

Newsletter

Financial Services

26 January 2022

What's inside?

WINGS in full swing	1
Recent AML disciplinary actions	1 – 3
Hong Kong SFC licensing and compliance hints	4 – 6
Deacons strengthens Financial Services practice with newly promoted partner – Joyce Li	6 – 7
Recent publications	7

WINGS in full swing

Rebecca Yip

Licensed companies should be familiar with the SFC's WINGS portal since its initial launch in January 2019.

On 3 January 2022, the SFC launched the next generation of the WINGS portal with an enhanced licensing platform. In addition to preparing licensing application forms and notifications on the platform, applicants and licensees can now sign and submit forms, and pay application fees on the platform electronically. There is also a WINGS mobile app which will offer key features of the website version. The app will be available for download in late January 2022.

The SFC has released a [video](#), [user guide](#) and [online demo](#) to assist the industry to be familiar with the preparation and submission of applications on the WINGS portal.

We also use the WINGS portal to submit applications and notifications for clients.

Recent AML disciplinary actions

Lavita Pong

In December 2021, the SFC issued information relating to three disciplinary actions which involve AML breaches.

Failures involving non-face-to-face approach and third party deposits

On 15 December 2021, the SFC reprimanded and fined Mason Securities Limited (**MSL**) (formerly known as GuocoCapital Limited (**GCL**)) and fined it HK\$3.6 million ([link](#)) for failures to:

- meet the requirements of the SFC's AML Guideline for certifying the identity documents of six clients; and
- put in place policies and procedures to identify third party deposits prior to June 2017 and in particular failure to identify 15 cheques issued by third parties into the accounts of five clients.

Non-face-to-face approach

During December 2014 to January 2015, a former licensed representative of GCL acted as a certifier and signed on the copy identity documents of six clients without in fact ever meeting these six clients. The certified copies were not dated, did not have the representative's position or capacity, and did not confirm that he had seen the originals.

According to the SFC's AML Guideline at the time (and the same is found in the current Guideline - see reference to the current version in brackets):

- *The certifier is required to have seen the original identity document (7.1 of Appendix C).*
- *The certifier should sign and date the copy document (printing his name clearly in capitals underneath) and clearly indicate his position or capacity on it. The certifier should state that it is a true copy of the original (7.3 of Appendix C).*

Third party deposits

From May to July of 2016, MSL did not realise that it had 15 third party cheques until the SFC asked for copies of these cheques. This had occurred due to GCG and MSL having a lack of policies and procedures related to third-party deposits prior to June 2017.

Although MSL explained that the five clients had difficulty in remitting funds from the Mainland to Hong Kong in order to settle their margin loans, there was no evidence to suggest that MSL made enquiries as to whether the funds used to settle such loans originated from the five clients respectively.

According to the SFC's AML Guideline at the time (and the same/similar requirement is found in the current AML Guideline – see reference to the current version in brackets):

- *GCL and MSL breached its obligation to mitigate money laundering (ML) and terrorist financing (TF) risk (3.1).*
- *MSL failed to identify third-party deposits as part of the ongoing monitoring obligations and in particular transaction monitoring (5.1).*

The SFC's AML Guideline was revised with effect from 30 September 2021. The current Guideline sets out the requirements for third-party deposits in Chapter 11. The required due diligence measures, including making proper enquiries, are at 11.5 of the Guideline.

Failures to make proper enquires on third-party deposits and implement effective transaction monitoring

On 30 December 2021, the SFC reprimanded and fined Grand International Futures Co., Limited (**Firm**) HK\$8 million for AML and other regulatory breaches. The SFC also suspended the Firm's responsible officer, Mr. Liang (**RO**) for eight months ([link](#)).

This action also:

- reflects how misuse of technological developments can facilitate anonymity in ML / TF schemes;
- involves the highest fine in terms of disciplinary actions involving AML breaches during the calendar year of 2021 (although it also involves other regulatory breaches); and
- indicates a strong deterrent message from the SFC to the market that such failures are unacceptable.

Facts

The SFC received a complaint against various licensed corporations (**LCs**) including the Firm, for permitting their clients

to place orders with their broker supplied systems (**BSSs**) through a software called Xinguanjia (**XGJ**). XGJ was developed and/or provided by Hengxin Software Limited.

It was alleged that XGJ allowed the LCs' clients to set up sub-accounts under their account maintained with the LCs, and that the clients had solicited investors from Mainland China to trade through the sub-accounts via XGJ without opening separate accounts with the LCs in Hong Kong.

Between October 2017 and October 2018 (**Period**), the Firm permitted over 100 clients to use their designated customer supplied systems (**CSSs**) to place orders and these amounted to over 99% of the trading volume of the Firm.

The Firm did not conduct any due diligence or testing on the CSSs and claimed that it relied on the supplier of BSSs to conduct due diligence on the CSSs. The supplier then claimed that the Firm had never instructed them to conduct the relevant due diligence.

AML breaches

During the Period, the Firm failed to:

- perform adequate due diligence on the CSSs, and assess and manage the associated ML / TF and other risks;
- conduct proper enquiries when deposits by clients did not match their declared profiles; and
- implement effective transaction monitoring, in particular, where there were over 100,000 matched trades. (Matched trades are trades where the client's order is matched with his / her own order in the opposite direction.)

SFC's findings

Apart from breaches of the Code of Conduct, this action involves AML breaches of the following key ongoing monitoring obligations of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (**AMLO**) and related provisions in the SFC's AML Guideline. The key provisions of Schedule 2 of the AMLO are summarised below:

- establish and implement adequate AML policies and procedures to ensure compliance with the AMLO and mitigate ML / TF risks (section 23);
- keep customer information up-to-date and relevant (section 5(1)(a));
- monitor transactions and ensure these are consistent with the client's profile (section 5(1)(b)); and
- identify transactions which are complex, large or unusual, or transaction patterns which have no apparent economic or lawful purpose; investigate and document findings and report them to the Joint Financial Intelligence Unit where there is any suspicion of ML / TF.

The RO's failures

The SFC also found that the Firm's failures were attributable to the RO's failures to discharge his duties as a responsible officer and a member of senior management to ensure appropriate standards of conducts and properly manage the risks associated with the Firm, pursuant to the Code of Conduct.

Supervisory failures including suspicious transaction monitoring

On 30 December 2021, the SFC issued information in relation to an action against a former responsible officer and executive director of Zhonghui International Futures Company Limited (Futures Broker) who was banned for seven months ([link](#)).

His supervisory failures related to the use of CSSs by the Futures Broker's clients for placing orders. In this case, the CSSs allow clients to conduct electronic trading through the internet, mobile phones and other electronic channels.

His failures also related to:

- approval of client requests for setting up third-party operated accounts; and
- monitoring of suspicious transactions in client accounts.

HK SFC licensing and compliance hints

Lavita Pong

Implementation of revised financial return form and migration to WINGS

The new financial return form was gazetted on 17 December 2021 (see SFC [circular](#) of 17 December 2021 and the Gazette [notice](#)). The form is available on the SFC's website (click [here](#)). You can also refer to our previous article of 24 November 2021 regarding the new data required ([link](#)).

The timetable below shows the implementation dates:

Dates in 2022	Description	Old return	Revised return
7 January	A return in respect of any period ending on or before this date (either form may be used)	✓	✓
24 January	A return in respect of any period ending on or after this date		✓
1 February	Must submit revised return via WINGS		✓

To make new electronic submissions, the responsible officer or an officer approved by the SFC for filing such returns can download the WINGS mobile app (see SFC [circular](#) of 21 January 2022) and sign the return electronically.

The SFC has also issued a user guide and demonstration videos to provide guidance on how to submit financial returns through WINGS. These are available on the SFC's website under "[User Guide – Submission services](#)" on WINGS ([wings.sfc.hk](#)).

SFC AML and CFT webinars 2021

The SFC held AML/CFT webinars on 6 and 7 December 2021, as follows:

1. SFC Anti-Money Laundering and Counter-Financing of Terrorism Webinar 2021 ([link](#)) presented by the SFC
2. Anti-Money Laundering & Terrorist Financing Suspicious Transaction Reporting presented by the Joint Financial Intelligence Unit ([link](#))

These presentations are available on the SFC's website (see the SFC [circular](#) of 16 December 2021) and the SFC encourages the industry to consider using them for internal training. The first presentation provides updates on major regulatory changes and the SFC's inspection findings, which are summarised below.

Update on the SFC's revised AML Guideline

The SFC has summarised the recent changes in the SFC's AML Guideline which came into effect on 30 September 2021 (with the exception of the requirements relating to cross-border correspondent relationships which will come into effect on 30 March 2022).

- Third-party deposits and payments

- The meaning of third party is broad. Any person or entity other than the investor is considered to be a third party.
- The SFC mentions that firms can provide their company policies to a client, and encourages clients to deposit funds into a designated bank account (in the client's own name or the name of any acceptable third party) to facilitate easy identification of the source.
- Cross-border correspondent relationships
 - The SFC gives useful guidance on what falls in-scope of the requirements, and the required measures (slides 10 and 12 of the presentation).
 - A Hong Kong asset manager which has been delegated with an asset management function by an overseas asset manager and thereby exercises its own investment discretion to place orders would fall out of the scope of such relationship (slide 11 of the presentation).

Other updates

- Mitigating ML/TF risks of virtual assets
 - In May 2021, the Financial Services Treasury Bureau issued its Consultation Conclusions on the Legislative Proposals to Enhance Anti-Money Laundering and Counter-Terrorist Financing Regulation in Hong Kong ([link](#)). It is expected that the relevant amendment bill will be introduced into the Legislative Council during the first half of 2022.
 - In October 2021, the FATF issued the Updated Guidance for a Risk-based Approach to Virtual Assets and Virtual Asset Service Providers ([link](#)).
- New technology for AML/CFT
 - On 1 July 2021, the FATF issued the "Opportunities and Challenges of New Technologies for AML/CFT" ([link](#)).
 - Machine learning and natural language processing (both are subsets of artificial intelligence) and Application Programming Interface are cited as offering the most potential for AML/CFT, based on responses to FATF's digital transformation questionnaire distributed to government authorities, and public and private sector experts.
 - The industry should mitigate challenges and obstacles such as operational issues as well as legal and ethical issues caused by use of technology.
 - Getting management buy-in and ensuring compatibility with international standards are ways to implement new technologies.
 - The industry should not become over-reliant on new technologies.
 - Human input and capacity-building continue to be essential elements.

Inspection findings and supervisory observations

- Inadequate policies and procedures

- Insufficient measures for identifying a natural person for corporate investors with complex structures
- Insufficient documentation of CDD measures taken (in connection with name screening result assessment and transaction monitoring)
- Institutional risk assessment
 - Failure to establish enhanced controls and action plans after assessment
- Customer risk assessment
 - Failure to update the high risk country list during the assessment
- Third party deposits
 - Identification – insufficient review by looking only into third-party deposits which exceed the pre-determined monetary threshold
 - Evaluation – no enquiries made as to why the deposits are necessary (for example, a deposit from a third party was transferred into a client’s trading account and without any trading activities the same amount was subsequently transferred to that client’s bank account)
- Sanction screening
 - Ineffective automated system for name screening
- Ongoing monitoring
 - Failure to check the veracity and adequacy of CDD information during review (e.g. only conducting a negative news screening)

Deacons strengthens Financial Services practice with newly promoted partner – Joyce Li



We are pleased to announce that Joyce Li has been promoted to Partner at Deacons in recognition of her strong contribution to the firm.

Jeremy Lam, Partner and Head of the Financial Services practice, commented: “Joyce is an integral part of the team and has been recognised by clients for the quality of her work and expertise in the funds and regulatory area. I am delighted to see her take this next step in her career and her promotion will further strengthen our well-recognised Financial Services practice.”

Joyce has extensive experience advising on the establishment of a wide range of funds for Hong Kong retail distribution as well as private offerings in Hong Kong. Her experience includes establishing Hong Kong domiciled unit trusts, Hong Kong open-ended fund companies, Cayman Islands open-ended investment companies and Cayman Islands segregated portfolio companies. Joyce also assists clients in obtaining SFC authorisation for both local and offshore funds and advises on post SFC-authorisation compliance obligations and various regulatory requirements in Hong Kong.

Prior to her current role, she was Vice President of the product and client service team of a leading Mainland Chinese asset manager with a focus on product development and managing product changes and infrastructure during the life cycle of a fund.

Joyce speaks English, Cantonese and Mandarin.

Recent publications

[Employment Law Review 2021-2022](#)

[Is your business collecting customer information arising from Covid-19 anti-pandemic measures? Beware of Privacy Commissioner's investigations and enforcement against non-compliance](#)

[Mainland China: Extension of several Preferential Individual Income Tax \(IIT\) policies – relevant plan and compliance work needs to be carried out by the employers](#)

[Could the third time be the charm for Hong Kong's copyright law?](#)

[Overview of Hong Kong's listing regime for special purpose acquisition companies \(SPACs\)](#)

[Adjudicator Nominating Bodies](#)

[Construction video series \(Episode 1 – Adjudication\)](#)

[New corporate governance requirements for HK listed companies/listing applicants will come into effect in January 2022](#)

[Code of Banking Practice Update](#)

Want to know more?

Jeremy Lam
Partner
jeremy.lam@deacons.com
+852 2825 9732

Taylor Hui
Partner
taylor.hui@deacons.com
+852 2826 5368

Alwyn Li
Partner
alwyn.li@deacons.com
+852 2825 9627

Su Cheen Chuah
Partner
sucheen.chuah@deacons.com
+852 2825 9651

Fiona Fong
Partner
fiona.fong@deacons.com
+852 2826 5316

Ming Chiu Li
Partner
mingchiu.li@deacons.com
+852 2825 9752

Pinky Siu
Partner
pinky.siu@deacons.com
+852 2825 9568

Joyce Li
Partner
joyce.li@deacons.com
+852 2825 9318

Scott Carnachan
Consultant
scott.carnachan@deacons.com
+852 2825 9265

The information contained herein is for general guidance only and should not be relied upon as, or treated as a substitute for, specific advice. Deacons accepts no responsibility for any loss which may arise from reliance on any of the information contained in these materials. No representation or warranty, express or implied, is given as to the accuracy, validity, timeliness or completeness of any such information. All proprietary rights in relation to the contents herein are hereby fully reserved.