

**March 2018**

## Key Takeaways for SVF and MSO licensees

Important amendments to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (CAP. 615) ("**AMLO**") came into force on 1 March 2018. The amendments are intended to enhance Hong Kong's regulatory regime for combating money laundering and counter-terrorist financing ("**AML-CTF**") and bring its legislation in line with recommendations made by the Financial Action Task Force, the inter-governmental body focused on this area. Hong Kong faces a FATF mutual evaluation in the coming year, and the amendments are focused on meeting certain deficiencies identified in the AMLO as it stands.

There has been significant focus on the amendment's extension of the AML-CTF requirements under the AMLO to solicitors, accountants, real estate agents and trust or company service providers. Also important, and not to be overlooked are key changes made to customer due diligence ("**CDD**") requirements and other administrative matters impacting on stored value facilities licensees ("**SVFs**") and money service operators licensed under the AMLO ("**MSOs**").

## AML Guideline revised

The introduction of the SVF licensing regime in 2016 has led to a surge of technological innovation in Hong Kong's payments services market, which has impacted MSOs' business models as well. Given that mobile app based payments and stored value solutions have a significant wealth of reliable customer data available to them, it appears counter-productive to not be relying on it for CDD in situations in which the customer is not physically present for identification purposes.

To this end, the AMLO's CDD requirements on MSOs for situations in which the customer is not physically present has been changed from being limited to verifying information provided by the customer to "information relating to the customer that has been obtained by the financial institution".

The amendments also align the requirement for customer information record keeping with international standards by reducing the minimum retention period from six years to five years.

In order to adopt a streamlined approach, the above changes have also been reflected in and updated to AML Guideline that applies to SVFs.

## Ultimate owner redefined: 25% shareholding

The threshold at which beneficial ownership is defined has increased from "not less than 10%" to "more than 25%", indicating that a person will be regarded as an ultimate owner only if he or she beneficially owns or controls more than 25% of the shares or voting rights of the business. This relaxation of CDD requirements brings Hong Kong's standards in line with international standards on this point.

## Expanded considerations for "fit and proper" assessments

Section 30(4)(a)(ii) of the AMLO has been amended to broaden the class of convictions under the United Nations (Anti-Terrorism Measures) Ordinance (CAP. 575) ("UNATMO") that are required to be taken into account when determining whether a person is fit and proper. It will now capture all offences under the UNATMO, as compared to the former provision under which only considered contraventions of sections 7 and 8. Additional offences include the supply of weapons to terrorists, failure to comply with Secretary for Security's notice to freeze terrorist property, recruitment or becoming of member of prohibited entities and creation of false threats of terrorist acts.

## MSO Licensee's duty to display original licence

The new provision, section 39A, requires MSOs to display their original licence in a conspicuous place at the premises specified in the licence. Non-compliance with this section without reasonable excuse warrants a fine of up to HK\$50,000 on conviction. The commissioner may also take disciplinary actions against the licensee in breach, including publicly reprimanding the licensee, ordering the licensee to take remedying action and ordering the payment of a penalty not exceeding HK\$1,000,000.

## Conclusion

The recent amendments to the AMLO represent further alignment of Hong Kong's AML-CTF framework with international standards. MSOs are reminded to review the amended AMLO and the revised AML Guideline and implement appropriate measures to ensure compliance. It is also suggested the SVFs shall review the revised AML Guideline as well to ensure its compliance under the SVF licensing regime.

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