

LEGISLATIVE COUNCIL BRIEF

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance
(Cap. 615)

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017

INTRODUCTION

At the meeting of the Executive Council on 20 June 2017, the Council **ADVISED** and the Acting Chief Executive **ORDERED** that, to fulfill Hong Kong's international obligation under the Financial Action Task Force ("FATF"), the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 ("the Bill"), at **Annex**, should be introduced into the Legislative Council ("LegCo") to –

- (a) apply statutory customer due diligence ("CDD") and record-keeping requirements to solicitors, accountants, real estate agents, and trust or company service providers ("TCSPs") when these professionals engage in specified transactions; and
- (b) introduce a licensing regime for TCSPs to require them to apply for a licence from the Registrar of Companies ("Registrar") and satisfy a "fit-and-proper" test before they can provide trust or company services as a business in Hong Kong.

JUSTIFICATIONS

2. The FATF is an inter-governmental body established in 1989 that sets international standards on combating money laundering and preventing terrorist financing. Over the years, the FATF has developed an elaborate set of 40 recommendations, based on which the international community has been strengthening regulation to combat money laundering

and terrorist financing (“ML/TF”). Member jurisdictions take turns to evaluate the domestic anti-money laundering and counter-terrorist financing (“AML/CTF”) regime of each other to assess the extent to which the relevant FATF recommendations are observed, both in terms of technical compliance and effectiveness of implementation.

3. Hong Kong has been a member of the FATF since 1991. Although, generally, we have in place a strong and effective AML/CTF framework, international standards have evolved quickly because of the changing financial market and security landscapes. A gap analysis suggests that there are certain key deficiencies in our AML/CTF regime as against the FATF recommendations. One is the absence of statutory CDD and record-keeping requirements for designated non-financial businesses and professions (“DNFBPs”) when they engage in specified transactions.¹

4. Hong Kong is scheduled to undergo a mutual evaluation in 2018/19. Given the openness of our economy and our increasing exposure to the Mainland market, we expect keen interest and heightened scrutiny from other FATF members in that evaluation. If remedial action is not taken to deal with the deficiencies in the run-up to 2018, it is almost certain that Hong Kong will receive adverse ratings. Hong Kong will then have to face an “enhanced follow-up” process. Also the perceived failings in relevant areas will be subjected to frequent reporting and close scrutiny by member jurisdictions during annual plenary meetings. More importantly, this will affect our reputation as an international financial centre and a safe and clean city for doing business.

5. We need to take our international obligations to combat ML/TF seriously. Even though it is not possible to close every regulatory gap in our regime, we recommend targeting the key deficiencies. As a matter of priority, we should strengthen regulation of DNFBPs by subjecting them to the CDD and record-keeping requirements under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions)

¹ Other key deficiencies include the absence of statutory requirements for companies to keep beneficial ownership information; certain gaps in the terrorist financing regime, property freezing mechanism and travel bans on terrorist groups; and the absence of a declaration/disclosure system on the cross-boundary movement of physical currency and bearer negotiable instruments. Separate legislative exercises are being pursued to address these regulatory gaps. The legislative proposal relating to statutory requirement for companies to keep beneficial ownership information is the subject of the Companies (Amendment) Bill 2017, which will be introduced into LegCo alongside the Bill.

Ordinance (Cap. 615) (“AMLO”) currently applicable to financial institutions.

LEGISLATIVE PROPOSAL

FATF Requirements

6. CDD and record-keeping requirements are the main strands of an effective AML/CTF regime to deter and disrupt money laundering activities and ensure the integrity of a financial system. The FATF recommends that financial institutions should implement CDD measures to identify and verify customers, and maintain records on customer identification and transactions for at least five years. Meanwhile, CDD and record-keeping requirements should be codified into the statute.

7. The FATF considers that, in addition to financial institutions, DNFBPs that engage in specified transactions² should also be subject to similar statutory CDD and record-keeping requirements. In FATF terminology, DNFBPs cover casinos, dealers in precious metals and stones, real estate agents, lawyers, notaries, accountants, and TCSPs.

8. The FATF also requires competent authorities or self-regulatory bodies with adequate powers to be designated to monitor and ensure compliance with AML/CTF requirements by the relevant DNFBP sectors. Meanwhile, proportionate sanctions (whether criminal, civil or administrative) should be applied to deal with non-compliance.

Regulating DNFBPs under the AMLO

9. In Hong Kong, we enacted the AMLO in April 2012 to implement the relevant FATF recommendations in respect of financial institutions.³ A regulatory gap remains in respect of DNFBPs. Having regard to the FATF’s defined scope of DNFBP coverage and the nature of

² Specified transactions include real estate transactions; management of client money, securities or other assets; management of bank, savings or securities accounts; company formation and management; and buying and selling of business entities.

³ Under the AMLO, specified financial institutions, including banks, securities firms, insurance companies and intermediaries, and remittance agents and money changers, have a statutory obligation to conduct CDD on their customers and keep the relevant records for six years. Non-compliance may render them liable to supervisory and criminal sanctions.

business engaged by the corresponding professions⁴ in Hong Kong, we propose to extend the coverage of the relevant requirements to include solicitors, accountants, real estate agents, and TCSPs.

10. Following a risk-based approach, Schedule 2 to the AMLO prescribes the circumstances under which different levels of CDD measures must be carried out by financial institutions, the required steps to complete due diligence, the procedures required to permit reliance on qualified third parties in performing due diligence, and also the duty of keeping relevant transaction records for a period of six years. We propose to extend the CDD and record-keeping requirements in Schedule 2 to cover DNFBPs.

Supervision of Solicitors, Accountants and Estate Agents

11. Solicitors, accountants and real estate agents are currently subject to professional self-regulation by their respective regulatory bodies. Those bodies have promulgated guidelines on CDD and record-keeping procedures for voluntary or mandatory participation by members. The Law Society of Hong Kong (“Law Society”), the Hong Kong Institute of Certified Public Accountants (“HKICPA”) and the Estate Agents Authority (“EAA”) enjoy broadly similar powers under the regulatory Ordinances to deal with professional misconduct of registered professionals.

12. Having regard to the principle of professional self-regulation, we propose to use the existing regulatory regimes applicable to the three

⁴ As there are no casinos in Hong Kong, the relevant FATF recommendations are only applicable to the other five sectors in the Hong Kong context. For barristers and notaries in Hong Kong, our understanding is that they do not engage in transactions as specified by the FATF, and hence they are also not relevant in our context. On the other hand, we note the FATF’s recommendation that CDD measures should apply when dealers in precious metals and stones (“DPMS”) engage in cash transactions. Our understanding from the trade, however, 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. While it takes time to prepare the sector for undertaking statutory AML responsibilities (given the absence of a sector-specific authority), we suggest covering those DNFBP 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.

sectors under the Legal Practitioners Ordinance (Cap. 159), the Professional Accountants Ordinance (Cap. 50) and the Estate Agents Ordinance (Cap. 511) respectively to enforce the statutory CDD and record-keeping requirements under the AMLO. The Law Society, the HKICPA and the EAA will be entrusted with statutory supervisory oversight in order to ensure compliance with the AMLO requirements by the relevant professions. Non-compliance will be handled in accordance with the existing statutory investigation, disciplinary and appeal mechanisms governing professional misconduct.

13. The Legal Practitioners Ordinance, the Professional Accountants Ordinance and the Estate Agents Ordinance have already put in place a set of appropriate disciplinary and sanction measures ranging from reprimands, orders for remedial action, civil fines,⁵ and suspension from practice or revocation of licences (as may be applicable). This should provide sufficient and proportionate deterrent effect in the three sectors. We do not propose to impose criminal sanctions for non-compliances with the AMLO requirements in view of the lesser risks concerning these DNFBP sectors when compared with financial institutions.⁶

14. To facilitate the Law Society, the HKICPA and the EAA in their discharge of regulatory functions under the AMLO, we propose to give them the discretion to promulgate guidelines under the AMLO as they consider appropriate in relation to the operation of the Schedule 2 requirements. As in the case with the existing financial regulators, the regulatory authorities for DNFBPs will also enjoy immunity from civil liability in respect of the performance of statutory functions under the AMLO.

Supervision of TCSPs

15. At present, in Hong Kong, there is no authority with statutory

⁵ Under the respective Ordinances, the civil penalty that may be imposed by the Law Society and the HKICPA is at a level not exceeding \$500,000, while that for the EAA is \$300,000.

⁶ The maximum criminal sanctions for a contravention by a financial institution and its employees of the Schedule 2 requirements are a fine of \$1 million and imprisonment of seven years under the AMLO. Alternative to the criminal route, the AMLO empowers relevant authorities to take a range of disciplinary actions, including public reprimand, remedial orders, a civil penalty not exceeding \$10 million or three times the amount of profit gained or costs avoided as a result of the contravention (whichever is higher).

power to regulate or oversee the business of TCSPs or to assess their suitability for carrying out that business. We propose to introduce a licensing regime to enforce the proposed statutory CDD and record-keeping requirements applicable to TCSPs.

16. TCSPs will be required to apply for a licence from the Registrar before they can carry on a trust or company services business in Hong Kong. It will be a criminal offence to operate a TCSP business without a licence.⁷ The licensing requirements, mainly involving a “fit-and-proper” test for applicants, will be modelled on a similar regime for money service operators under the AMLO. In determining whether a person is a fit and proper person, the Registrar must consider, among other things, whether the person has been convicted of an offence in Hong Kong or failed to comply with any requirement imposed under the AMLO or other relevant legislation. To avoid regulatory overlap, exemption from the new licensing requirements will be given to authorized institutions, licensed corporations, as well as qualified accountants and solicitors which/who may engage in TCSP business and are placed under the supervision of other competent regulators.

17. On enforcement, the Registrar will be empowered to investigate any non-compliance in relation to TCSP licensees and impose disciplinary sanctions (including public reprimand, remedial order, a pecuniary fine not exceeding \$500,000, and suspension or revocation of the licence), in line with the maximum level of civil sanction for solicitors and accountants. Appeals can be made to a review tribunal against decisions made by the Registrar in implementing the licensing and disciplinary regime.

18. We do not propose to introduce criminal offences for any non-compliance by a TCSP with a statutory CDD and record-keeping provision, having regard to the risk of this sector and the need to maintain some degree of consistency among the DNFBP sectors.

⁷ On conviction of an offence, one is liable to a fine at level 6 (a maximum of \$100,000) and to imprisonment of six months. The proposed offence and sanctions are comparable to those applicable to the money service operator regime under the AMLO. A person commits an offence if the person for various purposes under Part 5A makes a false or misleading statement in a material particular. The person will be liable on conviction to a fine at level 5 (\$50,000) and to imprisonment for six months.

Miscellaneous Amendments

19. We have taken the opportunity to propose certain improvements to the AMLO to ensure that it is in line with the latest FATF requirements and to facilitate compliance by the regulatees. The enhancements include –

- (a) relaxing the threshold of defining beneficial ownership from the current “not less than 10%” to “more than 25%”, having regard to the prevailing FATF standard and international practice;
- (b) introducing flexibility to measures permitted to be taken for verifying a customer’s identity, in the light of technological development in the methods used by financial institutions for obtaining information relating to customers;
- (c) reflecting the current criteria relating to wire transfers in the FATF recommendations by requiring the recording of basic information about a recipient and, where applicable, an intermediary institution involved in a transaction;
- (d) removing a sunset clause in the AMLO so that financial institutions will have the flexibility to rely on solicitors, accountants, TCSP licensees as well as other financial institutions (including a foreign financial institution in the same parent group) as intermediaries to carry out CDD measures; and
- (e) requiring a money service operator to display its licence at the licensed premises, so as to facilitate enforcement by the Customs and Excise Department and identification by members of the public.

THE BILL

20. The main provisions of the Bill are as follows –

(A) Part 2 – Amendments to the AMLO

- (a) **Clauses 3 and 4** amend the long title and the short title to reflect

the enhanced scope of the AMLO;

- (b) **Clause 5** amends section 4 to include regulatory bodies among the persons who are given immunity in the performance of their statutory functions;
- (c) **Clause 7** adds a new section 5A to provide that the AML/CTF requirements in Parts 2, 3 and 4 of Schedule 2 apply to DNFBPs;
- (d) **Clause 8** amends section 7 to allow the Registrar and the regulatory bodies to issue guidelines for the purposes of Schedule 2 and adds a new subsection (5A) to provide that section 7 does not prevent the Law Society or any other body that has the function of considering whether a legal professional has contravened an AML/CTF requirement from having regard to any practice directions that give guidance about those requirements;
- (e) **Clauses 9 to 13** amend sections 9 to 13 to extend to TCSP licensees the provisions relating to –
 - (i) entry into business premises for routine inspections;
 - (ii) offences relating to those inspections; and
 - (iii) appointment of investigators, their powers and offences for non-compliance with requirements made by investigators;
- (f) **Clauses 14 to 17** amend sections 24, 30(4) and 43 and add a new section 39A with respect to money service operators to –
 - (i) increase the prevailing minimum percentages for shareholdings and voting rights of controlling persons to more than 25% to reflect international standards;
 - (ii) include all offences under the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) as part of the fit-and-proper test; and

- (iii) require a licensee of a money service to display the licence at the licensed premises and to make non-compliance an offence as well as a ground for disciplinary action;
- (g) **Clause 18** adds a new Part 5A to provide for the regulation of TCSPs. The main new sections in that Part are as follows –
 - (i) section 53B states to whom the Part does not apply;
 - (ii) section 53D requires the Registrar to maintain a register of TCSP licensees, which should be made available for public inspection;
 - (iii) section 53F makes it an offence for a person to carry on a trust or company service business without a licence;
 - (iv) section 53G empowers the Registrar to grant licences and states how to make an application for a licence;
 - (v) section 53H makes the grant of a licence subject to the applicant satisfying the fit-and-proper test and section 53I sets out the elements of the fit-and-proper test;
 - (vi) section 53K provides for renewal of a licence;
 - (vii) section 53Q empowers the Registrar to revoke or suspend a licence in certain situations and section 53R specifies the procedure for revocation or suspension;
 - (viii) sections 53S, 53T and 53U provide that the Registrar's approval is required to hold certain positions in a TCSP licensee after the licence is granted and that it is an offence to do so without that approval, and section 53V states how to apply for approval;
 - (ix) sections 53Z to 53ZD relate to the Registrar's disciplinary powers, including the procedural

requirements for exercising disciplinary powers and the Registrar's duty to publish guidelines about the power to impose a pecuniary penalty;

- (x) sections 53ZE to 53ZF concern entry by authorized officers under a magistrate's warrant to search premises on which there is reason to suspect the commission of the offence of conducting a TCSP business without a licence;
 - (xi) sections 53ZI to 53ZK require the Registrar, officers employed in the Companies Registry ("CR") and persons assisting the Registrar to preserve confidentiality regarding information that comes to their knowledge in performing functions under the Ordinance;
 - (xii) section 53ZL empowers the Registrar to amend Schedule 3A (which contains the fees payable under Part 5A) and section 53ZM empowers the Registrar to make regulations for the purposes of Part 5A;
 - (xiii) section 53ZN creates an offence for giving false or misleading information for various purposes under Part 5A and section 53ZO extends the time limit for prosecuting a summary offence under Part 5A; and
 - (xiv) section 53ZQ contains transitional provisions applicable to TCSPs who are carrying on business when the licensing requirement in section 53F comes into effect; the transitional period is 120 days, depending on whether the person applies for a licence during the period;
- (h) **Clauses 19, 20(5), 21 and 22** contain amendments to change the name of the review tribunal established under section 55, in line with the amendment to the short title of the AMLO;
- (i) **Clause 23** amends section 77 to exclude regulations for the purposes of the new Part 5A from the Chief Executive in Council's power to make regulations;

- (j) **Clause 25** amends Schedule 1 (which contains definitions applicable to the AMLO) to include the definitions relevant to the application of the AML/CTF requirements to DNFBPs. The more significant ones are the definitions of the various types of DNFBPs and “regulatory body”;
- (k) **Clause 26** amends Schedule 2, which contains requirements relating to CDD and record-keeping. Most of the amendments are for the purpose of extending those requirements to DNFBPs. The other amendments are –
- (i) to amend the definition of beneficial owner in section 1(1) to increase the minimum shareholding to more than 25% to reflect international standards;
 - (ii) to define who a “pre-existing customer” is in relation to a DNFBP;
 - (iii) to add a definition of “customer” as including a client as it is more common to use the term “client” in relation to DNFBPs;
 - (iv) to set out the means of customer identification for DNFBPs who are accounting professionals, estate agents or legal professionals;
 - (v) to amend section 9 to reflect technological developments in the methods used by financial institutions for obtaining information relating to customers;
 - (vi) to amend section 12 to reflect the current requirements relating to wire transfers in the FATF recommendations;
 - (vii) to amend the description of a specified intermediary in section 18(3) to substitute references to three types of DNFBPs; and
 - (viii) to amend section 18 to add a related foreign financial

institution of a financial institution to the type of intermediaries through whom a financial institution can carry out CDD measures; and

- (l) **Clause 27** adds a new Schedule 3A, setting out fees payable for various matters under Part 5A; and

(B) Part 3 – Related Amendments to Other Ordinances

- (a) **Clauses 30 to 38** contain consequential amendments to the Professional Accountants Ordinance, the Legal Practitioners Ordinance and the Estate Agents Ordinance to provide that, among other things, failure by an accounting professional, a legal professional and an estate agent (all as defined) to comply with an AML/CTF requirement applicable to them constitutes a ground for triggering the investigation and disciplinary mechanisms under those Ordinances;
- (b) **Clause 39** adds a new section 1A to Schedule 1 to the Resolution of the Legislative Council Establishing the Companies Registry Trading Fund (Cap. 430B) to include the administration and enforcement of the provisions of the AMLO that apply to a trust or company service business among the services to be provided by the trading fund; and
- (c) **Clauses 40 to 49** amend various Ordinances that contain references to the present short title of the AMLO and the review tribunal established under it to delete the expression “(Financial Institutions)” to reflect the change proposed by this Bill to the short title of the AMLO.

LEGISLATIVE TIMETABLE

21. The legislative timetable will be –

Publication in the Gazette	23 June 2017
First Reading and commencement of Second Reading debate	28 June 2017

Resumption of Second Reading debate, committee stage and Third Reading	To be notified
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IMPLICATIONS OF THE PROPOSALS

22. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. It has no environmental, family, gender or sustainability implications. The Bill does not affect the current binding effect of the AMLO.

Financial and Staffing Implications

23. There will be additional work for the CR to implement the TCSP licensing regime, carry out compliance checks on licensed TCSPs and undertake disciplinary actions. New electronic systems will have to be put in place to build up a database of TCSPs and facilitate enforcement work. Application fees will be imposed to recover the costs. The CR will seek additional staffing resources with justifications for handling the related work in accordance with the established mechanism. Accommodation for the new TCSP Registry will also be arranged to implement the licensing regime. The additional annual staff costs for setting up the new TCSP Registry is around \$44 million and the additional annual rental is about \$4.5 million, all of which will be borne by the Companies Registry Trading Fund.

Economic Implications

24. The proposal is pertinent to our fulfilment of the relevant FATF obligations and will reduce the risks of ML/TF in the relevant DNFBP sectors. This will help safeguard the integrity of our financial markets and business environment, and add to our credibility as a transparent, trusted and competitive place to invest and do business.

PUBLIC CONSULTATION

25. We briefed the LegCo Panel on Financial Affairs on 3 January 2017 on the legislative proposal. We also conducted a stakeholder

consultation from 6 January to 5 March 2017 to seek views from the affected sectors on the legislative proposal. We received 69 written submissions and 131 identical letters in standard template. Respondents came from a good mix of backgrounds, including industry associations and professional bodies, political parties, international advocacy groups and civil society, individual firms or companies and individual members of the public.

26. Overall, there was broad support for the Government to enhance AML/CTF regulation in Hong Kong. A majority of the respondents indicated agreement with the overall direction and principles and the broad framework of the legislative proposal, and shared our view that a balanced approach to legislation should be adopted so as to minimise regulatory burden and compliance cost on affected businesses. Respondents also expressed diverse views regarding the precise scope, coverage and parameters of the legislative proposal, by and large reflecting their sectoral interests or backgrounds.

27. Having regard to the responses, we have fine-tuned certain parameters of the legislative proposal as are now reflected in the Bill. We published a consultation conclusion on 13 April 2017.

PUBLICITY

28. We will issue a press release upon gazettal of the Bill and arrange a spokesperson to answer media enquiries.

ENQUIRIES

29. Enquiries relating to the brief can be directed to Ms Eureka Cheung, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2067.

Financial Services and the Treasury Bureau
23 June 2017

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017

Contents

Clause		Page
Part 1		
Preliminary		
1.	Short title and commencement	1
2.	Enactments amended	2
Part 2		
Amendments to Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615)		
3.	Long title amended	3
4.	Section 1 amended (short title)	4
5.	Section 4 amended (immunity).....	4
6.	Section 5 amended (Schedule 2 has effect with respect to financial institutions)	4
7.	Section 5A added.....	4
	5A. Schedule 2 has effect in relation to DNFBPs.....	4
8.	Section 7 amended (relevant authority may publish guidelines)	6

Clause		Page
9.	Section 9 amended (power to enter business premises etc. for routine inspection)	9
10.	Section 10 amended (offences for non-compliance with requirements imposed under section 9)	11
11.	Section 11 amended (relevant authorities may appoint investigators)	12
12.	Section 12 amended (powers of investigators to require production of records or documents etc.)	13
13.	Section 13 amended (offences for non-compliance with requirements imposed under section 12)	14
14.	Section 24 amended (interpretation of Part 5)	15
15.	Section 30 amended (grant of licence)	15
16.	Section 39A added.....	16
	39A. Licensee's duty to display original of licence.....	16
17.	Section 43 amended (Commissioner may take disciplinary actions)	16
18.	Part 5A added	17

Part 5A

Regulation of Trust or Company Service Providers

Division 1—Preliminary

Subdivision 1—Interpretation and Disapplication of this Part

Clause	Page
53A. Interpretation of Part 5A.....	17
53B. Disapplication.....	19
Subdivision 2—Delegation by Registrar of Companies and Register of Licensees	
53C. Delegation of functions	20
53D. Registrar to maintain register of licensees	20
53E. Certified copies and their evidential value.....	21
Division 2—Licensing of Trust or Company Service Providers	
Subdivision 1—Restriction on Carrying on Trust or Company Service Business	
53F. Offence of carrying on trust or company service business without licence	22
Subdivision 2—Application for, Grant and Renewal of, Licence	
53G. Application for and grant of licence	22
53H. Licence granted only if fit and proper test satisfied.....	23
53I. Fit and proper test.....	24
53J. Conditions when granting licence	26
53K. Renewal of licence.....	26
53L. Conditions when renewing licence	27
53M. Amendment of conditions of licence.....	28

Clause	Page
Subdivision 3—Form and Validity Period of Licence	
53N. Form of licence.....	29
53O. Validity period of licence	29
53P. Cessation of validity when certain events happen	30
Subdivision 4—Revocation or Suspension of Licence	
53Q. When licence may be revoked or suspended	30
53R. Procedure for revoking or suspending licence.....	32
Division 3—Approvals by Registrar	
53S. Approval required to become ultimate owner of licensee	32
53T. Approval required to become partner of licensee	33
53U. Approval required to become director of licensee.....	34
53V. How to apply for approval.....	35
Division 4—Notifications to Registrar	
53W. Notification of changes in particulars.....	35
53X. Notification of cessation of business	36
53Y. How to give notifications.....	36
Division 5—Registrar’s Disciplinary Powers	
53Z. Disciplinary action by Registrar	36
53ZA. Procedure for exercising disciplinary powers.....	38

Clause		Page
53ZB.	Guidelines for imposing pecuniary penalty	39
53ZC.	Registration of pecuniary penalty order.....	39
53ZD.	Application of disciplinary powers in respect of directors of corporations.....	40
	Division 6—Warrants to Enter Premises	
53ZE.	Registrar may appoint authorized officers.....	41
53ZF.	Magistrate's warrant to enter premises	41
53ZG.	Power to require production of material in legible form	42
	Division 7—Confidentiality Requirements	
53ZH.	Interpretation of Division 7	43
53ZI.	Confidentiality	44
53ZJ.	Permitted disclosures by specified person	45
53ZK.	Permitted disclosures by Registrar	46
	Division 8—Miscellaneous	
53ZL.	Amendment of Schedule 3A.....	49
53ZM.	Regulations	49
53ZN.	Offence of providing false or misleading information	49
53ZO.	Time limit for prosecution	50
53ZP.	Requirements for authentication and delivery of	

Clause		Page
	relevant instruments.....	50
	Division 9—Transitional Arrangements for Trust or Company Service Providers	
53ZQ.	Transitional arrangements	53
19.	Part 6 heading amended (Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal).....	54
20.	Section 54 amended (interpretation of Part 6)	54
21.	Part 6, Division 2 heading amended (Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal).....	56
22.	Section 55 amended (establishment of Tribunal)	56
23.	Section 77 amended (regulations by Chief Executive in Council).....	56
24.	Section 80 amended (giving of notices by relevant authorities).....	57
25.	Schedule 1 amended (interpretation)	58
26.	Schedule 2 amended (requirements relating to customer due diligence and record-keeping)	62
27.	Schedule 3A added	89
	Schedule 3A Fees in relation to Part 5A.....	89
28.	Schedule 4 amended (provisions relating to Anti-Money	

Clause	Page
Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal).....	91
Part 3	
Amendments to Regulatory Ordinances etc. and Consequential Amendments	
Division 1—Amendments to Regulatory Ordinances	
Subdivision 1—Amendments to Professional Accountants Ordinance (Cap. 50)	
29. Section 18B amended (Council’s power to give directions).....	93
30. Section 34 amended (disciplinary provisions).....	93
31. Section 35B amended (consent order).....	95
32. Section 41A amended (application of disciplinary provisions to firms).....	95
33. Section 42C amended (appointment of Investigation Committee).....	96
Subdivision 2—Amendments to Legal Practitioners Ordinance (Cap. 159)	
34. Section 9A amended (complaint about conduct of solicitor, foreign lawyer, etc.).....	97
Subdivision 3—Amendments to Estate Agents Ordinance (Cap. 511)	
35. Section 2 amended (interpretation).....	98
36. Section 27 amended (suspension or revocation of licences).....	99
37. Section 28 amended (investigations).....	99
38. Section 29 amended (complaints).....	100

Clause	Page
Division 2—Amendment to Resolution of the Legislative Council Establishing Companies Registry Trading Fund (Cap. 430 sub. leg. B)	
39. Schedule 1 amended (services to be provided by the trading fund)	100
Division 3—Consequential Amendments	
Subdivision 1—Amendment to Insurance Ordinance (Cap. 41)	
40. Section 53A amended (secrecy)	101
Subdivision 2—Amendment to Post Office Ordinance (Cap. 98)	
41. Section 7 amended (exemption from liability)	101
Subdivision 3—Amendment to Banking Ordinance (Cap. 155)	
42. Section 120 amended (official secrecy).....	101
Subdivision 4—Amendments to Securities and Futures Ordinance (Cap. 571)	
43. Section 130 amended (suitability of premises for keeping records or documents).....	102
44. Section 180 amended (supervision of intermediaries and their associated entities).....	102
45. Section 378 amended (preservation of secrecy, etc.).....	102
46. Section 381B amended (disclosure by Monetary Authority).....	102
47. Schedule 1 amended (interpretation and general provisions)	102
Subdivision 5—Amendments to Payment Systems and Stored Value Facilities Ordinance (Cap. 584)	

Clause	Page
48. Section 50 amended (confidentiality)	103
49. Schedule 3 amended (minimum criteria)	103

A BILL

To

Amend the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance to apply customer due diligence and record-keeping requirements to solicitors and foreign lawyers, accountants, estate agents and trust or company service providers (collectively called designated non-financial businesses and professions) when they conduct certain transactions; for that purpose to establish a regulatory regime for trust or company service providers and to amend the regulatory Ordinances of the other sectors; and to make related and miscellaneous amendments to the principal Ordinance and consequential amendments to other Ordinances.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance 2017.
- (2) This Ordinance comes into operation on 1 March 2018.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

Amendments to Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615)

3. Long title amended

(1) The long title—

Repeal

“institutions”

Substitute

“institutions and designated non-financial businesses and professions”.

(2) The long title—

Repeal

“of the relevant authorities”

Substitute

“of the relevant authorities and regulatory bodies”.

(3) The long title—

Repeal

“operators;”

Substitute

“operators; to provide for the regulation of the operation of a trust or company service and the licensing of trust or company service providers;”.

4. Section 1 amended (short title)

Section 1(1)—

Repeal

“(Financial Institutions)”.

5. Section 4 amended (immunity)

After section 4(1)—

Add

“(1A) A regulatory body does not incur any civil liability for anything done or omitted to be done by the regulatory body in good faith in the performance or purported performance of a function conferred or imposed on the regulatory body by or under this Ordinance.”.

6. Section 5 amended (Schedule 2 has effect with respect to financial institutions)

Section 5(11), definition of *specified provision*—

Repeal

“, (4)”.

7. Section 5A added

After section 5—

Add

“5A. Schedule 2 has effect in relation to DNFBPs

(1) Schedule 2 has effect in relation to a DNFBP in accordance with this section.

(2) An AML/CTF requirement applies to a DNFBP of a particular type if the relevant provision by or under which the requirement is made—

(a) states that the provision applies to a DNFBP (without limiting the type of DNFBP) or to the particular type of DNFBP;

(b) requires a DNFBP (without limiting the type of DNFBP) or the particular type of DNFBP to comply with the provision; or

(c) otherwise applies the requirement or the provision to a DNFBP (without limiting the type of DNFBP) or to the particular type of DNFBP.

(3) An AML/CTF requirement that applies to a DNFBP who is an accounting professional or a legal professional only applies, when, by way of business, the accounting professional or the legal professional, in Hong Kong, prepares for or carries out for a client a transaction concerning one or more of the following—

(a) the buying or selling of real estate;

(b) the managing of client money, securities or other assets;

(c) the management of bank, savings or securities accounts;

(d) the organization of contributions for the creation, operation or management of corporations;

(e) the creation, operation or management of—

(i) legal persons; or

(ii) legal arrangements;

(f) the buying or selling of business entities;

(g) a service specified in the definition of *trust or company service* in section 1 of Part 1 of Schedule 1.

(4) An AML/CTF requirement that applies to a DNFBP who is an estate agent only applies when the estate agent is involved, in Hong Kong, in a transaction concerning the buying or selling of real estate for a client (as defined by section 2(1) of the Estate Agents Ordinance (Cap. 511)).

(5) An AML/CTF requirement that applies to a DNFBP who is a TCSP licensee only applies, when, by way of business, the TCSP licensee, 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.

(6) In this section—

AML/CTF requirement (反洗錢及恐怖分子集資規定) means a requirement set out in Part 2, 3 or 4 of Schedule 2.”.

8. Section 7 amended (relevant authority may publish guidelines)

(1) Section 7, heading—

Repeal

“Relevant authority may publish guidelines”

Substitute

“Guidelines for operation of Schedule 2”.

(2) Section 7(1), after “relevant authority”—

Add

“or a regulatory body”.

(3) Section 7(2)—

Repeal

“or Insurance Authority may”

Substitute

“, Insurance Authority or a regulatory body may”.

(4) Section 7(2)—

Repeal

“or Insurance Authority under”

Substitute

“, Insurance Authority or the regulatory body under”.

(5) Section 7(3), after “relevant authority”—

Add

“or a regulatory body”.

(6) Section 7(3), Chinese text, after “該當局”—

Add

“或該機構”.

(7) Section 7(5), after “relevant authority”—

Add

“or a regulatory body”.

(8) After section 7(5)—

Add

“(5A) In relation to a person who is a legal professional, nothing in this section prevents the regulatory body, or another body whose function is to consider whether the person has contravened an AML/CTF requirement, from having regard to or taking into account any practice direction that—

- (a) is issued by the regulatory body; and
- (b) provides guidance in relation to—
 - (i) the operation of any provision of Schedule 2 that applies to a legal professional; or
 - (ii) compliance with an AML/CTF requirement.”.
- (9) Section 7(7), definition of *relevant Ordinance*, paragraph (b)—
Repeal
“and”.
- (10) Section 7(7), definition of *relevant Ordinance*, paragraph (c)—
Repeal
“(Cap. 571).”
Substitute
“(Cap. 571);”.
- (11) Section 7(7), definition of *relevant Ordinance*, after paragraph (c)—
Add
“(d) in relation to the HKICPA, means the Professional Accountants Ordinance (Cap. 50);
(e) in relation to the Law Society, means the Legal Practitioners Ordinance (Cap. 159); and
(f) in relation to the Estate Agents Authority, means the Estate Agents Ordinance (Cap. 511).”.
- (12) Section 7(7)—
Add in alphabetical order

- “**AML/CTF requirement** (反洗錢及恐怖分子集資規定)
means a requirement that—
- (a) is set out in Part 2, 3 or 4 of Schedule 2; and
 - (b) applies under section 5A(3) to a legal professional;”.
9. **Section 9 amended (power to enter business premises etc. for routine inspection)**
- (1) Section 9(1)—
Repeal
“a financial institution”
Substitute
“a financial institution or a TCSP licensee”.
 - (2) Section 9(1)—
Repeal
“the financial institution” (wherever appearing)
Substitute
“the financial institution or the TCSP licensee”.
 - (3) Section 9(3)(a)—
Repeal
“institution”
Substitute
“institution or the TCSP licensee”.
 - (4) Section 9(3)(b)—
Repeal
“institution”
Substitute

“institution or the TCSP licensee”.

- (5) Section 9(5)—

Repeal

“financial institution or”

Substitute

“financial institution, the TCSP licensee or”.

- (6) Section 9(8)—

Repeal

“a financial institution”

Substitute

“a financial institution or a TCSP licensee”.

- (7) Section 9(8)—

Repeal

“the financial institution”

Substitute

“the financial institution or the TCSP licensee”.

- (8) Section 9(15), definition of *business premises*, paragraph (g)(ii)—

Repeal

“and”.

- (9) Section 9(15), definition of *business premises*, paragraph (h)—

Repeal the semicolon

Substitute

“; and”.

- (10) Section 9(15), definition of *business premises*, after paragraph (h)—

Add

“(i) in relation to a TCSP licensee, means any premises at which the TCSP licensee carries on business, including a place of business used for the purpose of—

- (i) the administration of the affairs or business of the TCSP licensee;
- (ii) the processing of transactions; or
- (iii) the storage of documents, data or records;”.

10. Section 10 amended (offences for non-compliance with requirements imposed under section 9)

- (1) Section 10(7)—

Repeal

“a financial institution” (wherever appearing)

Substitute

“a financial institution or a TCSP licensee”.

- (2) Section 10(7)—

Repeal

“the financial institution” (wherever appearing)

Substitute

“the financial institution or the TCSP licensee”.

- (3) Section 10(8)—

Repeal

“a financial institution” (wherever appearing)

Substitute

“a financial institution or a TCSP licensee”.

- (4) Section 10(8)—

Repeal

“the financial institution” (wherever appearing)

Substitute

“the financial institution or the TCSP licensee”.

11. Section 11 amended (relevant authorities may appoint investigators)

- (1) Section 11(1)(a)—

Repeal

“or”.

- (2) Section 11(1)(b)—

Repeal

“for”

Substitute

“in relation to a financial institution, for”.

- (3) Section 11(1)(b)—

Repeal

“whether a financial”

Substitute

“whether the financial”.

- (4) Section 11(1)(b)—

Repeal

“43(1),”

Substitute

“43(1); or”.

- (5) After section 11(1)(b)—

Add

“(c) in relation to a TCSP licensee, for the purpose of considering whether to exercise a power under section 53Z or 53ZD, has reason to inquire whether there has been a contravention referred to in section 53Z(2)(a) or (b),”.

- (6) Section 11(2)(c)—

Repeal

“and”.

- (7) Section 11(2)(d)—

Repeal the full stop

Substitute

“; and”.

- (8) After section 11(2)(d)—

Add

“(e) in relation to the Registrar, a public officer employed in the Companies Registry.”.

12. Section 12 amended (powers of investigators to require production of records or documents etc.)

- (1) Section 12(7)—

Repeal

“a financial institution”

Substitute

“a financial institution or a TCSP licensee”.

(2) Section 12(7)—

Repeal

“the financial institution”

Substitute

“the financial institution or the TCSP licensee”.

13. Section 13 amended (offences for non-compliance with requirements imposed under section 12)

(1) Section 13(7)—

Repeal

“a financial institution” (wherever appearing)

Substitute

“a financial institution or a TCSP licensee”.

(2) Section 13(7)—

Repeal

“the financial institution” (wherever appearing)

Substitute

“the financial institution or the TCSP licensee”.

(3) Section 13(8)—

Repeal

“a financial institution” (wherever appearing)

Substitute

“a financial institution or a TCSP licensee”.

(4) Section 13(8)—

Repeal

“the financial institution” (wherever appearing)

Substitute

“the financial institution or the TCSP licensee”.

14. Section 24 amended (interpretation of Part 5)

(1) Section 24, definition of *ultimate owner*, paragraph (b)(i)—

Repeal

“not less than a 10%”

Substitute

“more than a 25%”.

(2) Section 24, definition of *ultimate owner*, paragraph (b)(ii)—

Repeal

“not less than 10%”

Substitute

“more than 25%”.

(3) Section 24, definition of *ultimate owner*, paragraph (c)(i) and (ii)—

Repeal

“not less than 10%”

Substitute

“more than 25%”.

15. Section 30 amended (grant of licence)

(1) Section 30(4)(a)(i), Chinese text—

Repeal

“17(8)”

Substitute

“17(9)”.

(2) Section 30(4)(a)(ii)—

Repeal

“14(1)”

Substitute

“14”.

(3) Section 30(4)(a)(ii)—

Repeal

“for a contravention of section 7 or 8 of that Ordinance”.

16. Section 39A added

After section 39—

Add

“39A. Licensee’s duty to display original of licence

(1) A licensee who is licensed to operate a money service at premises specified in the licence must display the original of the licence in a conspicuous place at the specified premises.

(2) A licensee who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.”.

17. Section 43 amended (Commissioner may take disciplinary actions)

Section 43(1)(c)—

Repeal

“39(1),”

Substitute

“39(1), 39A(1),”.

18. Part 5A added

After Part 5—

Add

“Part 5A

**Regulation of Trust or Company Service
Providers**

Division 1—Preliminary

**Subdivision 1—Interpretation and Disapplication of this
Part**

53A. Interpretation of Part 5A

In this Part—

disciplinary power (紀律處分權力) means a power that may be exercised by the Registrar under section 53Z;

information system (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

licence (牌照) means a licence—

(a) granted under section 53G; or

(b) renewed under section 53K,

and, except in Subdivisions 2 and 3 of Division 2, includes a licence deemed to have been granted under section 53ZQ;

licensee (持牌人) means a person who holds a licence—

(a) granted under section 53G; or

(b) renewed under section 53K,

and, except in Subdivision 2 and Subdivisions 2 and 3 of Division 2, includes a deemed licensee as defined by section 53ZQ(5);

register (登記冊) means the register maintained under section 53D;

ultimate owner (最終擁有人)—

(a) in relation to an individual—

(i) means another individual who ultimately owns or controls the trust or company service business of the first-mentioned individual; or

(ii) if the first-mentioned individual is acting on behalf of another person, means the other person;

(b) in relation to a partnership, means an individual who—

(i) is entitled, directly or indirectly, to more than a 25% share of the capital or profits of the partnership;

(ii) controls, directly or indirectly, more than a 25% share of the capital or profits of the partnership;

(iii) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights in the partnership; or

(iv) exercises ultimate control over the management of the partnership; and

(c) in relation to a corporation, means an individual who—

(i) owns or controls, directly or indirectly, including through a trust or bearer share holding, more than 25% of the issued share capital of the corporation;

(ii) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights at general meetings of the corporation; or

(iii) exercises ultimate control over the management of the corporation.

53B. Disapplication

(1) This Part does not apply to—

(a) the Government;

(b) an authorized institution;

(c) a licensed corporation that operates a trust or company service business that is ancillary to the corporation's principal business;

(d) an accounting professional;

(e) a legal professional; or

(f) a person of a class or description prescribed under subsection (2).

(2) The Secretary for Financial Services and the Treasury may by regulation prescribe a class or description of persons to whom this Part does not apply.

**Subdivision 2—Delegation by Registrar of Companies and
Register of Licensees**

53C. Delegation of functions

- (1) The Registrar of Companies may in writing delegate any of his or her functions under this Ordinance to a public officer employed in the Companies Registry.
- (2) However, the Registrar of Companies must not delegate—
 - (a) the power to delegate under subsection (1); or
 - (b) the power—
 - (i) to amend Schedule 3A under section 53ZL; or
 - (ii) to make regulations under section 53ZM.

53D. Registrar to maintain register of licensees

- (1) The Registrar must maintain a register of licensees, in a form the Registrar considers appropriate, containing—
 - (a) the name of every licensee; and
 - (b) for—
 - (i) an individual carrying on business as a sole proprietor—the business address of the sole proprietor;
 - (ii) a partnership—the business address of the partnership; or
 - (iii) a corporation—the business address of the corporation.
- (2) The register must be made available for inspection by any member of the public for the purpose of ascertaining whether a person is a licensee.

- (3) A member of the public is entitled, without charge, to inspect the register during normal office hours.

53E. Certified copies and their evidential value

- (1) A person may, on the payment of the fee specified in Schedule 3A, obtain—
 - (a) a certified copy of—
 - (i) an entry in the register; or
 - (ii) an extract from the register; or
 - (b) a certificate by the Registrar stating that the name of a person—
 - (i) has been entered in the register;
 - (ii) has not been entered in the register;
 - (iii) has been removed from the register; or
 - (iv) has not been removed from the register.
- (2) In a civil or criminal proceeding, a copy of an entry in or extract from the register purporting to be certified by the Registrar—
 - (a) is admissible in evidence on production without further proof; and
 - (b) is evidence of the facts stated in it.
- (3) The fact that the name of a person does not appear on a copy of an entry in or extract from the register purporting to be certified by the Registrar is evidence that, at the date on which the copy is purported to be certified, the person was not a licensee.
- (4) In a civil or criminal proceeding, a certificate purporting to be signed by the Registrar stating that the name of a person has been entered in or removed from the register,

or has not been entered in or removed from the register,
is conclusive evidence of the facts stated in it.

Division 2—Licensing of Trust or Company Service Providers

Subdivision 1—Restriction on Carrying on Trust or Company Service Business

53F. Offence of carrying on trust or company service business without licence

- (1) A person commits an offence if the person carries on a trust or company service business without a licence.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) If a person is convicted of an offence under this section, the magistrate may order that the person be disqualified from holding a licence for a period—
 - (a) beginning on the date of the order; and
 - (b) specified in the order.

Subdivision 2—Application for, Grant and Renewal of, Licence

53G. Application for and grant of licence

- (1) The Registrar may, on application, grant, in accordance with this Subdivision, a licence to carry on a trust or company service business to—
 - (a) an individual carrying on business as a sole proprietor;

- (b) a partnership; or
 - (c) a corporation.
- (2) The application—
 - (a) must be made in the form and way specified by the Registrar; and
 - (b) must be accompanied by—
 - (i) a copy of a valid business registration certificate; and
 - (ii) the fee specified in Schedule 3A.

53H. Licence granted only if fit and proper test satisfied

- (1) If the applicant is an individual carrying on business as a sole proprietor, a licence may be granted only if the Registrar is satisfied that—
 - (a) the individual is a fit and proper person to carry on a trust or company service business; and
 - (b) if there is an ultimate owner in relation to the individual, the ultimate owner is a fit and proper person to be associated with a trust or company service business.
- (2) If the applicant is a partnership, a licence may be granted only if the Registrar is satisfied that—
 - (a) each partner in the partnership is a fit and proper person to carry on a trust or company service business; and
 - (b) if there is an ultimate owner in relation to the partnership, the ultimate owner is a fit and proper person to be associated with a trust or company service business.

- (3) If the applicant is a corporation, a licence may be granted only if the Registrar is satisfied that—
- (a) each director of the corporation is a fit and proper person to be associated with a trust or company service business; and
 - (b) if there is an ultimate owner in relation to the corporation, the ultimate owner is a fit and proper person to be associated with a trust or company service business.
- (4) If the Registrar decides not to grant a licence, the Registrar must inform the applicant of the decision by notice in writing.
- (5) The notice must include—
- (a) a statement of the reasons for the decision; and
 - (b) a statement that the applicant may apply to the Review Tribunal for a review of the decision.

53I. Fit and proper test

In determining whether a person is a fit and proper person for the purposes of section 53H, the Registrar must, in addition to any other matter that the Registrar considers relevant, have regard to the following matters—

- (a) whether the person has been convicted of—
 - (i) an offence under section 5(5), (6), (7) or (8), 10(1), (3), (5), (6), (7) or (8), 13(1), (3), (5), (6), (7) or (8), 17(9), 20(1), 61(2) or 66(3);
 - (ii) an offence under section 14 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575);

- (iii) an offence under section 25(1), 25A(5) or (7) of, or an offence specified in Schedule 1 to, the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405); or
 - (iv) an offence under section 25(1), 25A(5) or (7) of, or an offence specified in Schedule 1 or 2 to, the Organized and Serious Crimes Ordinance (Cap. 455);
- (b) whether the person has a conviction in a place outside Hong Kong—
 - (i) for an offence in respect of an act that would have constituted an offence specified in paragraph (a) had it been done in Hong Kong;
 - (ii) for an offence relating to money laundering or terrorist financing; or
 - (iii) for an offence for which it was necessary to find that the person had acted fraudulently, corruptly or dishonestly;
- (c) whether the person has failed to comply with a requirement imposed under this Ordinance or a regulation made under section 53ZM;
- (d) if the person is an individual, whether he or she is an undischarged bankrupt or is the subject of any bankruptcy proceedings under the Bankruptcy Ordinance (Cap. 6);
- (e) if the person is a corporation, whether it is in liquidation or is the subject of a winding up order, or there is a receiver appointed in relation to it.

53J. Conditions when granting licence

- (1) On granting a licence, the Registrar may impose any condition that the Registrar considers appropriate.
- (2) If a condition is imposed, the Registrar must, at the time the licence is granted, inform the licensee by notice in writing.
- (3) The notice must include—
 - (a) a statement of the reasons for the decision under subsection (1); and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (4) A condition takes effect at the time the licensee receives the notice or at the time specified in the notice, whichever is later.

53K. Renewal of licence

- (1) A licensee may apply to the Registrar for the renewal of a licence.
- (2) The application—
 - (a) must be made at least 60 days before the licence is due to expire;
 - (b) must be made in the form and way specified by the Registrar; and
 - (c) must be accompanied by the fee specified in Schedule 3A.
- (3) Sections 53H(1), (2) and (3) and 53I apply to an application for renewal as they apply to an application for the grant of a licence.

- (4) If the licence expires before the determination of the application, unless the application is withdrawn or the licence is revoked or suspended, the licence remains in force—
 - (a) until it is renewed; or
 - (b) if it is not renewed, until the decision not to renew takes effect as a specified decision under section 75.
- (5) If the Registrar decides not to renew the licence, the Registrar must inform the licensee of the decision by notice in writing.
- (6) The notice must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (7) A renewal takes effect—
 - (a) on the day following the expiry of the licence; or
 - (b) if subsection (4) applies, on the day following the day on which the licence would have expired but for that subsection.

53L. Conditions when renewing licence

- (1) On renewing a licence, the Registrar may, if the Registrar considers appropriate—
 - (a) impose a new condition;
 - (b) amend a previously imposed condition; or
 - (c) remove a previously imposed condition.

- (2) If a new condition is imposed or a condition is amended or removed, the Registrar must, at the time the licence is renewed, inform the licensee by notice in writing.
- (3) The notice must include—
 - (a) a statement of the reasons for a decision under subsection (1)(a) or (b); and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (4) The imposition, amendment or removal of a condition takes effect at the time the licensee receives the notice or at the time specified in the notice, whichever is later.

53M. Amendment of conditions of licence

- (1) The Registrar may, if satisfied that it is reasonable to do so in the circumstances, in relation to a licence—
 - (a) impose a new condition;
 - (b) amend a previously imposed condition; or
 - (c) remove a previously imposed condition.
- (2) If a new condition is imposed or a condition is amended or removed, the Registrar must inform the licensee by notice in writing.
- (3) The notice must include—
 - (a) a statement of the reasons for a decision under subsection (1)(a) or (b); and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (4) The imposition, amendment or removal of a condition takes effect at the time the licensee receives the notice or at the time specified in the notice, whichever is later.

Subdivision 3—Form and Validity Period of Licence

53N. Form of licence

- (1) A licence is to be in a form specified by the Registrar.
- (2) The licence must specify—
 - (a) the period for which the licence is valid; and
 - (b) if the licensee—
 - (i) is an individual carrying on business as a sole proprietor—the business address of the sole proprietor;
 - (ii) is a partnership—the business address of the partnership; or
 - (iii) is a corporation—the business address of the corporation.

53O. Validity period of licence

- (1) A licence that is granted under section 53G is valid for—
 - (a) 3 years beginning on the date on which the licence is granted; or
 - (b) if the Registrar considers it appropriate in a particular case, a shorter period—
 - (i) determined by the Registrar; and
 - (ii) beginning on the date on which the licence is granted.
- (2) A licence that is renewed under section 53K is valid for—
 - (a) 3 years beginning on the date on which the licence is renewed; or

- (b) if the Registrar considers it appropriate in a particular case, a shorter period—
 - (i) determined by the Registrar; and
 - (ii) beginning on the date on which the licence is renewed.

53P. Cessation of validity when certain events happen

A licence ceases to be valid—

- (a) if the licensee is an individual carrying on business as a sole proprietor—on the death of the individual;
- (b) if the licensee is a partnership—on the dissolution of the partnership; or
- (c) if the licensee is a corporation—on the commencement of the winding up of the corporation.

Subdivision 4—Revocation or Suspension of Licence

53Q. When licence may be revoked or suspended

- (1) The Registrar may, in a situation specified in subsection (2)—
 - (a) revoke a licensee's licence; or
 - (b) suspend a licensee's licence—
 - (i) for a period specified by the Registrar; or
 - (ii) until the occurrence of an event specified by the Registrar.
- (2) The situations are—

- (a) where the licensee is an individual carrying on business as a sole proprietor, the Registrar is no longer satisfied that—
 - (i) the individual is a fit and proper person to carry on a trust or company service business; or
 - (ii) if there is an ultimate owner in relation to the individual, the ultimate owner is a fit and proper person to be associated with a trust or company service business;
- (b) where the licensee is a partnership, the Registrar is no longer satisfied that—
 - (i) a partner in the partnership is a fit and proper person to carry on a trust or company service business; or
 - (ii) if there is an ultimate owner in relation to the partnership, the ultimate owner is a fit and proper person to be associated with a trust or company service business; or
- (c) where the licensee is a corporation, the Registrar is no longer satisfied that—
 - (i) a director of the corporation is a fit and proper person to be associated with a trust or company service business; or
 - (ii) if there is an ultimate owner in relation to the corporation, the ultimate owner is a fit and proper person to be associated with a trust or company service business.

53R. Procedure for revoking or suspending licence

- (1) If the Registrar decides to exercise a power under section 53Q(1), the Registrar must inform the licensee of the decision by notice in writing.
- (2) The notice must—
 - (a) include a statement of the reasons for the decision;
 - (b) for a decision to suspend a licence, specify the duration and terms of the suspension; and
 - (c) include a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (3) The Registrar may exercise the power only after giving the licensee a reasonable opportunity to be heard.
- (4) A revocation or suspension takes effect at the time specified in the notice.
- (5) Any fee paid for the grant or renewal of a licence is not refundable on the revocation or suspension of the licence.

Division 3—Approvals by Registrar

53S. Approval required to become ultimate owner of licensee

- (1) A person must not become an ultimate owner of a licensee unless the Registrar gives approval in writing.
- (2) The Registrar may give approval only if—
 - (a) the licensee makes an application for the approval; and
 - (b) the Registrar is satisfied that the person is a fit and proper person to be associated with a trust or company service business.

- (3) In determining whether a person is a fit and proper person, the Registrar must, in addition to any other matter that the Registrar considers relevant, have regard to the matters specified in section 53I.
- (4) If the Registrar decides not to give approval, the Registrar must inform the licensee of the decision by notice in writing.
- (5) The notice must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (6) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

53T. Approval required to become partner of licensee

- (1) A person must not become a partner of a licensee that is a partnership unless the Registrar gives approval in writing.
- (2) The Registrar may give approval only if—
 - (a) the licensee makes an application for the approval; and
 - (b) the Registrar is satisfied that the person is a fit and proper person to carry on a trust or company service business.
- (3) In determining whether a person is a fit and proper person, the Registrar must, in addition to any other matter that the Registrar considers relevant, have regard to the matters specified in section 53I.

- (4) If the Registrar decides not to give approval, the Registrar must inform the licensee of the decision by notice in writing.
- (5) The notice must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (6) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

53U. Approval required to become director of licensee

- (1) A person must not become a director of a licensee that is a corporation unless the Registrar gives approval in writing.
- (2) The Registrar may give approval only if—
 - (a) the licensee makes an application for the approval; and
 - (b) the Registrar is satisfied that the person is a fit and proper person to be associated with a trust or company service business.
- (3) In determining whether a person is a fit and proper person, the Registrar must, in addition to any other matter that the Registrar considers relevant, have regard to the matters specified in section 53I.
- (4) If the Registrar decides not to give approval, the Registrar must inform the licensee of the decision by notice in writing.
- (5) The notice must include—

- (a) a statement of the reasons for the decision; and
- (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (6) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

53V. How to apply for approval

An application under this Division—

- (a) must be made in the form and way specified by the Registrar; and
- (b) must be accompanied by the fee specified in Schedule 3A.

Division 4—Notifications to Registrar

53W. Notification of changes in particulars

- (1) If there is a change in the particulars previously provided to the Registrar in connection with a licensee's application for the grant or renewal of a licence, the licensee must notify the Registrar of the change within 1 month beginning on the date on which the change takes place.
- (2) For the purposes of subsection (1), particulars previously provided in connection with an application for the grant or renewal of a licence include particulars notified under that subsection.
- (3) The Registrar must, as soon as reasonably practicable after receiving the notification, amend any relevant particulars in the register if necessary.

- (4) A licensee who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

53X. Notification of cessation of business

- (1) If a licensee intends to cease to carry on the licensee's trust or company service business, the licensee must, before the intended date of cessation, notify the Registrar—
- (a) of that intention; and
 - (b) of the intended date of cessation.
- (2) The Registrar must, as soon as reasonably practicable after receiving the notification, cancel the licence with effect from the intended date of cessation.
- (3) Any fee paid for the grant or renewal of a licence is not refundable on the cancellation of the licence.
- (4) A licensee who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

53Y. How to give notifications

A notification under this Division must be given—

- (a) in the form specified by the Registrar; and
- (b) in the way specified by the Registrar.

Division 5—Registrar's Disciplinary Powers

53Z. Disciplinary action by Registrar

- (1) Subject to sections 53ZA and 53ZB, the Registrar may, in a situation specified in subsection (2), exercise, in

respect of a licensee, one or more of the powers specified in subsection (3).

- (2) The situations are that—
- (a) the licensee contravenes—
 - (i) a requirement set out in Schedule 2 that applies to a DNFBP who is a TCSP licensee;
 - (ii) a regulation made under section 53ZM; or
 - (iii) a condition of the licence; or
 - (b) there is a contravention of section 53S(1), 53T(1), 53U(1), 53W(1) or 53X(1).
- (3) The powers are—
- (a) to publicly reprimand the licensee;
 - (b) to order the licensee to take, by a date specified by the Registrar, any action specified by the Registrar for the purpose of remedying the contravention; and
 - (c) to order the licensee to pay a pecuniary penalty not exceeding \$500,000.
- (4) If a licensee fails to comply with an order to take remedial action, the Registrar may further order the licensee to pay a daily pecuniary penalty not exceeding \$10,000 for each day on which the failure continues after the compliance date.
- (5) A licensee who is ordered to pay a pecuniary penalty must pay it to the Registrar within—
- (a) 30 days; or
 - (b) a longer period specified in the notice referred to in section 53ZA(1),

after the order takes effect as a specified decision under section 75.

- (6) After a decision to exercise a disciplinary power takes effect as a specified decision under section 75, the Registrar may disclose to the public—
- (a) details of the decision;
 - (b) the reasons for which the decision was made; and
 - (c) any material facts relating to the case.

- (7) In this section—

compliance date (須予遵從日期) means the date specified in an order made under subsection (3)(b) as the date by which the remedial action must be taken;

remedial action (糾正行動) means an action ordered to be taken under subsection (3)(b).

53ZA. Procedure for exercising disciplinary powers

- (1) If the Registrar decides to exercise a disciplinary power in respect of a licensee, the Registrar must inform the licensee of the decision by notice in writing.
- (2) The notice must—
- (a) include a statement of the reasons for the decision;
 - (b) specify any action that the licensee is required to take under the decision;
 - (c) for a decision to publicly reprimand, specify the terms in which the licensee is to be reprimanded;
 - (d) for a decision to impose a pecuniary penalty—
 - (i) specify the amount of the penalty; and

- (ii) if the penalty is to be paid within a period other than that referred to in section 53Z(5)(a), specify that other period within which it must be paid; and

- (e) include a statement that the licensee may apply to the Review Tribunal for a review of the decision.

- (3) The Registrar may exercise a disciplinary power only after giving the licensee a reasonable opportunity to be heard.

53ZB. Guidelines for imposing pecuniary penalty

- (1) The Registrar must publish guidelines indicating the way in which the Registrar proposes to exercise the disciplinary power to impose a pecuniary penalty.
- (2) The guidelines must be published—
- (a) before the Registrar exercises a disciplinary power to impose a pecuniary penalty for the first time; and
 - (b) in the Gazette and in any other way the Registrar considers appropriate.
- (3) In exercising the disciplinary power to impose a pecuniary penalty, the Registrar must have regard to the published guidelines.
- (4) The guidelines are not subsidiary legislation.

53ZC. Registration of pecuniary penalty order

- (1) The Court of First Instance may, on an application made by the Registrar, register in that Court an order to pay a pecuniary penalty.

- (2) The application must be made by producing to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the original and a copy of the order.
- (3) On registration, the order is to be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of that Court for the payment of money.

(4) In this section—

pecuniary penalty (罰款) means a pecuniary penalty ordered to be paid under section 53Z(3)(c) or (4).

53ZD. Application of disciplinary powers in respect of directors of corporations

(1) This section applies if—

- (a) the Registrar exercises a disciplinary power in respect of a licensee that is a corporation in connection with a contravention referred to in section 53Z(2)(a)(i); and
- (b) either—
 - (i) the contravention was caused or allowed by a director of the corporation; or
 - (ii) the director failed to take reasonable steps to prevent the contravention.

(2) The disciplinary power is also exercisable by the Registrar in respect of the director as if the director were a licensee.

(3) This Division is to be construed accordingly.

(4) In this section—

director (董事) does not include a person who is an accounting professional or a legal professional.

Division 6—Warrants to Enter Premises

53ZE. Registrar may appoint authorized officers

The Registrar may appoint in writing a public officer employed in the Companies Registry to be an authorized officer for the purposes of this Division.

53ZF. Magistrate's warrant to enter premises

(1) A magistrate may issue a warrant authorizing an authorized officer to take the actions referred to in subsection (2) if satisfied by information on oath that there are reasonable grounds to suspect that an offence under section 53F—

- (a) is being committed on any premises; or
- (b) has been committed on any premises.

(2) The actions are—

- (a) to enter and search the premises; and
- (b) to seize, remove or detain—
 - (i) a record or document, or any cash or other article, found on the premises that is, or appears to the authorized officer to be, or to contain, or to be likely to be or to contain, evidence of the commission of the suspected offence; and
 - (ii) anything that the authorized officer has reasonable cause to believe may be required

as evidence in proceedings for the suspected offence.

- (3) An authorized officer authorized by a warrant may call on any person to assist the authorized officer in entering and searching the premises.
- (4) An authorized officer who enters any premises under this section must, if required, produce the warrant for inspection.
- (5) A person who obstructs an authorized officer in the exercise of a power under this section commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.
- (6) In this section—

authorized officer (獲授權人員) means a person appointed as an authorized officer under section 53ZE.

53ZG. Power to require production of material in legible form

- (1) This section applies in relation to information or matter (*material*) contained in a record or document that—
 - (a) is found on any premises entered under a warrant; and
 - (b) is not in a legible form or is in an information system.
- (2) If the material that is not in a legible form can be reproduced in a legible form, the authorized officer may require a person referred to in subsection (4) to produce the material or the relevant part of it in a legible form.
- (3) If the material is in an information system, the authorized officer may require a person referred to in subsection (4) to produce the material or the relevant

part of it in a form that enables it to be reproduced in a legible form.

- (4) The persons for the purposes of subsections (2) and (3) are—
 - (a) a person who appears to the authorized officer to be in charge of the premises; or
 - (b) a person who appears to the authorized officer to be able or likely to be able to produce the material—
 - (i) in a legible form; or
 - (ii) in a form that enables it to be reproduced in a legible form.
- (5) A person who obstructs an authorized officer in the exercise of a power under this section commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.
- (6) In this section—

authorized officer (獲授權人員) means an authorized officer (as defined by section 53ZF(6)) authorized by a warrant issued under section 53ZF.

Division 7—Confidentiality Requirements

53ZH. Interpretation of Division 7

- (1) In this Division—

information (資料) means a matter, record or document to which section 53ZI applies;

specified person (指明人士) means—

 - (a) the Registrar;

- (b) a person employed in the Companies Registry; or
 - (c) a person assisting the Registrar in the performance of a function under this Ordinance.
- (2) In this Division, a reference to disclosing information includes communicating it and allowing access to it (as the case requires).

53ZI. Confidentiality

- (1) This section applies to—
- (a) a matter that comes to a specified person's knowledge—
 - (i) in the course of performing a function under, or carrying into effect, a provision of this Ordinance; or
 - (ii) in the course of assisting another person in performing a function under, or carrying into effect, a provision of this Ordinance; and
 - (b) a record or document that has come into a specified person's possession because of a circumstance mentioned in paragraph (a).
- (2) A specified person—
- (a) must not communicate a matter referred to in subsection (1)(a)(i) or (ii) to a person other than the person to whom it relates; and
 - (b) must not allow another person to have access to a record or document referred to in subsection (1)(b).
- (3) A person who contravenes subsection (2) commits an offence and is liable—

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

53ZJ. Permitted disclosures by specified person

Despite section 53ZI, a specified person may—

- (a) disclose information—
 - (i) in performing a function under this Ordinance;
 - (ii) for the purpose of carrying into effect a provision of this Ordinance; or
 - (iii) for the purpose of doing anything required or authorized under this Ordinance;
- (b) disclose information that has already been made available to the public;
- (c) disclose information with a view to the institution of, or for the purposes of, any criminal proceedings in Hong Kong;
- (d) disclose information with a view to the commencement of, or for the purposes of, an investigation carried out in Hong Kong under the laws of Hong Kong;
- (e) disclose information for the purpose of seeking advice from, or giving of advice by, counsel, a solicitor or other professional adviser, who is acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance;

- (f) disclose information in connection with any judicial or other proceeding to which the specified person is a party; and
- (g) disclose information in accordance with an order of a court, magistrate or tribunal, or in accordance with a law of Hong Kong or a requirement imposed under a law of Hong Kong.

53ZK. Permitted disclosures by Registrar

- (1) Despite section 53ZI, the Registrar may—
 - (a) disclose information in the form of a summary compiled from any information in the Registrar's possession, including information provided by a person under a provision of this Ordinance, if the summary is so compiled as to prevent particulars relating to the business or identity, or the trading particulars, of any person from being ascertained from it;
 - (b) disclose information to the Review Tribunal;
 - (c) disclose information with the consent of the person from whom the information was obtained or received and, if the information relates to a different person, with the consent also of the person to whom the information relates;
 - (d) subject to subsection (2), disclose information to—
 - (i) the Financial Secretary;
 - (ii) the Monetary Authority;
 - (iii) the Insurance Authority;
 - (iv) the Securities and Futures Commission;
 - (v) the Privacy Commissioner for Personal Data;

- (vi) The Ombudsman;
- (vii) a public officer authorized under subsection (6);
- (viii) the HKICPA; or
- (ix) the Law Society;
- (e) subject to subsection (2), disclose information to an authority or regulatory organization outside Hong Kong that, in the opinion of the Registrar—
 - (i) performs functions similar to the functions of the Registrar under this Ordinance or regulates, supervises or investigates banking, insurance or other financial services or legal or accounting services; and
 - (ii) is subject to adequate secrecy provisions.
- (2) The Registrar may disclose information under subsection (1)(d) or (e) only if satisfied—
 - (a) that it is desirable or expedient that the information should be disclosed in the interest of licensees or their customers, or in the public interest; or
 - (b) that—
 - (i) the disclosure will enable or assist the recipient of the information to perform the recipient's functions; and
 - (ii) it is not contrary to the interest of licensees or their customers, or to the public interest, that the information is so disclosed.
- (3) The Registrar may, in disclosing any information under subsection (1), impose any condition that the Registrar considers appropriate.

- (4) Without limiting subsection (3), the Registrar may impose a condition that—
- (a) the person to whom the information is disclosed (*first person*) must not disclose the information to another person without the Registrar's consent; and
 - (b) a person obtaining or receiving the information, directly or indirectly, from the first person must not disclose the information to another person without the Registrar's consent.
- (5) Subsection (1)(c) does not require the Registrar to disclose in or in relation to a civil proceeding any information that the Registrar may disclose, or has disclosed, under that subsection.
- (6) The Financial Secretary may authorize a public officer as a person to whom information may be disclosed under subsection (1)(d)(vii).
- (7) A person who knowing of a condition imposed under subsection (4), contravenes the condition, or aids, abets, counsels or procures any person to contravene it, commits an offence.
- (8) A person who commits an offence under subsection (7) is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

Division 8—Miscellaneous

53ZL. Amendment of Schedule 3A

The Registrar of Companies may, by notice published in the Gazette, amend Schedule 3A.

53ZM. Regulations

The Registrar of Companies may make regulations for the better carrying out of the provisions and purposes of this Part.

53ZN. Offence of providing false or misleading information

- (1) A person commits an offence if the person in a specified document or for a specified purpose—
- (a) makes a statement that is false or misleading in a material particular; and
 - (b) knows that, or is reckless as to whether, the statement is false or misleading in a material particular.
- (2) A person commits an offence if the person in a specified document or for a specified purpose—
- (a) omits a material particular from a statement with the result that the statement is rendered false or misleading; and
 - (b) knows that, or is reckless as to whether, the material particular is omitted from the statement.
- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

- (4) In this section—

specified document (指明文件) means—

- (a) an application made to the Registrar under this Part;
- (b) a notification given to the Registrar under this Part; or
- (c) any other document provided to the Registrar for any purpose under this Part;

specified purpose (指明目的) means a purpose in connection with an application made to the Registrar under this Part or a notification given to the Registrar under this Part.

53ZO. Time limit for prosecution

Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings may be instituted for an offence under this Part, except for an indictable offence, within 12 months after the offence is discovered by, or comes to the notice of, the Registrar.

53ZP. Requirements for authentication and delivery of relevant instruments

- (1) The Registrar may, in relation to a relevant instrument—
 - (a) specify requirements for its authentication; and
 - (b) specify requirements as to the way it is to be delivered to the Registrar.
- (2) The Registrar may specify different requirements for different relevant instruments, or for different circumstances.
- (3) For the purposes of subsection (1)(a), the Registrar may—

- (a) require the relevant instrument to be authenticated by a particular person or a person of a particular description;
- (b) specify the means of authentication; and
- (c) require the relevant instrument to contain, or to be accompanied by—
 - (i) the name or licence number; or
 - (ii) the name and licence number, of the licensee to which the relevant instrument relates.

- (4) For the purposes of subsection (1)(b), the Registrar may—
 - (a) require the relevant instrument to be delivered in hard copy form, in electronic form or any other form;
 - (b) require the relevant instrument to be delivered by post or any other means;
 - (c) specify requirements as to the address to which the relevant instrument is to be delivered; and
 - (d) in the case of a relevant instrument to be delivered by electronic means, specify requirements as to the hardware and software to be used and the technical specifications.

- (5) In this section—

address (地址) includes a number, or any sequence or combination of letters, characters, numbers or symbols of any language, used for the purpose of sending or receiving a relevant instrument by electronic means;

electronic record (電子紀錄) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

in electronic form (電子形式) means in the form of an electronic record;

in hard copy form (印本形式) means in a paper form or a similar form capable of being read;

relevant instrument (有關文書) means—

- (a) an application made to the Registrar under this Part; or
 - (b) a notification or any other document required to be given, sent or otherwise provided to the Registrar under this Part.
- (6) For the purposes of this section—
- (a) a reference to delivering a relevant instrument to the Registrar includes—
 - (i) for an application—making it; and
 - (ii) for a notification or any other document—giving, sending or otherwise providing it;
 - (b) a relevant instrument is delivered in electronic form if it is delivered—
 - (i) by electronic means; or
 - (ii) by any other means while in electronic form; and
 - (c) a relevant instrument is delivered by electronic means if it is delivered in electronic form to an information system.

Division 9—Transitional Arrangements for Trust or Company Service Providers

53ZQ. Transitional arrangements

- (1) A person who satisfies the conditions in subsection (2) is deemed to have been granted a licence to carry on a trust or company service business with effect from the commencement date, and this Ordinance applies in relation to the person accordingly.
- (2) The conditions are that immediately before the commencement date, the person—
 - (a) was carrying on a trust or company service business; and
 - (b) for that purpose, held a valid business registration certificate.
- (3) If a deemed licensee does not apply for a licence under section 53G during the transitional period, a licence deemed to have been granted ceases to have effect when the earliest of the following events occurs—
 - (a) the transitional period ends;
 - (b) the deemed licensee ceases to carry on its trust or company service business;
 - (c) the deemed licensee ceases to hold a valid business registration certificate;
 - (d) an event referred to in section 53P occurs in relation to the deemed licensee.
- (4) If a deemed licensee applies for a licence under section 53G during the transitional period, a licence deemed to have been granted ceases to have effect when the earliest of the following events occurs—

- (a) the licence is granted;
- (b) the licence is not granted and the decision not to grant takes effect as a specified decision under section 75;
- (c) the application is withdrawn;
- (d) the deemed licensee ceases to carry on its trust or company service business;
- (e) the deemed licensee ceases to hold a valid business registration certificate;
- (f) an event referred to in section 53P occurs in relation to the deemed licensee.

(5) In this section—

commencement date (生效日期) means the date of commencement of this Part;

deemed licensee (當作持牌人) means a person to whom a licence is deemed to have been granted;

transitional period (過渡期) means the period of 120 days beginning on the commencement date.”.

19. **Part 6 heading amended (Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal)**

Part 6, heading—

Repeal

“(Financial Institutions)”.

20. **Section 54 amended (interpretation of Part 6)**

- (1) Section 54, definition of *specified authority*, paragraph (c)—

Repeal

“and”.

- (2) Section 54, definition of *specified authority*, paragraph (d)—

Repeal the semicolon

Substitute

“; and”.

- (3) Section 54, definition of *specified authority*, after paragraph (d)—

Add

“(e) in relation to a specified decision falling within paragraph (e) of the definition of *specified decision*, means the Registrar;”.

- (4) Section 54, definition of *specified decision*, after paragraph (d)—

Add

“(e) a decision of the Registrar—

- (i) not to grant a licence under section 53H;
- (ii) to impose a licence condition under section 53J;
- (iii) not to renew a licence under section 53K;
- (iv) to amend or impose a licence condition under section 53L or 53M;
- (v) to revoke or suspend a licence under section 53Q;
- (vi) not to give approval for a person to become an ultimate owner of a licensee under section 53S;
- (vii) not to give approval for a person to become a partner of a licensee under section 53T;
- (viii) not to give approval for a person to become a director of a licensee under section 53U; or

(ix) to exercise a power under section 53Z or 53ZD;”.

(5) Section 54, definition of *Tribunal*—

Repeal

“(Financial Institutions)”.

21. Part 6, Division 2 heading amended (Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal)

Part 6, Division 2, heading—

Repeal

“(Financial Institutions)”.

22. Section 55 amended (establishment of Tribunal)

(1) Section 55(1)—

Repeal

“(Financial Institutions)”.

(2) Section 55(1)—

Repeal

“(金融機構)”.

23. Section 77 amended (regulations by Chief Executive in Council)

Section 77(1)—

Repeal

“Part 5”

Substitute

“Parts 5 and 5A”.

24. Section 80 amended (giving of notices by relevant authorities)

After section 80(1)—

Add

“(1A) A notice or other document (however described) authorized or required to be given or sent by the Registrar to a person (*intended recipient*) under this Ordinance is given or sent, if—

- (a) for an individual, it is left at, or sent by post to, the individual’s last known—
 - (i) business address;
 - (ii) residential address; or
 - (iii) correspondence address;
- (b) for a partnership, it is left at, or sent by post to, the partnership’s last known—
 - (i) principal place of business; or
 - (ii) business address;
- (c) for a corporation that is a company as defined by section 2(1) of the Companies Ordinance (Cap. 622), it is left at, or sent by post to, the corporation’s—
 - (i) registered office (within the meaning of that Ordinance); or
 - (ii) last known business address;
- (d) for any other corporation, it is left at, or sent by post to, the corporation’s last known business address; or
- (e) for an intended recipient referred to in paragraph (a), (b), (c) or (d), it is sent by electronic means to

the intended recipient's last known electronic mail address.”.

25. Schedule 1 amended (interpretation)

(1) Schedule 1—

Repeal

“[s. 2]”

Substitute

“[ss. 2 & 5A]”.

(2) Schedule 1, English text, Part 1, section 1, definition of *terrorist financing*, paragraph (c)—

Repeal the full stop

Substitute a semicolon.

(3) Schedule 1, Part 1, section 1—

Add in alphabetical order

“*trust or company service* (信託或公司服務) means the provision, in Hong Kong, by a person, by way of business, of one or more of the following services to other persons—

- (a) forming corporations or other legal persons;
- (b) acting, or arranging for another person to act—
 - (i) as a director or a secretary of a corporation;
 - (ii) as a partner of a partnership; or
 - (iii) in a similar position in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address for a

corporation, a partnership or any other legal person or legal arrangement;

(d) acting, or arranging for another person to act—

- (i) as a trustee of an express trust or a similar legal arrangement; or
- (ii) as a nominee shareholder for a person other than a corporation whose securities are listed on a recognized stock market;

trust or company service business (信託或公司服務業務) means the business of providing a trust or company service.”.

(4) Schedule 1, Part 2, section 1, definition of *relevant authority*, paragraph (c)—

Repeal

“and”.

(5) Schedule 1, Part 2, section 1, definition of *relevant authority*, paragraph (d)—

Repeal the semicolon

Substitute

“; and”.

(6) Schedule 1, Part 2, section 1, definition of *relevant authority*, after paragraph (d)—

Add

“(e) in relation to a TCSP licensee, means the Registrar;”.

(7) Schedule 1, English text, Part 2, section 1, definition of *system operator*—

Repeal

“(Cap. 584).”

Substitute

“(Cap. 584);”.

- (8) Schedule 1, Part 2, section 1—

Add in alphabetical order

“*accounting professional* (會計專業人士) means—

- (a) a certified public accountant or a certified public accountant (practising), as defined by section 2(1) of the Professional Accountants Ordinance (Cap. 50);
- (b) a corporate practice as defined by section 2(1) of the Professional Accountants Ordinance (Cap. 50); or
- (c) a firm of certified public accountants (practising) registered under Part IV of the Professional Accountants Ordinance (Cap. 50);

director (董事), in relation to—

- (a) a corporation that is a company as defined by section 2(1) of the Companies Ordinance (Cap. 622)—means a director as defined by that section; and
- (b) any other corporation—means a person (by whatever name called) who occupies in the corporation a position similar to that of a director referred to in paragraph (a);

DNFBP (指定非金融業人士) means—

- (a) an accounting professional;
- (b) an estate agent;
- (c) a legal professional; or

- (d) a TCSP licensee;

Note—

DNFBP is an acronym for persons in the category described as designated non-financial businesses and professions in the Financial Action Task Force’s Recommendations.

estate agent (地產代理) means—

- (a) a licensed estate agent as defined by section 2(1) of the Estate Agents Ordinance (Cap. 511); or
- (b) a licensed salesperson as defined by section 2(1) of the Estate Agents Ordinance (Cap. 511);

Estate Agents Authority (地產代理監管局) means the body established by section 4 of the Estate Agents Ordinance (Cap. 511);

HKICPA (香港會計師公會) means the body known as the Hong Kong Institute of Certified Public Accountants incorporated by section 3 of the Professional Accountants Ordinance (Cap. 50);

Law Society (律師會) means The Law Society of Hong Kong;

legal professional (法律專業人士) means—

- (a) a solicitor as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159); or
- (b) a foreign lawyer as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);

recognized stock market (認可證券市場) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

Registrar (處長) means—

- (a) the Registrar of Companies; or

- (b) a person to whom the Registrar of Companies has, under section 53C(1), delegated his or her functions;

Registrar of Companies (公司註冊處處長) means the person appointed as the Registrar of Companies under section 21(1) of the Companies Ordinance (Cap. 622);

regulatory body (監管機構), in relation to—

- (a) an accounting professional—means the HKICPA;
(b) an estate agent—means the Estate Agents Authority; and
(c) a legal professional—means the Law Society;

secretary (秘書), in relation to—

- (a) a corporation that is a company as defined by section 2(1) of the Companies Ordinance (Cap. 622)—means a company secretary as defined by that section; and
(b) any other corporation—means a person (by whatever name called) who occupies in the corporation a position similar to that of a company secretary referred to in paragraph (a);

TCSP licensee (信託或公司服務持牌人) means—

- (a) a person who holds a licence granted under section 53G or renewed under section 53K; or
(b) a deemed licensee as defined by section 53ZQ(5).”.

26. **Schedule 2 amended (requirements relating to customer due diligence and record-keeping)**

(1) Schedule 2—

Repeal

“[ss. 3, 5, 6 & 7]”

Substitute

“[ss. 5, 5A, 6, 7 & 53Z]”.

- (2) Schedule 2, section 1(1), definition of *beneficial owner*, paragraph (a)(i)(A) and (B)—

Repeal

“not less than 10%”

Substitute

“more than 25%”.

- (3) Schedule 2, section 1(1), definition of *beneficial owner*, paragraph (b)(i)(A)—

Repeal

“not less than a 10%”

Substitute

“more than a 25%”.

- (4) Schedule 2, section 1(1), definition of *beneficial owner*, paragraphs (b)(i)(B) and (c)(i)—

Repeal

“not less than 10%”

Substitute

“more than 25%”.

- (5) Schedule 2, section 1(1), definition of *business relationship*—

Repeal

“a financial institution,”

Substitute

“a financial institution or a DNFBP,”.

- (6) Schedule 2, section 1(1), definition of *business relationship*, paragraph (b)—

Repeal

“the financial institution” (wherever appearing)

Substitute

“the financial institution or the DNFBP”.

- (7) Schedule 2, section 1(1)—

Repeal the definition of *Financial Action Task Force*

Substitute

“*Financial Action Task Force* (財務行動特別組織) means the Financial Action Task Force on Money Laundering established by the G-7 Summit held in Paris in 1989;”.

- (8) Schedule 2, section 1(1), definition of *occasional transaction*—

Repeal

“a financial institution”

Substitute

“a financial institution or a DNFBP”.

- (9) Schedule 2, section 1(1), definition of *occasional transaction*—

Repeal

“the financial institution”

Substitute

“the financial institution or the DNFBP”.

- (10) Schedule 2, section 1(1)—

Repeal the definition of *pre-existing customer*

Substitute

“*pre-existing customer* (先前客戶), in relation to—

- (a) a financial institution—means a customer with whom the financial institution has established a business relationship before the date of commencement of this Ordinance; and
- (b) a DNFBP—means a customer with whom the DNFBP has established a business relationship before the date of commencement of section 26 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance 2017 (of 2017);”.

- (11) Schedule 2, Chinese text, section 1(1), definition of *對等司法管轄區*, paragraph (a)—

Repeal

“特別行動”

Substitute

“行動特別”.

- (12) Schedule 2, section 1(1)—

Add in alphabetical order

“*customer* (客戶) includes a client;”.

- (13) Schedule 2, section 2(1)—

Repeal

“a financial institution”

Substitute

“a financial institution or a DNFBP”.

- (14) Schedule 2, section 2(1)(a)—

Repeal

“identifying”

Substitute

“for a financial institution or a DNFBP who is a TCSP licensee, identifying”.

- (15) Schedule 2, after section 2(1)(a)—

Add

“(ab) for a DNFBP who is an accounting professional, an estate agent or a legal professional, identifying the customer and verifying the customer’s identity on the basis of documents, data or information provided by—

- (i) a governmental body;
- (ii) the relevant regulatory body;
- (iii) an authority in a place outside Hong Kong that performs functions similar to those of the relevant regulatory body; or
- (iv) any other reliable and independent source that is recognized by the relevant regulatory body;”.

- (16) Schedule 2, section 2(1)(b)—

Repeal

“, subject to subsection (2),”.

- (17) Schedule 2, section 2(1)(b)—

Repeal

“the financial institution” (wherever appearing)

Substitute

“the financial institution or the DNFBP”.

- (18) Schedule 2, section 2(1)(b)—

Repeal

“it”

Substitute

“the financial institution or the DNFBP”.

- (19) Schedule 2, section 2(1)(c)—

Repeal

“the financial institution”

Substitute

“the financial institution or the DNFBP”.

- (20) Schedule 2, section 2(1)(d)(i)—

Repeal

“identifying”

Substitute

“for a financial institution or a DNFBP who is a TCSP licensee, identifying”.

- (21) Schedule 2, section 2(1)(d)(i)(D)—

Repeal

“; and”

Substitute a semicolon.

- (22) Schedule 2, after section 2(1)(d)(i)—

Add

“(ia) for a DNFBP who is an accounting professional, an estate agent or a legal professional, identifying the person and taking reasonable measures to verify the person’s identity on the basis of documents, data or information provided by—

- (A) a governmental body;
- (B) the relevant regulatory body;
- (C) an authority in a place outside Hong Kong that performs functions similar to those of the relevant regulatory body; or
- (D) any other reliable and independent source that is recognized by the relevant regulatory body; and”.

(23) Schedule 2, section 2—

Repeal subsection (2).

(24) Schedule 2, section 3(1)—

Repeal

“a financial institution must”

Substitute

“a financial institution or a DNFBP must”.

(25) Schedule 2, section 3(1)(b), (d) and (e)—

Repeal

“the financial institution”

Substitute

“the financial institution or the DNFBP”.

(26) Schedule 2, section 3(2)—

Repeal

“institution”

Substitute

“institution or a DNFBP”.

(27) Schedule 2, section 3(3)—

Repeal

“institution”

Substitute

“institution or a DNFBP”.

(28) Schedule 2, section 3(4)—

Repeal

“institution”

Substitute

“institution or a DNFBP”.

(29) Schedule 2, section 3(4)—

Repeal

“it” (wherever appearing)

Substitute

“the financial institution or the DNFBP”.

(30) Schedule 2, section 4(1)—

Repeal

“institution”

Substitute

“institution or a DNFBP”.

(31) Schedule 2, section 4(1)—

Repeal

“(c) and (d)”

Substitute

“(ab), (c) and (d)”.

(32) Schedule 2, section 4(1)—

Repeal

“it”

Substitute

“the financial institution or the DNFBP”.

- (33) Schedule 2, section 4(2)—

Repeal

“a financial institution”

Substitute

“a financial institution or a DNFBP”.

- (34) Schedule 2, English text, section 4(2)—

Repeal

“its”

Substitute

“the customer’s”.

- (35) Schedule 2, section 4(2)—

Repeal

“the financial institution”

Substitute

“the financial institution or the DNFBP”.

- (36) Schedule 2, section 4(4)—

Repeal

“institution”

Substitute

“institution or a DNFBP”.

- (37) Schedule 2, section 4(4)—

Repeal

“(c) and (d)”

Substitute

“(ab), (c) and (d)”.

- (38) Schedule 2, section 4(4)—

Repeal

“it”

Substitute

“the financial institution or the DNFBP”.

- (39) Schedule 2, section 5(1)—

Repeal

“A financial institution”

Substitute

“A financial institution or a DNFBP”.

- (40) Schedule 2, section 5(1)—

Repeal

“its business”

Substitute

“the business”.

- (41) Schedule 2, section 5(1)(a)—

Repeal

“the financial institution”

Substitute

“the financial institution or the DNFBP”.

- (42) Schedule 2, section 5(1)(b)—

Repeal

“institution’s”

Substitute

“institution’s or the DNFBP’s”.

- (43) Schedule 2, English text, section 5(1)(b)—

Repeal

“its”

Substitute

“the financial institution’s or the DNFBP’s”.

- (44) Schedule 2, section 5(1)(c)—

Repeal

“its”

Substitute

“the”.

- (45) Schedule 2, section 5(2)—

Repeal

“a financial institution”

Substitute

“a financial institution or a DNFBP”.

- (46) Schedule 2, section 5(2)—

Repeal

“its”

Substitute

“the”.

- (47) Schedule 2, English text, section 5(2)—

Repeal

“it” (wherever appearing)

Substitute

“the financial institution or the DNFBP”.

- (48) Schedule 2, section 5(2)—

Repeal

“the financial institution is”

Substitute

“the financial institution or the DNFBP is”.

- (49) Schedule 2, section 5(3)(a)—

Repeal

“a financial institution”

Substitute

“a financial institution or a DNFBP”.

- (50) Schedule 2, section 5(3)(b)—

Repeal

“a financial institution”

Substitute

“a financial institution or a DNFBP”.

- (51) Schedule 2, English text, section 5(3)(b)—

Repeal

“the financial institution”

Substitute

“the financial institution or the DNFBP”.

- (52) Schedule 2, section 5(3)(b)—

Repeal

“its possession”

Substitute

“the financial institution’s or the DNFBP’s possession”.

(53) Schedule 2, section 5(3)(c)—

Repeal

“a financial institution”

Substitute

“a financial institution or a DNFBP”.

(54) Schedule 2, section 5(3)—

Repeal

“the financial institution must”

Substitute

“the financial institution or the DNFBP must”.

(55) Schedule 2, section 5(3)—

Repeal

“its business”

Substitute

“the business”.

(56) Schedule 2, section 6(1)—

Repeal

“a financial institution”

Substitute

“a financial institution or a DNFBP”.

(57) Schedule 2, section 6(1)(a)(ii)—

Repeal

“institution’s”

Substitute

“institution’s or the DNFBP’s”.

(58) Schedule 2, English text, section 6(1)(a)(ii)—

Repeal

“its”

Substitute

“the financial institution’s or the DNFBP’s”.

(59) Schedule 2, section 6(2)—

Repeal

“institution”

Substitute

“institution or a DNFBP”.

(60) Schedule 2, section 6(2)—

Repeal

“it”

Substitute

“the financial institution or the DNFBP”.

(61) Schedule 2, English text, section 6(2)—

Repeal

“its”

Substitute

“the”.

(62) Schedule 2, section 8—

Repeal

“institution”

Substitute

“institution or a DNFBP”.

(63) Schedule 2, section 9—

Repeal

“financial institution”

Substitute

“financial institution or a DNFBP”.

(64) Schedule 2, section 9(a)—

Repeal

“2(1)(a)”

Substitute

“2(1)(a) or (ab)”.

(65) Schedule 2, section 9(b)—

Repeal

“all the information provided by the customer”

Substitute

“information relating to the customer that has been obtained
by the financial institution or the DNFBP”.

(66) Schedule 2, section 10(1)—

Repeal

“institution”

Substitute

“institution or a DNFBP”.

(67) Schedule 2, section 10(1)—

Repeal

“its possession”

Substitute

“the financial institution’s or the DNFBP’s possession”.

(68) Schedule 2, section 10(1)—

Repeal

“it”

Substitute

“the financial institution or the DNFBP”.

(69) Schedule 2, section 10(1)(a)—

Repeal

“its senior”

Substitute

“the senior”.

(70) Schedule 2, section 10(2)—

Repeal

“institution”

Substitute

“institution or a DNFBP”.

(71) Schedule 2, English text, section 10(2)—

Repeal

“its possession”

Substitute

“the financial institution’s or the DNFBP’s possession”.

(72) Schedule 2, section 10(2)—

Repeal

“it” (wherever appearing)

Substitute

“the financial institution or the DNFBP”.

(73) Schedule 2, section 10(2)(a)—

Repeal

“its senior”

Substitute

“the senior”.

(74) Schedule 2, section 12—

Repeal subsection (1).

(75) Schedule 2, section 12(3)—

Repeal

“Before”

Substitute

“Subject to subsection (3A), before”.

(76) Schedule 2, section 12(3)(b)—

Repeal

“; and”

Substitute a semicolon.

(77) Schedule 2, section 12(3)(c)—

Repeal

“or, in the absence of an address”.

(78) Schedule 2, section 12(3)(c)—

Repeal the full stop

Substitute a semicolon.

(79) Schedule 2, after section 12(3)(c)—

Add

“(d) the recipient’s name; and

(e) the number of the recipient’s account maintained with the beneficiary institution and to which the money for the wire transfer is paid or, in the absence of such an account, a unique reference number assigned to the wire transfer by the beneficiary institution.”.

(80) Schedule 2, after section 12(3)—

Add

“(3A) Subsection (3)(c) does not apply to a wire transfer involving an amount below \$8,000 or an equivalent amount in another currency.”.

(81) Schedule 2, section 12—

Repeal subsection (4).

(82) Schedule 2, section 12(5)—

Repeal

everything after “the wire”

Substitute

“transfer—

(a) for a wire transfer involving an amount equal to or above \$8,000 or an equivalent amount in another currency—the information recorded under subsection (3)(a), (b), (c), (d) and (e) in relation to the transfer; and

(b) for a wire transfer involving an amount below \$8,000 or an equivalent amount in another currency—the information recorded under

subsection (3)(a), (b), (d) and (e) in relation to the transfer.”.

- (83) Schedule 2, section 12(10)—

Repeal

“beneficiary institution”

Substitute

“beneficiary institution or an intermediary institution”.

- (84) Schedule 2, section 15—

Repeal

“A financial institution”

Substitute

“A financial institution or a DNFBP”.

- (85) Schedule 2, section 15—

Repeal

“authority”

Substitute

“authority or, in the case of a DNFBP who is an accounting professional, an estate agent or a legal professional, by the relevant regulatory body,”.

- (86) Schedule 2, section 15—

Repeal

“to the financial institution”

Substitute

“to the financial institution or the DNFBP”.

- (87) Schedule 2, section 15(a)(i)—

Repeal

“its”

Substitute

“the”.

- (88) Schedule 2, section 15(b)(i)—

Repeal

“its”

Substitute

“the”.

- (89) Schedule 2, section 15(b)(ii)—

Repeal

“the financial institution”

Substitute

“the financial institution or the DNFBP”.

- (90) Schedule 2, section 15(b)(ii)—

Repeal

“it”

Substitute

“the financial institution or the DNFBP”.

- (91) Schedule 2, section 16—

Repeal

“institution”

Substitute

“institution or a DNFBP”.

- (92) Schedule 2, section 18(3)(a)—

Repeal subparagraphs (i), (ii) and (iii)

Substitute

- “(i) an accounting professional;
(ii) a legal professional;
(iii) a TCSP licensee;”.

(93) Schedule 2, section 18(3)(a)—

Repeal subparagraph (iv).

(94) Schedule 2, section 18(3)—

Repeal paragraph (b)

Substitute

“(b) an intermediary financial institution;”.

(95) Schedule 2, section 18(3)(c)—

Repeal

“a financial institution mentioned in paragraph (b)”

Substitute

“an intermediary financial institution”.

(96) Schedule 2, section 18(3)(c)(iii)—

Repeal the full stop

Substitute

“; or”.

(97) Schedule 2, after section 18(3)(c)—

Add

“(d) an institution that—

- (i) is a related foreign financial institution in relation to the financial institution; and
(ii) satisfies the conditions in subsection (3A).”.

(98) Schedule 2, after section 18(3)—

Add

“(3A) The conditions are that—

- (a) the related foreign financial institution is required under group policy—
(i) to have measures in place to ensure compliance with requirements similar to the requirements imposed under this Schedule; and
(ii) to implement programmes against money laundering and terrorist financing; and
(b) the related foreign financial institution is supervised for compliance with the requirements mentioned in paragraph (a) at a group level—
(i) by a relevant authority; or
(ii) by an authority in an equivalent jurisdiction that performs, in relation to the holding company or the head office of the financial institution, functions similar to those of a relevant authority under this Ordinance.”.

(99) Schedule 2, section 18(4)(a)—

Repeal

“and”.

(100) Schedule 2, section 18(4)(b)—

Repeal the full stop

Substitute

“; and”.

(101) Schedule 2, after section 18(4)(b)—

Add

“(c) if the intermediary is a specified intermediary under subsection (3)(d), take reasonable measures to mitigate the risk of money laundering or terrorist financing involved.”.

(102) Schedule 2, section 18—

Repeal subsection (5).

(103) Schedule 2, section 18—

Repeal subsection (7)

Substitute

“(7) In this section—

group of companies (公司集團) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);

group policy (集團政策) means a policy of the group of companies to which the financial institution belongs that applies to—

(a) the financial institution; and

(b) the relevant related foreign financial institution;

holding company (控股公司), in relation to a financial institution, means a holding company within the meaning of section 13 of the Companies Ordinance (Cap. 622);

intermediary financial institution (中介人金融機構) means a financial institution that is—

(a) an authorized institution;

(b) a licensed corporation;

(c) an authorized insurer;

(d) an appointed insurance agent; or

(e) an authorized insurance broker;

related foreign financial institution (相關外地金融機構), in relation to a financial institution, means another institution that—

(a) carries on, in a place outside Hong Kong, a business similar to that carried on by an intermediary financial institution; and

(b) falls within any of the following descriptions—

(i) it is within the same group of companies as the financial institution;

(ii) if the financial institution is incorporated in Hong Kong, it is a branch of the financial institution;

(iii) if the financial institution is incorporated outside Hong Kong—

(A) it is the head office of the financial institution; or

(B) it is a branch of the head office of the financial institution.”.

(104) Schedule 2, section 19, heading—

Repeal

“institutions”

Substitute

“institutions and DNFBPs”.

(105) Schedule 2, section 19(1)—

Repeal

“institution”

Substitute

“institution or a DNFBP”.

- (106) Schedule 2, section 19(3)—
Repeal
“institution”
Substitute
“institution or a DNFBP”.
- (107) Schedule 2, English text, section 19(3)—
Repeal
“its”
Substitute
“the”.
- (108) Schedule 2, section 20(1)—
Repeal
“institution”
Substitute
“institution or a DNFBP”.
- (109) Schedule 2, section 20(1)(a)—
Repeal
“it”
Substitute
“the financial institution or the DNFBP”.
- (110) Schedule 2, section 20(1)(b)—
Repeal
“of its customers”
Substitute
“customer”.

- (111) Schedule 2, English text, section 20(4)—
Repeal
“A relevant authority”
Substitute
“A relevant authority or a regulatory body”.
- (112) Schedule 2, section 20(4)—
Repeal
“a financial institution”
Substitute
“a financial institution or a DNFBP”.
- (113) Schedule 2, section 20(4)—
Repeal
“the financial institution”
Substitute
“the financial institution or the DNFBP”.
- (114) Schedule 2, section 20(4)—
Repeal
“the relevant authority” (wherever appearing)
Substitute
“the relevant authority or the regulatory body”.
- (115) Schedule 2, section 20(5)—
Repeal
“institution”
Substitute
“institution or a DNFBP”.

(116) Schedule 2, after section 22(2)—

Add

“(2A) A DNFBP incorporated in Hong Kong must ensure that—

- (a) its branches; and
- (b) its subsidiary undertakings that carry on the same business as a DNFBP in a place outside Hong Kong,

have procedures in place to ensure compliance with, to the extent permitted by the law of that place, requirements similar to those imposed under Parts 2 and 3 of this Schedule that are applicable to the DNFBP.

(2B) If the law of the place at which a branch or a subsidiary undertaking of a DNFBP carries on business does not permit the application of any procedures relating to any of the requirements referred to in subsection (2A), the DNFBP must—

- (a) inform the relevant authority, or if applicable, the relevant regulatory body, accordingly; and
- (b) take additional measures to effectively mitigate the risk of money laundering and terrorist financing faced by the branch or subsidiary undertaking as a result of its inability to comply with the requirement.”.

(117) Schedule 2, section 22(3), definition of *branch*—

Repeal

“a financial institution”

Substitute

“a financial institution or a DNFBP”.

(118) Schedule 2, section 22(3), definition of *branch*—

Repeal

“the financial institution” (wherever appearing)

Substitute

“the financial institution or the DNFBP”.

(119) Schedule 2, section 23, heading—

Repeal

“institutions”

Substitute

“institutions and DNFBPs”.

(120) Schedule 2, section 23—

Repeal

“institution”

Substitute

“institution or a DNFBP”.

27. Schedule 3A added

After Schedule 3—

Add

“Schedule 3A

[ss. 53C, 53E, 53G, 53K,
53V & 53ZL]

Fees in relation to Part 5A

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions)
(Amendment) Bill 2017

Part 2
Clause 27

90

Column 1 Item	Column 2 Particulars	Column 3 Fee \$
1.	For certifying a copy of an entry in or extract from the register	260 per copy
2.	For providing a certificate referred to in section 53E(1)(b)	385 per copy
3.	Application for the grant of a licence plus for each person who is subject to the fit and proper test	3,440 975
4.	Application for the renewal of a licence plus for each person who is subject to the fit and proper test	2,910 975
5.	Application for an approval to become an ultimate owner of a TCSP licensee	1,140 for each person in relation to whom the application is made
6.	Application for an approval to become a partner of a TCSP licensee	1,140 for each person in relation to whom the application is

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions)
(Amendment) Bill 2017

Part 2
Clause 28

91

Column 1 Item	Column 2 Particulars	Column 3 Fee \$
		made
7.	Application for an approval to become a director of a TCSP licensee	1,140 for each person in relation to whom the application is made".

28. Schedule 4 amended (provisions relating to Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal)

(1) Schedule 4, heading—

Repeal

“(Financial Institutions)”.

(2) Schedule 4, section 6(11), definition of *representative*, paragraph (c)—

Repeal

“and”.

(3) Schedule 4, section 6(11), definition of *representative*, paragraph (d)—

Repeal the full stop

Substitute

“; and”.

(4) Schedule 4, section 6(11), definition of *representative*, after paragraph (d)—

Add

“(e) in relation to the Registrar, means a public officer employed in the Companies Registry.”.

Part 3

**Amendments to Regulatory Ordinances etc. and
Consequential Amendments**

Division 1—Amendments to Regulatory Ordinances

**Subdivision 1—Amendments to Professional Accountants
Ordinance (Cap. 50)**

29. Section 18B amended (Council’s power to give directions)

Section 18B(1)(c)—

Repeal

“(xii)”

Substitute

“(xv)”.

30. Section 34 amended (disciplinary provisions)

(1) Section 34(1)(a)(xi)—

Repeal

“; or”

Substitute a semicolon.

(2) After section 34(1)(a)(xii)—

Add

“(xiii) failed to comply with an AML/CTF requirement;

(xiv) while being a director of a corporate practice—

- (A) caused or allowed a breach of an AML/CTF requirement by the corporate practice; or
- (B) failed to take reasonable steps to prevent such a breach; or
- (xv) while being a director of a corporation that is a TCSP licensee—
 - (A) caused or allowed a breach of an AML/CTF requirement by the corporation; or
 - (B) failed to take reasonable steps to prevent such a breach;”.
- (3) Section 34(1)(b)(iv)—
Repeal
“; or”
Substitute a semicolon.
- (4) Section 34(1)(b)(v)—
Repeal
“individual,”
Substitute
“individual; or”.
- (5) After section 34(1)(b)(v)—
Add
“(vi) failed to comply with an AML/CTF requirement.”.
- (6) After section 34(3)—
Add
“(4) In this section—
accounting professional (會計專業人士) has the meaning given by section 1 of Part 2 of Schedule 1 to the AMLO;

AML/CTF requirement (反洗錢及恐怖分子集資規定) means a requirement that—

- (a) is set out in Part 2, 3 or 4 of Schedule 2 to the AMLO; and
- (b) applies—
 - (i) for subsection (1)(a)(xiii) and (xiv) and (b)(vi)—under section 5A(3) of the AMLO to an accounting professional; and
 - (ii) for subsection (1)(a)(xv)—under section 5A(5) of the AMLO to a TCSP licensee;

AMLO (《打擊洗錢條例》) means the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615);

director (董事) has the meaning given by section 1 of Part 2 of Schedule 1 to the AMLO;

TCSP licensee (信託或公司服務持牌人) has the meaning given by section 1 of Part 2 of Schedule 1 to the AMLO.”.

31. Section 35B amended (consent order)

Section 35B(1)—

Repeal

“or (x)”

Substitute

“, (x), (xiii), (xiv) or (xv)”.

32. Section 41A amended (application of disciplinary provisions to firms)

(1) Section 41A—

Repeal

“and (xii)”

Substitute

“, (xii), (xiv) and (xv)”.

(2) Section 41A—

Repeal

“34(1)(b)(iii)”

Substitute

“34(1)(b)(iii) and (vi)”.

33. Section 42C amended (appointment of Investigation Committee)

(1) Section 42C(2)(a)(i)—

Repeal

“or (xii)”

Substitute

“, (xii), (xiv) or (xv)”.

(2) Section 42C(2)(a)(ii)—

Repeal

“or (x)”

Substitute

“, (x) or (xiii)”.

**Subdivision 2—Amendments to Legal Practitioners Ordinance
(Cap. 159)**

34. Section 9A amended (complaint about conduct of solicitor, foreign lawyer, etc.)

(1) After section 9A(1)—

Add

“(1AA) Without limiting subsection (1), where the Council considers that the conduct involves an alleged breach referred to in subsection (1AAB), the Council must submit the alleged breach to the Tribunal Convenor for the purpose of inquiring into or investigating the conduct.

(1AAB) An alleged breach for the purposes of subsection (1AA) is that a solicitor or foreign lawyer—

(a) failed to comply with an AML/CTF requirement; or

(b) while being a director of a corporation that is a TCSP licensee—

(i) caused or allowed a breach of an AML/CTF requirement by the corporation; or

(ii) failed to take reasonable steps to prevent such a breach.

(1AAC) Section 7(5A) of the AMLO applies in relation to an inquiry or investigation referred to in subsection (1AA).”.

(2) After section 9A(2)—

Add

“(3) In this section—

AML/CTF requirement (反洗錢及恐怖分子集資規定) means a requirement that—

- (a) is set out in Part 2, 3 or 4 of Schedule 2 to the AMLO; and
- (b) applies—
 - (i) for subsection (1AAB)(a)—under section 5A(3) of the AMLO to a legal professional; and
 - (ii) for subsection (1AAB)(b)—under section 5A(5) of the AMLO to a TCSP licensee;

AMLO (《打擊洗錢條例》) means the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615);

director (董事) has the meaning given by section 1 of Part 2 of Schedule 1 to the AMLO;

legal professional (法律專業人士) has the meaning given by section 1 of Part 2 of Schedule 1 to the AMLO;

TCSP licensee (信託或公司服務持牌人) has the meaning given by section 1 of Part 2 of Schedule 1 to the AMLO.”.

Subdivision 3—Amendments to Estate Agents Ordinance (Cap. 511)

35. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

“**AML/CTF requirement** (反洗錢及恐怖分子集資規定) means a requirement that—

- (a) is set out in Part 2, 3 or 4 of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615); and
- (b) applies under section 5A(4) of that Ordinance to an estate agent as defined by section 1 of Part 2 of Schedule 1 to that Ordinance;”.

36. Section 27 amended (suspension or revocation of licences)

- (1) Section 27(2)(f)—

Repeal

“or”.

- (2) Section 27(2)(g)—

Repeal the full stop

Substitute

“; or”.

- (3) After section 27(2)(g)—

Add

“(h) if the relevant licensee has contravened or failed to comply with an AML/CTF requirement.”.

37. Section 28 amended (investigations)

Section 28(1)—

Repeal

“Ordinance may”

Substitute

“Ordinance, or an AML/CTF requirement, may”.

38. Section 29 amended (complaints)

- (1) Section 29(1)(c)—

Repeal

“or”.

- (2) Section 29(1)(d)—

Repeal

“specified,”

Substitute

“specified; or”.

- (3) After section 29(1)(d)—

Add

“(e) has failed to comply with, or has contravened, an AML/CTF requirement,”.

- (4) Section 29(2)—

Repeal

“(c) or (d)”

Substitute

“(c), (d) or (e)”.

**Division 2—Amendment to Resolution of the Legislative
Council Establishing Companies Registry Trading Fund
(Cap. 430 sub. leg. B)**

**39. Schedule 1 amended (services to be provided by the trading
fund)**

Schedule 1, after section 1—

Add

- “1A. Administering and enforcing the provisions of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) applicable to a trust or company service business as defined by section 1 of Part 1 of Schedule 1 to that Ordinance.”.

Division 3—Consequential Amendments

Subdivision 1—Amendment to Insurance Ordinance (Cap. 41)

40. Section 53A amended (secrecy)

Section 53A(3)(fa)—

Repeal

“(Financial Institutions)” (wherever appearing).

Subdivision 2—Amendment to Post Office Ordinance (Cap. 98)

41. Section 7 amended (exemption from liability)

Section 7(4)(b)—

Repeal

“(Financial Institutions)”.

Subdivision 3—Amendment to Banking Ordinance (Cap. 155)

42. Section 120 amended (official secrecy)

Section 120(5)(db)—

Repeal

“(Financial Institutions)” (wherever appearing).

**Subdivision 4—Amendments to Securities and Futures
Ordinance (Cap. 571)**

**43. Section 130 amended (suitability of premises for keeping
records or documents)**

Section 130(1)—

Repeal

“(Financial Institutions)”.

**44. Section 180 amended (supervision of intermediaries and their
associated entities)**

Section 180(2)(ba)—

Repeal

“(Financial Institutions)”.

45. Section 378 amended (preservation of secrecy, etc.)

Section 378(3)(ea)—

Repeal

“(Financial Institutions)” (wherever appearing).

46. Section 381B amended (disclosure by Monetary Authority)

Section 381B(1)(f)—

Repeal

“(Financial Institutions)” (wherever appearing).

47. Schedule 1 amended (interpretation and general provisions)

Schedule 1, Part 1, section 1, definition of *relevant provisions*,
paragraph (d)—

Repeal

“(Financial Institutions)”.

**Subdivision 5—Amendments to Payment Systems and Stored
Value Facilities Ordinance (Cap. 584)**

48. Section 50 amended (confidentiality)

Section 50(3)(j)—

Repeal

“(Financial Institutions)”.

49. Schedule 3 amended (minimum criteria)

Schedule 3, Part 2, section 6(2)(a)—

Repeal

“(Financial Institutions)”.

Explanatory Memorandum

The object of this Bill is to amend the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) (*principal Ordinance*) to meet Hong Kong's obligations under the Financial Action Task Force's Recommendations (*FATF Recommendations*) for combating terrorist financing and money laundering.

2. Accordingly, the Bill proposes—
 - (a) to apply the customer due diligence and record-keeping requirements (*AML/CTF requirements*) in the principal Ordinance (currently applicable only to financial institutions (*FIs*)) to *accounting professionals* (as defined), estate agents, solicitors and foreign lawyers (defined as *legal professionals*) and trust or company service providers (collectively called designated non-financial businesses and professions (*DNFBPs*)) when conducting certain transactions; and
 - (b) to make miscellaneous amendments to the existing requirements relating to FIs.
3. For the first 3 sectors, the AML/CTF requirements will be enforced by amendments to the existing regulatory framework in the Ordinances that regulate them. That is, the Professional Accountants Ordinance (Cap. 50), the Estate Agents Ordinance (Cap. 511) and the Legal Practitioners Ordinance (Cap. 159) (*regulatory Ordinances*).
4. Trust or company service providers are not currently regulated and the Bill proposes to establish a licensing regime, to be administered by the Registrar of Companies (*CR*), as the means for enforcing the AML/CTF requirements.

5. The amendments to the principal Ordinance are in Part 2 of the Bill. Part 3 of the Bill contains amendments to the regulatory Ordinances, an amendment to a Resolution of the Legislative Council (establishing the Companies Registry Trading Fund) and consequential amendments to some other Ordinances (*Related Amendments*).

Part 2 of Bill—Amendments to Principal Ordinance

6. Clauses 3 and 4 amend the long title and the short title to reflect the enhanced scope of the principal Ordinance.
7. Clause 5 amends section 4 to include regulatory bodies among the persons who are given immunity in the performance of their statutory functions.
8. Clause 7 adds a new section 5A to provide that the AML/CTF requirements in Parts 2, 3 and 4 of Schedule 2 apply to the DNFBPs.
9. Clause 8 amends section 7 to enable the CR and the regulatory bodies to publish guidelines for the purposes of Schedule 2 and adds a new subsection (5A) to section 7 to provide that section 7 does not prevent The Law Society of Hong Kong or any other body that has the function of considering whether a legal professional has contravened an AML/CTF requirement from having regard to any practice directions that give guidance about those requirements.
10. Clauses 9 to 13 amend sections 9 to 13 to extend to licensed trust or company service providers (*TCSP licensees*) the provisions relating to—
 - (a) entry into business premises for routine inspections;
 - (b) offences relating to those inspections; and

- (c) the appointment of investigators, their powers and offences for non-compliance with requirements made by investigators.
11. Clause 14 amends the definition of *ultimate owner* in section 24 to reflect the prevailing minimum percentages for share holdings and voting rights of controlling persons in international standards.
12. Clause 15(2) and (3) amends section 30(4) to include all offences under section 14 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) as part of the fit and proper test for licensees of money services.
13. Clause 16 adds a new section 39A to require a licensee of a money service to display the original of the licence at the licensed premises and to make non-compliance an offence, and clause 17 amends section 43 to include non-compliance as a ground for disciplinary action.
14. Clause 18 adds a new Part 5A to provide for the regulation of trust or company service providers. The new Part corresponds to Part 5 except for differences specific to trust or company service providers and technical and drafting changes to the organization and language. The following is a brief description of the proposed new sections in Part 5A—
- (a) section 53A sets out the definitions relevant to Part 5A;
 - (b) section 53B states to whom Part 5A does not apply;
 - (c) section 53C empowers the CR to delegate the functions under the principal Ordinance except the power to delegate or the power to amend new Schedule 3A (which sets out fees payable under Part 5A) or make regulations;

- (d) section 53D requires the CR to maintain a register of licensees, which should be made available for public inspection;
- (e) section 53E provides for admission into evidence of certified copies of entries in and extracts from the register and the evidential value of those copies;
- (f) section 53F makes it an offence for a person to carry on the business of providing a trust or company service without a licence;
- (g) section 53G provides for the CR's power to grant licences and how an application for the grant of a licence should be made;
- (h) section 53H states that the grant is subject to the applicant satisfying the fit and proper test and section 53I sets out the elements of the fit and proper test;
- (i) section 53J empowers the CR to impose conditions when granting a licence;
- (j) section 53K provides for the renewal of a licence and section 53L empowers the CR to impose conditions when renewing a licence;
- (k) section 53M empowers the CR to amend previously imposed conditions;
- (l) section 53N specifies the form of a licence, section 53O its validity period and section 53P the events on the occurrence of which a licence ceases to be valid;
- (m) section 53Q empowers the CR to revoke or suspend a licence in certain situations and section 53R sets out the procedure for revocation or suspension;
- (n) sections 53S, 53T and 53U provide that CR's approval is required to hold certain positions in a TCSP licensee

- after the licence is granted and that it is an offence to do so without that approval and section 53V states how to apply for approval.
- (o) sections 53W and 53X require the CR to be notified of changes in the particulars given in licence applications and a TCSP licensee's intended cessation of business and make the failure to do so an offence and section 53Y states how the CR is to be notified;
 - (p) sections 53Z to 53ZD relate to the CR's disciplinary powers; section 53Z empowers the CR to take specified disciplinary action (including imposing a pecuniary penalty) against TCSP licensees in certain situations; section 53ZA sets out the procedure for disciplinary action; section 53ZB requires the CR to publish guidelines about the power to impose a pecuniary penalty; section 53ZC provides for the registration in the Court of First Instance of an order to pay a pecuniary penalty for it to be enforced as an order of the Court; section 53ZD empowers the CR to exercise disciplinary powers against a director of a corporate TCSP licensee (as defined in that section);
 - (q) section 53ZE empowers the CR to appoint authorized officers and section 53ZF empowers a magistrate, if satisfied there is reason to suspect the commission on any premises of an offence under section 53F (carrying on a trust or company service business without a licence), to issue a warrant authorizing an authorized officer to enter and search the premises and take the actions specified in section 53ZF and in section 53ZG;
 - (r) section 53ZI requires the CR, officers employed in the Companies Registry and persons assisting the CR to preserve confidentiality regarding information that

- comes to their knowledge in performing functions under the principal Ordinance and sections 53ZJ and 53ZK set out the disclosures that are permitted;
- (s) section 53ZL empowers the CR to amend new Schedule 3A (which sets out fees payable under Part 5A) and section 53ZM empowers the CR to make regulations for the purposes of Part 5A;
 - (t) section 53ZN creates an offence for giving false or misleading information for various purposes under Part 5A;
 - (u) section 53ZO extends the time limit (specified in the Magistrates Ordinance (Cap. 227)) for prosecuting a summary offence under Part 5A;
 - (v) section 53ZP sets out how documents (including applications) can be conveyed to the CR for the purposes of Part 5A; and
 - (w) section 53ZQ contains transitional arrangements applicable to trust or company service providers who are carrying on a trust or company service business when the restriction on carrying on a trust or company service business without a licence in section 53F comes into effect and the circumstances in which the deemed status ends, depending on whether or not a person applies for a licence during the transitional period of 120 days specified in section 53ZQ.
15. Clauses 19, 20(5), 21 and 22 contain amendments to the name of the review tribunal established under section 55 along the lines of the amendment to the short title of the principal Ordinance.
16. Clause 20(1), (2), (3) and (4) amends certain definitions in section 54 to reflect the decisions made by the CR under new Part 5A.

17. Clause 23 amends section 77(1) to exclude regulations for the purposes of new Part 5A from the Chief Executive in Council's power to make regulations.
18. Clause 24 adds a new subsection (1A) to section 80 to include notices etc. given by the CR in the provision that states how notices are to be given by relevant authorities.
19. Clause 25 amends Schedule 1 (which contains definitions applicable to the principal Ordinance) to include the definitions relevant to the application of the AML/CTF requirements to DNFBPs. The more significant ones are the definitions of *accounting professional*, *estate agent*, *legal professional* and *TCSP licensee* (collectively defined as *DNFBPs*) and *regulatory body*.
20. Clause 26 amends Schedule 2, which contains requirements relating to customer due diligence and record-keeping. Most of the amendments are for the purpose of extending those requirements to DNFBPs. The other amendments to the various sections in that Schedule are in—
 - (a) clause 26(2) to (4), which amends the definition of *beneficial owner* in section 1(1) to increase the minimum share holding to more than 25% to reflect international standards;
 - (b) clause 26(10), which defines who a pre-existing customer is in relation to a DNFBP;
 - (c) clause 26(12), which adds a definition of *customer* (to include a client) because it is more common to use the term “client” in relation to DNFBPs;
 - (d) clause 26(15) and (22), which sets out the means of customer identification for DNFBPs who are accounting professionals, estate agents or legal professionals.

- (e) clause 26(65), which amends section 9 to reflect the technological developments in the methods used by FIs for obtaining information relating to customers;
 - (f) clause 26(74) to (83), which amends section 12 to reflect the current requirements relating to wire transfers in the FATF Recommendations;
 - (g) clause 26(92), which amends the description of a specified intermediary in section 18(3)(a) to substitute references to 3 types of DNFBPs;
 - (h) clause 26(93) to (103), which amends section 18 to add a related foreign financial institution of an FI to the type of intermediaries through whom a FI can carry out customer due diligence measures and makes other consequential amendments to that section.
21. Clause 27 adds a new Schedule 3A to set out the fees payable for various matters under new Part 5A.
22. Clause 28 amends Schedule 4 to include in the definition of *representative* a public officer employed in the Companies Registry.

Part 3 of Bill—Related Amendments

23. Clause 30 amends section 34 of the Professional Accountants Ordinance (Cap. 50) to include failure by an accounting professional (as defined) to comply with an AML/CTF requirement applicable to an accounting professional, or being a director of a corporate TCSP licensee, causing or allowing the non-compliance of an AML/CTF requirement applicable to the licensee or not taking reasonable steps to prevent the non-compliance by the licensee, as a ground for disciplinary action. Clauses 29 and 31 to 33 contain amendments consequential to that amendment.

24. Clause 34 amends section 9A of the Legal Practitioners Ordinance (Cap. 159) to provide that failure by a legal professional to comply with an AML/CTF requirement applicable to a legal professional, or being a director of a corporate TCSP licensee, causing or allowing the non-compliance of an AML/CTF requirement applicable to the licensee or not taking reasonable steps to prevent the non-compliance by the licensee, must be considered as conduct that should be inquired into or investigated for the purposes of disciplinary action.
25. Clauses 35 to 38 amend sections 2, 27, 28 and 29 of the Estate Agents Ordinance (Cap. 511) so that failure by a licensee to comply with an AML/CTF requirement is a ground for revoking or suspending the licence or a complaint against or investigation of the licensee.
26. Clause 39 adds a new section 1A to Schedule 1 to the Resolution of the Legislative Council Establishing the Companies Registry Trading Fund (Cap. 430 sub. leg. B) to include the administration and enforcement of the provisions of the principal Ordinance that apply to a trust or company service business among the services to be provided by the trading fund.
27. Clauses 40 to 49 amend various Ordinances that contain references to the present short title of the principal Ordinance and the review tribunal established under the principal Ordinance, to reflect the change proposed by the Bill to that short title, namely the repeal of the expression “(Financial Institutions)”.