

Practical Tips on Avoiding Money Laundering Traps for Businesses in Hong Kong、

Ignoring AML-related obligations can lead to severe penalties, including fines and imprisonment



In Hong Kong, money laundering is defined as the act of dealing with property that one knows or has reasonable grounds to believe represents, in whole or in part, the proceeds of drug trafficking or other indictable offenses (not being offenses triable by summary procedures like careless driving or littering). Additionally, not reporting on a suspicious transaction that may be money laundering is also a serious offense which can lead to serious legal consequences.

In today's interconnected global economy, small and medium-sized enterprises (SMEs) and other business enterprises in Hong Kong face significant risks related to non-compliance with Anti-Money Laundering (AML), Counter-Terrorist Financing (CFT), Counter-Proliferation Financing (CPF), and sanctions regulations, collectively referred to as "AML" below.

Ignoring AML-related obligations can lead to severe penalties, including fines of an unlimited amount and imprisonment for up to 14 years.

Beyond legal repercussions, non-compliance can tarnish a business's reputation, erode customer trust, and limit access to financial services. This article provides practical insights to navigate Hong Kong's AML frameworks, highlighting the legal requirements, reporting obligations, penalties for non-compliance, and industry-specific regulations.

Understanding the Legal Requirements

Hong Kong's AML regime is underpinned by several key laws, which all businesses, including SMEs, must comply with:

1. Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO), Cap. 615

The AMLO is the principal legislation governing customer due diligence (CDD) and record-keeping obligations for financial institutions (FIs) and designated non-financial businesses and professions

(DNFBPs). Under the AMLO, SMEs involved in services such as trust or company service provision, real estate, accounting, or legal services must conduct proper CDD measures, maintain records of transactions for at least five years, and monitor customer activities for suspicious behavior.

2. Drug Trafficking (Recovery of Proceeds) Ordinance (DTROPO), Cap. 405

The DTROPO criminalizes the handling of proceeds from drug trafficking. SMEs must be vigilant about transactions involving funds or property that could be connected to drug-related activities. Under this ordinance, businesses are required to report suspicious transactions involving such proceeds to the Joint Financial Intelligence Unit (JFIU).

3. Organized and Serious Crimes Ordinance (OSCO), Cap. 455

The OSCO extends AML obligations to proceeds of all indictable offenses, including fraud, corruption, and other organized crimes. SMEs must ensure that their operations do not inadvertently facilitate the handling of criminal proceeds. Reporting obligations to JFIU under this ordinance are similar to those under the DTROPO.

4. United Nations (Anti-Terrorism Measures) Ordinance (UNATMO), Cap. 575

The UNATMO addresses the financing of terrorism and prohibits providing or collecting property intended for terrorist acts. SMEs must also avoid dealing with property belonging to specified terrorists or terrorist associates. The ordinance grants the Secretary for Security the power to freeze terrorist assets, and businesses must comply with such notices.

5. Weapons of Mass Destruction (Control of Provision of Services) Ordinance (WMDO), Cap. 526

The WMDO prohibits the provision of services that may assist in the proliferation of weapons of mass destruction. SMEs involved in financing, sourcing materials, or providing technological services must exercise caution and conduct due diligence to ensure compliance.

6. United Nations Sanctions Ordinance (UNSO), Cap. 537

The UNSO enables Hong Kong to implement sanctions imposed by the United Nations Security Council. SMEs must ensure that their transactions and business relationships comply with these sanctions, particularly when dealing with jurisdictions under sanction such as North Korea and Iran.

Reporting Obligations

SMEs must fulfil the statutory reporting obligations under Hong Kong's AML framework. If a business knows or suspects that property may represent proceeds of drug trafficking, an indictable offense, or terrorist property, it must report this information to the JFIU as soon as reasonably practicable.

Red flags for suspicious activity are vital for effective AML compliance. Key indicators include unusual transaction patterns, such as large cash deposits, sudden account activity spikes, and "structuring" to avoid detection. Other concerns include temporary fund repositories, unusual customer behavior such as reluctance to provide information or using complex ownership structures, and dealings with high-risk entities or politically exposed persons (PEPs). Proactively identifying these signs helps SMEs and financial institutions mitigate financial crime risks, ensuring compliance and protecting their reputation.

The failure to report suspicious transactions is a criminal offense under the DTROPO, OSCO, and UNATMO.

Penalties for Non-Compliance

Non-compliance with AML regulations can result in severe penalties for SMEs.

1. **Failure to Report Suspicious Transactions:** Under section 25A of the DTROPO, OSCO, and section 12 of the UNATMO, failing to report suspicious transactions can result in a fine of up to HKD 500,000 and imprisonment for three months.
2. **Money Laundering Offenses:** Individuals or businesses can be found guilty of money laundering under section 25(1) of the DTROPO or OSCO face a maximum penalty of HKD 5 million and 14 years' imprisonment for dealing with property known or believed to represent proceeds of indictable offence
3. **Terrorist Financing:** Offenses under sections 7 and 8 of the UNATMO, such as providing property for terrorist acts or assisting terrorist associates, are punishable by a fine and up to 14 years in prison.
4. **CPF Violations:** Under section 4 of the WMDO, providing services connected to the proliferation of weapons of mass destruction is an offense, with penalties including fines of an unlimited amount and imprisonment for 7 years.

Industry-Specific Regulations

Certain industries have heightened AML requirements due to greater financial crime risks.

- Trust or Company Service Providers (TCSPs) must obtain a license and implement robust customer due diligence (CDD) measures.
- Real estate agents are supervised by the Estate Agents Authority and must verify client identities and report suspicious transactions.
- Accounting and legal professionals are subject to AML obligations when managing client funds, with oversight from their respective regulatory bodies.
- Money Service Operators (MSOs) require licensing and must adhere to stringent AML controls and reporting requirements enforced by the Commissioner of Customs and Excise.

Practical Compliance Tips for SMEs

To safeguard against AML risks, SMEs should adopt a risk-based approach to compliance. This involves conducting regular risk assessments, implementing CDD measures, and maintaining transaction records. SMEs can also use the "SAFE" approach recommended by the JFIU to identify suspicious transactions:

- **Screen** accounts for suspicious indicators.
- **Ask** customers appropriate questions.
- **Find** out customer records.
- **Evaluate** all available information.

Additionally, SMEs are encouraged to report suspicious transactions using the JFIU's e-reporting system, STREAMS, to ensure timely and accurate submissions.

AML compliance is not just a regulatory obligation but a critical component of sound business practices. By adhering to Hong Kong's AML regulations, SMEs can protect themselves from legal and reputational risks while showcasing their corporate decency and contributing to the fight against financial crime.

For inquiries about how JML can assist with your AML compliance planning, AML system building, AML audit and AML policy enhancement and publication, please scan the QR code below for quick access to know more about our services:



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