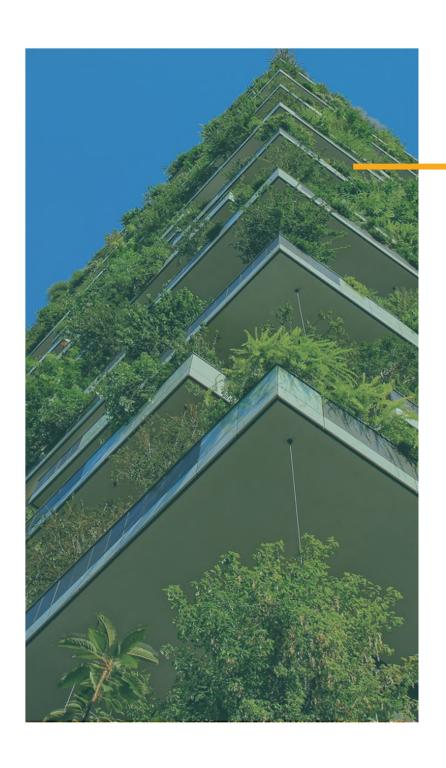




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#### Agenda

- 1. Introduction
- 2. Overview of the legal and regulatory environment in Hong Kong
- 3. Specific vulnerabilities and risks in the NGO sector
- 4. Guidelines on due diligence in accepting donations
- 5. Q&A





- Importance of the anti-money laundering framework
  - International financial centre need to safeguard the integrity of the financial system
  - Large flows of capital, people, goods, and information
  - Sophisticated market infrastructure
  - Well-established legal system
  - Advanced professional services
  - → Prime target for money laundering
- Hong Kong is a member of the Financial Action Task Force ("FATF")



#### Financial Action Task Force ("FATF")

- Established in 1989
- 40 members worldwide, including Hong Kong
- Sets standards and promotes effective implementation of legal, regulatory, and operational measures for combating money laundering and terrorist financing
- Best Practices for Combating the Abuse of Non-Profit
  Organisations (June 2015): <a href="https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/BPP-combating-abuse-non-profit-organisations.pdf">https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/BPP-combating-abuse-non-profit-organisations.pdf</a>
- Best Practices Paper On Combating The Terrorist Financing Abuse of Non-Profit Organisations (November 2023)



#### Compliance Challenges

- Compliance challenges for NGOs in the modern funding environment
  - Anonymous and/or overseas funding sources
  - Lack of funding in general
- HKCSS NGO Governance Team has developed a toolkit together with Mayer Brown and BNP Paribas
  - Designed to assist NGOs in conducting and managing their fundraising activities and operations
  - Provides a risk-based approach reflecting the latest legal and regulatory requirements
  - Due Diligence Toolkit for Hong Kong NGOs (June 2023, to be updated):
     <a href="https://governance.hkcss.org.hk/node/532">https://governance.hkcss.org.hk/node/532</a>





La banque d'un monde qui change





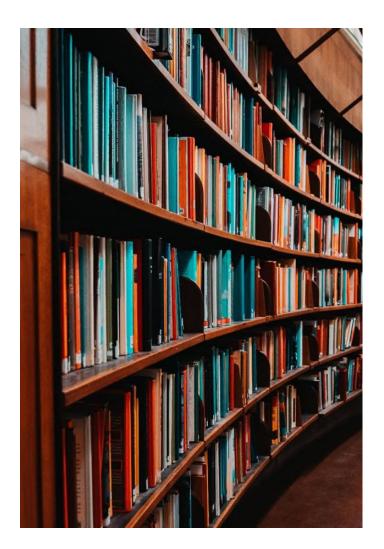
# OVERVIEW OF THE LEGAL AND REGULATORY ENVIRONMENT IN HONG KONG

#### Relevant Legislation



- Drug Trafficking (Recovery of Proceeds) Ordinance ("DTRPO"), Cap. 405
- Organized and Serious Crimes Ordinance ("OSCO"), Cap. 455
- Weapons of Mass Destruction (Control of Provision of Services) Ordinance, Cap. 526
- United Nations Sanctions Ordinance, Cap. 537
- United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575

#### Relevant Legislation



- Anti-Money Laundering and Counter-Terrorist Financing Ordinance ("AMLO"), Cap. 615
- Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("HKNSL")
- Safeguarding National Security Ordinance, Instrument A305

## Main Offences Related to Money Laundering

- Under both DTRPO and OSCO
- Active money laundering (s25(1))
  - "Dealing with property... knowing or having reasonable grounds to believe that [it]...
     represents... proceeds of an indictable offence
    - Indictable offences
    - Overseas conduct
- Failure to disclose (s25A(1))
  - "Know[ing] or suspect[ing] that any property...
     represents... proceeds of an indictable offence... [you] shall as soon as it is reasonable... disclose that knowledge or suspicion to [the JFIU]"



- Tipping off (s25A(5))
  - "Knowing or suspecting that a disclosure has been made... [you disclose] to any other person any matter which is likely to prejudice any investigation which might be conducted

#### Offences Explained

- "Indictable offence": Defined broadly in s25(4) of OSCO
  - Includes conduct both inside and <u>outside</u> of Hong Kong
- The prosecution need not prove that the relevant property actually represents the proceeds of an indictable offence: HKSAR v Yeung Ka Sing Carson (2016) 19 HKCFAR 279
  - This is for practical reasons overseas proceeds are difficult to trace
- The key element: "Knowing or having reasonable grounds to believe"



# SPECIFIC VULNERABILITIES AND RISKS IN THE NGO SECTOR

# The NGO Sector's Vulnerability to Money Laundering

- Budget constraints
- Limited resources



- Nature of donations
- Cash-intensive

Crowdfunding

Movement of money

#### FATF – Abuse of NGOs

Diversion of funds by internal actors

Affiliation with a terrorist entity



Support for recruitment efforts of terrorist organisations

False representation (e.g. sham NGOs)

Abuse of programming at point of delivery

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## GUIDELINES ON DUE DILIGENCE IN ACCEPTING DONATIONS

#### Overview

Types of Donations	Approach
Small and regular donations	No due diligence
Donations from lower-risk entity	Simplified due diligence
Large donations and corporate donors	Standard due diligence
Higher-risk situations	Enhanced due diligence
Anonymous donations	?

Core elements of due diligence	Identification + verification
	Additional screening
	Understanding the donor's business
	Understanding the purpose of the donation
	Watching out for unusual or suspicious activities, conduct, or requests

### Small and Regular Donations



- No due diligence required
- Small donations:
  - Relatively small amounts of money
  - One-off donations
  - By cheque, bank transfer, or cash
  - E.g. charity runs, charity boxes, flag selling
- Regular donations:
  - Existing donors
  - NGO already has their details

### Donations from Lower-Risk Entity



#### Simplified due diligence

- No high-risk indicators
- Lower-Risk Entities:
  - The Government or any public body in HK
  - The government or any public body in a non-highrisk jurisdiction
  - Financial institutions under AMLO, such as banks and authorised insurers

#### Donations from Lower-Risk Entity

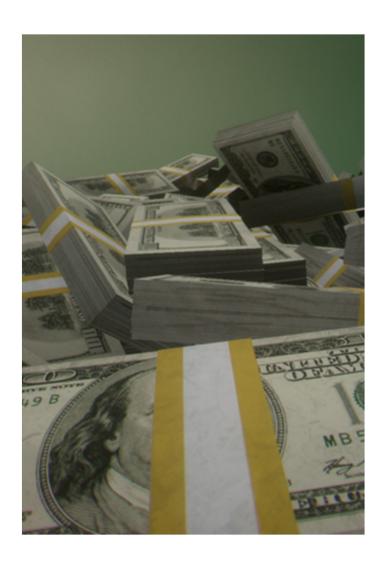


- Lower-Risk Entities (continued):
  - Well-established companies listed on a stock exchange, with a clear company structure and audited financial reports
  - Institutions established in a non-high-risk jurisdiction, with appropriate compliance measures and regulatory supervision
  - Charitable institutions established and regulated in a non-high-risk jurisdiction

#### Donations from Lower-Risk Entity

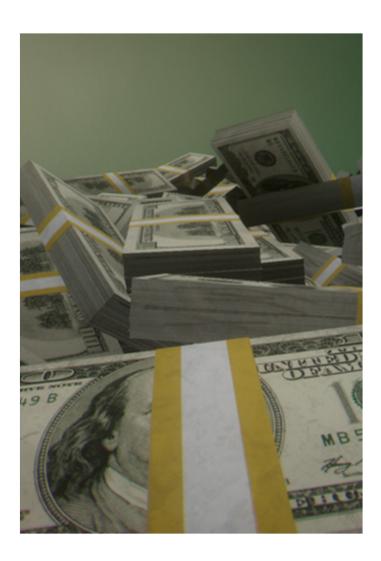


- What is simplified due diligence?
  - Standard due diligence, but <u>without</u> the need to identify/verify the entity's beneficial owners or senior management officials



#### Standard due diligence

- Large donations:
  - Significant grants
  - No defined cut-off point → NGOs to set monetary threshold
- Corporate donor:
  - Organisations not falling under the various categories of lower-risk entities
- Individual donor:
  - Former politically-exposed persons ("PEP")
  - People closely connected to PEPs
  - People engaging in virtual asset exchange business



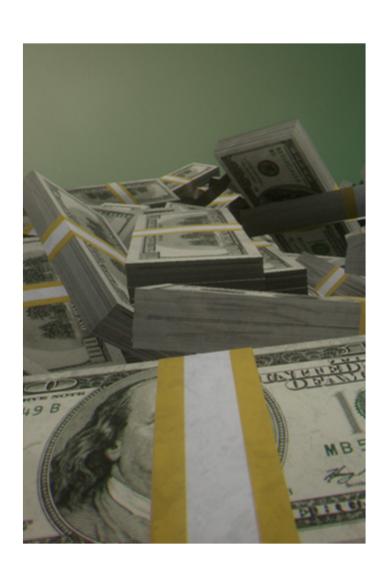
- What is standard due diligence?
  - Consists of 2 steps:
    - Step 1 Identification/verification
    - Step 2 Additional screening
  - Step 1 Individuals
    - Full name
    - Date of birth
    - ID number or travel document number
    - Residential address proved by documents issued by official institutions (e.g. utility bills, bank statements, letters from the government)



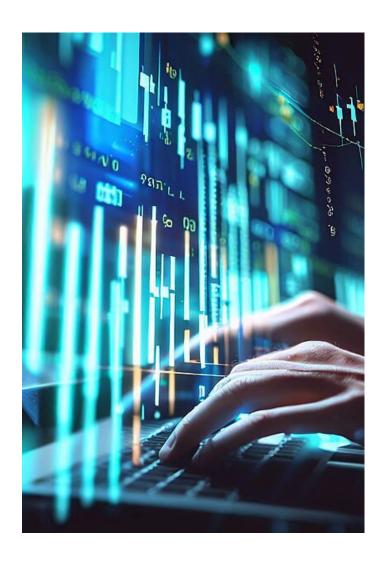
- Step 1 Corporations and institutions
  - Full legal/trading name
  - Place and date of incorporation/registration
  - Unique ID number
  - Registration address
  - Business address in HK (if applicable)
  - Nature/type of business
  - → Get information from a reliable/independent source, e.g. HK Companies Registry



- Step 1 Corporations and institutions (continued)
  - Full name of ultimate beneficial owner ("BO") and intermediary shareholders
    - Ownership chart may be necessary
  - If no BO is a natural person, then identify at least 2 senior management officials (e.g. CEO, managing director, president)
  - → Refer to "Step 1 Individuals" for how to verify natural persons



- Step 2 Additional screening
  - Check against lists issued by governments
  - Check for adverse news/information
  - Check for sanctions and embargo restrictions
  - Understand/identify the nature of the donor's business and the purpose of the donation



#### Enhanced due diligence

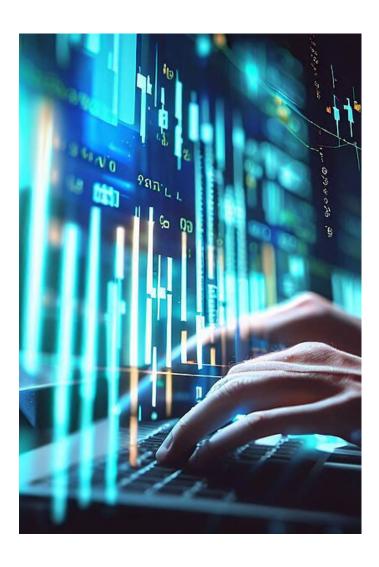
- Higher-risk factors:
  - Suspicious donations
    - Donations above a certain threshold
    - From unidentifiable sources
    - Made through an unknown party
    - Unusual payment mechanism (e.g. large numbers of small transfers)



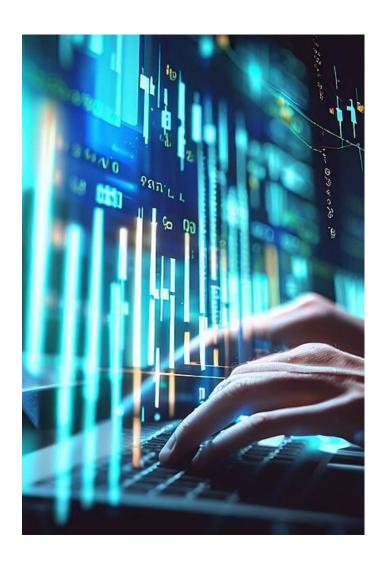
- Higher-risk factors (continued):
  - Suspicious conditions attached to the donation
    - Mere transfer/holding of funds by NGO
    - Mere exchange of currencies by NGO
    - NGO asked to hire a particular individual/entity who is suspicious
    - NGO asked to apply funds to benefit a particular individual
    - NGO asked to engage in specific work exclusively for donor
    - Donor/beneficiary/partners request unnecessary or unusual levels of privacy/secrecy



- Higher-risk factors (continued):
  - Suspicious donors/beneficiaries/partners
    - Source of donor's wealth is unclear, or is from a higher-risk industry (e.g. currency exchanges, casinos, cryptocurrency)
    - Closely connected to: (1) a PEP, or (2) a person/entity on a sanctions list
    - Subject to any material adverse news use search terms, e.g. "corruption" or "crime"
    - Associated with (1) any political group, or (2) activities which could fall under HKNSL
    - Connected to a high-risk country (e.g. address of donor, source of donation)



- Higher-risk factors (continued):
  - Suspicious donors/beneficiaries/partners
    - Fake/suspicious identity documents
    - Identical characteristics and addresses
    - Multiple identical or similar names and signatures
    - Third parties demanding payment for recommending beneficiaries
    - Vague project proposal, lacking in adequate financial/technical details
    - Unusual payment mechanisms or requests for cash
    - Partner is difficult to contact



- What is enhanced due diligence?
  - May include any of a number of procedures, e.g.:
    - Obtaining additional company documents
    - Certification of documents by a notary/lawyer/accountant
    - Obtaining additional documents showing source of wealth (e.g. bank statements, financial accounts)
    - Meeting the donor/beneficiary/partner in person

### Anonymous Donations



How should NGOs handle anonymous donations?

#### Anonymous Donations

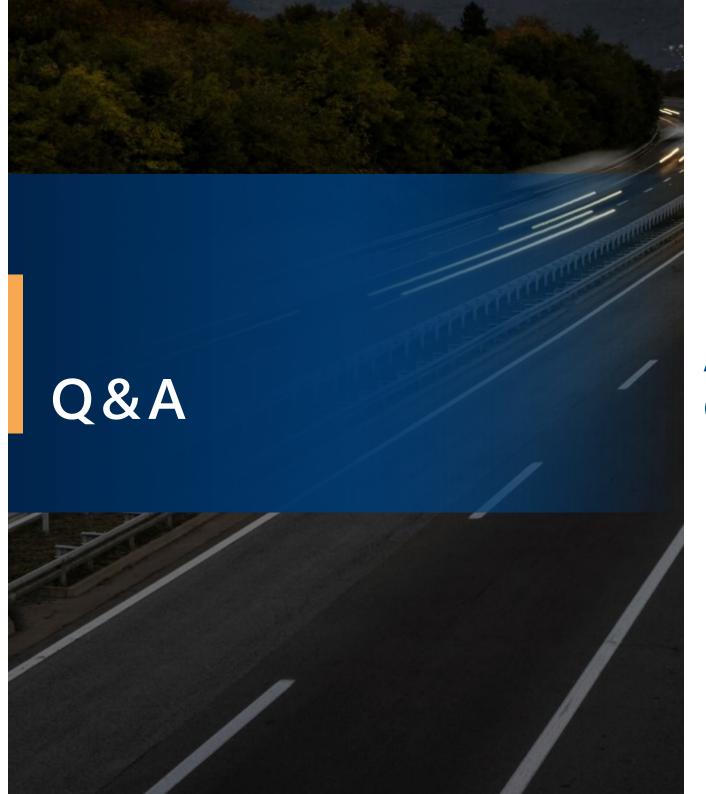


- Can NGOs accept anonymous donations?
- Yes, provided NGOs look out for suspicious circumstances and put adequate safeguards in place, they may accept anonymous donations
- NGOs should apply the enhanced due diligence procedures discussed under "Higher Risk Factors/Situations"
- Robust due diligence procedures and regular staff training are the NGO's best protection!
- Potentially suspicious donations include:
  - substantial one-off anonymous donations
  - a series of smaller donations for the same or similar amounts all deposited within a short time frame

#### **Anonymous Donations**



- a donation made subject to conditions e.g. the NGO is asked to act as conduit for passing a donation to a second body which may or may not be a regulated N.G.O.
- anonymous donations from another country/made in a foreign currency
- If an NGO has suspicious about an anonymous donation or series of donations it should:
  - (i) escalate the matter to senior management for urgent consideration
  - (ii) segregate the donation(s) in question pending a decision to accept or reject
  - (iii) consider whether legal advice should be sought
  - (iv) consider the need for an immediate report to the JFIU
  - (v) not make any attempt to return the funds back to where they came from



ANY QUESTIONS?



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