



# Updates on Anti-Money Laundering / Counter- Financing of Terrorism Due Diligence Toolkit for Hong Kong NGOs

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# AGENDA

1. How the Anti-Money Laundering (**AML**) / Counter-Financing of Terrorism (**CFT**) Due Diligence Toolkit assists NGOs
2. Existing Toolkit dated 30 June 2023
3. Updates to address current requirements and good practices
  - i. Anonymous donations – increased concern on potential money laundering (**ML**) / terrorist financing (**TF**) risks
  - ii. Property freezing notices – Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (**HKNSL**)
  - iii. Former non-Hong Kong politically exposed persons (**PEPs**) – revised FAQs published by The Hong Kong Association of Banks (**HKAB**)
  - iv. Revised AML / CFT Guideline for licensed money lenders published by Companies Registry

# How the Toolkit assists NGOs

# How the AML / CFT Due Diligence Toolkit assists NGOs

- **AML / CFT** stands for anti-money laundering and counter-financing of terrorism
- The Toolkit is designed to provide a general guide and holistic overview of:
  - the AML / CFT legal and regulatory requirements that are in force in Hong Kong, and
  - the related risks and potential vulnerabilities posed to NGOs in managing and conducting charitable fundraising activities and operations in Hong Kong
- The appendices of the Toolkit include a list of the AML / CFT related legislations, and checklists and practical tips on how to identify and address potential ML / TF risks

# Existing Toolkit and contents

# Existing Toolkit and contents

- In 2023, JSM collaborated with BNP Paribas and The Hong Kong Council of Social Service (**HKCSS**) to develop the Anti-Money Laundering Counter-Financing of Terrorism Due Diligence Toolkit for Hong Kong NGOs
- The Toolkit covers the following contents:
  - Chapter 1 – Executive Summary
  - Chapter 2 – Introduction to HK's AML / CFT landscape
  - Chapter 3 – ML / TF risks in the NGO sector
  - Chapter 4 – Organisational integrity
  - Chapter 5 – Risk assessment and mitigation
  - Chapter 6 – Reporting and record-keeping
  - Chapter 7 – Staff administration and accountability

# Existing Toolkit and contents

- The Appendices of the Toolkit include the following information and materials:
  - Appendix A – List of AML / CFT related legislations
  - Appendix B – Guidelines on due diligence according to different types of donations
  - Appendix C – Non-exhaustive checklist for identifying and detecting ML / TF risks
  - Appendix D – Due diligence checklist on donors, partners and beneficiaries
  - Appendix E – Segregation of duties checklist



# Updates to Toolkit



# Updates to Toolkit

- We will update the existing Toolkit to:
  - address the latest AML / CFT requirements and good practices, and
  - expand on the discussions on matters which attract increased attention of governmental authorities / law enforcement agencies, or the public
- Areas to be updated include:
  - Anonymous donations
  - Property freezing notices under the HKNSL
  - Former non-Hong Kong PEPs explained in HKAB's revised FAQs
  - Revised AML / CFT Guideline for licensed money lenders

# Updates to Toolkit (1) – Anonymous donations

## Increased concern regarding anonymous donations

- Updates will be made to several sections or chapters of the Toolkit, including:
  - 4.2.2 on “Policies, controls and procedures”
  - 4.3.1 on “Collecting donations”
  - 5.2 on “Due diligence”, in particular:
    - 5.2.2 on “Know your donors”
    - 5.2.5 on “Due diligence guidelines”
    - 5.3 on “Risk mitigation”
  - Expand the section on “Higher risk factors/situations – Enhanced due diligence” in Appendix B to address anonymous donations

# Updates to Toolkit (1) – Anonymous donations

- *Can NGOs accept anonymous donations?*
- *What can NGOs do to protect their interest?*
  - NGOs can accept anonymous donations...BUT...
  - NGOs should look out for suspicious circumstances and put in place adequate safeguards
  - NGOs should undertake enhanced due diligence procedures
  - NGOs can best protect themselves by having robust due diligence procedures and regular staff training

# Updates to Toolkit (1) – Anonymous donations

- Suspicious circumstances include:
  1. a one-off anonymous donation of a substantial amount
  2. a series of smaller donations for the same or similar amounts that are all deposited within a short period
  3. a donation made subject to conditions, e.g. the recipient NGO is asked to act as conduit for passing a donation to another body that might / might not be an NGO
  4. anonymous donations from another country / in a foreign currency

# Updates to Toolkit (1) – Anonymous donations

- If an NGO is suspicious about an anonymous donation or series of donations, it should:
  1. escalate the matter to senior management for urgent consideration
  2. segregate the donations in question pending a decision to accept / reject
  3. consider whether to seek legal advice on the matter
  4. consider whether there is a need to file a suspicious transaction report to the Joint Financial Intelligence Unit (**JFIU**)
  5. not make any attempt to return the funds to where they came from

# Updates to Toolkit (2) – Property freezing notices under HKNSL

## 2020 Implementation Rules amended in 2023

- Updates will be made to several sections or chapters of the Toolkit, including:
  - 4.2 on “Governance”
  - 4.2.2 on “Policies, controls and procedures”, in particular, the section on national security
  - expand the discussions in Appendix A on the HKNSL to address the amendments to the Implementation Rules and clarifications on the property freezing notices

# Updates to Toolkit (2) – Property freezing notices under HKNSL

- The Implementation Rules for Article 43 of the HKNSL initially came into operation on 7 July 2020
- The Implementation Rules were amended subsequently and the amendments took effect on 15 December 2023
- The amendments:
  - clarify beyond doubt that a freezing notice on offence related property that is issued under Schedule 3 to the Implementation Rules will remain valid while the proceedings of the offence are pending and until such proceedings are concluded (sections 3(4A), 3(4B), 3(4C), 3(4D) of Schedule 3 to Implementation Rules), and
  - clarify the circumstances where the proceedings are regarded as concluded (section 3(10) of Schedule 3 to Implementation Rules)
- The amendments apply to property freezing notices that are issued before, and are still effective on, 15 December 2023 (section 3(11) of Schedule 3 to Implementation Rules)



# Updates to Toolkit (2) – Property freezing notices under HKNSL

- Circumstances where the proceedings of the offence are regarded as concluded:
  - the party that instituted the proceedings withdraws or discontinues the proceedings
  - the court makes the final judgment or decision in respect of the proceedings that is not appealable or reviewable
  - the prescribed period for making an appeal or review against the final judgment or decision made in respect of the proceedings expires, and no appeal or review is made by any party, or
  - in the case of proceedings for an application for a confiscation order or forfeiture order, the confiscation / forfeiture order is satisfied
- These property freezing notices are issued by the Secretary for Security where it has reasonable grounds to suspect that any property held by any person is offence related property. NGOs should note the requirements above in case any freezing notice is served on them

# Updates to Toolkit (2) – Property freezing notices under HKNSL

- The amendments reflect the purposes of imposing a property freezing notice, namely:
  - to preserve the property in question so that a confiscation or forfeiture order may be obtained (and enforced) in the future
  - to prevent the use of the property in question in financing or assisting any offence endangering national security, and
  - to prevent any dealing with the property in a manner which may prejudice on-going investigation or proceedings concerning an offence endangering national security

# Updates to Toolkit (3) – Former non-Hong Kong PEPs

## Former non-Hong Kong PEPs

- Updates will be made to several sections or chapters of the Toolkit, including:
  - Chapter 5 on “Risk Assessment”, in particular:
    - 5.2 on “Due diligence”
    - 5.3 on “Risk mitigation”
  - expand the discussions on former PEPs in Appendix B (Guidelines on Due Diligence According to Different Types of Donations)
  - expand the discussions on former PEPs in Appendix C (Non-exhaustive Checklist for Identifying and Detecting ML / TF Risks)

## Updates to Toolkit (3) – Former non-Hong Kong PEPs

- The HKAB updated its Frequently Asked Questions in relation to Anti-Money Laundering and Counter-Financing of Terrorism in December 2024
- While the guidance is given to licensed banks, NGOs may consider adopting the guidance in handling former non-Hong Kong PEPs
- Item 56 of FAQs provides guidance for licensed banks in deciding not to apply enhanced due diligence (**EDD**) on former non-Hong Kong PEPs
- Item 56 explains that a licensed bank's decision not to apply or cease to apply EDD measures to a former non-Hong Kong PEP who no longer poses a high ML / TF risk after stepping down, does not require senior management's approval

## Updates to Toolkit (3) – Former non-Hong Kong PEPs

- However, the bank should conduct an appropriate assessment on the ML / TF risk associated with the previous PEP status taking into account various risk factors, including but not limited to:
  - the level of (informal) influence that the individual could still exercise
  - the seniority of the position that the individual held as a PEP, or
  - whether the individual's previous and current function are linked in any way (e.g. formally by appointment of the PEP's successor, or informally by the fact that the PEP continues to deal with the same substantive matters)

# Updates to Toolkit (4) – Licensed Money Lenders Guideline published by Companies Registry

## **Revised Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (for Licensed Money Lenders)**

- Updates will be made to the following sections or chapters of the Toolkit, including:
  - 5.3 (Risk mitigation) including the discussions on proper record of transactions, reporting, training and record-keeping
  - Chapter 6 on “Reporting and Record-Keeping”
  - Appendix A – List of AML / CFT Related Legislations

# Updates to Toolkit (4) – Licensed Money Lenders Guideline published by Companies Registry

- The Companies Registry revised the existing Guideline (June 2023) and the revised Guideline will take effect on 3 March 2025
- The major revisions relate to the handling of requests from law enforcement agencies and crime-related intelligence (paragraphs 7.31 to 7.35 of Guideline)
- While the Guideline applies to licensed money lenders, NGOs may consider following the guidelines in handling these requests from law enforcement agencies
- The Guideline explains that the requests from law enforcement agencies pursuant to the AML / CFT related legislations (e.g. search warrants, production orders, restraint orders or confiscation orders) are crucial to aid law enforcement agencies to carry out investigations and restrain and confiscate illicit proceeds. If the court convicts the defendant, the court may order to confiscate his criminal proceeds and may also order to forfeit other property where the court is satisfied that the property is terrorist property



# Updates to Toolkit (4) – Licensed Money Lenders Guideline published by Companies Registry

- The Guideline provides that a licensed money lender should:
  - establish clear policies and procedures to handle these requests in an effective and timely manner, including allocation of sufficient resources and appointing a staff member as the main point of contact with law enforcement agencies
  - if any search warrant or production order is served on it, respond within the required time limit and provide all information or materials falling within scope of the request, and if it encounters difficulty in complying within the requested timeline, contact the officer-in-charge of the investigation for further guidance at the earliest opportunity
  - if any restraint order is served on it which prohibits the dealing with particular funds or property pending the outcome of an investigation, ensure that it is able to withhold the relevant property that is subject to the order

# Updates to Toolkit (4) – Licensed Money Lenders Guideline published by Companies Registry

- if it receives any search warrant, production order or other types of crime-related intelligence requests in relation to a particular customer or business relationship, timely assess the risks involved and whether it is necessary to conduct appropriate review on the customer or business relationship to determine whether there is any suspicion, and be aware that the customer in question can be a victim of crime

# Consequences of non-compliance

	Legislation	Offence	Maximum penalty
Property Freezing Notices under HKNSL	Implementation Rules	Section 3(8) of Schedule 3 to Implementation Rules – a person commits an offence if he knowingly contravenes a property freezing notice (i.e. if he deals directly or indirectly with offence related property specified in the notice)	Imprisonment for 7 years and a fine (section 3(8) does not specify amount)
		Section 3(9) of Schedule 3 to Implementation Rules – a person commits an offence if he, without reasonable excuse, contravenes the requirement under section 3(5) of Schedule 3 (i.e. the person holding the offence related property, having been served with a property freezing notice, fails to send a copy of the notice without delay to each person (if any) who owns the property or for whom he holds the property)	Imprisonment for 3 months and a fine of HKD100,000
Anonymous Donations	Drug Trafficking (Recovery of Proceeds) Ordinance (DTROP)	Section 25(1) of DTROP and OSCO – a person commits an offence if he deals with any property, knowing or having reasonable grounds to believe that such property in whole or in part directly or indirectly represents proceeds of drug trafficking or of an indictable offence	Imprisonment for 14 years and a fine of HKD5 million
	Organized and Serious Crimes Ordinance (OSCO)	Section 25A(1) of DTROP and OSCO – a person who knows or suspects that any property in whole or in part directly or indirectly represents proceeds of, was used or is intended to be used in connection with drug trafficking or an indictable offence, commits an offence if he fails to disclose to a police officer or any other authorized officer, as soon as it is reasonable for him to do so such knowledge or suspicion and the basis of such knowledge or suspicion	Imprisonment for 3 months and fine of HKD50,000
		Section 25A(5) of DTROP and OSCO – “tipping off” – a person commits an offence if, knowing or suspecting that a disclosure has been made under section 25A(1), he discloses to any other person any matter which is likely to prejudice any investigation	Imprisonment for 3 years and a fine of HKD500,000
	United Nations Sanctions Ordinance	Section 3 of United Nations Sanctions Ordinance empowers the Chief Executive to make regulations to implement sanctions against persons and entities designated by the Security Council of the United Nations. It is an offence for any person to deal with any funds or other financial assets belonging to, owned or controlled by any sanctioned persons or entities	Imprisonment of 7 years and an unlimited fine

# Glossary

Term	Abbreviation
Anti-Money Laundering	AML
Counter-Financing of Terrorism	CFT
Money Laundering	ML
Terrorist-Financing	TF
Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region	HKNSL
Enhanced Due Diligence	EDD
Politically Exposed Persons	PEPs
Joint Financial Intelligence Unit	JFIU
The Hong Kong Association of Banks	HKAB
The Hong Kong Council of Social Service	HKCSS

# Q&A

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