices should prepare, maintain and retain documentation and records on their business relations with, and transactions for, clients that are necessary and sufficient to achieve the record-keeping objectives indicated below and fulfil any related legal or regulatory requirements, and which are appropriate to the scale, nature and complexity of their businesses. The information maintained should be sufficient to ensure that:*
 - a) *any client and, where appropriate, the beneficial owner of the client, can be properly identified and verified;*
 - b) *the audit trail for particular transactions and property dealt with by a practice that relates to any client and, where appropriate, the beneficial owner of the client, is clear and complete;*



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

37

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

Guidelines – Principles and some key concepts (Cont'd)

Record keeping (cont'd)

- c) *the original or suitable copies of all relevant client and records and information are available on a timely basis to the Institute or other relevant authority, upon appropriate authority;*
- d) *practices are able to show evidence of compliance with any relevant requirements specified in other sections of these Guidelines (e.g., relating to client identification, verification and risk assessments, internal reports and suspicious transaction reports, and training)*
- e) *Records in relation to particular transactions and clients should be retained for six years after the transaction has been completed or the business relationship has ended, respectively"*

Source: Draft AML Guidelines



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

38

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

Guidelines – Principles and some key concepts (Cont'd)

Record keeping (cont'd)

- AMLO states that records required to be kept under section 20 of this Schedule 2 must be kept in the following way:
 - a) If the record consists of a document, either (i) the original of the document must be kept; or (ii) a copy of the document must be kept either on microfilm or in the database of a computer
 - b) If the record consists of data or information, a record of the data or information must be kept either on microfilm or in the database of a computer



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

III. The Next Steps

- Comment on the draft Guidelines before the end of September. The Institute aims to introduce the GLs in readiness for the legislation on AML regulation
- Give the Institute any views on the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 ("AMLO Bill") and the Companies (Amendment) Bill 2017.
Timing - the government hopes to pass the legislation by the end of 2017 and bring it in on 1 March 2018
- Think about how you may develop AML/CFT policies and procedures appropriate to your business
- Think about conducting risk assessments on your existing client base and ask whether you have sufficient information about your clients and their business



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

Proposed changes in Companies Ordinance in relation to disclosure of beneficial ownership of HK companies

- CO will also be amended in conjunction with AMLO to comply with the FATF beneficial ownership disclosure recommendation
- Upon passage of the Companies (Amendment) Bill 2017, companies incorporated in Hong Kong will be required to maintain Registers of Significant Controllers
- The following individuals will be regarded as persons with significant control on a Hong Kong incorporated company:
 - a) A person who holds directly or indirectly more than 25% of the shares or voting rights of the company
 - b) A person who has the right, directly or indirectly, to appoint or remove a majority of the board of director of the company
 - c) A person who has right to exercise, or actually exercises, significant influence or control over the company
 - d) A person who has right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm.
- Competent authorities will have access to the Registers



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

ML court cases on accountants HKSAR vs Cheung Kam Sing

- Cheung was a professional accountant and running his sole proprietor firm.
- He assisted two Dutchmen to set up companies and allowed them to use the trust account of his firm to receive and withdraw funds which were claimed to be professional fees of the Dutchmen
- It is obvious that the fund flows exhibited very unusual pattern but Cheung did not question it and just executed the transactions as per instructed
- The Dutchmen were subsequently caught by the Dutch police for a few indictable offences, including money laundering. The Dutch police sought assistance from the Hong Kong police in this case
- Cheung was then caught



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

ML court cases on accountants HKSAR vs Cheung Kam Sing (Cont'd)

- Cheung was held to be dealing with property known or reasonably believed to represent proceeds of an indictable offence
- Cheung was put into jail for 6 years
- The HKICPA Disciplinary Committee judged Cheung to be guilty of dishonourable conduct in breach of section 34(1)(a)(x) of the Professional Accountants Ordinance
- Cheung was removed from the HKICPA register as a member permanently



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

43

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.

Developing an effective AML Program

- Accountability for ensuring an effective AML Program is in place
- Risk-based approach – measures should be commensurate with risk
- Policy and procedures supplemented with practical guidance
- Documentation standard and record keeping system
- Staff communication and training
- Compliance monitoring and testing
- Ongoing enhancements to the program



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

44

© Hong Kong Institute of Certified Public Accountants, 2017. All rights reserved.



Thank you for your attention



Hong Kong Institute of
Certified Public Accountants
香港會計師公會