



Anti-Money Laundering/Counter- Financing of Terrorism: Due Diligence Toolkit for NGOs

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Agenda

1. Background, Introduction & Updates
2. Why We Prepare the Toolkit for NGOs
3. How to Use the Toolkit
4. Money Laundering/Terrorist Financing (**ML/TF**) Risks in NGO Sector
5. Risk Assessment, Mitigation & Record Keeping
6. Internal Organization, Supervisory Accountability & Staff Administration
7. Case Scenarios Discussion

****These presentation slides contain selected extracts from the Due Diligence Toolkit for NGOs, which may have been edited for presentation purposes. Please refer to the Due Diligence Toolkit for NGOs for the full discussions.***

1. Background, Introduction & Updates

1. Background, Introduction & Updates

- As an international financial centre, it is particularly important for Hong Kong to safeguard its financial system and to keep abreast of international standards for Anti-Money Laundering and Counter-Financing of Terrorism (**AML/CFT**).
 - Hong Kong has in place a AML/CFT risk assessment framework which meets FATF standards.
 - NOTE this framework is kept under regular review and may be enhanced from time to time to address prevailing circumstances and risks, to stay effective.
- NGOs should be aware of the AML/CFT laws and guidelines (and changes), in conducting and managing charitable fundraising activities and operations in Hong Kong.
- JSM has collaborated with the NGO Governance Team of The Hong Kong Council of Social Service to develop this Toolkit
 - To provide a holistic overview of the latest AML/CFT legal and regulatory requirements;
 - To cover risks and potential vulnerabilities posted to NGOs that operate in Hong Kong.

1. Background, Introduction & Updates

AML/CFT Related
Legislations
(Appendix A):

Anti-Money Laundering and Counter-Terrorist Financing Ordinance (**AMLO**);

Drug Trafficking (Recovery of Proceeds) Ordinance (**DTROP**);

Organized and Serious Crimes Ordinance (**OSCO**);

United Nations (Anti-Terrorism Measures) Ordinance (**UNATMO**);

United Nations Sanctions Ordinance (**UNSO**); and

Weapons of Mass Destruction (Control of Provision of Services) Ordinance (**WMDO**).

Please note AMLO applies to financial institutions and designated non-financial businesses and professions.
It does not apply to NGOs but is a good source of reference.

1. Background, Introduction & Updates

HKNSL Related
Legislations
(Appendix B):

Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (**HKNSL**);

The Implementation Rules for Article 43 of the HKNSL Instrument A303 (**Implementation Rules for Article 43 of the HKNSL**); and

Safeguarding National Security Ordinance Instrument A305 (**SNSO**).

The Tax Guide for Charitable Institutions and Trusts of a Public Character states that "any institution, organisation or individual in the Hong Kong Special Administrative Region" shall abide by the HKNSL, and the laws of the Hong Kong "in relation to the safeguarding of national security, and shall not engage in any act or activity which endangers national security" to maintain its tax exemption status under Section 88 of the Inland Revenue Ordinance (**IRO**) .

1. Background, Introduction & Updates

Key Updates to the Toolkit (since initial launch in June 2023)

1. Anonymous Donations
 - To address increased concern regarding anonymous donation.
2. Handling Requests from Law Enforcement Agencies
 - Updates to Licensed Money Lenders Guideline published by Companies Registry (for reference).
3. Property Freezing Notices under HKNSL
 - Clarifications in Implementation Rules amended in 2023.
4. Safeguarding National Security Ordinance Instrument A305 (**SNSO**)
 - Enacted to improve the law for safeguarding national security in Hong Kong – came into effect on 23 March 2024.
5. Former non-Hong Kong PEPs
 - Updates to The Hong Kong Association of Banks Frequently Asked Questions in relation to Anti-Money Laundering and Counter-Financing of Terrorism.

2. Why We Prepare the Toolkit for NGOs

2. Why We Prepare the Toolkit for NGOs

Risk factors for NGOs	<ul style="list-style-type: none"> • Nature of donation collecting being relatively cash-intensive • The movement of money through an NGO may add to the complexity of a transaction or money flows (making it more difficult to spot illicit activities)
Risk factors for small-to-medium-sized NGOs	<ul style="list-style-type: none"> • Compliance challenges with the evolving AML/CFT regime due to their limited resources, including keeping up with the latest legal and regulatory requirements

2. Why We Prepare the Toolkit for NGOs

- The Toolkit presents to NGOs a risk assessment framework that addresses the latest AML/CFT and related requirements.
- The Toolkit is intended to:
 - Assist NGOs to conduct and manage their charitable fundraising activities and operations in Hong Kong, through enhancing their knowledge and understanding of ML/TF risks and potential vulnerabilities posed to NGOs in their activities;
 - To provide a practical guide for NGOs to adopt a risk-based approach that is relevant and appropriate for the scale and scope of their operations and activities.

3. How to Use the Toolkit

3. How to Use the Toolkit

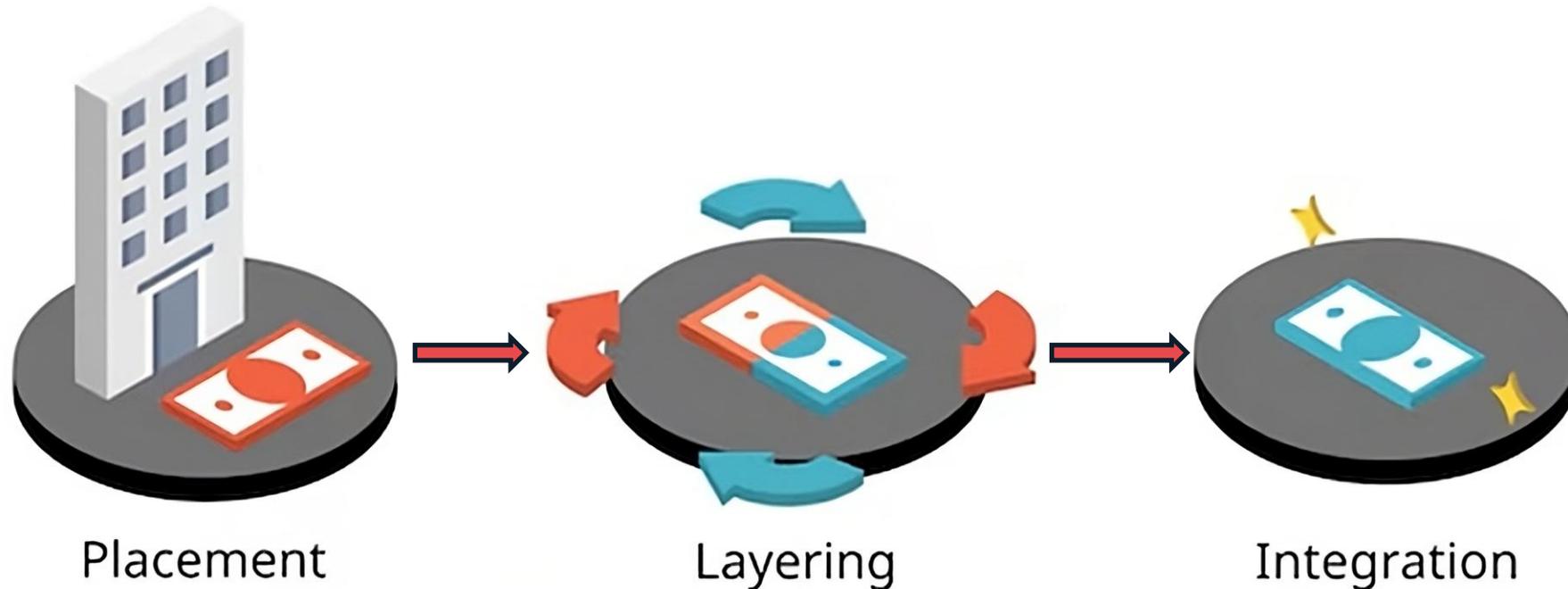
- **There is no one-size-fits-all AML/CFT risk assessment framework or mode for every NGO**
 - This Toolkit is a guide to help NGOs design and implement an AML/CFT framework that suits them.
- **Contents of the Toolkit:**
 - **Body:** general principles and recommended practices that should be considered
 - **Appendices:** a list of the AML/CFT and HKNSL Related Legislations, checklists and practical tips on how to identify and address potential ML/TF risks

4. ML/TF Risks in the NGO Sector (Chapter 3 of Toolkit)

4. ML/TF Risks in the NGO Sector

ML

- To "wash" illegal proceeds and make them appear "clean" and "legitimate"
- The process occurs in 3 stages:



4. ML/TF Risks in the NGO Sector

TF

- When property (usually money) is provided or collected with the intention or knowledge that:
 - The property will be used to commit terrorist acts; OR
 - For the benefit of a person knowing that (**or being reckless as to whether**) the person is a terrorist or terrorist associate.

TF can occur even if the NGO does not intend for property to be used for TF

4. ML/TF Risks in the NGO Sector

In HKNSL Context

- Under Section 60 of SNSO, the Secretary for Security may, by order published in the Gazette, prohibit organizations from operation or continued operation in Hong Kong (**Prohibited Organizations**).
- A person is prohibited from:
 - Managing or assisting in the management of a Prohibited Organization; OR
 - Paying money or giving aid of other kinds to or for the purposes of a Prohibited Organization; OR
 - Procuring subscription or aid for a Prohibited Organization.

4. ML/TF Risks in the NGO Sector

In HKNSL Context

- Under Section 89 of SNSO, the Secretary for Security may, by notice, published in the Gazette, specify a person as an absconder (**Absconder**).
- A person is prohibited against:
 - Making available, directly or indirectly, any funds or other financial assets or economic resources to, or for the benefit of, a relevant Absconder; OR
 - Dealing with, directly or indirectly, any funds or other financial assets or economic resources belonging to, or owned or controlled by, a relevant Absconder.

4. ML/TF Risks in the NGO Sector

As set out in Section 3.2.3 of the Toolkit, the Financial Action Task Force (**FATF**) identified the following 5 general categories of abuse of NGOs:



5. Risk Assessment, Mitigation & Record Keeping (Chapter 5 and 6 of Toolkit)

5. Risk Assessment, Mitigation & Record Keeping

- FATF recommends that NGOs adopt a risk-based approach
 - To look at its operations and activities;
 - Identify the potential risks those operations and activities may pose, and
 - Determine the measures that may be needed to address the potential risks.

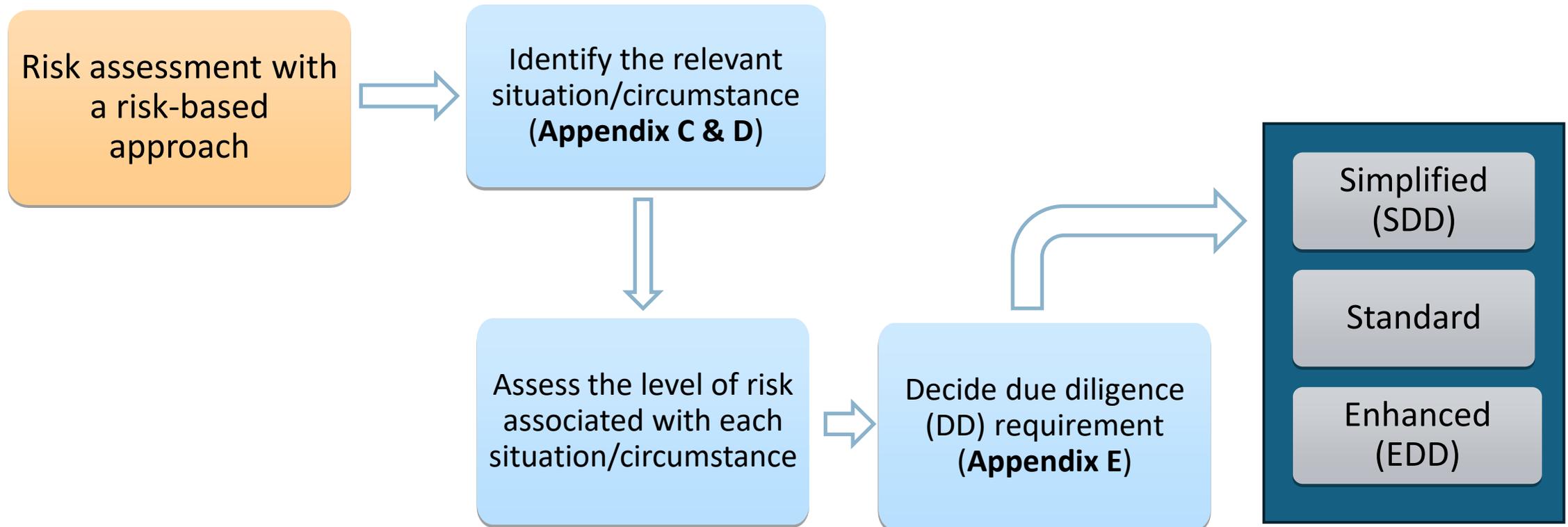
In short, a risk-based approach aims at drawing NGOs' attention and directing their resources according to priorities so that the greatest risks receive the highest attention.

- For more details, see Section 5.1 of the Toolkit

5. Risk Assessment, Mitigation & Record Keeping

Assessing risks

- A risk-based approach assessment process will be along the following lines:



5. Risk Assessment, Mitigation & Record Keeping

Due diligence

- Due diligence is the **main action** NGOs can take to guard against ML/TF, which can be summed up in 3 “**know your**” principles:



5. Risk Assessment, Mitigation & Record Keeping

should be conducted **prior to/as soon as possible** when confirming the relationship AND **regularly reviewed**

Due diligence

NGOs are encouraged to take the following specific steps and, in the following order:



5. Risk Assessment, Mitigation & Record Keeping

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.



5. Risk Assessment, Mitigation & Record Keeping

- 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.

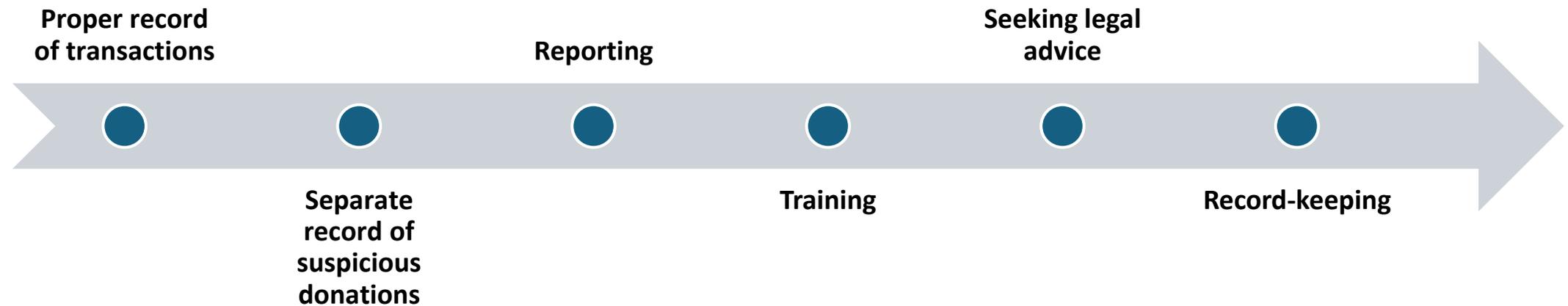
5. Risk Assessment, Mitigation & Record Keeping

- 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.

5. Risk Assessment, Mitigation & Record Keeping

Risk mitigation

- No “one-size-fits-all” approach to risk mitigation
- NGOs should consider following practical steps:



5. Risk Assessment, Mitigation & Record Keeping

Reporting and record-keeping

- **Internal reporting** – Internal reporting policies and procedures that require staff to report any information that causes them to believe or suspect that someone is engaging in ML/FT activities and/or HKNSL related activities.
- **External reporting** – When a compliance officer of NGO determines that the information disclosed does indicate or cause a suspicion of activities caught by AML/CFT Related Legislations and/or HKNSL Related Legislations, he/she will file a suspicious transaction report (**STR**) with the JFIU or NSD (where appropriate) and to keep a written record of such reports (failure to file is a criminal offence).

5. Risk Assessment, Mitigation & Record Keeping

Reporting and record-keeping

- **Tipping off**

- Tipping off is an offence under the laws of Hong Kong.
- Parties named in the STR should not be notified or otherwise be informed of any investigation or internal examination of their transactions.
- A person commits an offence if, knowing or suspecting that an STR has been made, the person discloses to any other person any matter which is likely to prejudice any investigation.
- NGO staff should be reminded that there is a risk that other parties could be unintentionally tipped off when the NGO seeks to inquire about a suspicious transaction. Sufficient training should be provided to staff and volunteers on the offence of tipping off.



5. Risk Assessment, Mitigation & Record Keeping

Reporting and record-keeping

- **Record-keeping**
 - Ensure that the audit trail for funds moving through the NGO is clear and complete.
 - All due diligence information and transaction records are recorded and/or retained.
 - Adequate staff training is provided to ensure compliance with due diligence and record-keeping requirements.

All documents and records should be kept throughout the continuance of the relationship with the relevant donor/beneficiary/partner, and for a period of at least 5 years beginning on the date on which the business relationship ends, or if an occasional transaction equal or exceeds the due diligence threshold, the 5-year retention period also applies

5. Risk Assessment, Mitigation & Record Keeping

Reporting and record-keeping

- **Staff training**
 - Implement a clear and well-articulated policy to provide relevant and adequate training, to staff addressing the specific risks faced by the NGO taking into account job duties and experience of staff.
 - New staff should be required to attend initial/induction training.
 - Regular refresher training.



6. Internal Organization, Supervisory Accountability and Staff Administration (Chapter 4 and 7 of Toolkit)

6. Internal Organization, Supervisory Accountability and Staff Administration

- To implement the risk assessment, risk mitigation and compliance measures effectively, NGOs will have to adopt a sound governance structure and necessary internal systems and controls. This also safeguards the public trust and confidence in the NGO sector.
- We will discuss the following aspects:
 - (A) internal organization,
 - (B) supervisory accountability, and
 - (C) staff administration.

6. Internal Organization, Supervisory Accountability and Staff Administration

(A) Internal organization

Organization Structure



- Led by its board, whose collective responsibility is to ensure that the NGO complies with its governing document(s) and all applicable laws and regulations; maintain oversight over the NGO
- The management team of an NGO reports, and is accountable, to the board.
- Each NGO should develop its own governance structure having regard to its size and the nature of its activities.
- For more details see Section 4.2.1 of the Toolkit.

6. Internal Organization, Supervisory Accountability and Staff Administration



- Handling requests from law enforcement agencies
 - Law enforcement agencies may request for assistance and judicial bodies may issue orders pursuant to the AML/CFT Related Legislations or the HKNSL Related Legislations.
 - When an NGO is served with such a request or an order, it should respond within the stipulated time and provide all information or materials falling within the scope of the request or order.
 - If the NGO encounters difficulty in complying within the stipulated time, it should contact the officer-in-charge for guidance at the earliest opportunity.

6. Internal Organization, Supervisory Accountability and Staff Administration

- Once an NGO is served with a restraint order or freezing notice which prohibits the dealing with the funds or property specified pending the outcome of an investigation or pending the proceedings of the offence respectively, the NGO must immediately withhold the funds or property in question strictly in accordance with the terms of such order or notice.
- An NGO served with a search warrant, production order or other types of crime related intelligence requests concerning a specified donor, beneficiary or partner must also timely comply with it, conduct the NGO's internal assessment of risk and identify any suspicious circumstances for the law enforcement agencies to investigate.

6. Internal Organization, Supervisory Accountability and Staff Administration

(B) Supervisory Accountability

- An NGO's board needs to be open, transparent, responsive and accountable to all stakeholders, including staff.
- The board of an NGO should consider adopting the measures to facilitate supervisory accountability, including:
 - Identify who the key staff are and establish procedures that foster effective communication.
 - Clearly delineate the scope of duties and responsibilities of the key staff, bearing in mind the guidelines regarding segregation of duties below.
 - Require the staff to properly execute their supervisory role in performing checks and reviews on the operation of the NGO in the conduct of fundraising activities, particularly in relation to major activities that are more prone to ML/TF risks.
 - Require the staff to report major activities to facilitate monitoring, including statistical analyses, deliverables and any matters of concern.
- For more details, see Chapter 3 and Sections 4.2.2, 4.3 and 7.3 of the Toolkit.

6. Internal Organization, Supervisory Accountability and Staff Administration

(C) Staff administration

- Effective staff management ensures that staff of the required qualification and experience are employed, improves staff performance and morale, and minimises opportunities for abuse.

Staff management comprises a number of components:



- For more details, see Sections 7.1, 7.2 and 7.3 of the Toolkit.

7. Case Scenarios

7. Case Scenarios

Scenario 1:

A Hong Kong NGO receives funding from a businessperson who is later classified as a Politically Exposed Person (**PEP**) under AML guidelines. The authorities suspect that the funds may have been intended to influence activities deemed to undermine national security.

Discussion Points:

- What are the immediate steps the NGO should take upon learning this news?
- Should the NGO suspend or halt any related activities or partnerships to mitigate further risks?
- Could the NGO be perceived as complicit, even if it was unaware of the donor's status as a PEP?
- How can the NGO demonstrate that its due diligence process was thorough and compliant with AML guidelines?

7. Case Scenarios

Scenario 1:

A Hong Kong NGO receives funding from a businessperson who is later classified as a Politically Exposed Person (**PEP**) under AML guidelines. The authorities suspect that the funds may have been intended to influence activities deemed to undermine national security.

Discussion Points:

What are the immediate steps the NGO should take upon learning this news?

Internal reporting - upon discovery of the reclassification of the businessperson, regardless of whether the NGO receives a request from law enforcement agencies, the relevant staff members should report the situation to the compliance officer

External reporting - if the compliance officer determines that there is suspicion of ML/FT or HKNSL activities, an STR is to be filed with the JFIU or NSD and the NGO should keep a written record of such STR. Also, beware of “tipping-off” offence.

Even if the compliance officer determines not to file an STR, then the NGO should undertake enhanced due diligence measures with proper assessment and documentation prior to accepting further donations from or continuing the relationship with the PEP.

7. Case Scenarios

Scenario 1:

A Hong Kong NGO receives funding from a businessperson who is later classified as a Politically Exposed Person (**PEP**) under AML guidelines. The authorities suspect that the funds may have been intended to influence activities deemed to undermine national security.

Discussion Points:

Should the NGO suspend or halt any related activities or partnerships to mitigate further risks?

If an STR is filed, the NGO should suspend the related activity or partnership until further notice from JFIU or NSD.

If an STR is not necessary, the NGO may continue its relationship or activities with the PEP, subject to **enhanced due diligence**

7. Case Scenarios

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A Hong Kong NGO receives funding from a businessperson who is later classified as a Politically Exposed Person (PEP) under AML guidelines. The authorities suspect that the funds may have been intended to influence activities deemed to undermine national security.

Discussion Points:

Could the NGO be perceived as complicit, even if it was unaware of the donor's status as a PEP?

"The national security offences stipulated in the NSL and the SNSO clearly define their elements, penalties, exceptions and defences. These laws actively prevent, suppress and punish acts and activities that endanger national security, in accordance with the principle of the rule of law. They target an extremely small minority of people and organisations that pose a threat to national security, while protecting the lives and property of the general public. Law-abiding persons, including ordinary travellers and businesspeople visiting Hong Kong, will not engage in acts and activities that endanger national security and will not unwittingly violate the law, and therefore have no reason to be concerned. When discharging their duty to safeguard national security, the HKSAR law enforcement agencies have been taking law enforcement actions based on evidence and strictly in accordance with the law. The Department of Justice of the HKSAR makes independent prosecutorial decisions, and prosecutions are only commenced if there is sufficient admissible evidence to support a reasonable prospect of conviction and if it is in the public interest to do so. The HKSAR Judiciary exercises judicial power independently in accordance with the law. As guaranteed by the Basic Law and the Hong Kong Bill of Rights, all defendants charged with a criminal offence shall have the right to a fair trial by the Judiciary."

The above quote from the Government spokesperson in relation to the implementation of the HKNSL states the official position. Based on the quote, if NGO was genuinely unaware and had conducted the relevant level of due diligence on the individual under the risk-based approach before establishing the relationship with the individual, it is unlikely that the law enforcement agencies would regard the NGO as complicit.

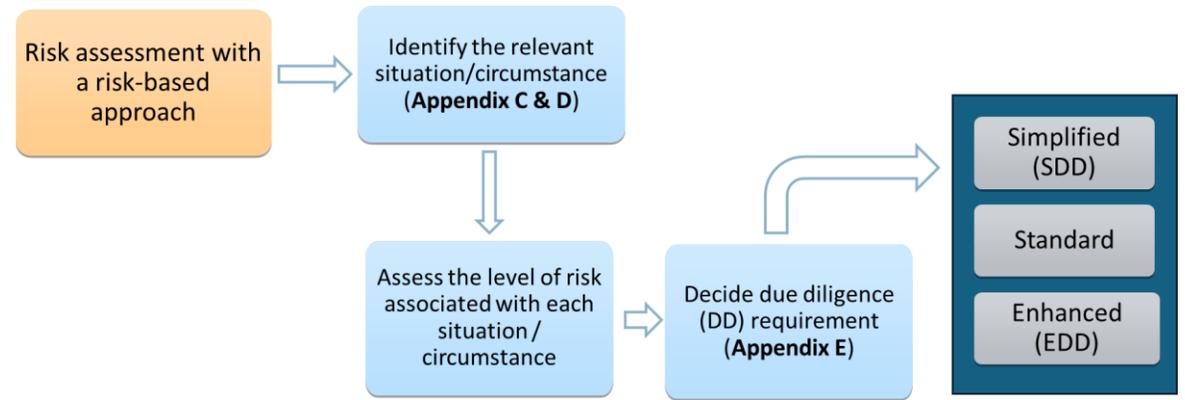
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Scenario 1:

A Hong Kong NGO receives funding from a businessperson who is later classified as a Politically Exposed Person (PEP) under AML guidelines. The authorities suspect that the funds may have been intended to influence activities deemed to undermine national security.

Discussion Points:
How can the NGO demonstrate that its due diligence process was thorough and compliant with AML guidelines?

Refer to Section 5.2 of the Toolkit
First identify and assess the risk and carry out appropriate level of due diligence and record keeping



7. Case Scenarios

Scenario 2:

A Hong Kong NGO's online donation platform is hacked, and fraudulent transactions are processed. Some of the stolen funds are linked to individuals or groups flagged under the HKNSL for posing a national security threat. The NGO faces scrutiny for failing to secure its fundraising operations.

Discussion Points:

- Could the NGO be held liable for failing to prevent these funds from being processed?
- How can the NGO ensure its online platforms are aligned with best practices for AML compliance?

7. Case Scenarios

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A Hong Kong NGO's online donation platform is hacked, and fraudulent transactions are processed. Some of the stolen funds are linked to individuals or groups flagged under the HKNSL for posing a national security threat. The NGO faces scrutiny for failing to secure its fundraising operations.

Discussion Points:

Could the NGO be held liable for failing to prevent these funds from being processed?

This seems more a question of cybersecurity rather than AML/CFT as such.

7. Case Scenarios

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A Hong Kong NGO's online donation platform is hacked, and fraudulent transactions are processed. Some of the stolen funds are linked to individuals or groups flagged under the HKNSL for posing a national security threat. The NGO faces scrutiny for failing to secure its fundraising operations.

Discussion Points:

How can the NGO ensure its online platforms are aligned with best practices for AML compliance?

- Refer to **Section 4.2 of the Toolkit**
- Sound governance structure and robust internal systems and controls are crucial measures for NGOs to manage the risks of ML and TF

All payments must be supported by original invoices or debit notes and should be attached to payment vouchers. For details see **Sections 4.3.1 and 4.3.2 of the Toolkit**

7. Case Scenarios

Scenario 3:

A Hong Kong NGO transfers funds to a partner organization in Mainland China for a poverty alleviation project. However, the funds are flagged by authorities as suspicious, and the NGO is accused of failing to prevent money laundering.

Discussion Points:

- How can Hong Kong NGOs navigate cross-border financial transactions while complying with AML regulations?
- What are the best practices for monitoring fund flows to Mainland China?
- How can NGOs document their compliance efforts to reduce legal exposure?

7. Case Scenarios

Scenario 3:

A Hong Kong NGO transfers funds to a partner organization in Mainland China for a poverty alleviation project. However, the funds are flagged by authorities as suspicious, and the NGO is accused of failing to prevent money laundering.

Discussion Points:

How can Hong Kong NGOs navigate cross-border financial transactions while complying with AML regulations?

- Please refer to **Section 4.3.3 of the Toolkit**
- In any cross-border financial transactions, particular attention should be paid when transferring funds to or through ML/TF high-risk countries or territories, which could lead to money being diverted before reaching the intended recipients; and moving funds outside the formal banking system of the countries or territories.

7. Case Scenarios

Scenario 3:

A Hong Kong NGO transfers funds to a partner organization in Mainland China for a poverty alleviation project. However, the funds are flagged by authorities as suspicious, and the NGO is accused of failing to prevent money laundering.

Discussion Points:

What are the best practices for monitoring fund flows to Mainland China?

The Toolkit focuses on Hong Kong. If an issue specific to laws and regulations of a jurisdiction outside of Hong Kong arises, the NGO should consider asking local counsel for advice.

Mainland China is not a high-risk country. In performing the relevant due diligence process involving Mainland China, please refer to **Appendix C, D and E** of the Toolkit. **Appendix E** provides guidance on name screening, including checking the official website of the Ministry of Foreign Affairs for remarks on entities/individuals which may be of concern to the government of the People's Republic of China.

7. Case Scenarios

Scenario 3:

A Hong Kong NGO transfers funds to a partner organization in Mainland China for a poverty alleviation project. However, the funds are flagged by authorities as suspicious, and the NGO is accused of failing to prevent money laundering.

Discussion Points:

How can NGOs document their compliance efforts to reduce legal exposure?

- Keep the audit trail for funds moving through the NGO clear and complete;
- Make sure all due diligence information and transaction records are recorded and/or retained; and
- Provide adequate staff training to ensure compliance with due diligence and record-keeping requirements.
- For more details see **Section 6.4** of the Toolkit.

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

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