

More investigations expected under Hong Kong's AML law, former regulator says

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Hong Kong can expect to see more investigations under its relatively new anti-money laundering regime, said Jill Wong, partner at Howse Williams Bowers.

She said the territory's Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance Cap 615, or AMLO, of 2012, would see ample use in the coming months and years.



"We can expect to see more investigations under the new AML regime," she told a University of Hong Kong law school audience on Wednesday, during a presentation on preparing for regulatory investigations.

Wong, the Hong Kong Monetary Authority's (HKMA) former deputy general counsel, said a worrying aspect about AMLO was its scope and that many in financial circles could, potentially, be ensnared by it.

"If you are an employee or involved in the management of a financial institution, and you knowingly cause or permit your institution to contravene AMLO, you could go to jail for two years or you could face a fine of HK\$1 million (\$127,000). There are many groups of people who can be an "employee", she said.

To allay concerns, however, there is a defence within the AMLO for employees that follow the appropriate internal procedures.

Regulators hold information

Given the influx of capital from mainland China via regulated entities into Hong Kong, Bill Majcher, head of EMIDR, a Hong Kong corporate risk group specialising in AML and cyber security, asked Wong whether it would be possible for those priming for civil forfeiture actions to serve court orders against the HKMA and Securities and Futures Commission (SFC) to make them disclose such details. The reason being that the city's two main financial regulators pick up on a lot of compelled information based on what locally based institutions send them.

In most English common law derived legal systems, such as "Anton Piller" court orders require a defendant in proceedings to permit the plaintiff or their legal representatives to enter the defendant's place of business to obtain necessary evidence.

"There is an abundance of information held by the local regulators. As a result, if someone were pursuing a civil forfeiture action, can they serve an Anton Piller order on the SFC and HKMA to have that information turned over to civil investigators?" Majcher asked.

Wong replied in the affirmative that regulators would have to disclose pursuant to a valid court order, but that they would be cautious before doing so.

"They get a lot of information from the people that they regulate and do not want institutions to stop being frank, open and honest with them," she said. "If banks, brokers and asset managers ever felt that whatever they gave the regulators could be given to a third party relatively easily, they may not be so forthcoming and the regulators know that."

"Courts would be quite reluctant to do anything which might impede or obstruct the flow of information to regulators in this context," said Syren Johnstone, adjunct associate professor at HKU's Faculty of Law. He said courts would give consideration to such a request for information, in view of the public purpose of the regulators' statutory mandate, before compelling disclosure pursuant to an Anton Piller order.

Under s 378 of territory's Securities and Futures Ordinance (SFO), there exists a statutory provision to keep such information secret.

"That applies to both the Commission, as well as those assisting or otherwise aiding the SFC in its investigations," Wong said.

Similarly, s 120 of the Banking Ordinance applies to the HKMA in a like fashion. "They are supposed to keep certain things they get from banks confidential as well," Wong said.

In both cases, there are certain "windows" permitting disclosure, such as disclosure being in the public interest.

Wong's public lecture was one in a series on compliance co-hosted by HKU and the Hong Kong Securities and Investment Institute (HKSI).

Ajay Shamdasani is a senior regulatory correspondent with Thomson Reuters Regulatory Intelligence in Hong Kong. He covers regulatory developments in Hong Kong, India and South Korea. He also writes about money laundering, tax evasion, fraud, corruption, data privacy and cybercrime.

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