Press release

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill gazetted

Friday, October 29, 2010

The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill (the Bill), which seeks to improve Hong Kong's anti-money laundering (AML) regime by better alignment of the financial sector with prevailing international standards, was gazetted today (October 29).

The Financial Services and the Treasury Bureau (FSTB) has conducted two rounds of public consultation on proposals to improve Hong Kong's AML regulation for the financial sectors - in July and December 2009 respectively. The second-round consultation - which focused on the detailed legislative proposals - ended in February 2010, during which 45 written submissions were received.

The FSTB also attended a public hearing session organised by the Legislative Council Financial Affairs Panel on May 24, 2010, at which representatives from 12 trade bodies and organisations expressed their views on the proposals.

A Government spokesman said, "The proposed legislation is intended to better align with the prevailing international AML standards, and it will strengthen Hong Kong's position as an international financial centre. As reflected by the comments received, there is broad support for the proposals. Respondents made many constructive comments on the operational and technical aspects of the legislative proposals, for which we are very thankful.

"In drawing up the Bill, we have modified certain proposals, giving regard to comments received during the consultation. We believe that the current proposals will not affect legitimate business transactions or restrict the development of our financial markets."

The major proposals covered by the Bill include:

- codifying the customer due diligence requirements, which refer to the measures enabling financial institutions to establish the identity of each customer, and record-keeping requirements in line with the prevailing international standards as promulgated by the Financial Action Task Force (FATF);

- subjecting specified financial institutions, namely banks and deposit-taking companies (collectively referred to as authorised institutions), licensed corporations in the securities sector, authorised insurers, appointed insurance agents, authorised insurance brokers, money service operators and the Postmaster General to the statutory requirements provided in the new legislation;

- empowering the Monetary Authority (MA), the Securities and Futures Commission (SFC), the Insurance Authority (IA) and the Customs and Excise Department (C&ED) as the respective relevant authorities to supervise compliance with the statutory requirements by the specified financial institutions;

- providing for supervisory and criminal sanctions for contravention of the statutory customer due diligence and record-keeping requirements;

- putting in place a licensing regime for money service operators to be administered by C&ED; and

- establishing an independent review tribunal to review decisions made by the relevant authorities to impose supervisory sanctions and decisions related to money service operator licensing matters.

The proposed statutory customer due diligence and record-keeping requirements largely reflect the existing requirements set out in the administrative guidelines issued by MA, SFC and IA.

The major views received from the second-round consultation and the Government's responses are set out in the consultation conclusion which will be available on the FSTB's website.

Key changes made to the earlier proposals include removing the across-the-board requirements to conduct customer due diligence on all pre-existing accounts and the removal of personal civil liability of officers of financial institutions. Customer due diligence requirements for beneficiaries of life insurance policies have also been clarified.

The Bill will be introduced into the Legislative Council on November 10, 2010. Subject to the passage of the Bill by the Legislative Council, the Government's target is to implement the requirements on April 1, 2012. Upon enactment of the new legislation, the relevant authorities will issue draft guidelines on compliance with the statutory requirements for consultation with the industry.

"We look forward to early enactment of the Bill to allow more time for the relevant authorities and financial institutions to make necessary preparation for the implementation of the new legislation on the target date of commencement," the spokesman added.

Hong Kong is a member of FATF, the international AML standard-setter. FATF conducted an evaluation on Hong Kong in 2007-08. While FATF recognised the strengths of Hong Kong's AML regime, they also highlighted in their evaluation that the lack of statutory backing for customer due diligence and record-keeping requirements, the lack of appropriate sanctions for these requirements, the limited range of regulators' supervisory and enforcement powers and the absence of an AML regulatory regime for money service operators (namely remittance agents and money changers) were major deficiencies that should be addressed.