



STEP

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8 October 2009

PRIVATE & CONFIDENTIAL  
Secretary for Financial Services & the Treasury  
18<sup>th</sup> Floor  
Admiralty Centre, Tower One  
18 Harcourt Road  
Hong Kong

Attention: Ms Angelina Kwan

Dear Ms Kwan

**Legislative Proposal to Enhance the Anti-Money Laundering Regime**

Thank you for your letter of 9 July 2009. The Society of Trust & Estate Practitioners (Hong Kong Branch) welcomes the opportunity to comment on the conceptual framework of the legislative proposal to enhance the AML regulatory regime. The Society's comments are set out below.

*Q2.1 Do you agree to the proposed designation of AML regulators for the banking/deposit-taking, securities, insurance and RAMC sectors as set out in paragraph 2.2?*

Yes.

*Q2.2 Do you think that there are other important principles in addition to those set out in paragraph 2.4 that the Administration should adopt in working out the detailed legislative AML regime on CDD and record-keeping requirements?*

No.

*Q3.1 Do you agree that the CDD measures that should be undertaken by financial institutions should be subject to the risk profiles of the customers and that enhanced CDD measures should apply to higher-risk customers as set out in paragraph 3.4(e)?*

Yes.

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Q3.2 *Apart from the enhanced training to be provided to facilitate financial institutions' compliance with the statutory obligations as mentioned in paragraph 3.7, do you think that the Government, relevant regulators and concerned trade or professional bodies should also provide other assistance to facilitate compliance by the financial institutions? If so, what types of assistance should be provided?*

The Guidelines issued by regulators such as the SFC and HKMA, as well as the training provided by the financial regulators and the Police are helpful and should be adequate; provided they are revised and improved from time to time to take account of market developments and any requests from the financial community from time to time for further guidelines or training.

Q3.3 *What should be the appropriate length of the transitional period, if any, to be allowed for individual financial sectors concerned to get fully prepared before commencement of the new legislation?*

STEP would suggest immediately in respect of new business and 6 – 12 months in respect of remediation or exit of any non-complying business.

Q4.1 *Do you think that the proposed inspection, supervisory and enforcement powers which are similar to SFC's existing powers in supervising the securities business, are appropriate for supervising the financial institutions' compliance with the statutory CDD and record-keeping requirements in paragraphs 4.4 and 4.6?*

Yes.

Q4.2 *Do you consider that the establishment of an independent appeals tribunal to hear appeals against the regulators' decisions on supervisory sanctions and matters relating to the licensing of RAMCs is an appropriate check and balance arrangement (paragraph 4.5)?*

Yes.

Q5.1 *Do you think it is appropriate to stipulate in the new legislation that an offence would be committed only if any of the circumstances set out in paragraph 5.4 (in underlined text) arises?*

Yes, subject to the reference to "recklessness" being omitted. This is a very important point. As this will be a criminal offence there should be intent (mens rea). Rather than "recklessness", "willful or knowing conduct" would be more appropriate.

Q5.2 *Do you agree that the new legislation should provide for supervisory fines and other supervisory sanctions, in addition to criminal sanctions, to deal with breaches of the statutory requirements (i.e., the imposition of criminal sanctions on any breach of the statutory requirements should not preclude the imposition of supervisory sanctions by the concerned regulatory authority and vice versa) on the basis that any such sanctions should be effective, proportionate and dissuasive in accordance with FATF's requirement?*

Yes.

Q5.3 *Do you think that the other supervisory sanctions (i.e. other than fines) should include public reprimand, partial / full suspension or revocation of licence, and issue of directions for remedial actions? Yes. Do you have views on other types of supervisory sanctions that the authorities should be empowered to impose under the new legislation?*

No. The above are adequate.

Q5.4 Do you agree that the maximum level of supervisory fines to be prescribed in the new legislation should be determined having regard to the maximum level of supervisory fines that may be imposed by SFC under S.194 of SFO as mentioned in paragraph 5.6?

Yes.

Q6.1 Do you agree that all RAMCs currently covered by the registration system under OSCO should be required to obtain licences from C&ED and subject to the CDD and record-keeping requirements under the proposed legislation?

Yes.

Q6.2 Do you agree that the criteria for determining "fitness and properness" as proposed under 6.5 (e)(i) are appropriate?

Yes.

Q6.3 Do you agree that any persons who operate RAMCs business without a valid licence should be liable to criminal sanctions (including a fine and/or imprisonment)?

Yes, definitely.

Q6.4 Do you agree that the licence/renewal fee should be determined on the basis of the cost recovery principle?

We feel there is insufficient information to opine on this aspect categorically at this point. It would depend on the extent of the costs to be recovered and the ability of the industry to pay. However, in general terms, a cost recovery model seems fair.

Q6.5 What is your view on the need or otherwise for transitional arrangements before RAMC licensing system is implemented? If so, what specific arrangements should be made?

If there is likely to be a significant time lag then one option may be to require the auditor of the RAMC to review the AML procedures as part of the annual audit. If the new regime can be implemented reasonably promptly, then there is probably no need for significant transitional arrangements.

One additional point STEP suggests that trust and company service providers that are neither an institution that is regulated by the HKMA or the SFC, nor a wholly owned subsidiary of such an institution, should also be subject to regulatory oversight in respect of AML. The Society would be happy to assist in developing a definition of "trust and company services" for these purposes.

Yours sincerely  
For and on behalf of STEP Hong Kong Limited



Bernard Rennell