



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2527 0790)

12 July 2017

Ms Eureka CHEUNG
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) 5
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Ms CHEUNG,

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

Further to our letter of 6 July 2017, we should be grateful for your clarification of the following additional issues:

Clause 18 – proposed Part 5A of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615)

1. Should the statement of reasons from the Registrar of Companies ("Registrar") to the licensee under the proposed sections 53L(3)(a) and 53M(3)(a) of Cap. 615 not also explain a decision not to remove a previously imposed condition where, for instance, the grounds for imposing the condition no longer exist but the Registrar nevertheless decides not to remove the condition?
2. In such circumstances, should the Registrar's decision not to remove a licence condition under the proposed section 53L or 53M also be subject to review pursuant to the new paragraph (e)(iv) of the definition of "specified decision" under section 54 as amended by clause 20(4)?

3. Under the proposed section 53ZD(1)(a), the Registrar could in certain circumstances discipline a director of a corporate licensee, but only in connection with a contravention referred to in the proposed section 53Z(2)(a)(i), i.e. the licensee's contravention of a requirement set out in Schedule 2 that applies to a DNFBP who is a TCSP licensee. Why is the Registrar's disciplinary power not also exercisable against a director in connection with the licensee's contravention of a regulation made under the proposed section 53ZM or a condition of the licence (proposed section 53Z(2)(a)(ii) and (iii) refers) if the director caused or allowed the contravention, or failed to take reasonable steps to prevent the contravention?

Clause 24 – proposed section 80(1A) of Cap. 615

4. Under the proposed section 80(1A)(e), the Registrar could give or send a notice or other document by transmitting it to the intended recipient's last known email address. Likewise, section 400 of the Securities and Futures Ordinance (Cap. 571) permits service by email, while section 134 of the Banking Ordinance (Cap. 155) allows service by telex, facsimile transmission or other similar method. Why is the Commissioner of Customs and Excise not allowed to serve notices or documents on a money service operator by electronic means under the existing section 80(1) of Cap. 615?

Chinese text

5. The existing text of Cap. 615 refers to "customer" as 客戶 which is, however, rendered in the Bill as 客户 (see, for example, clause 26(10), (12) and (15)). Please explain the change from 戶 to 户.
6. Some existing references to 客戶 in Cap. 615 (for example, the headings of Schedule 2 and Part 2 thereof, and the heading and/or text of sections 2 to 7, 9, 10, 16, and 18 to 20 of Schedule 2) are not proposed to be replaced with 客户 under the Bill. Please advise what further steps, if any, would be taken to iron out the internal inconsistencies within Cap. 615. Would the Secretary for Justice, for instance, exercise his editorial power under section 12 of the Legislation Publication Ordinance (Cap. 614) to substitute all references to 戶 by 户? If so, when would the amendments be made?

7. It is further noted that while clause 7 (the proposed section 5A(3), (4) and (5) of Cap. 615) renders "client" as 客戶, clause 26(12) (the proposed definition of "customer" in section 1(1) of Schedule 2 to Cap. 615) proposes 當事人 as the Chinese rendition for "client". Please explain the discrepancy between these two renditions.
8. Under clause 8(8), the proposed section 7(5A)(b) of Cap. 615 renders "guidance" as 指引|. It is noted that the existing section 7(1) seems to distinguish between:
- (a) a "guideline" (指引|), i.e. the document or instrument published in the Gazette by the relevant authority; and
 - (b) "guidance" (導引|), e.g. advice, examples, commentaries etc., provided in the guideline by the relevant authority in relation to the operation of any requirements set out in Schedule 2.

In view of this distinction, please consider whether section 7(5A)(b) should also render "guidance" as 導引| for the sake of consistency.

9. Under clause 18, the proposed definition of "ultimate owner" in the new section 53A of Cap. 615 renders "control" inconsistently as 控制 (paragraphs (a)(i), (b)(ii) and (iv), and (c)(i) and (iii) which relate to the shares, profits or management of a business) and 支配 (paragraphs (b)(iii) and (c)(ii) which relate to voting rights). Please explain the difference, if any, between these two renditions.

We look forward to receiving your reply in both languages as soon as possible.

Yours sincerely,



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