



THE

# LAW SOCIETY OF HONG KONG

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Urgent by fax and by post  
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Dear Peter

Re: Draft Risk-Based Approach (RBA)  
Guidance for Lawyers by Financial Action Task Force

Reference is made to the draft RBA guidance for lawyers.

The Law Society of Hong Kong has taken all necessary steps to assist the Hong Kong Government in policing its AML policies. In particular, with regard to client due diligence procedures, the Law Society introduced a Practice Direction P on 3 December 2007 imposing both mandatory and advisory procedures upon its members in identifying clients.

In the past, the Law Society of Hong Kong has voiced and continues to voice its opposition to a risk-based approach to policing AML policies for the following reasons:-

1. It infringes upon and in some cases is in direct conflict with the client's right to confidentiality and legal professional privilege.
2. It places the individual lawyer in the role of investigator and whistle blower. Both roles are incongruous with his duty to his client.
3. The practical difficulties in imposing time consuming client due diligence procedures upon lawyers (which in more than 99.9% of instances are of no assistance whatsoever to the authorities) is an unnecessary burden upon the lawyer's resources.
4. The role of detecting anti-money laundering procedures should be undertaken by the competent law-enforcement authorities in every jurisdiction.

5. The Law Society of Hong Kong is of the view that threshold reporting is the solution to policing anti-money laundering activities. If a financial transaction which the lawyer handles on behalf of the client involves a sum above a stipulated figure, a compulsory report setting out the details of that should be made to the authorities by the lawyer irrespective of whether there are grounds for suspicion. Such a procedure would, firstly, deter money launderers from using lawyers as a channel for cleansing illegitimate funds; secondly, preserve inviolate the essential principles of client confidentiality and legal professional privilege and thirdly, prevent a conflict of interest situation which arises due to the current obligation to make Suspicious Transaction Reports.

Yours sincerely



Angela Li  
Assistant Director  
Regulation and Guidance

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