Annex

Details of the Amendments to the Hong Kong Monetary Authority Guideline on Anti-Money Laundering and Counter-Terrorist Financing

Paragraph	Amendments
1.11	The term "terrorist financing" is defined in section 1 of Part 1 of Schedule 1 to the AMLO and means: (a) the provision or collection, by any means, directly or indirectly, of ~~funds~~any property – (i) with the intention that the ~~funds~~property be used; or (ii) knowing that the ~~funds~~property will be used, in whole or in part, to commit one or more terrorist acts (whether or not the ~~funds are~~property is actually so used); or (b) the making available ~~funds~~of any property or financial (or related) services, by any means, directly or indirectly, to or for the benefit of a person knowing that, or being reckless as to whether, the person is a terrorist or terrorist associate~~.~~; or (c) the collection of property or solicitation of financial (or related) services, by any means, directly or indirectly, for the benefit of a person knowing that, or being reckless as to whether, the person is a terrorist or terrorist associate.
1.23	The UNATMO, among other things, criminalizes the provision or collection of ~~funds~~property and making ~~funds~~any property or financial (or related) services available to terrorists or terrorist associates. The highest penalty for the offence upon conviction is imprisonment for 14 years and a fine. The UNATMO also permits terrorist property to be frozen and subsequently forfeited.
6.7	Terrorist financing generally refers to the carrying out of transactions involving ~~funds~~property that are owned by terrorists, or that have been, or are intended to be, used to assist the commission of terrorist acts. This has not previously been explicitly covered under the money laundering regime where the focus is on the handling of criminal proceeds, i.e. the source of ~~funds~~property is what matters. In terrorist financing, the focus is on the destination or use of ~~funds~~property, which may have derived from legitimate sources.
6.13	It is an offence for any person to make any ~~funds~~property or financial services available, by any means, directly or indirectly, to or for the benefit of a terrorist or terrorist associate except under the authority of a licence granted by S for S. It is also an offence for any person to collect property or solicit financial (or related) services, by any means, directly or indirectly, for the benefit of a terrorist or terrorist associate. Contraventions are subject to a maximum sentence of 14 years imprisonment and an unspecified fine.

Paragraph	Amendments
6.14	Section 8 of the UNATMO does not affect a freeze per se; it prohibits a person~~, in the absence of a licence granted by S for S,~~ from (i) making available, by any means, directly or indirectly, any ~~funds~~property or financial services to or for the benefit of a person he knows or has reasonable grounds to suspect is a terrorist or terrorist associate, in the absence of a licence granted by S for S; and (ii) collecting property or soliciting financial (or related) services, by any means, directly or indirectly, for the benefit of a person he knows or has reasonable grounds to suspect is a terrorist or terrorist associate.
6.15	The S for S can licence exceptions to the prohibitions to enable frozen ~~funds~~property and economic resources to be unfrozen and to allow payments to be made to or for the benefit of a designated party under the UNATMO. An FI seeking such a licence should write to the Security Bureau.
7.14	The following is a (non-exhaustive) list of examples of situations that might give rise to suspicion in certain circumstances: (a) transactions or instructions which have no apparent legitimate purpose and/or appear not to have a commercial rationale; (b) transactions, instructions or activity that involve apparently unnecessary complexity or which do not constitute the most logical, convenient or secure way to do business; (c) where the transaction being requested by the customer, without reasonable explanation, is out of the ordinary range of services normally requested, or is outside the experience of the financial services business in relation to the particular customer; (d) where, without reasonable explanation, the size or pattern of transactions is out of line with any pattern that has previously emerged; (e) where the customer refuses to provide the information requested without reasonable explanation or who otherwise refuses to cooperate with the CDD and/or ongoing monitoring process; (f) where a customer who has entered into a business relationship uses the relationship for a single transaction or for only a very short period without a reasonable explanation; (g) the extensive use of trusts or offshore structures in circumstances where the customer's needs are inconsistent with the use of such services; (h) transfers to and from high risk jurisdictions[41] without reasonable explanation, which are not consistent with the customer's declared business dealings or interests; and (i) unnecessary routing of funds or other property from/to third parties or through third party accounts.

[41] Guidance on determining high risk jurisdictions is provided at paragraphs 4.15.

Paragraph	Amendments
	Further examples of what might constitute suspicious transactions are provided in paragraphs 7.39-7.44. These are not intended to be exhaustive and only provide examples of the most basic ways in which money may be laundered. However, identification of any of the types of transactions listed above or in paragraphs 7.39-7.44 should prompt further investigations and be a catalyst towards making at least initial enquiries about the source of funds. FIs should also be aware of elements of individual transactions that could indicate ~~funds~~property involved in terrorist financing. The FATF has issued guidance for FIs in detecting terrorist financing[42]. FIs should be familiar with the characteristics in that guidance, which are grouped under the headings of (i) accounts; (ii) deposits and withdrawals; (iii) wire transfers; (iv) characteristics of the customer or his/her identity; and (v) transactions linked to locations of concern.
8.1	Record-keeping is an essential part of the audit trail for the detection, investigation and confiscation of criminal or terrorist property or funds. Record-keeping helps the investigating authorities to establish a financial profile of a suspect, trace the criminal or terrorist property or funds and assists the Court to examine all relevant past transactions to assess whether the property or funds are the proceeds of or relate to criminal or terrorist offences.

[42] Available on the FATF website at www.fatf-gafi.org/dataoecd/39/21/34033955.pdf.