



■ INDEPTH FEATURE Reprint February 20

ANTI-MONEY LAUNDERING

Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in anti-money laundering.





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Before joining the legal profession, Dominic Wai worked in the banking sector as well as in the Independent Commission Against Corruption (ICAC). His practice focuses on advising clients on matters relating to anti-corruption, white-collar crime, law enforcement, regulatory and compliance matters in Hong Kong, including advice on anti-money laundering. He also handles cases involving corporate litigation, shareholders' disputes and insolvency matters, defamation cases, domestic and international arbitration cases, cyber security, data security and privacy law issues, competition law matters, e-discovery and forensic investigation issues, as well as property litigation.

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Q. To what extent is financial crime growing in frequency and complexity? How would you summarise recent trends in Hong Kong?

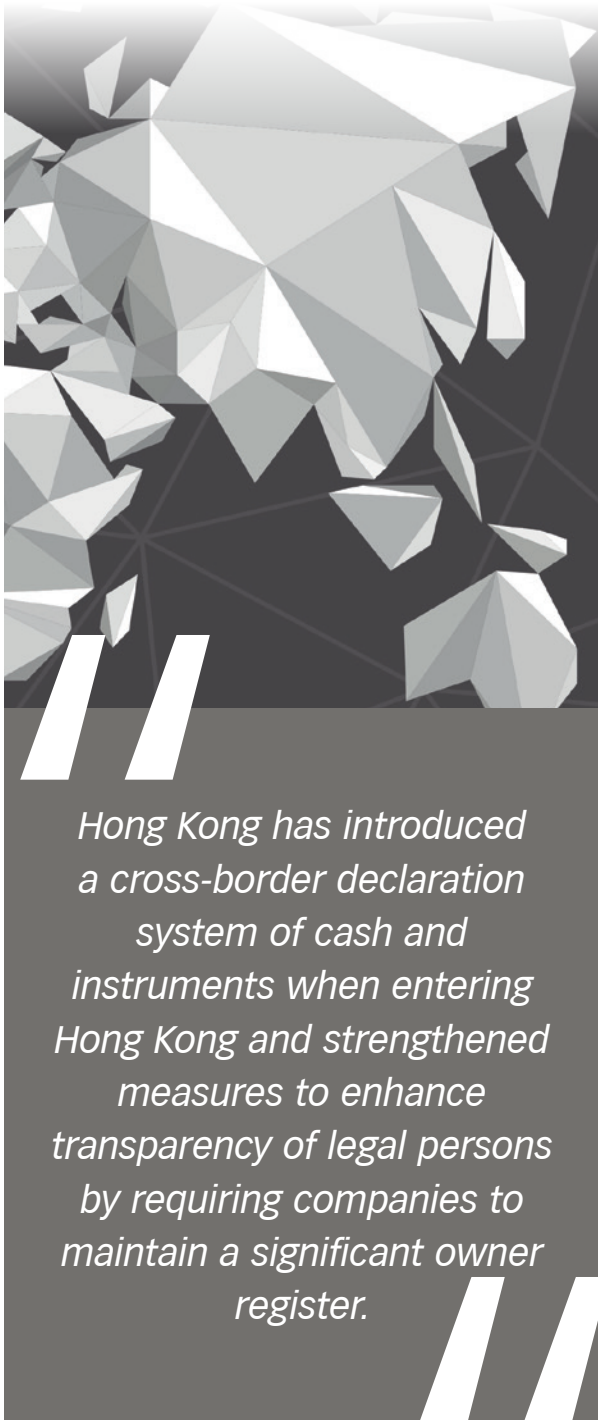
A: The Financial Action Task Force (FATF) recognises that, while Hong Kong has a low and declining domestic crime rate, its status as a major global financial centre inevitably exposes it to potential misuse as a transit point for foreign proceeds of crime. There appears to be a rise in fraud crimes and particularly with an increase in email scams – email scammers typically hack into the computers or email accounts of targeted companies and businesspeople. They use the information to impersonate business partners, clients or executives and order money transfers. Between January and June 2019, the squad received 829 requests to intercept payments of HK\$2.61bn from victims of scams in Hong Kong and around the world. Officers halted payments totalling HK\$1.29bn to fraudsters in 304 of the cases. In the same period in the previous year, there were 680 requests involving HK\$2.29bn. Police helped to freeze more than HK\$350m in 180 of the cases. With this rise in fraud and financial crime cases, the Hong Kong

Police Force (HKPF) set up the Anti-Deception Coordination Centre under the Commercial Crime Bureau of the HKPF in 2017. The main money laundering threats in Hong Kong are fraud, drugs-related crimes, and foreign corruption and tax evasion. Given Hong Kong's position as a free and open financial centre with no foreign exchange control, with the proliferation of technology related scams and financial crimes, the trend is for scammers to use Hong Kong for transferring and laundering such crime proceeds.

Q. Could you outline some of the key legal and regulatory developments in Hong Kong affecting anti-money laundering (AML)? Do companies need to accept that they now operate under heightened scrutiny, and react accordingly?

A: In March 2018, the new Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) came into operation. It introduced, among other things, the following new features in relation to anti-money laundering (AML). First, requirements relating to

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customer due diligence and recordkeeping requirements extended to designated non-financial businesses and professions (DNFBPs) such as lawyers, accountants, real estate agents and trust and company service providers (TCSPs). Second, a licensing regime for TCSPs to require them to apply for a licence and satisfy a “fit-and-proper” test before they can provide trust or company services as a business in Hong Kong. Finally, powers of the relevant authorities to supervise DNFBPs’ compliance with the requirements set out in AMLO. Hong Kong has also introduced a cross-border declaration system of cash and instruments when entering Hong Kong and strengthened measures to enhance transparency of legal persons by requiring companies to maintain a significant owner register. According to the FATF mutual evaluation report of September 2019, the private sector’s understanding of AML risks and implementation of mitigating measures is mixed.

Q. How would you describe AML monitoring and enforcement activity in Hong Kong? What problems may arise for multinational companies as a result of the extraterritorial reach of certain laws, and



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greater collaboration between national agencies?

A: AML monitoring and enforcement activities in Hong Kong are dealt with by regulators and law enforcement agencies under a number of ordinances, some with criminal justice measures. According to the FATF mutual evaluation report 2019, Hong Kong has a strong legal and institutional framework for combating money laundering. The technical compliance framework is particularly strong regarding confiscation, law enforcement, preventive measures for, and the supervision of, financial institutions, and international cooperation, but less so regarding the transparency of legal arrangements, preventive measures for politically exposed persons (PEPs), and supervision of DNFBPs. Hong Kong has mutual legal assistance on criminal matters arrangements with a number of foreign countries, such as the US, and for extraterritorial laws such as the Foreign Corrupt Practices Act, it is possible for US law enforcement agencies, such as the Federal Bureau of Investigations (FBI), to request the Hong Kong Police or Independent Commission

Against Corruption to assist with their investigations on cross-border crimes, including money laundering crimes. The risk for multinational companies on money laundering related matters is that they might face multijurisdictional investigations and prosecutions on the same money laundering matter or allegation.

Q. What steps should companies take to ensure adequate processes, programmes and policies are in place to support AML?

A: Companies in a highly regulated industry, such as financial institutions like banks or money service operators where AMLO applies, should follow guidelines issued by respective regulators. Guidelines generally set out AML statutory and regulatory requirements, and the AML standards that companies should comply with. The guidelines suggest that companies adopt a risk-based approach to identify, assess and understand the AML risks to which the companies are exposed, and take AML measures commensurate with those risks in order to manage and mitigate them effectively. Companies should therefore

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adopt a risk-based approach in the design and implementation of AML policies, procedures and programmes with a view to managing and mitigating AML risks.

Q. In what ways can companies utilise technology to help manage risks arising from AML?

A: Given that regulators advocate the adoption of a risk-based approach in devising policies and programmes to identify AML risks and to mitigate such risks, technology that could help companies to identify and assess such risks would be useful. One example is the use of search programmes to identify and verify whether a customer could be a PEP. Other technologies include recognition and verification programmes to check the authenticity of documents and confirm the identities of individuals who are overseas and not able to meet face-to-face for customer due diligence purposes.

Q. What overall advice would you give to organisations in terms of marrying technology with protocols, to enhance the efficiency of their AML capabilities and

allow them to detect unusual behaviour and identify red flags?

A: The adoption of technology and automation would enhance an organisation's effectiveness and ability to comply with relevant statutory requirements on customer due diligence and AML risk assessment in terms of customer checking and also transactions monitoring. With the speed of transactions and exchange of information digitally and electronically ever increasing, leveraging technology such as artificial intelligence (AI) and Big Data analysis would help organisations to minimise the risk of having something undone or missed in terms of AML risks identification and assessment.

Q. Going forward, do you expect the risks posed by money laundering to increase over time? Do companies need to continually improve their systems in order to deal with current and emerging threats?

A: I expect the risks posed by money laundering to increase over time. With the advancement and proliferation of different



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kinds of payment systems and means of payment, including cryptocurrencies and virtual institutions, such as virtual banks, those who want to launder money or hide crime proceeds have more avenues and opportunities to do so. Technology might be exploited to facilitate such malicious deeds, given that there might be vulnerabilities or loopholes for exploitation and the cost of attempting such deeds or launching hacks might be low. Companies thus need to continue to enhance and improve their systems to deal with such threats, given that regulators expect companies to take the necessary steps to deal with emerging trends. For non-regulated companies, the threats they face are significant due to competition, so they also need to continually improve their systems. □

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