

Professional accountants and anti-money laundering – Experience Sharing

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Experience sharing

- The framework for professional accountants
- Client due diligence
- Record keeping
- Reporting suspicions
- Examples (with thanks to Narcotics Bureau)

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

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

The framework for professional accountants

- FATF Recommendations not yet enshrined in either HK Law or professional guidance, 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

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 activity of which he should have been suspicious
- Risk management measures
 - Understanding
 - Training
 - Procedures (client due diligence etc)
 - Consultative and reporting mechanisms

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

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

Client Due Diligence

- Practical difficulties
 - Useful information is not readily available
 - Inherent cultural inclination to secrecy – implications for UBOs
 - Private/public boundaries are obscured sometimes
 - Who are PEPs, in HK and China context?
- Risk-based approach
- Centralise aspects using ‘experts’?
- Onus on partner-led assessment/decision

Record Keeping

- An FATF recommendation, and best practice
- Shouldn't be a challenge for professional accountants
- Avoid 'tick-lists', provide evidence
 - Centralise collection and maintenance of documentation?

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”

Reporting Suspicious

- Practical difficulties
 - What is ‘suspicion’?
 - When does a predicate crime become money laundering?
 - Outside Hong Kong
 - Tax avoidance v tax evasion
- Training, FAQs, Case Studies
 - JFIU, HKICPA material exists or is being prepared

Example 1

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?

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- c) **Proceed with the business and conduct CDD on Mr X?**
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Example 2

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?

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Example 3

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?

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Example 4

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?

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Example 5

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?

Example 5

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

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- c) **Make a STR to the JFIU?**