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FINANCIAL SERVICES AND  
THE TREASURY BUREAU  
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10 November 2017

Legal Service Division  
Legislative Council Secretariat  
1 Legislative Council Road  
Central, Hong Kong  
(Attn: Mr Hugo Chiu)

Dear Hugo,

**Bills Committee on Anti-Money Laundering and Counter-Terrorist  
Financing (Financial Institutions) (Amendment) Bill 2017 and  
Companies (Amendment) Bill 2017**

**Follow-up to meeting on 30 October 2017**

I refer to your letter dated 1 November. The Administration's responses are set out in **Annexes 1 and 2** for your information. The Chinese translation will follow later.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Eureka Cheung', written over a large, stylized flourish.

(Ms Eureka Cheung)

for Secretary for Financial Services and the Treasury

c.c.

Bills Committee Chairman (Attn: Hon. Wong Ting-kwong, GBS, JP)

Registrar of Companies (Attn: Ms Ada Chung)

Secretary for Justice (Attn: Ms Nilmini Dissanayake

Ms Rayne Chai

Ms Frances Hui

Mr Vincent Wai

Mr Danny Yuen

Dr Stefan Lo)

**The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 applies statutory customer due diligence (“CDD”) and record-keeping requirements to, inter alia, legal professionals (covering solicitors and foreign lawyers) when they engage in specified transactions by extending the coverage of CDD and record-keeping requirements in Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) (“AMLO”) to them. At the same time, the Law Society of Hong Kong has issued Practice Direction P (“PDP”) setting out requirements relating to anti-money laundering for all law firms, solicitors and foreign lawyers practising in Hong Kong. The Administration is requested to provide a comparison between PDP and Schedule 2 of AMLO, and highlight the requirements provided in Schedule 2 to AMLO that are not covered by PDP.**

CDD and record-keeping requirements are the main strands of an effective anti-money laundering and counter-terrorist financing (“AML/CTF”) regime to deter and disrupt money laundering activities and ensure the integrity of a financial system. The Financial Action Task Force (“FATF”) considers that, in addition to financial institutions (“FIs”), designated non-financial businesses and professions (“DNFBPs”) that engage in specified transactions should also be subject to similar statutory CDD and record-keeping requirements, and such principles should be set out in law.

2. With the FATF standards in mind, the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 (“AML Bill”) is intended to be an overarching, enabling piece of legislation for prescribing the general CDD and record-keeping requirements applicable to DNFBPs, which includes solicitors and foreign lawyers, when they engage in specified transactions.

3. Having regard to the principle of professional self-regulation, we propose using the existing regulatory regimes applicable to solicitors and foreign lawyers under the Legal Practitioners Ordinance (Cap. 159) to enforce the statutory CDD and record-keeping requirements under the AMLO. The Law Society of Hong Kong (“LSHK”) will be entrusted with statutory supervisory oversight in order to ensure compliance with the AMLO requirements by solicitors and foreign lawyers. Non-compliance will be handled in accordance with the existing statutory investigation, disciplinary and appeal mechanisms governing professional misconduct. These apart, we have not proposed any other investigation or disciplinary proceedings or criminal sanctions under the AML Bill in relation to non-compliances of statutory CDD and record-keeping requirements by solicitors and foreign lawyers.

4. Much as we appreciate the PDP that the LSHK has put in place for subjecting solicitors and foreign lawyers to CDD and record-keeping requirements, we note that, as pointed out in paragraph 11 of the Practice Direction P, “these guidelines do not have the force of law and should not be interpreted as such”. As revealed from recent mutual evaluations of other jurisdictions, the absence from the statute of the CDD and record-keeping requirements for DNFBPs will very likely result in our failing the relevant FATF assessment. The extension of the statutory AML/CTF requirements as set out in the AMLO to cover DNFBPs is therefore

essential to enable Hong Kong to stand up to the FATF scrutiny in the upcoming mutual evaluation scheduled for 2018/19.

5. The comparison of Schedule 2 to the AMLO and the PDP issued by the LSHK is as follows –

- (i) CDD principles and concepts are generally covered in the PDP, but fall short of the AMLO (and the FATF) standard both in specificity and depth.
- (ii) Under the PDP, solicitors/foreign lawyers are allowed to rely on third parties for conducting CDD measures.
- (iii) There is ambiguity as to what constitutes “mandatory” and “recommended” requirements. Specific requirements (e.g. non face-to-face; politically exposed persons) are not listed in the mandatory requirements section of the PDP, but rather listed in Annexure 3 as “Recommended procedures and policies” (cf paragraph 18 of the PDP).
- (iv) There is no obligation (as opposed to “must” in the AMLO) to terminate business relationship if solicitors/foreign lawyers are unable to conduct CDD on their clients as required.
- (v) Solicitors/foreign lawyers only need to enquire about beneficial owners’ information when their clients are legal entities, whereas in the AMLO regular CDD measures entail enquiry into beneficial owners of both individuals and legal entities. There is also no beneficial ownership threshold stated in the PDP.
- (vi) The FATF requirements of AML/CTF duties being extended to branches and subsidiary undertakings outside Hong Kong are missing in the PDP.
- (vii) The duty of keeping relevant transaction records is a period of six years under the AMLO, whereas in the PDP similar duty ranges from 3 years to 15 years, depending on the types of transactions involved.

**Financial Services and the Treasury Bureau**  
**10 November 2017**

**Summary of views made by deputations on the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 and Companies (Amendment) Bill 2017 and the Administration’s response**

<b>Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 (“AML Bill”)</b>			
	<b>Organization / individual</b>	<b>Views</b>	<b>Administration’s response</b>
(1)	Acota Limited	(i) In support of the trust or company service provider (“TCSP”) licensing regime. (ii) Enquired whether a TCSP had to terminate its business immediately if its application for TCSP licence was rejected during the 120-day transitional period. (iii) Enquired whether the TCSP licence application must be accompanied by a valid business registration certificate of a director/ultimate owner if it was an overseas company which was not incorporated in Hong Kong.	(i) Support noted. (ii) Depending on the circumstances of the case, if a deemed licensee applies for a licence during the transitional period which is not granted and the decision not to grant takes effect as a specified decision under s.75 of the AMLO, then a licence deemed to have been granted will cease to have effect. It will be a criminal offence to operate a TCSP business in Hong Kong without a licence. (iii) An application for a TCSP licence must be accompanied by a copy of a valid business registration certificate. If the applicant is a corporation, a licence may be granted only if the Registrar of Companies (“R of C”) is satisfied that each director and ultimate owner (if there is one) is a fit and proper person to be associated with a trust or company service business.
(2)	A-Swiss Corporate Services Limited	(i) In support of the AML Bill.	(i) Support noted.
(3)	Clifford Chance	(i) In support of the AML Bill. (ii) Whether TCSPs which were registered under the Trustees	(i) Support noted. (ii) We note the suggestions for exemption of different categories of operators engaging in the trust or

		Ordinance or already subject to the regulation of the Securities and Futures Commission could be exempted under the proposed licensing regime.	company business, but there is no consensus reached during the consultation period. To avoid regulatory overlap, we propose to exempt authorised institutions and licensed corporations which are providing TCSP service as an ancillary to their principal business as well as accounting and legal professionals from the TCSP licensing requirements. We will reserve a rule-making power in s.53B of the AML Bill for the Secretary for Financial Services and the Treasury to grant further exemption for a certain class of TCSP operators should the need arise in the future.
(4)	Ernst & Young Advisory Services Limited	(i) In support of the AML Bill and the revised threshold of beneficial ownership would align with international standards.	(i) Support noted.
(5)	Estate Agents Authority (“EAA”)	(i) In support of the AML Bill. (ii) The real estate sector is facing a low money laundering and terrorist financing (“ML/TF”) risk and cash transactions are rarely involved nowadays upon the signing of Provisional Agreements for Sale and Purchase. The enabling provision under the AML Bill should be flexible enough for the EAA to issue sector-specific guidelines and allow estate agents to conduct simplified customer due	(i) Support noted. (ii) Having regard to the FATF recommendation, we consider it reasonable for statutory CDD measures to trigger only when a transaction is actually taking place as typified in the signing of a Provisional Agreement for Sale and Purchase. We appreciate that estate agents may have varying capacity or expertise to follow Schedule 2 requirements under the AMLO, especially at the initial implementation stage. An enabling provision in the AML Bill allows the EAA to issue sector-specific guidelines as they consider appropriate for implementation of the Schedule 2 requirements and guide estate agents

		<p>diligence (“CDD”) measures in low-risk situations in view of the relatively low education requirements for entry into the sector and the possible increase of operational costs to be brought by the statutory requirements.</p> <p>(iii) There may be resource implications arising from the designation of the EAA as a regulatory authority under the AML Bill, considering that extra manpower and financial resources would be required to conduct compliance checks and investigations.</p>	<p>through the application of the risk-based approach having regard to the business nature and risk profile of the real estate sector. We will continue to liaise with the EAA closely to follow through the issue of appropriate guidelines to cater for various circumstances as necessary and where justified in accordance with the risk-based approach.</p> <p>(iii) We thank the EAA for agreeing to take on the statutory role of overseeing AML/CTF compliance by estate agents. We will continue our dialogue with the EAA and render all necessary assistance to facilitate the sector’s migration to the AMLO regime.</p>
(6)	Hatari Express Limited	<p>(i) Expressed difficulty in opening bank accounts in Hong Kong.</p>	<p>(i) The Hong Kong Monetary Authority (“HKMA”) is aware of the difficulties encountered by certain entities in opening bank accounts and has devoted considerable resources to address the issue. The problem is a global one and the standards set by the HKMA are on par with other jurisdictions. The HKMA has reminded banks of the need to take reasonable steps in meeting AML/CTF regulatory requirements and issued a circular to all banks in 2016 clarifying that banks should adopt a risk-based approach and refrain from practices which could result in financial exclusion. The HKMA has also taken various other initiatives to improve the situation, including establishment of a dedicated</p>

			web page and email account on opening of bank accounts. The HKMA will closely monitor the situation.
(7)	Hong Kong General Chamber of Commerce	<p>(i) Agreed and supported the government's effort to conform with and fulfill international obligations under the FATF by ensuring Hong Kong's regulatory regime was sufficiently effective in countering ML/TF activities.</p> <p>(ii) TCSPs should be given the opportunity to organize themselves in line with other professionals/businesses that have already set up a self-regulatory body instead of being subject to oversight by the Companies Registry ("CR").</p>	<p>(i) Support noted.</p> <p>(ii) We respect the wish of some for the TCSP sector to be registered by existing industry bodies instead of the CR. We note, however, that the TCSP sector comprises players from not only the company secretary profession, but also the legal, accountancy, trustee and other professions. The CR, being a government agency, is better placed to administer the licensing and regulatory regime for TCSPs.</p>
(8)	Hong Kong Institute of Certified Public Accountants ("HKICPA")	<p>(i) In support of the AML Bill.</p> <p>(ii) The HKICPA had already drawn up draft AML guidelines for use once the legislative proposals were in force. Failure for their members to comply with the guidelines might result in disciplinary actions.</p> <p>(iii) There might be a regulatory gap for overseas accountants as they were under no obligation to join and were not regulated by the HKICPA if they were not undertaking any</p>	<p>(i) Support noted.</p> <p>(ii) We thank the HKICPA for taking the initiative to draw up AML guidelines ahead of the commencement of the AML Bill, and will continue to liaise with the HKICPA closely to follow through the issue of the guidelines.</p> <p>(iii) We consulted the HKICPA on the definition of accounting professional in the process of formulating the AML Bill. We will keep in view the implementation of the AML Bill to see if the definition needs refinement in future.</p> <p>(iv) As we propose designating the HKICPA to be the</p>

		<p>auditing work in Hong Kong.</p> <p>(iv) Proactive monitoring of compliance of AML/CTF requirements under the AMLO would be important.</p> <p>(v) Details of the shared regulatory arrangements between the HKICPA and CR in administering the TCSP licensing regime would need to be further developed.</p>	<p>regulatory body for enforcing CDD and record-keeping requirements for accountants under the AMLO, we trust that the HKICPA will ensure, on a risk-sensitive basis, that accountants are subject to effective systems for monitoring and ensuring compliance with AML/CTF requirements in accordance with the FATF standards.</p> <p>(v) We will continue discussions with the HKICPA in the months ahead to ensure a clear delineation of regulatory roles between them and the CR in administering the TCSP licensing regime.</p>
(9)	Hong Kong Investment Funds Association	(i) Expressed full support to the AML Bill which would align Hong Kong's regulatory regime with international requirements as promulgated by the FATF and reduce the risk of ML and TF so as to safeguard the integrity of Hong Kong as an international financial centre.	(i) Support noted.
(10)	Hong Kong Society of Notaries	<p>(i) The practice of notaries public does not involve management of client's money or client's assets. The Society also reminded members that in their capacity as notaries public, they must not hold client's money nor open a client account.</p> <p>(ii) The Society would not add much to the deliberation of the Bills</p>	(i) Noted. As notaries in Hong Kong do not engage in transactions as specified by the FATF, they are not relevant in the context of the AML Bill.



		Committee.	
(11)	Hong Kong Trustees Association (“HKTA”)	(i) In support of the AML Bill and thanked the government’s efforts in consulting the industry on the legislative proposals. The HKTA would continue to support the government by offering comments on the draft guidelines to be issued by the CR.	(i) Support noted. We will continue our dialogue with the HKTA and render all necessary assistance to facilitate the sector’s migration to the AMLO regime.
(12)	Ms Lam Lau-mei	(i) Agreed that there should be further development of the TCSP sector in the long run but asked the government to take into account the workload of the sector in the proposed licensing regime. (ii) Asked if the 120-day transitional period could be further extended.	(i) Views noted. The TCSP licensing regime is introduced for the purpose of enforcing CDD and record-keeping requirements for the TCSP industry and not as a professional registration system for individual practitioners. This will ensure that any compliance cost of the licensing requirements is kept to the minimum for TCSP operators. We will keep in view implementation of the licensing regime to see if any refinement is required in future. (ii) In light of the views received during the consultation period, a deeming provision has already been incorporated in the AML Bill to the effect that a person is deemed to have been granted a licence if the person is at the time carrying on a TCSP business and holding a valid business registration certification. Given the deeming provision, the length of the transition period will not have much bearing on the existing TCSP operators other than that they will have to make an application within the period. This notwithstanding, we have

			extended the transition period in the AML Bill from the originally proposed 90 days to 120 days to further facilitate existing TCSP operators' migration to the licensing regime.
(13)	STEP	(i)	In support of the AML Bill.
(14)	The Federation of Hong Kong Industries	(i)	Supported the AML Bill so as to fulfill Hong Kong's international obligation in the FATF.
(15)	The Hong Kong Association of Banks ("HKAB")	(i)	Strongly supported the amendments to the AMLO.
		(ii)	Suggested alternative formulations of certain defined terms to clarify requirements of the AML Bill.
		(iii)	Suggested including related foreign trusts companies to act as specified intermediaries, similar to the new requirements for related foreign FIs.
		(iv)	Enquired about the application of section 22 of Schedule 2 to the AMLO and the requirements to implement group wide policies as they relate to FIs with designated non-financial businesses and professions ("DNFBPs") subsidiaries and vice versa.
(16)	The Hong Kong Chinese Importers' & Exporters' Association	(i)	In support of the AML Bill given Hong Kong had the international obligation to combat ML/TF
		(i)	Support noted.
		(i)	Support noted.
		(i)	Support noted.
		(ii)	Views noted.
		(iii)	Views noted. At present, s.18(3)(c) of Schedule 2 already allows FIs to rely on a TCSP practising in an equivalent jurisdiction under certain criteria to carry out CDD measures on their behalf. We do not intend to expand the scope of group reliance to related foreign trust companies.
		(iv)	Views noted. The HKAB's understanding is correct.

		activities. The legislative proposals would help the government to effectively monitor the flow of unidentified huge amount of funds and prevent using shell companies for the purpose of ML/TF.	
(17)	The Hong Kong General Chamber of Small and Medium Business	(i) In support of the AML Bill which would enhance the reputation of small and medium enterprises (“SMEs”) and the competitiveness of Hong Kong as an international financial centre.	(i) Support noted.
(18)	The Hong Kong Institute of Chartered Secretaries	(i) Strongly supported the AML Bill and having the CR as the overall regulator of the TCSP sector. (ii) Suggested heightening the fit-and-proper test proposed under the TCSP licensing regime to include prudential criteria such as experience, competency and qualifications. This issue needed to be considered at an opportune time.	(i) Support noted. (ii) The TCSP licensing regime is introduced for the purpose of enforcing CDD and record-keeping requirements for the TCSP industry and not as a professional registration system for individual practitioners. This will ensure that any compliance cost of the licensing requirements is kept to the minimum for TCSP operators. We will keep in view implementation of the licensing regime to see if any refinement is required in future.
(19)	The Law Society of Hong Kong (“LSHK”)	(i) Disagreed with the government’s approach in subjecting solicitors and foreign lawyers to statutory CDD and record-keeping requirements under the AMLO	(i) We follow closely the recommendation of the FATF in proposing to prescribe statutory CDD and record-keeping requirements for DNFBBs in the AML Bill. We fully appreciate the PDP that the LSHK has put in place for subjecting solicitors and

		<p>given the sector is already subject to the Practice Direction P (“PDP”) which set out similar requirements. Solicitors and foreign lawyers should therefore be carved out of the legislative proposal.</p> <p>(ii) If the government insisted on including the sector in the AML/CTF regime, a simple provision providing that solicitors and foreign lawyers should conduct CDD and record-keeping requirements with sanctions for non-compliance under the Legal Professionals Ordinance (Cap. 159) (“LPO”) would suffice.</p> <p>(iii) Concerned about the adverse implications of the proposed amendments to section 9A of the LPO that all AML/CTF complaints, irrespective of the severity, would have to be referred to the Convenor of the Solicitors Disciplinary Tribunal mandatorily which would override the Council of the Law Society’s discretion currently empowered upon them under the LPO.</p> <p>(iv) Requested for a comparison between the PDP and Schedule 2 of</p>	<p>foreign lawyers to CDD and record-keeping requirements. Hong Kong will undergo a mutual evaluation in 2018/19 which will assess the extent to which we are in compliance with the FATF requirements and the effectiveness of our AML/CTF regime. Noting that the PDP does not have the force of law, and having regard to the assessments of other jurisdictions in the mutual evaluation exercises, we are concerned that the absence from the statute of the core FATF principles that legal professionals should observe CDD and record-keeping requirements when they engage in specified transactions will very likely result in our failing the relevant FATF assessment. The extension of the statutory AML/CTF requirements as set out in the AMLO to cover solicitors and foreign lawyers alongside with other DNFBPs is essential to ensure fairness and consistency across the board as well as enable Hong Kong to stand up to the FATF scrutiny.</p> <p>(ii) We have already included in the AML Bill specific enabling provisions which should serve to provide the LSHK with the necessary power and discretion in discharging its regulatory functions in relation to statutory CDD and record-keeping requirements that are applicable to legal professionals. In particular, under Clause 8 of the AML Bill, section 7 of the AMLO will be amended to the effect that the LSHK is the regulatory body (as defined under Clause 25) for issuing practice direction that</p>
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		<p>the AMLO that are not covered by the PDP.</p> <p>(v) Whether other jurisdictions have already put the CDD requirements into law and their respective ratings in the FATF mutual evaluations.</p>	<p>provides guidance in relation to the operation of or compliance with AML/CTF requirements as applicable to the legal professionals, and that the LSHK may have regard to or take into account any practice direction that is so issued.</p> <p>(iii) We fully respect the professional self-regulatory regime governing solicitors and foreign lawyers under the LPO at present. It is our every intention, and in fact the stated objective of the AML Bill, to continue to rely on the LSHK for regulating the professional practice of solicitors and foreign lawyers, including their conduct pertaining to AML/CTF. With this in mind, we provide in the AML Bill to the effect that the LSHK is the regulatory body to issue practice direction which provides guidance in relation to the operation of AML/CTF requirements under the AMLO as applicable to legal professionals; and provide in the LPO that any non-compliance of the AML/CTF requirements will be handled following the existing investigation and disciplinary regime applicable to legal professionals under the LPO. For the latter, considerable thoughts have already been given to amending section 9A of the LPO in such a way as to preserve the discretion of the Council of the LSHK to determine whether the conduct of a solicitor or a foreign lawyer involves an alleged AML/CTF breach and for that matter to be referred to the Tribunal Convenor for follow-up.</p> <p>(iv) The comparison of Schedule 2 to the AMLO and the</p>
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			<p>PDP issued by the LSHK is as follows –</p> <ul style="list-style-type: none"> <li>- PDP does not have the force of law, and any amendment is not subject to the scrutiny of the Legislative Council (“LegCo”).</li> <li>- CDD principles and concepts are generally covered in the PDP, but fall short of the AMLO (and the FATF) standard both in specificity and depth.</li> <li>- Under the PDP, solicitors/foreign lawyers are allowed to rely on third parties for conducting CDD measures.</li> <li>- There is ambiguity as to what constitutes “mandatory” and “recommended” requirements. Specific requirements (e.g. non face-to-face; politically exposed persons) are not listed in the mandatory requirements section of the PDP, but rather listed in Annexure 3 as “Recommended procedures and policies” (cf paragraph 18 of the PDP).</li> <li>- There is no obligation (as opposed to “must” in the AMLO) to terminate business relationship if solicitors/foreign lawyers are unable to conduct CDD on their clients as required.</li> <li>- Solicitors/foreign lawyers only need to enquire about beneficial owners’ information when their clients are legal entities, whereas in the AMLO regular CDD measures entail enquiry into beneficial owners of both individuals and legal entities. There is also no beneficial ownership threshold stated in the PDP.</li> </ul>
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			<ul style="list-style-type: none"> <li>- The FATF requirements of AML/CTF duties being extended to branches and subsidiary undertakings outside Hong Kong are missing in the PDP.</li> <li>- The duty of keeping relevant transaction records is a period of six years under the AMLO, whereas in the PDP similar duty ranges from 3 years to 15 years, depending on the types of transactions involved.</li> </ul> <p>(v) We observe, for instance, that comparable jurisdictions such as Singapore received unfavourable ratings in the mutual evaluation for their DNFBPs regime notwithstanding the presence of guidelines issued by relevant regulatory bodies on CDD and record-keeping requirements. The assessors specifically pointed out that those CDD requirements were only set out in circulars but not in law as required by the FATF recommendations. The United States also failed the FATF test due to the absence of statutory CDD requirements for DNFBPs. The United Kingdom, another comparable jurisdiction, already sets out statutory CDD requirements under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 for independent legal professionals (among other DNFBPs and FIs) to observe when they engage in specified transactions.</p>
(20)	Thomson Reuters	(i) In support of the legislative	(i) Support noted.

		<p>proposals to extend the AML/CTF regulatory regime to DNFBPs and the criteria for determining the fitness and properness of TCSPs.</p> <p>(ii) Leaving out dealers in precious metals and stones (“DPMS”) in the legislative proposals might reduce the overall effectiveness of the AML/CTF regulatory regime.</p> <p>(iii) Hong Kong should consider consolidating the AML/CTF regulatory regime into a single, dedicated supervisory agency.</p>	<p>(ii) We note the FATF’s recommendation that CDD measures should apply when DPMS engage in cash transactions. Our understanding from the trade is that cash transactions are no longer so common in Hong Kong as in the old days. According to the Hong Kong Police Force, no dealer had been found linked to or convicted for money laundering offences over the five years between 2010 and 2015. Its assessment is that the sector does not pose insurmountable risks in the overall AML/CTF institutional framework in Hong Kong requiring immediate mitigation. This notwithstanding, we have been stepping up education in this sector to raise the AML/CTF awareness through capacity-building seminars and the issuance of guidelines. Given the absence of a sector-specific authority, it also takes time to prepare the sector for undertaking statutory AML responsibilities. On balance, we suggest covering those DNFBPs sectors that are more ready in the current legislative exercise. This will be a more proportionate and pragmatic response in light of the risk-based approach advocated by the FATF. We will keep in view international development and review the need to subject DPMS to regulation under the AMLO in future.</p> <p>(iii) We have considered the option of introducing one new single regulatory body for DNFBPs in respect of the AML/CTF regulatory. We are, however, mindful of the administrative burden and</p>
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			<p>compliance cost implications for the respective professions, which are already subject to a rigorous professional regulatory system under the relevant Ordinances. Having regard to the principle of professional autonomy, and considering that the professional regulators have already established an AML/CTF regime for the respective professions, we believe it more appropriate to task the LSHK, the HKICPA, the EAA and the CR to take on the statutory role of overseeing AML/CTF compliance as proposed.</p>
(21)	Tricor	<p>(i) In support of the AML Bill which would help Hong Kong enhance its position as an international financial centre.</p> <p>(ii) The TCSP licensing regime should go towards professionalism in the future.</p>	<p>(i) Support noted.</p> <p>(ii) The TCSP licensing regime is introduced for the purpose of enforcing CDD and record-keeping requirements for the TCSP industry and not as a professional registration system for individual practitioners. This will ensure that any compliance cost of the licensing requirements is kept to the minimum for TCSP operators. We will keep in view implementation of the licensing regime to see if any refinement is required in future.</p>
(22)	Victon Registrations Limited	<p>(i) Whether TCSP licensees have to apply for extra licences if there are multiple business premises; and whether TCSP licensees have to display licences at the business premises.</p> <p>(ii) Whether the CR will require overseas TCSPs to obtain a licence</p>	<p>(i) TCSP licensees do not have to apply for extra licences if there are multiple business premises. If there is a change in the particulars previously provided to the R of C in connection with a licensee's application for the grant or renewal of a licence, the licensee must notify the R of C of the change within one month beginning on the date on which the change takes place. Owing to the nature</p>

		<p>in Hong Kong.</p> <p>(iii) Whether the CR will circulate the list of high-risk and non-cooperative jurisdictions issued by the FATF for compliance by TCSP licensees in the future.</p>	<p>of the TCSP business, there is no requirement as regards the premises at which a TCSP carries on business under the TCSP regime. The requirement to display the original of licence at the business premises is therefore not applicable to a TCSP licensee.</p> <p>(ii) So long as the overseas TCSP, by way of business, in Hong Kong, prepares for or carries out for a client a transaction concerning a service specified in the definition of trust or company service in section 1 of Part 1 of Schedule 1, we consider the geographical location of the TCSP immaterial and it should apply for a licence from the CR in this regard.</p> <p>(iii) The CR will notify TCSP licensees on the updated list of high-risk and non-cooperative jurisdictions issued by the FATF for compliance in the future.</p>
(23)	鄭俊鴻先生	<p>(i) Agreed with the legislative proposals under the AML Bill except for –</p> <ul style="list-style-type: none"> <li>- the validity of TCSP licences should be extended to four years and a half; and</li> <li>- considered that TCSP should not be subject to any criminal sanctions (be it operating without a licence or failure to comply with the AML/CTF requirements under the AMLO).</li> </ul>	<p>(i) Support noted.</p> <p>(ii) We note the majority preference of a three-year TCSP licence received during the consultation period and will maintain the proposal which is renewable on application.</p> <p>(iii) Given the general support received during the consultation period for criminal liability to be imposed on unlicensed TCSP operations, we will maintain the proposed sanction level which is comparable to that applicable to the licensing regime for money service operators under the AMLO. For non-compliance of TCSP licensees</p>

			<p>with the statutory CDD and record-keeping requirements under the AMLO, the range of disciplinary (not criminal) sanctions that we propose at present is in line with the maximum level of civil sanction that may be triggered against solicitors and accountants, having regard to the relatively low risk of the TCSP sector.</p>
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<b>Companies (Amendment) Bill 201 (“CO Bill”)</b>			
	<b>Organization / individual</b>	<b>Views</b>	<b>Administration’s response</b>
(24)	Mr Anthony Chiu	<p>(i) Under section 653ZA, the notice addressee will commit an offence if the addressee fails to comply with the requirements within one month from the date of notice. If the addressee is residing overseas, it may not be practicable for him/her to make a response within one month.</p> <p>(ii) Enquired whether there should be a positive duty imposed on significant controller to notify the applicable company of their beneficial owner identity.</p>	<p>(i) Views noted. The one-month period has taken into consideration the delivery time involved for a notice even if the addressee is residing overseas.</p> <p>(ii) Imposing a statutory duty on beneficial owners to proactively identify themselves to the company would put an onerous burden on persons forming, owning or controlling companies, with implications on enforcement when the persons reside outside our jurisdiction. The current proposal has incorporated consensus views received during the public consultation.</p>
(25)	Mr Anthony Rogers	<p>(i) For the vast majority companies, the beneficial ownership (“BO”) information has already been included in the public record filed under the Annual Return to CR. The simple way to accomplish the aim of this legislative amendment exercise is to require applicable companies to keep the significant controllers register (“SCR”) where the identity of such persons or entities is not self-evident from the publicly available Annual Returns.</p>	<p>(i) At present, the Companies Ordinance (“CO”) requires a company incorporated in Hong Kong to disclose information of legal ownership by filing such information via the Annual Return to CR. It does not require a company to ascertain, keep or file information about its ultimate beneficial owner. The majority of the respondents in the consultation exercise supported our proposal of keeping the SCR register at a company’s registered office or prescribed place. We are also mindful of the potential compliance burden at the initial stage on some SMEs for having to file regular returns on SCR.</p>

		A note can then be inserted in the Annual Returns as to whether such a register is kept.	
(26)	A-Swiss Corp	<p>(i) Section 653B(1)(j) should be abolished in order to avoid confusion as well as abuse of power by an officer of any department or agency of the Government.</p> <p>(ii) The nature of the person's control over the company in Schedule 5B, Part 2 No.2(2)(e) should be clarified.</p> <p>(iii) Sought clarification on whether a company should trace significant controllers up to a natural person when a registrable legal entity has been identified.</p>	<p>(i) The purpose of section 653B(1)(j) is to cater for any future need where an officer of any department or agency of the Government, or of any statutory body may have to be specified as a law enforcement officer for the purpose of enforcing the CO Bill. Any such specification will require the making of regulation by the Financial Secretary, which is subject to negative vetting by the LegCo.</p> <p>(ii) The nature of the person's control over the company in Schedule 5B, Part 2 No.2(2)(e) is referring to the five conditions stipulated in Schedule 5A, Part 1 Section 1. To let the public have a better understanding of the whole BO regime, the CR will promulgate guidelines on the keeping of SCR.</p> <p>(iii) The FATF defines "beneficial owner" of a legal person as a natural person who ultimately owns or controls the legal person. Identification of the natural person who ultimately controls a legal person is required. The purpose of identifying and registering a relevant legal entity with significant control over the company is to facilitate identification of the holding structure in which a beneficial owner holds an interest in a company indirectly through successive layers of holding companies in an ownership chain.</p>
(27)	Federation of Hong Kong	(i) In support of the CO Bill.	(i) Support noted.

	Industries	<ul style="list-style-type: none"> <li>(ii) A company may have difficulties in identifying a person holding controlling rights indirectly through an overseas company.</li> <li>(iii) Recommended the Government to conduct some publicity activities for introducing the new regime to the public.</li> <li>(iv) To avoid any unnecessary or frequent inspection of the SCR by the competent authorities, the Government should adopt a risk-based approach and take enforcement actions against high-risk companies.</li> <li>(v) When there is information wrongly entered into the SCR, the law should allow the company to amend the entry within a reasonable time.</li> </ul>	<ul style="list-style-type: none"> <li>(ii) To ensure the availability and accuracy of BO information, when a company has identified a legal entity which may be registrable and is an overseas company, the company should serve a notice to such overseas company for confirmation and provision of required particulars as well as information of any other person who is a significant controller of the company. It is a legal obligation for such overseas company to comply with the notice requirement and inform the company any other registrable person/legal entity as far as it knows.</li> <li>(iii) To let the public have a better understanding of the new BO regime, the CR will carry out publicity work before commencement of the CO Bill, including seminars, and the issuance of guidelines and letters to all local companies.</li> <li>(iv) Under section 653X, a law enforcement officer is empowered to inspect the SCR only for the purpose of the officer's performance under the law of Hong Kong of a specified function relating to the prevention, detection or investigation of money laundering, or terrorist financing. The law enforcement officer's power is very limited in scope. Unnecessary or frequent request for inspection of the SCR is unlikely.</li> <li>(v) The information relating to a significant controller of an applicable company should be entered into the company's SCR after it has been confirmed. Any changes in the significant controller's identity or required particulars also need to be recorded in the</li> </ul>
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			SCR.
(28)	Hong Kong Chinese Importers' and Exporters' Association	<ul style="list-style-type: none"> <li>(i) In support of the CO Bill.</li> <li>(ii) The threshold of "more than 25%" shareholding should be relaxed to "30%".</li> <li>(iii) Any need for written documents to prove a person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company.</li> </ul>	<ul style="list-style-type: none"> <li>(i) Support noted.</li> <li>(ii) We note the broad support received during the consultation for our proposed threshold of "more than 25%" for determining BO. The threshold has been formulated with reference to the FATF recommendation as well as similar regimes of other advanced economies.</li> <li>(iii) There is no explicit provision in the CO Bill to require any written documents to prove a person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company. A company may consult its membership register, articles of association, or relevant documents to consider whether anyone has the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors on all matters or substantially all matters.</li> </ul>
(29)	Hong Kong General Chamber of Commerce ("HKGCC")	<ul style="list-style-type: none"> <li>(i) HKGCC agreed and supported the CO Bill and emphasized that light touch regulation should be adopted. HKGCC also appreciated the Government's effort in fine-tuning the legislative proposal after the consultation exercise as follows – <ul style="list-style-type: none"> <li>(a) elimination of the requirement for public inspection of the SCR; and</li> <li>(b) reducing the period for</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>(i) Support noted.</li> </ul>

		retention of SC's information from 10 to six years.	
(30)	Hong Kong General Chamber of Small and Medium Business	<p>(i) In support of the legislative proposal on enhancing the transparency of BO of Hong Kong Companies.</p> <p>(ii) As companies need to file the BO information to the CR, after taking into consideration that public can access the BO information kept in the CR, some personal particulars should not be fully disclosed, such as correspondence address.</p> <p>(iii) Sanctions are overly severe. Lenient sanctions such as fine and warning were sufficient. A grace period of two years is also recommended.</p>	<p>(i) Support noted.</p> <p>(ii) In our proposal, a company is required to keep the SCR at its registered office or prescribed place and there is no need to file any BO information with the CR. Meanwhile, only law enforcement officers are permitted to inspect the SCR and the public will not have access to the SCR.</p> <p>(iii) During the consultation, there was majority support for the proposed sanction levels, which are on par with those applicable to non-compliance with the requirements to keep legal ownership information under the CO.</p>
(31)	Hong Kong Institute of Certified Public Accountants	<p>(i) In support of the CO Bill.</p> <p>(ii) The definition of “beneficial owner” under the AMLO is in some respects different from the definition of a person with significant control under the CO. Interested to know why these definitions were not more closely aligned with one another.</p> <p>(iii) It needs to clarify what precisely a</p>	<p>(i) Support noted.</p> <p>(ii) The term “beneficial owner” is presently used in the AMLO and the definition is well known to FIs and others who are required to conduct due diligence procedures under the Ordinance. In the CO Bill, the concept “significant controller” is used instead. The two terms are used in different contexts and hence their different formulations. A similar threshold of “more than 25%” applies to both terms which should complement each other in actual</p>



		<p>relevant company has to maintain on day one after the amending legislation commences, under the proposed section 653H.</p> <p>(iv) Under the proposed section 653J(4), it is not clear what evidence will be required to establish that a particular of a registrable person or legal entity, provided or confirmed by a third person, has been provided or confirmed with the registrable person's or legal entity's knowledge.</p> <p>(v) In long run, centralized database aiming at facilitating access should be considered.</p> <p>(vi) Access to SCR should also been granted to CPA practices and other relevant DNFbps.</p> <p>(vii) A notice given under the proposed section 653P(2) or (3) should be required to include the definition of "registrable person", "registrable legal entity" and "significant controller", as appropriate, or indicate where the definitions may be found.</p> <p>(viii) On the list of persons allowed to seek rectification from the court</p>	<p>practice.</p> <p>(iii) A company has a duty to investigate and obtain information about its significant controllers. When a company is in the process of taking reasonable steps to identify its significant controllers, this fact must be entered in the SCR, i.e. section 5 (case 4) of Part 2 of Schedule 5C. The SCR cannot be empty. Schedule 5C to the CO Bill provides for the additional matters to be noted in the SCR when the company is in different stages of obtaining and updating the information on its significant controllers. Examples of such additional matters to be noted in the SCR will be set out in the guideline to be issued by the CR.</p> <p>(iv) As regards the evidence which shows that a particular of a registrable person is or has been provided or confirmed by another person with the registrable person's knowledge, we do not consider it appropriate for the Bill to state the kind of evidence required as there may be various situations under which the particular is provided or confirmed with the registrable person's knowledge. We are content for this to be left to the companies. A dedicated hotline will be set up to answer enquiries if companies have any queries to raise as regards the entering of particulars in the register.</p> <p>(v) We will keep in view international development and deliberate on the issue should the need arise in the future.</p> <p>(vi) The majority of the respondents in the consultation</p>
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		<p>about entries in the SCR, it is not clear how a person comes to know that his/her name has been wrongly entered in the register, or that it has been omitted?</p> <p>(ix) It is unclear why information known to be correct before the commencement of the legislation cannot be relied upon by the company under the transitional provisions for section 653S, i.e. 653ZK.</p>	<p>considered that the SCR should be accessible by competent authorities only. Having regard to privacy concern, international practices and the FATF recommendations, we consider that access to the SCR should be restricted to law enforcement officers and the significant controllers. For the sake of equity, we do not consider that DNFBBs should be allowed access to the SCR when other members of the public do not have such right.</p> <p>(vii) CR will provide sample notices in the guidelines to be issued, which will include definition of significant controllers for reference by notice addresses.</p> <p>(viii) A person that is a significant controller of a company may at the person's own initiative inform the company of his/her status as a significant controller or a change of such status. Pursuant to s.653I of the CO Bill, the SCR of a company must include in respect of each person that the company knows to be its significant controller the particulars prescribed in the new Schedule 5B and particulars for a registrable change (which change includes ceasing to be a significant controller). The company has an obligation to send a notice, under s.653P to a person that the company knows to be its significant controller and under s.653T, to a person that the company knows has a registrable change. If a person has doubts as to whether he/she has been included in or removed from the register, the person can make enquiries with the company.</p>
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			(ix) The requirement for an applicable company to identify its significant controllers and to keep a SCR takes effect on the commencement date of the CO Bill upon its enactment. Section 653ZK merely provides expressly that section 653S has no retrospective application. This is especially so given that the concept of “significant controller” does not even exist before the commencement date, and the facts of individual cases may vary before and after commencement of the CO Bill.
(32)	Hong Kong Institute of Chartered Secretaries	(i) In support of the CO Bill. (ii) Tracing of registrable person can stop with a listed issuer, whether listed in Hong Kong or elsewhere.	(i) Support noted. (ii) We note the FATF requirement for identification of the natural persons who ultimately have a controlling ownership interest in a legal person or are exercising control through other means. Companies listed in Hong Kong are exempted as they are subject to more stringent disclosure requirements under the Securities and Futures Ordinance (“SFO”).
(33)	Hong Kong Investment Funds Association (“HKIFA”)	(i) HKIFA expressed full support to the proposed bill as it aligned Hong Kong’s regulatory regime with international requirements as promulgated by the FATF and further reduced the risk of money laundering and terrorist financing so as to safeguard the integrity of Hong Kong as an international financial center.	(i) Support noted.

(34)	Oxfam	<ul style="list-style-type: none"> <li>(i) In support of the CO Bill;</li> <li>(ii) There is no commitment for automatic exchange of BO information with other jurisdictions.</li> <li>(iii) It is a loophole if there is no statutory duty on beneficial owner to inform the company his identity and provide the required particulars proactively.</li> <li>(iv) It should review the BO regime in other legislations like Trustee Ordinance.</li> <li>(v) There is no consideration of setting the threshold at “5%” which is in line with the SFO.</li> <li>(vi) The criminal sanctions for non-compliance are overly light. Oxfam recommend the maximum penalty be fine at \$10,000,000 and imprisonment for 10 years.</li> <li>(vii) BO information should be kept in CR’s public register for public inspection.</li> </ul>	<ul style="list-style-type: none"> <li>(i) Support noted.</li> <li>(ii) FATA requires countries to take measures to prevent the misuse of legal persons for money laundering and terrorist financing by ensuring that there is adequate, accurate and timely information on the BO. It is not an FATF requirement for jurisdictions to engage in automatic exchange of BO information.</li> <li>(iii) Imposing a statutory duty on beneficial owners to proactively identify themselves to the company would put an onerous burden on persons forming, owning or controlling companies, with implications on enforcement when the persons reside outside our jurisdiction. The current proposal has incorporated consensus views received during the public consultation.</li> <li>(iv) The current proposal seeks to implement the FATF requirement for legal persons to maintain BO information. CO is therefore the right place to start.</li> <li>(v) We note the broad support received during the consultation for our proposed threshold of “more than 25%” for determining BO. The threshold has been formulated with reference to the FATF recommendation as well as similar regimes of other advanced economies.</li> <li>(vi) During the consultation, there was majority support for the proposed sanction levels, which are on par with those applicable to non-compliance with the requirements to keep legal ownership information</li> </ul>
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			<p>under the CO.</p> <p>(vii) The majority of the respondents in the consultation exercise supported our proposal of keeping the SCR register at a company’s registered office or prescribed place. We are also mindful of the potential compliance burden at the initial stage on some SMEs for having to file regular returns on SCR. In addition, the majority of the respondents in the consultation considered that the SCR should be accessible by competent authorities only. Having regard to privacy concern, international practices and the FATF recommendations, we consider that access to the SCR should be restricted to law enforcement officers and not to the public.</p>
(35)	The Chinese Manufacturers’ Association of Hong Kong	<p>(i) Companies limited by guarantee should also be exempted from the requirement.</p> <p>(ii) The threshold should be relaxed to “above 50%”.</p> <p>(iii) Sanctions for non-compliance of the SCR keeping requirements should be set on a progressive basis and grace period should be provided.</p>	<p>(i) We note from the consultation exercise that there was no consensus among respondents on what further types of companies other than listed companies should be exempted. Meanwhile, no strong or evidence-based justifications have been put forward for the proposed exemptions. Given the FATF’s unequivocal intention to catch legal persons of all forms, carving out the various types of companies will undermine the effectiveness of the disclosure regime and run the risk of subjecting these companies to possible abuse. Nevertheless, we have reserved a general rule-making power in the legislation for the Financial Secretary to promulgate further exemption by way of subsidiary legislation should the need arise in future.</p>

			<p>(ii) We note the broad support received during the consultation for our proposed threshold of “more than 25%” for determining BO. The threshold has been formulated with reference to the FATF recommendation as well as similar regimes of other advanced economies.</p> <p>(iii) During the consultation, there was majority support for the proposed sanction levels, which are on par with those applicable to non-compliance with the requirements to keep legal ownership information under the CO.</p>
(36)	鄭俊鴻先生	<p>(i) In support of the legislative proposal on enhancing the transparency of BO of Hong Kong companies.</p> <p>(ii) Funerary industry should be exempted from the requirement.</p> <p>(iii) Objection of the ten-year record-keeping requirement.</p> <p>(iv) Objection of the criminal sanctions on companies and the relevant parties.</p>	<p>(i) Support noted.</p> <p>(ii) We note from the consultation exercise that there was no consensus among respondents on what further types of companies other than listed companies should be exempted. Meanwhile, no strong or evidence-based justifications have been put forward for the proposed exemptions. Given the FATF’s unequivocal intention to catch legal persons of all forms, carving out the various types of companies will undermine the effectiveness of the disclosure regime and run the risk of subjecting these companies to possible abuse. Nevertheless, we have reserved a general rule-making power in the legislation for the Financial Secretary to promulgate further exemption by way of subsidiary legislation should the need arise in future.</p> <p>(iii) In view of the consultation outcome, we have included a six-year record-keeping requirement in</p>

			<p>the Bill instead of ten years as originally proposed.</p> <p>(iv) During the consultation, there was majority support for the proposed sanction levels, which are on par with those applicable to non-compliance with the requirements to keep legal ownership information under the CO.</p>
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**Financial Services and the Treasury Bureau**  
**10 November 2017**