



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

This module should be read in conjunction with the [Introduction](#) and with the [Glossary](#), which contains an explanation of abbreviations and other terms used in this Manual. If reading on-line, click on blue underlined headings to activate hyperlinks to the relevant module.

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## Purpose

To set out the supervisory approach of the Hong Kong Monetary Authority (HKMA) for anti-money laundering and counter-financing of terrorism policies, procedures and controls (hereafter collectively referred to as “AML/CFT Systems”) of Authorized Institutions (AIs).

## Classification

A statutory Guideline issued by the Monetary Authority (MA) under the Banking Ordinance, section 7(3).

## Previous guidelines superseded

Circular on “Prevention of Money Laundering and Terrorist Financing, Re: Approach to Formalising Use of Supervisory Measures” dated 6 October 2006.

## Application

To all AIs

## Structure

1. Introduction
  - 1.1 Background
  - 1.2 Application
  
2. Legal and Regulatory Framework
  - 2.1 Anti-Money Laundering and Counter-Terrorist Financing Ordinance and Banking Ordinance
  - 2.2 Other Relevant Legislation



## Supervisory Policy Manual

**AML-1**

### **Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism**

**V.1 – 19.10.18**

2.3 Statutory and Regulatory Guidance

3. HKMA's AML/CFT Policy

3.1 AML/CFT

3.2 Sanctions Compliance

4. Roles of AIs and HKMA in Hong Kong's AML/CFT Regime

5. Supervisory Approach

5.1 Risk-Based Supervision

5.2 Understanding the ML/TF Risk of the Banking Sector

5.3 Understanding the ML/TF Risk of Individual AIs

5.4 Supervisory Process

5.5 Supervisory and Enforcement Measures

6. Feedback, Sharing and Capacity Building

7. Domestic and International Cooperation

8. Other Related Areas

8.1 Financial Inclusion

8.2 Use of Technology

Annex 1: List of Possible Supervisory and Enforcement Measures



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

## 1. Introduction

### 1.1 Background

1.1.1 Money laundering and terrorist financing (ML/TF) represent significant threats to the integrity of economic and financial systems. Funds flowing through AIs may also be subject to financial sanctions imposed under United Nations Security Council Resolutions (UNSCRs) and, for AIs operating internationally, relevant sanctions regimes imposed by other jurisdictions. The financing of proliferation of weapons of mass destruction (WMD) is also a significant threat as recognised internationally.

1.1.2 As an international financial centre with an externally oriented economy, Hong Kong recognises these ML/TF threats and attaches great importance to safeguarding the integrity of its financial systems by implementing an AML/CFT regime in line with the international standards. Hong Kong is a member of international standard-setting bodies, including the Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering (APG) since 1991 and 1997 respectively.

1.1.3 Within Hong Kong's overall AML/CFT regime, the HKMA has developed relevant policies and guidance for the banking sector which focus on safeguarding the banking system from ML/TF risks.

### 1.2 Application

1.2.1 This Module sets out the HKMA's overall policy and supervisory approach on AIs for managing ML/TF risks, which is premised on a risk-based approach. It should be read in conjunction with *Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report*<sup>1</sup>, *Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Authorized Institutions)* (AML/CFT Guideline) and other guidance on AML/CFT published by the HKMA from time to time.

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<sup>1</sup> Published by the Hong Kong Special Administrative Region Government from time to time.



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

## 2. Legal and Regulatory Framework

### 2.1 Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) (Cap.615) and Banking Ordinance (BO) (Cap.155)

2.1.1 The main legislation relevant for AIs' AML/CFT Systems is the AMLO. Under Part 2 of Schedule 1 of the AMLO, the MA is the relevant authority (RA) for AIs.

2.1.2 The AMLO supports the prevention and detection of ML/TF activities by requiring financial institutions, including AIs, to conduct customer due diligence (CDD) and keep records for a specified period.

2.1.3 In addition, paragraph 10 of the Seventh Schedule to the BO requires AIs to maintain on and after authorization adequate accounting systems and systems of control. These are essential for ensuring prudent and efficient running of the business, safeguarding the assets of the AI, minimising the risk of fraud, monitoring the risks to which the AI is exposed and complying with all relevant legal and regulatory requirements.

### 2.2 Other Relevant Legislation

#### 2.2.1 Other relevant legislation includes:

(a) The Organized and Serious Crimes Ordinance (OSCO) (Cap.455), in particular section 25, which prohibits dealing with property known or believed to represent proceeds of an indictable offence, and section 25A, which requires persons to disclose knowledge or suspicion that any property represents proceeds of an indictable offence.

(b) The Drug Trafficking (Recovery of Proceeds) Ordinance (DTROP) (Cap.405), in particular section 25, which prohibits dealing with property known or believed to represent proceeds of drug trafficking and section 25A, which requires persons to disclose knowledge or suspicion that any property represents proceeds of drug trafficking.



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

- (c) The United Nations (Anti-Terrorism Measures) Ordinance (UNATMO) (Cap.575), under which UNSCRs relating to terrorism are implemented in Hong Kong, in particular:
- (i) section 8A, which prohibits dealing with any property knowing that, or being reckless as to whether, it is terrorist property, controlled by a terrorist or terrorist associate, or held on behalf of, or at the direction of, a terrorist or terrorist associate; and
  - (ii) section 12, which requires persons to disclose knowledge or suspicion that any property known or suspected to be terrorist property.
- (d) The United Nations Sanctions Ordinance (UNSO) (Cap.537), under which most UNSCRs are implemented in Hong Kong and which forms the basis for Hong Kong's financial sanctions regime.
- (e) The Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap.526), in particular section 4, which prohibits a person from providing any services where he believes or suspects, on reasonable grounds, that those services may be connected to proliferation of WMD.

### 2.3 Statutory and Regulatory Guidance

- 2.3.1 The HKMA publishes the AML/CFT Guideline under section 7(3) of the BO and section 7 of the AMLO, setting out the AML/CFT standards with which AIs are required to comply in order to satisfy the statutory requirements of the AMLO and BO. The AML/CFT Guideline also provides practical guidance to assist AIs in designing and implementing their own AML/CFT Systems and contains a specific chapter on suspicious transaction detection and reporting. AIs' effective implementation of CDD measures is aided by the AML/CFT Guideline, to which the HKMA will have regard in considering whether an AI has contravened any provision of Schedule 2



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

of the AMLO. The AML/CFT Guideline has evidentiary effect under section 7(4) of the AMLO.

- 2.3.2 The AML/CFT Guideline is kept under continuous review and updated as appropriate to reflect domestic and international developments. Similar guidelines are issued by the Securities and Futures Commission (SFC), Insurance Authority (IA) and the Commissioner for Customs and Excise (CCE), who are the RAs under the AMLO for the securities, insurance and money service operator sectors respectively. The common parts of the various guidelines are drawn up in a coordinated manner by the RAs to ensure consistency of approaches, while each RA also provides sector-specific guidance in the respective guidelines covering sector-specific risks and relevant international standards.
- 2.3.3 The HKMA also issues circulars to inform AIs of any new regulatory requirements with which AIs should comply, as well as the latest local and international development on AML/CFT.
- 2.3.4 Guidance papers and frequently asked questions are developed by the HKMA and/or the industry bodies (e.g. the Hong Kong Association of Banks), to assist AIs in understanding the latest developments and complying with their legal and regulatory obligations on AML/CFT.

### 3. HKMA's AML/CFT Policy

#### 3.1 AML/CFT

- 3.1.1 As set out in the *Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report*, the Government is committed to upholding a robust AML/CFT regime that:
- (a) fulfils the international AML/CFT standards;
  - (b) deters and detects illicit fund flows in and out of the territory, through the financial system or otherwise;
  - (c) combats ML/TF and restrains and confiscates illicit



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

proceeds effectively;

- (d) reduces ML/TF vulnerabilities of both financial and non-financial sectors in Hong Kong;
- (e) adopts a risk-based approach (RBA) in applying compliance obligations to businesses and individuals;
- (f) fosters strong external and international collaboration to disrupt global ML/TF threats; and
- (g) promotes the awareness and builds the capacity of private sector stakeholders in combatting ML/TF risks through engagements in AML/CFT efforts.

3.1.2 The HKMA's AML/CFT policy (see paragraph 3.1.4), which flows from the Government's policy, is founded on an RBA. The policy objective is to address the ML/TF risks in Hong Kong's banking sector by, through appropriate preventive measures, deterring abuse of the sector as a conduit for illicit funds, and detecting and disrupting ML/TF activities through identification and reporting of such activities by AIs on the basis of a fully collaborative relationship with the Joint Financial Intelligence Unit (JFIU) and law enforcement agencies. Under this policy, the HKMA supervises and monitors AIs in their effective assessment and management of ML/TF risks and compliance with AML/CFT requirements.

3.1.3 Such policy recognises the important role which AIs play in Hong Kong's AML/CFT regime, given the size of the banking sector and Hong Kong's role as an international financial centre. It also recognises the need to provide guidance and assistance to AIs to focus their resources and effort as effectively and efficiently as possible on areas of real ML/TF risks as well as to reduce unnecessary compliance burden on AIs and bona fide businesses and individuals.

3.1.4 Being part of Hong Kong's AML/CFT regime, the HKMA seeks to:

- (a) meet international standards, in particular those set by the FATF;



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

- (b) embed the RBA through targeted support to deliver a stronger territory-wide response;
- (c) support Government and law enforcement efforts to combat ML/TF activities, and the restraint and confiscation of proceeds of illicit activities;
- (d) dovetail with the AML/CFT efforts of other agencies, both in Hong Kong and internationally, through cooperation with other financial regulators and law enforcement agencies as well as active participation in the FATF, APG and other international bodies such as the AML/CFT Expert Group of the Basel Committee on Banking Supervision; and
- (e) raise awareness and build AML/CFT capacity in the banking sector by providing guidance and promoting training and good practices.

### 3.2 Sanctions Compliance

- 3.2.1 While sanctions evasion, particularly evasion of sanctions related to financing of terrorism and WMD proliferation may share certain characteristics with other forms of ML, it also displays unique characteristics which should be considered when devising strategies to counter these threats.
- 3.2.2 Sanctions in force in Hong Kong are generally those imposed by the Security Council of the United Nations and implemented locally under the UNSO or the UNATMO.
- 3.2.3 Sanctions which are not applied under Hong Kong law have no legal status or effect in Hong Kong. However, such overseas sanctions regimes may be relevant to, and pose risks for, the businesses of Als, especially where such business is international in nature, for example in relation to correspondent banking relationships, trade-related businesses and cross-border payments. The HKMA therefore expects Als to be aware of such regimes and any risks they may pose for their businesses and to take appropriate measures to mitigate such risks.





## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

#### 4. Roles of AIs and HKMA in Hong Kong's AML/CFT Regime

- 4.1 Hong Kong's AML/CFT regime comprises a robust legal framework, effective law enforcement, rigorous preventive measures, international cooperation as well as education and publicity. Hong Kong's overall AML/CFT policy is set by a Central Coordinating Committee on AML/CFT (CCC) chaired by the Financial Secretary and consisting of the relevant government bureaux and departments, law enforcement agencies and financial regulators. In addition to AIs, the key stakeholders in Hong Kong's AML/CFT regime also include other financial institutions, designated non-financial businesses and professions, and their regulatory or self-regulatory bodies.
- 4.2 ML and TF are crimes and the responsibility for investigation and prosecution rests with law enforcement agencies including the Hong Kong Police Force, the Customs and Excise Department and the Independent Commission Against Corruption. Financial institutions, including AIs, play an important role in supporting jurisdiction-wide AML/CFT efforts by implementing AML/CFT Systems that help prevent criminals and terrorists exploiting the financial system; keeping records of business relationships and transactions that may facilitate financial investigation of suspected ML/TF activities; and collaborating with law enforcement agencies through the filing of suspicious transaction reports to the JFIU and information sharing to detect, prevent and disrupt crime.
- 4.3 The HKMA's role is to supervise AIs in their roles as key stakeholders under Hong Kong's AML/CFT regime, complying with legal and regulatory requirements, and effectively focusing on areas of higher ML/TF risk.



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

## 5. Supervisory Approach

### 5.1 Risk-Based Supervision

5.1.1 The HKMA adopts an RBA in its AML/CFT supervision of AIs. The general principle of risk-based supervision is that supervisory engagement (whether through on-site examination, off-site reviews or otherwise) is graduated according to the ML/TF risks presented by different segments of the banking sector and by individual AIs. Supervisory attention and resources of the HKMA are focused on AIs that are subject to higher ML/TF risks, while maintaining adequate and appropriate levels of engagement with AIs that present lower ML/TF risks. It is essential to recognise that the risks which AIs are exposed to are not static, but likely to change over time as threats evolve; AIs' business models change; businesses expand to cover new products, services and customer segments; and in response to technological changes.

### 5.2 Understanding the ML/TF Risk of the Banking Sector

5.2.1 Effective risk-based supervision requires a thorough understanding of the risks presented by the banking sector, specific segments and individual AIs. The HKMA draws upon a variety of sources in this process, including the Hong Kong ML/TF Risk Assessment, domestic and international typologies and supervisory experience. The HKMA, in consultation with the industry, contributes to the assessment of the banking sector in the overall Hong Kong ML/TF Risk Assessment, which is carried out periodically. The current assessment identifies the banking sector as high risk. The assessment was prepared based on the HKMA's supervisory engagement with the banking sector and discussions with industry associations, and is in line with the risks presented by banks internationally, in particular taking into account Hong Kong's status as an international financial and trading centre.

5.2.2 Within the banking sector, private banking, trade finance/trade-related business, international fund transfer and retail and corporate banking segments have been identified



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

as areas presenting higher vulnerabilities to exploitation for ML/TF.

#### 5.3 Understanding the ML/TF Risk of Individual AIs

5.3.1 To understand the risks presented by individual AIs, the HKMA undertakes periodic risk profiling<sup>2</sup> on all AIs. The exercise combines a risk rating of each AI with an impact rating reflecting its importance to Hong Kong's financial system to determine the extent and distribution of ML/TF risks across the sector and thus the intensity of supervisory engagement with individual AIs. Each AI is required to submit information for the risk-profiling exercise, including its most recent institutional ML/TF risk assessment. The results of this exercise are used by the HKMA in planning its supervisory activities and allocating resources. The exercise is conducted periodically because ML/TF risks are not static, but change in response to factors including developments in ML/TF typologies and changes to AIs' business models and scope.

5.3.2 The periodic nature of both the overall Hong Kong ML/TF Risk Assessment and the risk-profiling exercise on AIs means that risks are reassessed from time to time to ensure that the HKMA's understanding of ML/TF risk levels is kept up-to-date. Review of an AI's risk profile may take place between the periodic exercises in response to specific events or developments, for example: changes in or expansion of its business, corporate events such as merger or acquisition, or the introduction of new technology to its services or delivery channels.

5.3.3 Hong Kong is an international financial centre, and it is therefore not uncommon for customer relationships to be managed by an AI but the account of that customer to be booked outside Hong Kong. In such cases, in assessing the ML/TF risks facing individual AIs, the HKMA will focus on whether the AI has a business relationship with the customer. A major consideration is whether the relationship is managed

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<sup>2</sup> In general, the HKMA conducts risk-profiling exercise on all AIs every two years, subject to possible interim reviews of individual AIs when circumstances warrant.



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

in substance by the AI. If there is a business relationship, the account holder will be regarded as the AI's customer for the purposes of the AMLO and the assessment of risk, regardless of where the account is booked, and the AI will be expected to comply with all relevant requirements under the AMLO and the AML/CFT Guideline<sup>3</sup>.

#### 5.4 Supervisory Process

5.4.1 The HKMA employs a range of approaches in its supervisory work, including risk profiling on all AIs; off-site reviews; on-site examinations; self-assessments; meetings with AIs' senior management and boards; and review meetings in cases where specific problems are identified.

5.4.2 On-site examinations include both risk-focused and thematic examinations. Risk-focused examinations take place more frequently for AIs identified as having higher ML/TF risks in the risk-profiling exercise during which the AML/CFT Systems of individual AIs will be examined across the board and in depth. For AIs with lower ML/TF risks, risk-focused examinations will take place less frequently and focus on specific areas of the business regarded as of higher risk, or where information is less readily available, for example areas of business that are new or have expanded significantly since the last examination or review. Frequency of on-site examinations may change in response to specific trigger events, such as merger or acquisition and changes to business model or scope that may affect AIs' risk profiles.

5.4.3 Thematic examinations focus on specific areas of business or operations that may present particular ML/TF risks, such as private banking, trade finance and trade-related business and sanctions compliance. They cover groups of AIs engaged in these areas or subject to similar risks and are designed to gather information not just on individual AIs but also on common issues facing the industry.

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<sup>3</sup> For the avoidance of doubt, a business relationship always exists whenever an account is booked in Hong Kong.



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

5.4.4 Information on risks, ML/TF typologies, common problems and best practices identified during on-site examinations is shared with the industry via circulars, guidance papers and the regular AML seminars. AIs and their staff, particularly Heads of compliance and MLROs, are also expected to participate in training events and seek to build adequate capacity as set out in the Enhanced Competency Framework on AML/CFT.

5.4.5 Heads of compliance and MLROs are expected to attend the regular AML/CFT seminars organised by the HKMA and will be sent all AML/CFT-related circulars, updates of the AML/CFT Guideline, sanctions alerts and other information and relevant Government and HKMA consultation papers.

#### 5.5 Supervisory and Enforcement Measures

5.5.1 The HKMA is empowered to deploy a range of supervisory and enforcement measures under the AMLO and the BO against any AI that fails to comply with relevant legal and regulatory requirements. A non-exhaustive list of these measures is at Annex 1. Such measures can be applied to the AIs and/or their controllers, directors, chief executives, managers, employees, as appropriate. Supervisory and enforcement measures are not mutually exclusive, and can be used in combination, depending on the facts and circumstances of a particular case.

5.5.2 In applying supervisory measures, the HKMA's aim is to bring about prompt remedial actions to address the identified deficiencies in AML/CFT Systems and to prevent recurrence. Where deficiencies in an individual AI's AML/CFT Systems are identified, the HKMA will write to the AI's Chief Executive, and its Board of Directors where appropriate, to ensure that the AI understands what the deficiencies are, the remedial actions which must be undertaken, and the timeframe within which those actions must be completed. The HKMA will follow up with the AI concerned on the timely implementation of remedial actions, and that the identified deficiencies are effectively addressed. Where appropriate, the HKMA will require the AI to provide independent validation of the completion and effectiveness of the remedial actions taken.



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

Such validation may be provided by the AI's internal audit function or by an independent external adviser under section 59(2) of the BO, depending on the circumstances of each case.

- 5.5.3 Enforcement tools are used when this is proportionate to the seriousness of the concerns identified. If there is reason to inquire whether a specified provision under the AMLO has been contravened or if there is reasonable cause to believe that an offence under the AMLO may have been committed, an investigation may be commenced by the HKMA. If contraventions of the AMLO are identified, enforcement actions will be taken that are commensurate with, and proportionate to, the deficiencies found. The principal objectives of enforcement actions are to deter abuse of the banking system for ML/TF activities, drive changes and reinforce the important message that banks must have AML/CFT Systems that are commensurate with the risks presented. The more serious the findings, the greater the need to use enforcement tools that have a greater deterrent effect both on the AI concerned and the industry.
- 5.5.4 Under the AMLO, available enforcement tools for the HKMA include disciplinary measures on AIs such as remedial orders, pecuniary penalty and public reprimand. At the most serious end of the scale, where there is sufficient evidence to establish that an offence under section 5 of the AMLO has been committed by the AI concerned and/or an employee, and it is in the public interest to do so, the HKMA may prosecute the offence under section 79 of the AMLO. In less serious cases, where AIs are not fully compliant but the impact of the deficiencies on risk management is less serious, compliance advice letters may be issued to AIs as an enforcement tool to bring the areas of weakness to the attention of management and/or board of directors so that they can be properly addressed. Repeat failures and failures to act on compliance advice are likely to raise more serious concerns about management and the adequacy of controls and may result in disciplinary or other actions.



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

5.5.5 In exercising the power to impose a pecuniary penalty, the MA will have regard to the *Guideline on Exercising Power to Impose Pecuniary Penalty* published by the MA under section 23(1) of the AMLO. Cooperation is one of the factors that may be taken into consideration. The HKMA has also issued a *Guidance Note on Cooperation with the HKMA in Investigations and Enforcement Proceedings*, which elaborates on the HKMA's policy with regard to cooperation including the mutual benefits of cooperation, examples of how to cooperate, the factors taken into account in assessing the degree of cooperation and the extent to which the MA may recognise the cooperation. While cooperation does not preclude enforcement action, the MA takes cooperation into consideration when determining the outcome of enforcement action and may reduce proposed sanctions when this is appropriate in all the circumstances of the case. The Guidance Note does not apply in criminal cases.

## 6. Feedback, Sharing and Capacity Building

6.1 The HKMA shares its supervisory feedback, including good practices as well as areas of concern, to facilitate learning and capacity building in AML/CFT work of individual AIs and the banking sector as a whole. This includes but is not limited to:

- (a) sharing of observations and findings from on-site AML/CFT examinations with individual AIs to inform areas for improvement;
- (b) regular meetings with AIs and audit/consultancy firms working with AIs, to conduct fact finding and provide direct support on particular issues as appropriate;
- (c) collation of good practices and common issues observed during AML/CFT examinations and thematic reviews as well as feedback from the JFIU for sharing with the industry in the annual and ad hoc training seminars, and also in the form of circulars and guidance papers;



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

- (d) giving direction on key risks and thematic areas as well as clarifying regulatory expectations and interpretation of key controls, in the form of circulars and guidance papers, making reference to international standards and best practices and guidance issued by international organisations; and
  - (e) regular meetings and forums with the industry associations to discuss topical issues on AML/CFT.
- 6.2 All guidance and outreach materials, including presentation materials and public releases regarding disciplinary actions resulting from HKMA investigations, are available in the dedicated AML/CFT session of the HKMA's website.
- 6.3 The HKMA promotes industry training, in particular the Enhanced Competency Framework on AML/CFT drawn up in cooperation with the Hong Kong Institute of Bankers and launched in December 2016 and expanded in April 2018.

## 7. Domestic and International Cooperation

- 7.1 AML/CFT policy in Hong Kong is set by the CCC, chaired by the Financial Secretary, of which the HKMA is a member, together with relevant Government bureaux, financial regulators and law enforcement agencies. The HKMA also cooperates closely with the SFC, IA and CCE in the drafting and revision of the AML/CFT Guideline for financial institutions and in discussions of matters on common interest, including cross-sector ML/TF risks. The HKMA and the other RAs also meet regularly in forums led by the Financial Services and the Treasury Bureau.
- 7.2 The HKMA also participates in regular discussions with relevant Government bureaux and departments and law enforcement agencies on areas such as the implementation of United Nations sanctions in Hong Kong and suspicious transaction reporting by AIs.
- 7.3 The HKMA is committed to promote effective sharing of information and intelligence between the HKMA, AIs and law enforcement agencies. It is an active participant in the Fraud and Money





## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

Laundering Intelligence Taskforce<sup>4</sup> established in cooperation with the Hong Kong Police Force and the Hong Kong Association of Banks.

- 7.4 Internationally, the HKMA participates in the FATF, the APG and the AML/CFT Expert Group of the Basel Committee on Banking Supervision. It also cooperates with authorities in other jurisdictions, including the Mainland and Macau via bilateral memoranda of understanding or other cooperation arrangements.

## 8. Other Related Areas

### 8.1 Financial Inclusion

8.1.1 While it is important for AIs to ensure that AML/CFT Systems are sufficiently robust and in compliance with all relevant legal and regulatory requirements, the HKMA expects AIs to adopt an RBA and refrain from adopting practices that would result in financial exclusion, particularly in respect of the need for bona fide businesses and individuals to have access to basic banking services. The principles of an RBA in relation to CDD are:

- (a) Risk differentiation – The risk assessment processes should be able to differentiate the risks of individual customers within a particular segment or grouping through the application of a range of factors, including country risk, business risk, product/service risk and delivery/distribution channel risk. It is inappropriate for AIs to adopt a one-size-fits-all approach.
- (b) Proportionality – Based on the likely risk level of a customer, AIs should apply appropriate CDD and risk mitigating measures commensurate with the risk level of the customer, thus avoiding undue burden on the customer and the AI concerned.

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<sup>4</sup> The Taskforce, established as a pilot project in 2017, is a Police-led public-private platform, with participation by the HKMA and the banking sector, for sharing information and intelligence on financial crime and related ML risks.



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

- (c) Not a “Zero Failure” regime – While AIs should take all reasonable measures to identify ML/TF risks at the account opening stage and, for existing customers, on an ongoing basis, it is unrealistic to expect that no ML/TF activities would ever occur through the banking system. AIs are not required to implement overly stringent CDD processes with a view to eliminating, ex-ante, all risks, since such an approach may result in a large number of bona fide businesses and individuals not being able to open or maintain accounts. CDD is only one part of an effective AML/CFT regime. AIs are also required to implement a system that can monitor, detect, and where appropriate report suspicious transactions, and take the necessary mitigating measures, such as enhanced due diligence. The HKMA’s supervisory stance is aimed at the effective implementation of AML/CFT Systems by AIs and ensuring that there are no material failings in those systems, rather than aiming for nil ML/TF activities in the banking system.

## 8.2 Use of Technology

- 8.2.1 The HKMA supports innovative means by which AIs implement AML/CFT Systems effectively as well as exploring the greater use of technology and analytical tools in supervisory work. The HKMA expects AIs, before introducing any new product, service or technology, to conduct adequate risk assessments and ensure that any identified risks are effectively managed or mitigated.



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

#### Annex 1: List of Possible Supervisory and Enforcement Measures

##### *Administrative measures*

- Issue of a letter and examination report to senior management of the AI concerned, setting out the AML/CFT deficiencies and requiring the rectification of these deficiencies

##### *Prudential measures*

- Issue of a statement of caution or warning or a compliance advice letter to senior management of the AI concerned, setting out the AML/CFT deficiencies and requiring the rectification of these deficiencies within a reasonable period
- Direct communication with the Board of Directors (in the case of a locally incorporated AI), stating the MA's supervisory concerns and requesting the Board's close attention to and oversight of the AI's AML/CFT system and controls
- Direct communication with the head office/parent bank and the home supervisor (in the case of an overseas incorporated AI or foreign-owned subsidiary AI), informing them of the MA's supervisory concerns and urging them to take necessary steps to address the issues in the AI
- Requiring the AI to submit a comprehensive remedial action plan and thereafter regular status reports on remedial actions taken to address its AML/CFT deficiencies
- Requiring the AI to engage an independent party (e.g. internal auditor or external auditor) to conduct a follow up review/validate the remedial actions
- Requiring the AI to take specific remedial actions as are appropriate in the circumstances of the case (e.g. replacing management or staff with inadequate AML/CFT expertise)



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

- Requiring the AI to submit a detailed investigation report on specific accounts, transactions or matters which are suspicious of being associated with ML/TF activity
- Conducting follow-up examinations on the AI to ascertain that the AML/CFT deficiencies have been properly rectified
- Adjusting the supervisory plan and priorities for the AI, taking into account the seriousness of its AML/CFT deficiencies (e.g. increasing the scope and frequency of on-site examinations)
- Downgrade of supervisory ratings of the AI (e.g. overall or individual components of CAMEL ratings)
- Putting on hold the AI's new business or branch expansion plans while remedial actions are still being implemented by the AI
- Referral of the AI's alleged violations of the provisions in the DTROP, the OSCO or the UNATMO to law enforcement authorities for investigation or prosecution
- Imposing ring-fencing measures on the AI (in the case of an overseas incorporated AI or foreign-owned subsidiary AI) if its head office/parent bank is involved in a money laundering scandal and face sanctions from its home supervisor (after seeking relevant information and confirmation from the home supervisor)

#### *Statutory powers under the BO*

- Attaching condition(s) under section 16(5) to the AI's authorization, after giving the AI an opportunity to be heard
- Proposing to revoke the AI's authorization under section 22(1), after consultation with the Financial Secretary, if the MA's power to revoke the AI's authorization becomes exercisable, and after giving the AI an opportunity to be heard
- Temporary suspending or suspending the AI's authorization under sections 24(1) or 25(1), after consultation with the Financial Secretary



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

- Exercising the MA's power under section 52, subject to conditions set out in section 52(1) and after consultation with the Financial Secretary, to –
  - require the AI to take any action or do any act or thing in relation to its affairs, business and property (including imposing restrictions on its business);
  - direct the AI to seek advice on the management of its affairs, business and property from an Advisor appointed by the MA; or
  - appoint a Manager to manage the affairs, business and property of the AI
- Requiring the AI to commission an external auditors' report under section 59(2) on all or specific aspects of its AML/CFT Systems
- Serving a notice of objection under section 70A(3) on any existing controller of the AI who is considered by the MA as no longer fit and proper to be such a controller, after taking into account the person's written representations
- Withdrawing previous consent given by the MA under section 71(4) for the appointment of a person as a director or the chief executive of the AI if the person is considered by the MA as no longer fit and proper to be such a director or chief executive, after taking into account the person's written representations
- Exercising the MA's power under section 97F to vary any capital requirement rule applicable to the AI, after considering the AI's written representations
- Making a report to the Financial Secretary under section 117 if it appears to the MA that it is in the interests of depositors of the AI or in the public interest that an inquiry should be made into the affairs, business or property of the AI
- Where the AI is a registered institution (RI) under the Securities and Futures Ordinance (SFO) and the AML/CFT deficiencies relate to its securities business –



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

- exercising the MA's disciplinary powers (i.e. removal or suspension of registration) under section 58A(1) in respect of any relevant individual of the RI associated with the AML/CFT deficiencies if that individual is guilty of misconduct or is considered by the MA as no longer fit and proper to be such an individual, after consultation with the SFC and giving the individual an opportunity of being heard;
- recommending the SFC under section 58A(5) to exercise the power under section 196 or 197 of the SFO (e.g. reprimand and/or fine) as considered appropriate by the MA in respect of any relevant individual of the RI associated with the AML/CFT deficiencies;
- withdrawing or suspending under section 71C(4) the consent given by the MA for any individual to be an executive officer of the RI if that individual, who is associated with the AML/CFT deficiencies, is guilty of misconduct or is considered by the MA as no longer fit and proper to be such an officer, after consultation with the SFC and giving the individual an opportunity of being heard; or
- recommending the SFC under section 71C(8) to exercise the power under section 196 or 197 of the SFO (e.g. reprimand and/or fine) as considered appropriate by the MA in respect of any executive officer of the RI associated with the AML/CFT deficiencies.

#### *Statutory powers under the AMLO*

- If an AI contravenes a specified provision as defined by section 5(11), the MA (being the RA in relation to AIs) may under section 21 –
  - publicly reprimand the AI;
  - order the AI to take, by a date specified by the MA, any action specified by the MA for the purpose of remedying the contravention;
  - order the AI to pay a pecuniary penalty not exceeding the amount that is the greater of (i) \$10,000,000 or (ii) 3 times the amount of the profit gained, or costs avoided, by the AI as a result of the contravention; and



## Supervisory Policy Manual

AML-1

### Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism

V.1 – 19.10.18

- if the AI fails to comply with an order to take remedial action, further order the AI to pay a daily pecuniary penalty not exceeding \$100,000 for each day on which the failure continues after the specified date by which a remedial action must be taken.
- In addition to the above supervisory measures, contravention of a specified provision as defined in the AMLO may involve the commission of an offence under section 5, prosecution of which is a matter for the Secretary for Justice and the prosecuting authorities.

[Contents](#)

[Glossary](#)

[Home](#)

[Introduction](#)