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Anti-Money Laundering – Due Diligence for NGOs

Navigating risks and challenges
in the NGO sector

Strictly private & confidential



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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

A close-up photograph of a compass rose on a dark, textured surface. The compass rose is made of metal and has several points. The cardinal directions are labeled: 'E' (East) at the top, 'S' (South) at the bottom, 'W' (West) on the left, and 'N' (North) on the right. There are also intermediate directions like 'NE', 'SE', 'SW', and 'NW'. The background is dark and slightly blurred, showing some numbers like 60, 80, 100, 120, 140, 160, 180, 200, 220, 240, 260, 280, 300, 320, 340, 360. A dark blue rectangular overlay covers the middle of the image, and the word 'INTRODUCTION' is written in white, bold, sans-serif capital letters across it. A thin orange vertical bar is on the left side of the blue overlay.

INTRODUCTION

Introduction

- 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): <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/BPP-combating-abuse-non-profit-organisations.pdf>
- 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):
<https://governance.hkcass.org.hk/node/532>



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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 **outside** 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”



A compass rose is centered on a dark, textured background. The compass has a metallic, multi-pointed needle. The background features faint, light-colored markings for degrees and cardinal directions (E, SE, S, SW, W, NW, N). A semi-transparent blue rectangular box is overlaid on the left side of the image, containing white text. A small orange vertical bar is positioned to the left of the text box.

SPECIFIC VULNERABILITIES AND RISKS IN THE NGO SECTOR

The NGO Sector's Vulnerability to Money Laundering

- Budget constraints
- Limited resources

- Crowdfunding

- Nature of donations
- Cash-intensive

- Movement of money



FATF – Abuse of NGOs

Diversion of funds
by internal actors

Affiliation with a
terrorist entity

False representation
(e.g. sham NGOs)

Support for recruitment
efforts of terrorist
organisations

Abuse of
programming at
point of delivery

A compass rose is centered on a dark, textured background. The compass has a metallic needle pointing towards the top. The cardinal and ordinal directions are labeled: E (East), SE (Southeast), S (South), SW (Southwest), W (West), and NW (Northwest). Degree markings are visible around the perimeter of the compass face. A semi-transparent blue rectangular box is overlaid on the left side of the image, containing the title text in white. A thin orange vertical bar is positioned to the left of the blue box.

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-high-risk 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 **without** the need to identify/verify the entity's beneficial owners or senior management officials

Large Donation and Corporate Donors



- **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

Large Donation and Corporate Donors



- 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)

Large Donation and Corporate Donors



- 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

Large Donation and Corporate Donors



- 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

Large Donation and Corporate Donors



- 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

Higher Risk Factors/Situations



- **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/Situations



- 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/secretcy

Higher Risk Factors/Situations



- 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/Situations



- 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

Higher Risk Factors/Situations



- 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



Q&A

ANY
QUESTIONS?



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