

香港特別行政區政府  
政務司司長辦公室轄下行政署



The Government of  
The Hong Kong Special Administrative Region  
Administration Wing,  
Chief Secretary for Administration's Office

香港添馬添美道 2 號

2 Tim Mei Avenue, Tamar, Hong Kong

本函檔號 Our Ref.:

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3 July 2017

Clerk to House Committee  
(Attn: Miss Flora Tai)  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

Dear Miss Tai,

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

I am writing to convey the Government's views concerning the arrangement of the Bills Committee in connection with the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 ("AML Bill") and the Companies (Amendment) Bill 2017 ("CO Bill").

As you are aware, the two Bills were introduced into the Legislative Council on 28 June 2017 and we understand that they will be considered by the House Committee on 7 July 2017. We would like to suggest for Members' consideration that the two Bills be considered together by one single Bills Committee should such be formed.

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The Government set out in the Legislative Council Briefs issued on 23 June 2017 (at Annex A and Annex B) details concerning the legislative amendments to be introduced into the two Bills. In brief, the AML Bill seeks to amend the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) to prescribe statutory customer due diligence and record-keeping requirements for designated non-financial businesses and professions; whereas the CO Bill seeks to amend the Companies Ordinance (Cap. 622) to require companies incorporated in Hong Kong to maintain beneficial ownership information.

The two Bills are both intended to fulfil Hong Kong's obligations under the Financial Action Task Force ("FATF") and to address certain gaps in our regulatory regime for combating money laundering and terrorist financing. They are similar in background and nature, in that both seek to implement the relevant FATF standards in Hong Kong for the purpose of combating money laundering and terrorist financing. In addition, some of the clauses of the two Bills are interrelated. For instance, the beneficial ownership threshold in the AML Bill will be revised to align with the same in the CO Bill; whereas an accounting professional, a legal professional, or a trust or company service provider licensee, whose definitions are stipulated in the AML Bill, will be designated as representative of a company to provide assistance to law enforcement officers if necessary in the CO Bill. To allow a holistic deliberation on the two Bills, we consider it desirable and logical for the two Bills to be considered together by Members under one Bills Committee.

I should be grateful if you could convey our views to Members for their consideration. In the meantime, if you have any questions, please let us know.

Yours sincerely,



( Ms Christine Wai )  
for Director of Administration

c.c. Secretary for Financial Services and the Treasury  
(Attn: Ms Eureka Cheung) - w/o encl.

**File Ref: B&M/4/1/41C**

## **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.<sup>1</sup>

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)

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<sup>1</sup> 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 transactions<sup>2</sup> 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.<sup>3</sup> A regulatory gap remains in respect of DNFBPs. Having regard to the FATF’s defined scope of DNFBP coverage and the nature of

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<sup>2</sup> 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.

<sup>3</sup> 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 professions<sup>4</sup> 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

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<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</sup>

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

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<sup>5</sup> 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.

<sup>6</sup> 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.<sup>7</sup> 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.

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<sup>7</sup> 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

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## 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.

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**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.”.

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**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)”.

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### 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)”.

**File Ref: B&M/4/1/43C**

## **LEGISLATIVE COUNCIL BRIEF**

Companies Ordinance  
(Cap. 622)

### **Companies (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 fulfil Hong Kong's international obligations under the Financial Action Task Force ("FATF"), the Companies (Amendment) Bill 2017 ("the Bill"), at **Annex**, should be introduced into the Legislative Council ("LegCo") to require a company incorporated in Hong Kong, unless otherwise exempted, (hereafter referred to as "an applicable company") to –

- (a) take reasonable steps to ascertain the individuals and legal persons that have significant control over the company (referred to as "significant controllers"), give notice to them, and obtain accurate and up-to-date information about their identities; and
- (b) maintain a register of significant controllers of the company, containing required particulars of their identities, for inspection by law enforcement officers<sup>1</sup> upon demand.

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<sup>1</sup> For the purpose of the Bill, a law enforcement officer is any of the following officers –

- (a) an officer of the Companies Registry;
- (b) an officer of the Customs and Excise Department;
- (c) an officer of the Hong Kong Monetary Authority;
- (d) an officer of the Hong Kong Police Force;
- (e) an officer of the Immigration Department;
- (f) an officer of the Inland Revenue Department;
- (g) an officer of the Insurance Authority established under section 4AAA(1) of the Insurance Ordinance (Cap. 41);
- (h) an officer of the Independent Commission Against Corruption established under section 3 of the Independent Commission Against Corruption Ordinance (Cap. 204);
- (i) an officer of the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Commission Ordinance (Cap. 571); and
- (j) an officer of any other Government department, Government agency or body established or constituted by or under an Ordinance, that is specified by the Financial Secretary by regulations made under new section 653ZG to be added to the Companies Ordinance by the Bill.

## 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 requirements for companies to keep their beneficial ownership information.<sup>2</sup>

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.

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<sup>2</sup> Other key deficiencies include the absence of statutory customer due diligence and record-keeping requirements for designated non-financial businesses and professions; certain gaps in the CTF regime in relation to terrorist financing crimes, freezing mechanisms and travel bans on terrorist groups; and the absence of a declaration/disclosure system on the physical cross-boundary transportation movement of large quantities of physical currency and bearer negotiable instruments. Separate legislative exercises are being pursued to address these regulatory gaps. The legislative proposal relating to the statutory customer due diligence and record-keeping requirements for designated non-financial businesses and professions is the subject of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017, which will be introduced into LegCo alongside the Bill.

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 enhance transparency of beneficial ownership of Hong Kong companies as set out in the Bill.

## **LEGISLATIVE PROPOSALS**

### **FATF Requirements**

6. Despite the essential and legitimate roles companies play in conducting businesses under the global economy, there are increasing international concerns over the misuse of companies, particularly those under complex ownership and control structures, as a way to disguise and hide crime proceeds, facilitate money laundering, or serve illicit purposes such as tax evasion, corruption or terrorist financing. The ultimate ownership of such companies is often obscured so that those with criminal motives can distance themselves from the assets they really control. This is posing significant challenges to law enforcement agencies when investigating the identity of known or suspected criminals who conceal the true purpose of an account or property, or the source or use of certain funds held through companies or layers of companies in a complicated structure across different locations or jurisdictions.

7. The FATF requires member jurisdictions to take measures to prevent the misuse of legal persons for ML/TF, by ensuring that adequate and accurate information on the beneficial owners and control of legal persons can be obtained or accessed in a timely fashion by competent authorities including law enforcement agencies. The FATF defines a beneficial owner as a natural person who ultimately has a controlling ownership interest in a company, or is exercising control of the company through other means.

### **Hong Kong's Present Regime**

8. At present, the Companies Ordinance (Cap. 622) ("CO") requires a company incorporated in Hong Kong to disclose information on its members (including the shares held by each member and the paid-up capital), directors and company secretaries, by keeping the information in the relevant registers kept by the company at its registered office (or a prescribed place), and filing the information with the Companies Registry ("CR") via specified forms for public inspection. The current law focuses on disclosure of legal ownership, and it does not

require a company to ascertain, keep or file information about its ultimate beneficial owner (i.e. the natural person who ultimately owns or controls the company after lifting the veil of corporate layers), except in the case of a listed corporation which is required under the Securities and Futures Ordinance (Cap. 571) (“SFO”) to keep a register of those individuals or entities owning 5% or more interests in any class of voting shares (including any beneficial owner of such interests).<sup>3</sup>

9. Separately, the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) currently requires a financial institution to take reasonable measures, as part of the customer due diligence process, to verify the identity of the ultimate beneficial owner in relation to a customer, including measures to enable the financial institution to understand the ownership and control structure of a corporate customer. However, the information gathered is not normally accessible to law enforcement agencies, unless a court order is obtained to mandate a specific financial institution to produce the relevant records. This is often time-consuming, and can only be accomplished when an investigator knows the financial institution with which a suspicious company has established business relationship. The present regime is thus not very efficient in disrupting illicit financial flows.

## **Enhancing Transparency of Beneficial Ownership**

10. To enhance transparency of corporate beneficial ownership in accordance with the FATF recommendation, we **propose** amending the CO to require a company incorporated in Hong Kong to obtain and maintain up-to-date beneficial ownership information, by way of keeping a “significant controllers register” (“SCR”), for inspection upon demand by law enforcement officers for the purpose of prevention, detection or investigation of money laundering or terrorist financing under the law of

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<sup>3</sup> Generally, under the SFO, a person comes under a duty of disclosure when (i) the person acquires 5% or more interests in any voting shares in a listed corporation; (ii) there are any changes in the percentage level or nature of the interests in such shares; or (iii) the person ceases to have 5% or more interests in such shares. The person shall give notification to the listed corporation concerned and to The Stock Exchange of Hong Kong of the interests which the person has, or ceases to have, in voting shares in the listed corporation. A beneficial owner of a listed corporation who comes under a duty of disclosure, as summarised above, must give a notification under the SFO. Every listed corporation shall keep a register of interests in shares and short positions under section 336(1) of the SFO. Whenever a listed corporation receives information from a person given in performance of a duty imposed on the person by any relevant provision (including the notification mentioned above), the listed corporation is under a duty to record it in the register. The register shall, for the purposes of enabling members of the public to ascertain the identity and the particulars of persons who are the true owners of voting shares in the listed corporation, be made available for inspection. Any member of the corporation or any other person may require a copy of any such register on payment of a fee.

Hong Kong. Unless otherwise exempted, the requirement will apply to all companies incorporated under the CO in Hong Kong, including companies limited by shares, companies limited by guarantee and unlimited companies.

11. We **propose** exempting listed companies from the relevant requirements as the SFO has a more stringent regime requiring every listed corporation to keep a register of interests in shares. Listed companies aside, we do not intend to exempt any other particular type of company or class of companies. A power will be reserved for the Financial Secretary (including the Secretary for Financial Services and the Treasury) to make regulations providing for any such exemptions should the need arise, say if it transpires in future that any such companies are bound by disclosure and transparency rules similar to the ones being proposed in relation to beneficial ownership.

12. We **propose** that an applicable company must maintain a SCR in either the English or Chinese language, containing information of its significant controllers. The significant controllers of an applicable company are to be classified into two groups, one consists of registrable persons and the other consists of registrable legal entities. An individual who ultimately has a controlling ownership interest (e.g. holding more than 25% of the voting rights or shareholdings) in an applicable company, or who exercises control of the company through other means (e.g. holding the right to appoint or remove a majority of directors of the company) is a registrable person of the company (“registrable person”).<sup>4</sup>

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<sup>4</sup> Under the Bill, a person is a registrable person of an applicable company if one or more of the following conditions are met –

- (a) the person holds, directly or indirectly, more than 25% of the issued shares in the company (or if the company does not have a share capital, the person holds, directly or indirectly, a right or rights to share in more than 25% of the capital or profits of the company);
- (b) the person holds, directly or indirectly, more than 25% of the voting rights of the company;
- (c) the person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company (or if the company does not have a board of directors, the person holds the right to appoint or remove members of an equivalent management governing body holding a majority of the voting rights at meetings of the body on all or substantially all matters);
- (d) the person has the right to exercise, or actually exercises, significant influence or control over the company; or
- (e) the person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or a firm that is not a legal person, but whose trustees or members satisfy any of the first four conditions (in their capacity as such) in relation to the company.

Registrable persons of an applicable company also include the following entities (“specified entities”) if they meet one or more of the above conditions –

- (a) a corporation sole;
- (b) a government of a country or territory or part of a country or territory;
- (c) an international organization whose members includes two or more countries or territories (or their governments); and
- (d) a local authority or local government in a country or territory.

13. We believe that a beneficial owner may hold an interest in a company indirectly through successive layers of companies in a chain of ownership. To facilitate identification of the holding structure in such cases, we **propose** that an applicable company should also be required to identify and include in the SCR the information of a legal entity that has significant control over the company (“registrable legal entity”). A legal entity – whether or not it is formed or incorporated in Hong Kong – is a registrable legal entity of an applicable company only if it meets one or more of the specified conditions<sup>5</sup> pertaining to controlling ownership interest, and if it is a legal entity immediately above the company in the company’s ownership chain.

14. To ensure the availability and accuracy of beneficial ownership information which may not be readily available or apparent, we **propose** requiring an applicable company to take reasonable steps<sup>6</sup> to identify and ascertain its registrable persons or registrable legal entities by giving notice to them. A notice addressee who is or is believed to be a registrable person or registrable legal entity of the company, or who knows or is believed to know the identity of a registrable person or registrable legal entity of the company, will be required to confirm or provide (as appropriate) certain particulars relating to the registrable person or registrable legal entity. The particulars<sup>7</sup> relating to a registrable person of an applicable company should be entered into the company’s SCR within seven days after they have all been provided or confirmed by the registrable person or by another person with the registrable person’s knowledge. Each of the particulars relating to a registrable legal entity of an applicable company should be entered in the company’s SCR within seven days after that particular comes to the

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<sup>5</sup> The specified conditions as applicable to a legal entity are the same as those conditions mentioned in footnote 4. For the purpose of the current proposal, a legal entity does not include a specified entity mentioned in footnote 4.

<sup>6</sup> Under the Bill, “taking reasonable steps” includes serving a notice to any person (i) that the company knows or has reasonable cause to believe to be registrable, or (ii) that the company knows or has reasonable cause to believe to be a person who knows another person that is registrable.

<sup>7</sup> When a company has identified a registrable person of the company, the company should obtain and ascertain the accuracy of the particulars required to be entered in its SCR in relation to the person, including –

- (a) the name of the person;
- (b) (if applicable) the number of the identity card, or the number and issuing country of a passport, of the person;
- (c) the date on which the person became a registrable person of the company; and
- (d) the nature of the person’s control over the company.

notice of the company.<sup>8</sup>

15. We **propose** that an applicable company be required to keep a SCR at its registered office or a prescribed place in Hong Kong. All the entries relating to a registrable person or registrable legal entity of the company may be destroyed after the end of a period of six years from the date on which the person or legal entity ceases to be a registrable person or registrable legal entity of the company. The company is not required to open its SCR for public inspection.

16. We **propose** that on demand made by a law enforcement officer for the purpose of the officer's performance under the law of Hong Kong of a function relating to the prevention, detection or investigation of money laundering or terrorist financing, a company must make available its SCR for inspection by the officer. If the company fails to do so, the officer may apply to the Court of First Instance of the High Court of the Hong Kong Special Administrative Region ("Court") for an order to compel immediate inspection. A person whose name is entered in the SCR as a significant controller of the company is also entitled to inspect the register in accordance with regulations made under section 657 of the CO, and may apply to the Court for rectification of the register. The company will have to designate a representative to serve as a contact point for providing information about the SCR and assistance to law enforcement officers should the need arise.

17. If a company fails to comply with the requirement of keeping a SCR, the company (and each of its responsible persons) will be liable to a fine at a level comparable to that currently applicable to failure to keep registers of members, directors and company secretaries under the CO. We **propose** that the maximum penalty for the non-compliance should be a fine at level 4 (i.e. maximum of \$25,000) and a further daily fine of \$700. A similar penalty (i.e. maximum of \$25,000) should apply in relation to each person who commits an offence for not complying with a requirement of a notice mentioned in paragraph 14. If a person is charged with the offence for non-compliance with a notice requirement, it is a defence for the person to prove that the requirement is frivolous or

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<sup>8</sup> When a company has identified a registrable legal entity of the company, the company should obtain and ascertain the accuracy of the particulars required to be entered in its SCR in relation to the legal entity, including—

- (a) the name of the legal entity;
- (b) the legal form of the entity (including the law that governs it) and the company registration number or the equivalent in its place of incorporation or formation;
- (c) the date on which the legal entity became a registrable legal entity of the company; and
- (d) the nature of the entity's control over the company.

vexatious.

18. If any person knowingly or recklessly makes, in a SCR or in a document replying to a company's notice, a statement which is misleading, false or deceptive in any material particular, we **propose** that the person will commit an offence and will be liable on conviction on indictment to a fine of \$300,000 and to imprisonment for two years; or on summary conviction to a fine at level 6 (i.e. maximum of \$100,000) and to imprisonment for six months.

## **THE BILL**

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

- (a) **Clause 4** adds a new Division 2A to Part 12 of the CO. The new Division 2A mainly provides for an applicable company's duties in relation to keeping its SCR. The following is a brief description of the new sections in that Division –
  - (i) sections 653A to 653D and sections 653F and 653G define certain expressions used in the new Division, such as “applicable company”, “law enforcement officer”, “registrable person”, “registrable legal entity”, “significant controller” and “significant controllers register”;
  - (ii) section 653E provides for the circumstances under which a person is regarded as having significant control over an applicable company;
  - (iii) section 653H requires an applicable company to keep a SCR;
  - (iv) section 653I provides for the contents of the SCR;
  - (v) sections 653J and 653K provide for the entering of certain particulars of a significant controller of the company in the company's SCR;
  - (vi) section 653L provides for the time after which certain entries in the company's SCR may be destroyed;
  - (vii) section 653M provides for the place at which a SCR may

be kept and the giving of a notice to the Registrar of Companies in respect of that place;

- (viii) section 653N provides for the giving of a notice to the Registrar of Companies if there is a change in the place at which the company's SCR is kept;
- (ix) section 653P requires the company to take reasonable steps to ascertain whether there is a significant controller of the company and to issue notices to relevant parties;
- (x) sections 653Q and 653R set out the requirements for a notice to be given under section 653P;
- (xi) section 653T imposes a duty on the company to keep the information in its SCR up to date;
- (xii) section 653U sets out the requirements for a notice to be given under section 653T;
- (xiii) section 653W provides for the right of a person whose name is entered in the company's SCR to inspect the register and request a copy of it;
- (xiv) section 653X requires an applicable company to make its SCR available for inspection by a law enforcement officer for the purpose of the officer's performance under the law of Hong Kong of a function relating to the prevention, detection or investigation of money laundering or terrorist financing, and to permit the officer to make a copy of it;
- (xv) sections 653Y and 653Z empower the Court to make orders relating to the inspection and making copies of the SCR by a law enforcement officer;
- (xvi) section 653ZA imposes a duty on the addressee of a notice given under the new Division 2A to comply with a requirement of the notice made under section 653Q, 653R or 653U;
- (xvii) section 653ZB is a provision on legal professional privilege;

- (xviii) section 653ZC requires an applicable company to designate at least one person to provide assistance relating to the company's SCR to a law enforcement officer;
  - (xix) section 653ZD empowers the Court to rectify the SCR of an applicable company;
  - (xx) section 653ZE creates an offence for making a false statement or providing misleading, false or deceptive information; and
  - (xxi) section 653ZG empowers the Financial Secretary to make regulations; and
- (b) **Clause 6** adds three new schedules to the CO –
- (i) Schedule 5A sets out the criteria for determining whether a person has significant control over an applicable company;
  - (ii) Schedule 5B provides for the particulars to be entered in the SCR of an applicable company; and
  - (iii) Schedule 5C sets out the additional matters required to be entered in the SCR of an applicable company.

## LEGISLATIVE TIMETABLE

20. 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

## **IMPLICATIONS OF THE PROPOSALS**

21. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, environmental, family, gender or sustainability implications. The proposed amendments do not affect the binding effect of the CO.

### **Financial and Staffing Implications**

22. There will be additional work for CR to implement the beneficial ownership proposal, educate the public, carry out compliance checks on the SCRs of companies, and undertake related enforcement work, with appropriate revisions to statutory returns and its electronic systems. CR will seek to absorb the additional workload with existing resources as far as possible. Additional manpower resources, if required, will be sought with justifications in accordance with the established mechanism. It is expected that the Companies Registry Trading Fund would be able to generate sufficient revenue on an overall basis to meet the costs for implementing the proposal.

### **Economic Implications**

23. The proposal is pertinent to our fulfilment of the relevant FATF obligations and will reduce the risks of ML/TF in the wider corporate world. 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**

24. We briefed the LegCo Panel on Financial Affairs on 3 January 2017 on the legislative proposal. We also conducted a public consultation from 6 January to 5 March 2017 on the legislative proposal and received 58 written submissions. Respondents came from a good mix of backgrounds, including the Office of the Commissioner for Personal Data, industry associations and professional bodies, political parties, international advocacy groups and civil society, individual firms or companies, as well as individual members of the public.

25. Overall speaking, there was broad support for the Government to enhance AML/CTF regulation in Hong Kong in fulfilment of our international obligations under the FATF. A majority of the respondents indicated agreement with the overall direction and principles as well as

the broad framework of the legislative proposals, 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. 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**

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

## **ENQUIRIES**

27. 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**

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# A BILL

## To

Amend the Companies Ordinance to require certain companies incorporated in Hong Kong to keep registers of persons who have significant control over the companies; and to provide for related matters.

Enacted by the Legislative Council.

### 1. Short title and commencement

- (1) This Ordinance may be cited as the Companies (Amendment) Ordinance 2017.
- (2) This Ordinance comes into operation on 1 March 2018.

### 2. Companies Ordinance amended

The Companies Ordinance (Cap. 622) is amended as set out in sections 3 to 6.

### 3. Part 12, Division 2 heading amended (registers)

Part 12, Division 2, heading, after “**Registers**”—

Add

“(other than Register of Significant Controllers)”.

### 4. Part 12, Division 2A added

Part 12, after Division 2—

Add

## “Division 2A—Register of Significant Controllers

### Subdivision 1—Preliminary

#### 653A. Interpretation

In this Division—

*applicable company* (適用公司) means a company other than—

- (a) a listed company; or
- (b) a company that falls within a type of company, or class of companies, exempted by regulations made under section 653ZG(1)(a);

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

*existing company* (原有公司) means a company that came into existence before the commencement date;

*function* (職能) includes a power and a duty;

*law enforcement officer* (執法人員)—see section 653B;

*legal entity* (法律實體)—

- (a) means a body of persons, corporate or unincorporate, that is a legal person under the law that governs it; but
- (b) does not include a specified entity;

*prescribed* (訂明) means prescribed by regulations made under section 657;

*registrable change* (須登記更改)—see section 653F;

*registrable legal entity* (須登記法律實體)—see section 653D;

*registrable person* (須登記人士)—see section 653C;

*related person* (有關連人士)—see section 653G;

*required particulars* (所需詳情) means the particulars prescribed in Schedule 5B;

*significant control* (重大控制權)—see section 653E;

*significant controller* (重要控制人) means—

- (a) a registrable person of an applicable company; or
- (b) a registrable legal entity of an applicable company;

*significant controllers register* (重要控制人登記冊) means the register mentioned in section 653H(1);

*specified entity* (指明實體) means—

- (a) a corporation sole;
- (b) a government of a country or territory, or part of a country or territory;
- (c) an international organization whose members include 2 or more countries or territories (or their governments); or
- (d) a local authority or local government in a country or territory;

*specified function* (指明職能), in relation to a law enforcement officer, means a function of the officer under the law of Hong Kong that is a function relating to the prevention, detection or investigation of money laundering, or terrorist financing, as defined by section 1 of Part 1 of Schedule 1 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

#### **653B. Law enforcement officer**

(1) Each of the following is a law enforcement officer for the purposes of this Division—

- (a) an officer of the Companies Registry;
- (b) an officer of the Customs and Excise Department;
- (c) an officer of the Hong Kong Monetary Authority;
- (d) an officer of the Hong Kong Police Force;
- (e) an officer of the Immigration Department;
- (f) an officer of the Inland Revenue Department;
- (g) an officer of the Insurance Authority established under section 4AAA(1) of the Insurance Ordinance (Cap. 41);
- (h) an officer of the Independent Commission Against Corruption established under section 3 of the Independent Commission Against Corruption Ordinance (Cap. 204);
- (i) an officer of the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571);
- (j) an officer of any department or agency of the Government, or of any statutory body, that is specified by the Financial Secretary by regulations made under section 653ZG(1)(b) for the purposes of this paragraph.

(2) In subsection (1)—

*statutory body* (法定團體) means a body established or constituted by or under the authority of an Ordinance.

**653C. Registrable person**

- (1) If a natural person or specified entity has significant control over an applicable company, the person or entity is a registrable person of the company.
- (2) Despite subsection (1), a natural person or specified entity that has significant control over an applicable company is not a registrable person of the company if the condition specified in subsection (3) is satisfied.
- (3) The condition is that the natural person or specified entity has significant control over the company only because—
  - (a) the person or entity holds or has rights or shares in the company through a registrable legal entity of the company (*entity A*), and entity A has any of its shares listed on a recognized stock market; or
  - (b) the person or entity holds or has rights or shares in the company through a chain of legal entities with the last one in the chain being a registrable legal entity of the company (*entity B*), and entity B has any of its shares listed on a recognized stock market.

**Note—**

See also section 653E and Schedule 5A which provide for the criteria for determining whether a person has significant control over an applicable company.

**653D. Registrable legal entity**

A legal entity is a registrable legal entity of an applicable company if the entity—

- (a) is a member of the company; and
- (b) has significant control over the company.

**Note—**

See also section 653E and Schedule 5A which provide for the criteria for determining whether a person has significant control over an applicable company.

**653E. How to determine whether person has significant control over applicable company**

A person has significant control over an applicable company if the person meets one or more of the conditions specified in Part 1 of Schedule 5A in relation to the company.

**653F. Registrable change**

There is a registrable change with respect to a person if—

- (a) the person ceases to be a significant controller of an applicable company; or
- (b) any other change results in any particulars entered in the company's significant controllers register for the person being incorrect or incomplete.

**653G. Related person**

(1) This section applies if—

- (a) a provision of this Division provides that if a requirement of a notice given to a legal entity is not complied with (*failure*), a related person of the entity commits an offence; or
- (b) a provision in the regulations made under section 653ZG provides that a related person of a legal entity commits an offence if a provision is contravened (*contravention*).

(2) For the purposes of the provision, a person is a related person of a legal entity that is a body corporate (*entity A*) if—

- (a) the person is an officer or shadow director of entity A; and
- (b) the person authorizes or permits, or participates in, the failure or contravention.
- (3) A person is also a related person of entity A if—
  - (a) the person is an officer or shadow director of another body corporate that is an officer or shadow director of entity A;
  - (b) the other body corporate authorizes or permits, or participates in, the failure or contravention; and
  - (c) the person authorizes or permits, or participates in, the failure or contravention.
- (4) For the purposes of the provision, a person is a related person of a legal entity other than a body corporate (*entity B*) if—
  - (a) the person is an officer of entity B that is similar to an officer or shadow director of a body corporate (*similar officer of entity B*); and
  - (b) the person authorizes or permits, or participates in, the failure or contravention.
- (5) A person is also a related person of entity B if—
  - (a) the person is an officer or shadow director of a body corporate;
  - (b) the body corporate is a similar officer of entity B and authorizes or permits, or participates in, the failure or contravention; and
  - (c) the person authorizes or permits, or participates in, the failure or contravention.

## Subdivision 2—Keeping of Significant Controllers Register

### 653H. Keeping of register

- (1) Each applicable company must keep a register of its significant controllers.
- (2) Subsection (1) applies to an applicable company even if the company does not have a significant controller.
- (3) The significant controllers register of an applicable company must be kept in the English or Chinese language.
- (4) If subsection (1) or (3) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

### 653I. Contents of register

- (1) The significant controllers register of an applicable company must contain the following particulars of each person that the company knows to be a significant controller of the company—
  - (a) the particulars prescribed in Schedule 5B that are applicable to the person; and
  - (b) for a registrable change with respect to the person—
    - (i) details of the change; and
    - (ii) the date on which the change occurs.
- (2) The register must also contain—

- (a) the name and contact details of at least one person designated by the company under section 653ZC; and
  - (b) all the additional matters required to be noted in the register under Schedule 5C in relation to the company.
- (3) If subsection (1)(a) or (b) or (2)(a) or (b) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (4) To avoid doubt, section 634 does not affect what may be contained or entered in the significant controllers register of an applicable company.

**653J. Entering of particulars in register—registrable person**

- (1) The particulars required under section 653I(1)(a) to be contained in the significant controllers register of an applicable company for a natural person or specified entity—
- (a) must not be entered in the register unless they are all confirmed by the person or entity; and
  - (b) must be entered in the register within 7 days after they have all been so confirmed.
- (2) The particulars required under section 653I(1)(b) to be contained in the significant controllers register of an applicable company for a registrable change with respect to a natural person or specified entity—
- (a) must not be entered in the register unless they are all confirmed by the person or entity; and

- (b) must be entered in the register within 7 days after they have all been so confirmed.
- (3) If subsection (1)(a) or (b) or (2)(a) or (b) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (4) For the purposes of this section, a particular of a natural person or specified entity is or has been confirmed by that person or entity only if the particular is or has been—
- (a) provided or confirmed by that person or entity; or
  - (b) provided or confirmed by another person with that natural person's or specified entity's knowledge.

**653K. Entering of particulars in register—registrable legal entity**

- (1) A particular required under section 653I(1) to be contained in the significant controllers register of an applicable company for a legal entity must be entered in the register within 7 days after the particular comes to the notice of the company.
- (2) If subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

**653L. When may entries in register be destroyed**

If a person ceases to be a significant controller of an applicable company, all the entries in the company's

significant controllers register relating to the person may be destroyed—

- (a) for a natural person or specified entity—after the end of a period of 6 years from the date on which the person or entity ceased to be the company's registrable person; and
- (b) for a legal entity—after the end of a period of 6 years from the date on which the entity ceased to be the company's registrable legal entity.

**653M. Place at which register must be kept**

- (1) An applicable company must keep its significant controllers register at—
  - (a) the company's registered office; or
  - (b) a prescribed place.
- (2) The company must notify the Registrar in accordance with subsection (3) of the place at which its significant controllers register is kept.
- (3) The notice—
  - (a) must be in the specified form; and
  - (b) must be delivered to the Registrar for registration within 15 days after the register is first kept at that place.
- (4) An applicable company is not required to comply with subsection (2) if, since its significant controllers register came into existence, the register has at all times been kept at the company's registered office.
- (5) Without affecting subsection (4), an existing company is not required to comply with subsection (2) if—

- (a) since the commencement date, the company's register of members has at all times been kept at the place at which it was kept immediately before that date;
- (b) since the company's significant controllers register came into existence, the register has also at all times been kept at that place; and
- (c) immediately before the commencement date, the company has delivered to the Registrar every notice that is required under section 628 in respect of its register of members.

- (6) If subsection (1) or (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

**653N. Change in place at which register is kept**

- (1) An applicable company must notify the Registrar in accordance with subsection (2) of a change in the place at which its significant controllers register is kept.
- (2) The notice—
  - (a) must be in the specified form; and
  - (b) must be delivered to the Registrar for registration within 15 days after the change.
- (3) An applicable company is not required to comply with subsection (1) in relation to a change mentioned in that subsection if—
  - (a) its significant controllers register is kept at the company's registered office; and

- (b) the change is due to a change of the registered office's address.
- (4) If subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

### **Subdivision 3—Investigation and Obtaining Information by Applicable Company**

#### **653O. Interpretation**

- (1) In this Subdivision—  
*specified particulars* (指明詳情), in relation to a person—
  - (a) means the particulars of the person falling within a description of the particulars prescribed in Schedule 5B; but
  - (b) if the person is a natural person, does not include—
    - (i) the number of an identity card of the person; and
    - (ii) the number and issuing country of a passport held by the person.
- (2) In sections 653P, 653Q and 653R, a reference to knowing the identity of a person includes knowing any information from which the person can be identified.

#### **653P. Company's duty to investigate and obtain information**

- (1) An applicable company must take reasonable steps—
  - (a) to ascertain whether there is any significant controller of the company; and
  - (b) if any, to identify each of them.

- (2) Without limiting subsection (1), if the company knows, or has reasonable cause to believe, that a person is a significant controller of the company, the company must give a notice, in accordance with section 653Q, to the person within 7 days after the first of the following to happen—
  - (a) the company first knows that the person is a significant controller of the company;
  - (b) the company first has reasonable cause to believe that the person is such a controller.
- (3) Without limiting subsection (1), if the company knows, or has reasonable cause to believe, that a particular person knows the identity of another person who is a significant controller of the company, the company must give a notice, in accordance with section 653R, to the particular person within 7 days after the first of the following to happen—
  - (a) the company first knows that the particular person knows the identity of another person who is a significant controller of the company;
  - (b) the company first has reasonable cause to believe that the particular person knows the identity of another person who is such a controller.
- (4) If subsection (1), (2) or (3) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

#### **Note—**

See also section 653S which provides for the circumstances under which an applicable company is not required to comply with this section.

**653Q. Notice under section 653P(2)**

- (1) A notice given under section 653P(2) by an applicable company must be in writing and must require the addressee of the notice to confirm, as the case requires—
  - (a) whether or not the addressee is a registrable person of the company; or
  - (b) whether or not the addressee is a registrable legal entity of the company.
- (2) The notice must—
  - (a) state that if the addressee confirms that the addressee is a registrable person or registrable legal entity of the company, the addressee is required to—
    - (i) confirm or correct the required particulars of the addressee that are included in the notice; and
    - (ii) provide any required particulars of the addressee that are missing from the notice; and
  - (b) require the addressee to—
    - (i) state whether or not the addressee knows the identity of another person who is a significant controller of the company; and
    - (ii) if the addressee knows the identity of such a person—
      - (A) provide to the company all the specified particulars of that person that are known to the addressee; and
      - (B) state whether or not the particulars are provided with that person's knowledge.

- (3) The notice must also state that the addressee must comply with the requirements made under this section within 1 month from the date of the notice.

**653R. Notice under section 653P(3)**

- (1) A notice given under section 653P(3) by an applicable company must be in writing and must—
  - (a) require the addressee of the notice to confirm whether or not the addressee knows the identity of another person who is a significant controller of the company; and
  - (b) state that if the addressee confirms that the addressee knows the identity of such a person, the addressee is required to—
    - (i) provide to the company all the specified particulars of that person that are known to the addressee; and
    - (ii) state whether or not the particulars are provided with that person's knowledge.
- (2) The notice must also state that the addressee must comply with the requirements made under this section within 1 month from the date of the notice.

**653S. Circumstances where notice under section 653P not required**

An applicable company is not required to comply with section 653P with respect to a significant controller of the company if—

- (a) for a registrable person of the company—
  - (i) the company has already been informed of the person's status as such; and

- (ii) all the required particulars of the person have been provided to the company by the person or with the person's knowledge; and
- (b) for a registrable legal entity of the company—
  - (i) the company has already been informed of the entity's status as such; and
  - (ii) all the required particulars of the entity have been provided to the company.

#### **Subdivision 4—Applicable Company to Keep Information Up-to-date**

##### **653T. Company's duty to keep information up-to-date**

- (1) This section applies to an applicable company if the company knows, or has reasonable cause to believe, that there is a registrable change with respect to a person, the details of which are required to be contained in the significant controllers register of the company.
- (2) The company must give a notice, in accordance with section 653U, to the person to whom the registrable change relates within 7 days after the first of the following to happen—
  - (a) the registrable change first comes to the notice of the company;
  - (b) the company first has reasonable cause to believe that the change has occurred.
- (3) If subsection (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

##### **Note—**

See also section 653V which provides for the circumstances under which an applicable company is not required to comply with this section.

##### **653U. Notice under section 653T**

- (1) A notice given under section 653T by an applicable company must be in writing and must—
  - (a) require the addressee of the notice to confirm whether or not there is a registrable change with respect to the addressee; and
  - (b) state that if the addressee confirms that there is such a change, the addressee is required to—
    - (i) inform the company of the date on which the change occurs;
    - (ii) confirm or correct any particulars—
      - (A) that are required to be contained in the significant controllers register of the company for the addressee; and
      - (B) that are included in the notice; and
    - (iii) provide any particulars—
      - (A) that are required to be contained in the register for the addressee; and
      - (B) that are missing from the notice.
- (2) The notice must also state that the addressee must comply with the requirements made under this section within 1 month from the date of the notice.

**653V. Circumstances where notice under section 653T not required**

- (1) An applicable company is not required to comply with section 653T in relation to a registrable change with respect to a natural person or specified entity if—
  - (a) the company has already been informed of the change; and
  - (b) the information has been provided to the company by the person or entity, or with the person's or entity's knowledge.
- (2) An applicable company is not required to comply with section 653T in relation to a registrable change with respect to a legal entity if the company has already been informed of the change.

**Subdivision 5—Inspection of Significant Controllers Register****653W. Right to inspect and request copy of register**

- (1) A person whose name is entered in the significant controllers register of an applicable company as a significant controller of the company is entitled, on request made in the prescribed manner and without charge, to inspect the register in accordance with regulations made under section 657.
- (2) A person mentioned in subsection (1) is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register, or a part of it, in accordance with regulations made under section 657.

**Note—**

For the duties of a company regarding the inspection and provision of copies of its company records, and the power of the Court to make an

order relating to the inspection and provision of copies of such records—see regulations made under section 657.

**653X. Register be available for inspection etc. by law enforcement officer**

- (1) An applicable company must, on demand made by an officer of the Companies Registry for the purpose of ascertaining whether this Division is or has been complied with, or on demand made by any other law enforcement officer for the purpose of the officer's performance under the law of Hong Kong of a specified function, act as follows—
  - (a) at any reasonable time make its significant controllers register available for inspection by the officer at the place at which the register is kept; and
  - (b) permit the officer to make a copy of the register, or a part of it, in the course of inspection.
- (2) If subsection (1)(a) or (b) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

**653Y. Court order relating to inspection of register**

- (1) This section applies if section 653X(1)(a) is contravened in relation to a demand made by a law enforcement officer under section 653X(1).
- (2) The Court may, on application by the law enforcement officer, order the applicable company concerned to permit the officer to inspect the company's significant controllers register.
- (3) An order made under subsection (2) may—
  - (a) direct the company to permit the officer to inspect the register—

- (i) immediately after the order is made; or
  - (ii) from the time specified in the order; and
- (b) specify the duration and manner of the inspection.
- (4) Subsection (5) applies if—
  - (a) the register is kept at the office of a person other than the company; and
  - (b) section 653X(1)(a) is contravened because of a default of the person.
- (5) The power of the Court under subsection (2) extends to the making of an order against the person mentioned in subsection (4) and the person's officers and employees.

**653Z. Court order relating to making copy of register**

- (1) This section applies if section 653X(1)(b) is contravened in relation to a demand made by a law enforcement officer under section 653X(1).
- (2) The Court may, on application by the law enforcement officer, order the applicable company concerned to permit the officer to make a copy of the company's significant controllers register, or a part of it, in the course of inspection.
- (3) An order made under subsection (2) may also specify the time, duration and manner of inspection, including the circumstances in which and the extent to which the copying of information is permitted in the course of inspection.
- (4) Subsection (5) applies if—
  - (a) the register is kept at the office of a person other than the company; and

- (b) section 653X(1)(b) is contravened because of a default of the person.
- (5) The power of the Court under subsection (2) extends to the making of an order against the person mentioned in subsection (4) and the person's officers and employees.

**Subdivision 6—Miscellaneous or Related Matters**

**653ZA. Addressee of notice to comply with requirements made under section 653Q, 653R or 653U**

- (1) If a requirement made under section 653Q, 653R or 653U is not complied with within 1 month from the date of the notice concerned, the addressee of the notice, and (if the addressee is a legal entity) every related person of the entity, commit an offence, and each is liable to a fine at level 4.
- (2) If a person is charged with an offence under subsection (1), it is a defence for the person to prove that the requirement was frivolous or vexatious.

**653ZB. Legal professional privilege**

In complying with a notice given under this Division by an applicable company, a person is not required to provide any information to the company that the person would on grounds of legal professional privilege be entitled to refuse to give or provide in legal proceedings.

**653ZC. Designated representative**

- (1) An applicable company must designate at least one person as its representative to provide the following assistance relating to the significant controllers register of the company—

- (a) assistance to an officer of the Companies Registry to facilitate ascertaining whether this Division is or has been complied with;
  - (b) assistance to any other law enforcement officer to facilitate the officer's performance under the law of Hong Kong of a specified function.
- (2) The company must not designate a person under subsection (1) unless—
- (a) the person—
    - (i) is a natural person resident in Hong Kong; and
    - (ii) is a director, employee or member of the company; or
  - (b) the person is an accounting professional, a legal professional, or a TCSP licensee, as defined by section 1 of Part 2 of Schedule 1 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

**653ZD. Power of Court to order rectification of register**

- (1) An interested party may apply to the Court to rectify the significant controllers register of an applicable company if—
- (a) the name of a person is, without sufficient cause, entered in or omitted from the register; or
  - (b) a default is made or an unnecessary delay takes place in entering in the register the fact that a person has ceased to be a significant controller of the company.

- (2) If an application is made under subsection (1), the Court may—
  - (a) refuse the application; or
  - (b) order that the register be rectified.
- (3) A rectification order may include an order for the company to pay any damages sustained by an aggrieved party.
- (4) On an application made under subsection (1), the Court—
  - (a) may decide whether the name of a person who is a party to the application should be entered in or omitted from the register; and
  - (b) generally may decide any question considered necessary or expedient to rectify the register.
- (5) In subsection (1)—
 

*interested party* (有利害關係的一方), in relation to a matter mentioned in subsection (1), means—

  - (a) a person aggrieved by the matter;
  - (b) a significant controller of the company; or
  - (c) the company.

**653ZE. Offence for false information**

- (1) A person commits an offence if the person, in purported compliance with a notice given under this Division, knowingly or recklessly makes a statement or provides any information that is misleading, false or deceptive in a material particular.
- (2) A person who commits an offence under subsection (1) is liable—

- (a) on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

**653ZF. Applicable company not to be affected with notice of certain rights or put on enquiry as to certain rights**

An applicable company—

- (a) is not, because of anything done under this Division, affected with notice of—
  - (i) the rights of a person in relation to any shares in the company; or
  - (ii) other rights of a person in or with respect to the company; and
- (b) is not, because of anything done under this Division, put on enquiry as to those rights of a person.

**653ZG. Financial Secretary may make regulations**

- (1) Without affecting section 657, the Financial Secretary may make regulations—
  - (a) to exempt a type of company, or class of companies, from this Division or a provision of this Division;
  - (b) to specify any department or agency of the Government, and any statutory body, for the purposes of section 653B(1)(j);
  - (c) to provide for matters relating to a notice given under this Division by an applicable company, including providing for—
    - (i) the form and content of the notice; and

- (ii) the way in which it is to be given; and
- (d) to provide for incidental or supplementary matters relating to keeping a significant controllers register of an applicable company.
- (2) Regulations made under subsection (1) may provide that—
  - (a) if a company contravenes any of the regulations made under that subsection, an offence is committed by—
    - (i) the company; and
    - (ii) every responsible person of the company;
  - (b) if a legal entity contravenes any of the regulations made under that subsection, an offence is committed by—
    - (i) the entity; and
    - (ii) every related person of the entity; and
  - (c) a person who commits an offence mentioned in paragraph (a) or (b) is liable to a fine not exceeding level 5 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for each day during which the offence continues.

**Note—**

See also section 910 which provides for supplementary provisions for regulations made under this Ordinance.

**653ZH. Transitional provision for section 653J**

For the purposes of section 653J(1), in relation to an existing company, a particular is confirmed only if the particular is confirmed on or after the commencement date.

**653ZI. Transitional provision for section 653K**

For the purposes of section 653K, in determining the time at which a particular comes to the notice of an existing company, any knowledge of the particular that the company had before the commencement date is not to be taken into account.

**653ZJ. Transitional provisions for section 653P**

- (1) For the purposes of section 653P(2), if, on the commencement date, an existing company knows, or has reasonable cause to believe, that a person is a significant controller of the company, the company must give the notice required under that section within 7 days after the commencement date.
- (2) For the purposes of section 653P(3), if, on the commencement date, an existing company knows, or has reasonable cause to believe, that a person knows the identity of another person who is a significant controller of the company, the company must give the notice required under that section within 7 days after the commencement date.

**653ZK. Transitional provision for section 653S**

For the purposes of section 653S, in relation to an existing company, a particular has been provided only if the particular has been provided on or after the commencement date.”.

**5. Section 911 amended (Financial Secretary and Registrar may amend schedules)**

Section 911(1), before “or”—

**Add**

“, 5A, 5B, 5C”.

**6. Schedules 5A, 5B and 5C added**

After Schedule 5—

**Add**

**“Schedule 5A**

[ss. 653E & 911]

**Significant Control over Applicable Company****Part 1****Who has Significant Control over Applicable Company****1. Significant control over applicable company**

A person has significant control over an applicable company as defined by section 653A if one or more of the following conditions are met—

- (a) the person holds, directly or indirectly—
  - (i) if the company has a share capital—more than 25% of the issued shares in the company; and
  - (ii) if the company does not have a share capital—a right or rights to share in more than 25% of the capital or, as the case requires, profits of the company;
- (b) the person holds, directly or indirectly, more than 25% of the voting rights in the company;

- (c) the person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company;
- (d) the person has the right to exercise, or actually exercises, significant influence or control over the company;
- (e) the person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm—
  - (i) that, under the law governing the trust or firm, is not a legal person; and
  - (ii) whose trustees or members meet one or more of the conditions (in their capacity as such) specified in paragraphs (a), (b), (c) and (d).

**Note—**

In relation to paragraphs (d) and (e), when determining whether a person has the right to exercise, or actually exercises, significant influence or control over an applicable company or the activities of a trust or firm, regard may be had to any guidelines issued under section 24.

**Part 2****Interpretative Provisions****Division 1—Preliminary****2. Purpose of this Part**

This Part sets out the provisions for the interpretation of this Schedule.

**3. Interpretation**

- (1) In this Part—

*legal entity* (法律實體) has the meaning given by section 653A.

- (2) For the purposes of this Part, an arrangement—

- (a) includes—

- (i) a scheme, agreement or understanding, whether or not it is legally enforceable; and
- (ii) a convention, custom or practice of any kind; and

- (b) refers only to an arrangement with some degree of stability, whether by its nature or terms, the time it has been in existence or otherwise.

**Division 2—Shares****4. Joint interest—share**

If a person holds a share jointly with another person, each of them is regarded as holding the share.

**5. Joint arrangement—share**

- (1) If shares held by a person and those held by another person are the subject of a joint arrangement between the person and the other person, each of them is regarded as holding the combined shares of both of them.
- (2) For the purposes of subsection (1), a joint arrangement is an arrangement between the holders of shares to exercise all, or substantially all, the rights conferred by their respective shares jointly in a way pre-determined by the arrangement.

**6. Share held by nominee**

A share held by a nominee for another person is regarded as being held by that other person.

**7. Share held indirectly**

- (1) A person holds a share indirectly if the person has a majority stake in a legal entity (*entity A*) and—
  - (a) entity A holds the share; or
  - (b) entity A is part but not the last of a chain of legal entities and—
    - (i) each of those legal entities (other than the last one in the chain) has a majority stake in the entity immediately below it in the chain; and
    - (ii) the last one in the chain holds the share.
- (2) For the purposes of subsection (1), a person has a majority stake in a legal entity if—
  - (a) the person holds a majority of the voting rights in that entity;
  - (b) the person is a member of that entity and has the right to appoint or remove a majority of the board of directors of that entity;
  - (c) the person is a member of that entity and, under an agreement with another member of that entity, controls alone a majority of the voting rights in that entity; or
  - (d) the person has the right to exercise, or actually exercises, dominant influence or control over that entity.

**Division 3—Rights****8. Who is regarded as holding right**

- (1) If a person controls a right, the person is regarded as holding the right, whether or not the person in fact holds the right.
- (2) Although a person in fact holds a right, the person is not regarded as holding the right unless the person also controls the right.
- (3) For the purposes of this section, a person controls a right if, under an arrangement between the person and another person, a right is exercisable—
  - (a) only by the person;
  - (b) only in accordance with the person's directions or instructions; or
  - (c) only with the person's consent or concurrence.

**9. Joint interest—right**

If a person holds a right jointly with another person, each of them is regarded as holding the right.

**10. Joint arrangement—right**

- (1) If rights held by a person and those held by another person are the subject of a joint arrangement between the person and the other person, each of them is regarded as holding the combined rights of both of them.
- (2) For the purposes of subsection (1), a joint arrangement is an arrangement between the holders of rights to exercise all, or substantially all, the rights conferred by their respective rights jointly in a way pre-determined by the arrangement.

**11. Voting rights in legal entity**

- (1) A reference to the voting rights in a legal entity is a reference to—
  - (a) if the entity has a share capital—the rights given to its members in respect of their shares to vote at general meetings of the entity on all matters or on substantially all matters; and
  - (b) if the entity does not have a share capital—the rights given to its members to vote at general meetings of the entity on all matters or on substantially all matters.
- (2) For a legal entity that does not have general meetings at which matters are decided by exercising such rights—
  - (a) a reference to the voting rights in the entity is a reference to—
    - (i) if the entity has a share capital—the rights equivalent to those mentioned in subsection (1)(a); and
    - (ii) if the entity does not have a share capital—the rights equivalent to those mentioned in subsection (1)(b); and
  - (b) a reference to 25% of the voting rights in the entity is a reference to the right under the entity's constitution to block changes to the overall policy of the entity or to the terms of its constitution.

**12. Appointment or removal of majority of board of directors**

A reference to a right to appoint or remove a majority of the board of directors of a legal entity—

- (a) is a reference to the right to appoint or remove directors holding a majority of the voting rights at

meetings of the board on all matters or on substantially all matters; and

- (b) in relation to a legal entity that does not have a board of directors, is a reference to the right to appoint or remove members of an equivalent governing body holding a majority of the voting rights at meetings of the body on all matters or on substantially all matters.

**13. Right held indirectly**

- (1) A person holds a right indirectly if the person has a majority stake in a legal entity (*entity A*) and—
  - (a) entity A holds the right; or
  - (b) entity A is part but not the last of a chain of legal entities and—
    - (i) each of those legal entities (other than the last one in the chain) has a majority stake in the entity immediately below it in the chain; and
    - (ii) the last one in the chain holds the right.
- (2) For the purposes of subsection (1), a person has a majority stake in a legal entity if—
  - (a) the person holds a majority of the voting rights in that entity;
  - (b) the person is a member of that entity and has the right to appoint or remove a majority of the board of directors of that entity;
  - (c) the person is a member of that entity and, under an agreement with another member of that entity, controls alone a majority of the voting rights in that entity; or

- (d) the person has the right to exercise, or actually exercises, dominant influence or control over that entity.

**14. Circumstances under which legal entity would be regarded as having right to appoint director of another legal entity**

- (1) A legal entity (*entity B*) is regarded as having a right to appoint a director of another legal entity (*entity C*) if—
  - (a) a person's appointment as a director of entity C follows necessarily from that person's appointment as a director of entity B; or
  - (b) the directorship of entity C is held by entity B itself.
- (2) For the purposes of subsection (1), if entity B does not have a board of directors, a reference to a director of entity B in subsection (1)(a) is a reference to a member of an equivalent governing body of entity B.
- (3) For the purposes of subsection (1), if entity C does not have a board of directors—
  - (a) a reference to a director of entity C in subsection (1)(a) is a reference to a member of an equivalent governing body of entity C; and
  - (b) a reference to the directorship of entity C in subsection (1)(b) is a reference to the membership of an equivalent governing body of entity C.

**15. Right attached to shares held by way of security**

- (1) A right attached to shares held by way of security is regarded as being held by the person providing the security—

- (a) if, except for the situation specified in subsection (2), the right is exercisable only in accordance with that person's instructions; or
- (b) if—
  - (i) the shares are held in connection with the granting of loans as part of normal business activities; and
  - (ii) except for the situation specified in subsection (2), the right is exercisable only in that person's interests.
- (2) The situation is that the right—
  - (a) is exercised for the purpose of preserving the value of the security; or
  - (b) is exercised for the purpose of realizing the security.

**16. Right exercisable only in certain circumstances**

- (1) A right that is exercisable only in certain circumstances is taken into account only if—
  - (a) the circumstances have arisen; or
  - (b) the circumstances are within the control of the person having the right.
- (2) A right exercisable under subsection (1)(a) is exercisable for so long as the circumstances exist.
- (3) A right that is normally exercisable but is temporarily incapable of being exercised continues to be taken into account.
- (4) A reference in this section to a right that is exercisable does not include a right that is exercisable by a provisional liquidator, liquidator or creditor under the

Companies (Winding Up and Miscellaneous Provisions)  
Ordinance (Cap. 32).

## Schedule 5B

[ss. 653A, 653I, 653O &  
911]

### Required Particulars of Significant Controllers

#### Part 1

#### Preliminary

##### 1. Interpretation

In this Schedule—

*applicable company* (適用公司) has the meaning given by section 653A;

*registrable person* (須登記人士) has the meaning given by section 653C;

*significant controllers register* (重要控制人登記冊) has the meaning given by section 653A.

## Part 2

### Natural Person

#### 2. Particulars of natural person

- (1) This section applies if a registrable person of an applicable company is a natural person.
- (2) The following are the particulars required under section 653I(1)(a) to be contained in the significant controllers register of the company for the person—
  - (a) the person's present forename and surname, former forename or surname (if any), and aliases (if any);
  - (b) the person's correspondence address, which must not be a post office box number;
  - (c) the number of the person's identity card or, if the person does not have an identity card, the number and issuing country of a passport held by the person;
  - (d) the date on which the person became a registrable person of the company;
  - (e) the nature of the person's control over the company.
- (3) In this section—
 

*forename* (名字) includes a Christian or given name;

*surname* (姓氏), in relation to a person usually known by a title that is different from the person's surname, means that title.
- (4) In this section, a reference to a person's former forename or surname does not include—

- (a) a forename or surname of the person that was changed or ceased to be used before the person attained the age of 18 years;
- (b) a forename or surname of the person that has been changed or ceased to be used for a period of at least 20 years;
- (c) if the person is usually known by a title different from the person's surname, the name by which the person was known before adopting or succeeding to that title; and
- (d) if the person is a married woman, a name or surname by which the person was known before the marriage.

### Part 3

#### Specified Entity

##### 3. Particulars of specified entity

- (1) This section applies if a registrable person of an applicable company is a specified entity.
- (2) The following are the particulars required under section 653I(1)(a) to be contained in the significant controllers register of the company for the entity—
  - (a) the entity's name;
  - (b) the address of the entity's principal office;
  - (c) the entity's legal form, and the law that governs it;
  - (d) the date on which the entity became a registrable person of the company;
  - (e) the nature of the entity's control over the company.

- (3) In this section—  
*specified entity* (指明實體) has the meaning given by section 653A.

### Part 4

#### Legal Entity

##### 4. Particulars of legal entity

- (1) This section applies to a registrable legal entity of an applicable company.
- (2) The following are the particulars required under section 653I(1)(a) to be contained in the significant controllers register of the company for the entity—
  - (a) the entity's name;
  - (b) if the entity is a company—
    - (i) the company's registration number as stated in its certificate of incorporation; and
    - (ii) the address of its registered office;
  - (c) if the entity is not a company—
    - (i) (if applicable) its registration number (or the equivalent) in the place of its incorporation or formation; and
    - (ii) the address of its registered or principal office;
  - (d) the entity's legal form, and the law that governs it;
  - (e) the date on which the entity became a registrable legal entity of the company;
  - (f) the nature of the entity's control over the company.

- (3) In this section—  
*registrable legal entity* (須登記法律實體) has the meaning given by section 653D.

## Schedule 5C

[ss. 653I & 911]

### Additional Matters

#### Part 1

##### Preliminary

#### 1. Interpretation

In this Schedule—

*applicable company* (適用公司) has the meaning given by section 653A;

*registrable person* (須登記人士) has the meaning given by section 653C;

*required particulars* (所需詳情) has the meaning given by section 653A;

*significant controller* (重要控制人) has the meaning given by section 653A;

*significant controllers register* (重要控制人登記冊) has the meaning given by section 653A;

*specified period* (指明限期), in relation to a notice given under section 653P or 653T, means the period of 1 month from the date of the notice.

## Part 2

### Inclusion of Additional Matters in Certain Cases

#### 2. Case 1—where there is no significant controller

- (1) This section applies if an applicable company knows, or has reasonable cause to believe, that it has no significant controller.
- (2) The company must note in its significant controllers register that the company knows, or has reasonable cause to believe, that it has no significant controller.

#### 3. Case 2—where there is unidentified registrable person

- (1) This section applies if—
  - (a) an applicable company knows, or has reasonable cause to believe, that it has a registrable person; and
  - (b) the company has not been able to identify that person.
- (2) The company must—
  - (a) note in its significant controllers register that the company knows, or has reasonable cause to believe, that it has a registrable person but has not been able to identify that person; and
  - (b) make a separate note in the register in respect of each person that the company has not been able to identify.

**4. Case 3—where particulars of identified registrable person are not confirmed**

- (1) This section applies if—
  - (a) an applicable company has identified a registrable person of the company; and
  - (b) not all the required particulars of that person have been confirmed under section 653J.
- (2) The company must—
  - (a) note in its significant controllers register that the company has identified a registrable person of the company but not all the required particulars of that person have been confirmed under section 653J; and
  - (b) make a separate note in the register in respect of each registrable person whose required particulars have not been so confirmed.

**5. Case 4—where company's investigations are ongoing**

- (1) This section applies to an applicable company if—
  - (a) none of the following provisions of this Schedule applies to the company—
    - (i) section 2;
    - (ii) section 3;
    - (iii) section 4;
  - (b) the company has not entered, and is not yet required to enter, the required particulars of a significant controller of the company in its significant controllers register; and

- (c) the company has not completed taking reasonable steps to ascertain whether it has a significant controller.

- (2) The company must note in its significant controllers register that the company has not yet completed taking reasonable steps to ascertain whether it has a significant controller.

**6. Case 5—where matters noted under section 2, 3, 4 or 5 of this Schedule has ceased to be true**

- (1) This section applies to an applicable company if a matter noted in its significant controllers register under section 2, 3, 4 or 5 of this Schedule has ceased to be true.
- (2) The company must—
  - (a) note in its significant controllers register that the matter has ceased to be true; and
  - (b) note also in the register the date on which the matter ceased to be true.

**7. Case 6—where requirement made under section 653Q or 653R is not complied with within specified period**

- (1) This section applies if—
  - (a) an applicable company has given a notice under section 653P(2) or (3); and
  - (b) the addressee of the notice has failed to comply with a requirement of the notice made under section 653Q or 653R within the specified period.
- (2) The company must—
  - (a) note in its significant controllers register that the company has given a notice under section 653P(2) or (3) (as the case requires) in respect of which a

requirement made under section 653Q or 653R (as the case requires) has not been complied with within the specified period; and

- (b) make a separate note in the register in respect of each such notice.

**8. Case 7—where all requirements made under section 653Q or 653R are complied with after specified period**

- (1) This section applies if—
  - (a) an applicable company has given a notice under section 653P(2) or (3);
  - (b) a note has been made in the company's significant controllers register in respect of the notice under section 7 of this Schedule; and
  - (c) the addressee of the notice has complied with all of the requirements of the notice made under section 653Q or 653R after the specified period.
- (2) The company must—
  - (a) note in its significant controllers register that the company has given a notice under section 653P(2) or (3) (as the case requires) in respect of which all of the requirements made under section 653Q or 653R (as the case requires) have been complied with after the specified period; and
  - (b) make a separate note in the register in respect of each such notice.
- (3) Each separate note must also state the date of the compliance.

**9. Case 8—where requirement made under section 653U is not complied with within specified period**

- (1) This section applies if—
  - (a) an applicable company has given a notice under section 653T(2); and
  - (b) the addressee of the notice has failed to comply with a requirement of the notice made under section 653U within the specified period.
- (2) The company must—
  - (a) note in the entry for the addressee in its significant controllers register that the company has given the notice to the addressee; and
  - (b) note also in the register that the addressee has failed to comply with the requirement within the specified period.

**10. Case 9—where all requirements made under section 653U are complied with after specified period**

- (1) This section applies if—
  - (a) an applicable company has given a notice under section 653T(2);
  - (b) a note has been made in the company's significant controllers register in respect of the notice under section 9 of this Schedule; and
  - (c) the addressee of the notice has complied with all of the requirements of the notice made under section 653U after the specified period.
- (2) The company must—
  - (a) note in the entry for the addressee in its significant controllers register that the addressee has complied

- with all of the requirements after the specified period; and
- (b) note also in the register the date of the compliance.”.
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### Explanatory Memorandum

Hong Kong is required to meet its obligations under the Financial Action Task Force’s Recommendations for combating money laundering and terrorist financing (*Hong Kong’s obligations*).

2. The main purpose of this Bill is to amend the Companies Ordinance (Cap. 622) (*Companies Ordinance*) to meet Hong Kong’s obligations in providing for transparency in the beneficial ownership of companies.
3. The Bill proposes to add a new Division (*new Division 2A*) to Part 12 of the Companies Ordinance, and 3 new Schedules to that Ordinance—
  - (a) to require a company falling within certain descriptions to keep a register (*significant controllers register*) for persons who have significant control over the company (*significant controllers*);
  - (b) to provide the criteria for determining whether a person has significant control over the company; and
  - (c) to provide for related matters.
4. A company that has the duty to keep a significant controllers register under the new Division 2A is referred to as an applicable company (*applicable company*) in that Division. An applicable company is a company incorporated in Hong Kong other than—
  - (a) a listed company as defined by section 2(1) of the Companies Ordinance; or
  - (b) a company that falls within a type of company, or class of companies, exempted by regulations made under that Division.

### New Division 2A Added to Part 12 of Companies Ordinance

5. Clause 4 adds the new Division 2A to Part 12 of the Companies Ordinance. The new Division 2A has 6 Subdivisions and 37 sections (sections 653A to 653ZK).

**Subdivision 1 of New Division 2A—Preliminary (Sections 653A to 653G)**

6. Subdivision 1 of the new Division 2A provides for preliminary matters.
7. Sections 653A, 653B, 653C, 653D, 653F and 653G define certain expressions used in the new Division 2A. These expressions include—
- (a) *applicable company*;
  - (b) *law enforcement officer*;
  - (c) *registrable change*;
  - (d) *registrable legal entity*;
  - (e) *registrable person*;
  - (f) *related person*;
  - (g) *significant controller*; and
  - (h) *significant controllers register*.
8. Section 653E provides for the circumstances under which a person is regarded as having significant control over an applicable company. A person has significant control over an applicable company if the person meets one or more of the conditions specified in Part 1 of the new Schedule 5A in relation to the company.

**Subdivision 2 of New Division 2A—Keeping of Significant Controllers Register (Sections 653H to 653N)**

9. Subdivision 2 of the new Division 2A mainly provides for an applicable company's duties in relation to keeping its significant controllers register.
10. Section 653H requires an applicable company to keep a register of its significant controllers, whether or not it has any significant controllers. It also requires the register to be kept in the English or Chinese language.
11. Section 653I provides for the contents of the significant controllers register of an applicable company. The register must contain—
- (a) for each person that the company knows to be a significant controller of the company—the particulars prescribed in the new Schedule 5B that are applicable to the person, and the particulars in relation to certain changes with respect to the person;
  - (b) the name and contact details of at least one person who is designated by the company under section 653ZC; and
  - (c) all the additional matters required to be noted in the register under the new Schedule 5C.
12. Sections 653J and 653K provide for the entering of certain particulars of or in relation to a significant controller of an applicable company in the company's significant controllers register.
13. Section 653L provides for the time after which certain entries in the significant controllers register of an applicable company may be destroyed.
14. Section 653M provides for the place at which the significant controllers register of an applicable company may be kept and the giving of a notice to the Registrar of Companies (*Registrar*) in respect of that place.

15. Section 653N provides for the giving of a notice to the Registrar if there is a change in the place at which a significant controllers register is kept.

**Subdivision 3 of New Division 2A—Investigation and Obtaining Information by Applicable Company (Sections 653O to 653S)**

16. Subdivision 3 of the new Division 2A (*Subdivision 3*) provides for an applicable company's duty to carry out investigation and obtain information about its significant controllers.
17. Section 653O defines certain expressions used in Subdivision 3.
18. Section 653P(1) requires an applicable company to take reasonable steps to ascertain whether there is any significant controller of the company and, if any, to identify each of them.
19. Section 653P(2) requires an applicable company to give a notice to a person whom the company knows or has reasonable cause to believe to be a significant controller of the company.
20. Section 653P(3) requires that if an applicable company knows, or has reasonable cause to believe, that a particular person knows the identity of another person who is a significant controller of the company, the company must also give a notice to the particular person.
21. The requirements for a notice to be given under section 653P(2) are set out in section 653Q, and those for a notice to be given under section 653P(3) are set out in section 653R.
22. Section 653S provides for the circumstances under which an applicable company is not required to comply with section 653P.

**Subdivision 4 of New Division 2A—Applicable Company to Keep Information Up-to-date (Sections 653T, 653U and 653V)**

23. Section 653T imposes a duty on an applicable company to keep the information in its significant controllers register up-to-date.
24. Under section 653T, if an applicable company knows, or has reasonable cause to believe, that a person has ceased to be a significant controller of the company, the company must give a notice to the person.
25. The company must also give its significant controller a notice if the company knows, or has reasonable cause to believe, that there is any other change resulting in the controller's particulars entered in the significant controllers register of the company being incorrect or incomplete.
26. A notice under section 653T must be given in accordance with section 653U.
27. Section 653V provides for the circumstances under which an applicable company is not required to give a notice under section 653T.

**Subdivision 5 of New Division 2A—Inspection of Significant Controllers Register (Sections 653W to 653Z)**

28. Subdivision 5 of the new Division 2A contains 4 sections.
29. Section 653W entitles a person whose name is entered in the significant controllers register of an applicable company to inspect the register and request the company to provide a copy of it (or part of it).
30. Section 653X requires an applicable company to make its significant controllers register available for inspection by a law enforcement officer, and permit the officer to make a copy of the register (or part of it).
31. Sections 653Y and 653Z empower the Court of First Instance of the High Court of the Hong Kong Special Administrative Region

(*Court*) to make orders enabling a law enforcement officer to inspect and make a copy of a significant controllers register (or part of it) by the officer.

**Subdivision 6 of New Division 2A—Miscellaneous or Related Matters (Sections 653ZA to 653ZK)**

32. Subdivision 6 of the new Division 2A provides for miscellaneous or related matters.
33. Section 653ZA imposes a duty on the addressee of a notice given under the new Division 2A to comply with a requirement of the notice made under section 653Q, 653R or 653U.
34. Section 653ZB is a provision about legal professional privilege. It provides that a person is not required to provide information to an applicable company in complying with a notice given under the new Division 2A by the company which the person would, on grounds of legal professional privilege, be entitled to refuse to give or provide in legal proceedings.
35. Section 653ZC requires an applicable company to designate at least one person to provide assistance relating to the company's significant controllers register to a law enforcement officer to facilitate the officer's performance of a function described in that section.
36. Section 653ZD empowers the Court to rectify the significant controllers register of an applicable company.
37. Section 653ZE makes it an offence to make a statement or provide information that is misleading, false or deceptive in a material particular.
38. Section 653ZG empowers the Financial Secretary to make regulations.

39. Sections 653ZH to 653ZK contain transitional provisions for sections 653J, 653K, 653P and 653S. The provisions apply to an existing company as defined by section 653A.

**Other Amendments Made to Companies Ordinance**

40. Clause 5 makes a minor amendment to section 911 of the Companies Ordinance to empower the Financial Secretary to amend the new Schedules 5A, 5B and 5C.
41. Clause 6 adds new Schedules 5A, 5B and 5C to the Companies Ordinance.