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SPECIAL ADMINISTRATIVE REGION
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29 September 2017

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

Dear Bonny,

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

I refer to your letters dated 6 July and 12 July seeking clarifications on the captioned Bill ("AML Bill"). The Administration's responses are set out in **Annex** for your information.

Yours sincerely,

(Ms Eureka Cheung)
for Secretary for Financial Services and the Treasury

c.c.
Clerk to Bills Committee (Attn: Ms Connie Szeto)
Registrar of Companies (Attn: Ms Ada Chung)
Secretary for Justice (Attn: Ms Nilmini Dissanayake
Ms Rayne Chai
Mr Danny Yuen)

Annex

The Administration's responses on questions raised in the Assistant Legal Adviser's letter dated 6 July

Clause 7 – proposed section 5A of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615)

1. **The Financial Action Task Force ("FATF") defines designated non-financial businesses and professions ("DNFBPs") to cover casinos, dealers in precious metals and stones, real estate agents, lawyers, notaries, accountants and trust or company service providers ("TCSPs").[1] Solicitors, foreign lawyers, accountants, estate agents and TCSPs are the only DNFBPs sought to be regulated under the Bill. Has FATF explained why the anti-money laundering/counter-terrorist financing ("AML/CTF") requirements relating to customer due diligence ("CDD") and record-keeping need not apply to other non-financial businesses and professions (e.g. architects, surveyors, planners and property management companies etc.) who may also be involved in real estate projects and/or manage customers' assets?**

   The FATF places great importance in requiring jurisdictions to put in place CDD and record-keeping requirements for the seven DNFBPs which are commonly involved in handling the following specified transactions, i.e. –

   (i) the buying and selling of real estate;
   (ii) the managing of client money, securities or other assets;
   (iii) the management of bank, savings or securities accounts;
   (iv) the organisation of contributions for the creation, operation or management of companies; and
   (v) the creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

[1] See paragraph 7 of LC Paper No. CB(1)363/16-17(05).

2. **The proposed section 5A(3) to (5) of Cap. 615 requires a DNFBP, "in Hong Kong", to prepare for, carry out or be involved in a specified transaction in order for an AML/CTF requirement set out in Schedule 2 to apply to that DNFBP/transaction. Please provide examples to illustrate whether the requisite geographical nexus with Hong Kong would be established in any given case where:**

   (a) **the DNFBP, the client or the subject matter of the transaction (e.g. the real estate or business entity to be bought or sold, the assets or accounts to be managed, the company to be created, operated or managed, or the trust or corporation for which the TCSP is to act as a trustee or nominee shareholder) is located outside Hong Kong, e.g. Mainland China or Cayman Islands;**

   (b) **the relevant transaction documents or the DNFBP's service agreements with the client choose a foreign governing law; or**

   (c) **the DNFBP (or its overseas operations) provides services to the client via a website or server located outside Hong Kong.**

   In relation to a specified transaction set out in section 5A(3) to (5), "in Hong Kong" qualifies "*prepares for or carries out*" and "*is involved*". As long as the italicised acts take place in Hong Kong, we consider the geographical location of the DNFBP/ client/ subject matter of the transaction/ website or server used throughout the transaction and the choice of law immaterial.

3. **In the proposed section 5A(3):**

   (a) **Why is paragraph (d) limited to "the creation, operation or management of corporations", while paragraph (e) applies to the creation etc. of all legal persons or legal arrangements?**

   (b) **What would constitute the buying or selling of a "business entity" under paragraph (f)? Would the sale or purchase**

of: (i) shares or other equity interests in; or (ii) substantial assets (e.g. receivables, intellectual property and goodwill etc.) of, a business constitute the selling or buying of a "business entity"?

Our legislative proposals closely follow the FATF Recommendation, which requires accounting professionals or legal professionals to conduct CDD and record-keeping requirements when they prepare for or carry out the specified transactions for their clients. Whether a transaction constitutes the buying or selling of a "business entity" depends on the facts of the case. We envisage that the buying or selling of shares, other equity interests in, or substantial assets of a business could amount to the buying or selling of the business entity.

Clause 8 – proposed section 7 of Cap. 615

4. In relation to the proposed section 7(5A) of Cap. 615:

(a) In case of conflict between a guideline published under section 7(1) (as amended) and a practice direction referred to in section 7(5A) regarding the operation of or compliance with an AML/CTF requirement, which instrument would prevail?

(b) Should there be another provision similar to the proposed subsection (5A) so that the Hong Kong Institute of Certified Public Accountants, in considering whether an accountant has contravened an AML/CTF requirement, may have regard to or take into account any relevant statement of professional ethics, or standards of accounting, auditing and assurance practices, issued or specified by its Council pursuant to section 18A of the Professional Accountants Ordinance (Cap. 50)?

(a) According to Clause 8 of the AML Bill, the publication of guidelines by regulatory bodies is discretionary. However, according to section 7(5) of the AMLO, in considering whether a person has contravened a provision of Schedule 2, a

regulatory body must have regard to these guidelines if they are to be published under section 7 of the AMLO. From an operational and practical point of view, we do not envisage that a conflict between guidelines and practice directions will be an issue. For legal professionals, the Law Society of Hong Kong ("LSHK") is the regulatory body that is empowered to issue guidelines under section 7 (as proposed to be amended by Clause 8). As the LSHK is also the issuing authority for the practice directions referred to in the proposed new section 7(5A), we trust that the LSHK will ensure consistency between such practice directions and any other guidelines to be published under section 7(1) in relation to the operation of or compliance with AML/CTF requirements applicable to legal professionals under the AMLO. In fact, it seems reasonable to assume that they will be consistent with each other considering that practice directions and section 7 guidelines emanate from the same source.

(b) We understand that the Hong Kong Institute of Certified Public Accountants ("HKICPA") is currently consulting its members on a set of draft guidelines that are intended to provide specific guidance in relation to the operation of or compliance with AML/CTF requirements as applicable to the accounting professionals. Subject to the internal discussion in the HKICPA and passage of the AML Bill, these tailor-made AML/CTF guidelines (as opposed to any relevant statement of professional ethics or standards of accounting, auditing and assurance practices issued or specified by the HKICPA which cover much wider issues) will be published under section 7 of the AMLO. We therefore do not see the need to create a similar provision to the proposed subsection (5A) for the HKICPA.

Clauses 16 and 18 – proposed new section 39A and Part 5A of Cap. 615

5. **Clause 16 seeks to add a new section 39A to require a money service operator ("MSO") to display the original of its MSO licence in a conspicuous place at the premises specified in the licence. Should the proposed Part 5A similarly require a TCSP**

licensee to display its original TCSP licence at the licensee's business premises?

Under the MSO regime, an MSO must not operate a money service at a particular premises without obtaining the licence to do so from the Commissioner of Customs and Excise ("CCE"). The CCE has to be satisfied, among other things, that the premises are suitable to be used for the operation of a money service. Owing to the nature of the TCSP business, there is no similar requirement as regards the premises at which a TCSP carries on business under the TCSP regime. The requirement to display the original of licence in a conspicuous place at the specified premises is therefore not applicable to a TCSP licensee.

Clause 18 – proposed new Part 5A of Cap. 615

6. **According to paragraph 14 of the Explanatory Memorandum, the new Part 5A corresponds to the existing Part 5 (relating to MSOs) except for differences specific to TCSPs. Please elaborate on such differences between the licensing regimes under Parts 5 and 5A.**

Owing to the different nature of the two businesses, the major differences between the licensing regimes under Parts 5 and 5A include the following –

(a) The regulatory authority for MSOs is the Customs and Excise Department ("C&ED") whereas for TCSPs is the Companies Registry ("CR").

(b) The contents of the disapplication provision are specific to TCSPs.

(c) Part 5 (but not Part 5A) contains requirements as regards operating a money service at any particular premises (including section 30 in relation to licence application, section 34(1) in relation to revocation or suspension of licence for licensee operating a money service at a domestic premises, section 38 for adding new business premises and section 39 in relation to application to operate at particular premises), whereas there are

no such requirements for TCSP licensees.

(d) TCSP licensees are not required to surrender a licence.

(e) Having regard to the lower risks associated with the sector when compared to financial institutions, TCSP licensees are not subject to criminal sanctions for non-compliance of AML/CTF requirements under the AMLO.

7. **Paragraphs (b)(iv) and (c)(iii) of the definition of "ultimate owner" under the proposed section 53A refer to the term "ultimate control". Please explain the meaning of this undefined term, and consider defining it in the Bill.[2] It is further noted that under the Companies (Amendment) Bill 2017 ("CO Bill"), a "registrable person" means a person having "significant control", which in turn is defined by reference to, among other factors, holding more than 25% of the shares, capital, profits or voting rights in a company, having the right to appoint or remove a majority of its directors, or exercising "significant influence or control" over the company (proposed sections 653C and 653E of, and Schedule 5A to, the Companies Ordinance (Cap. 622)). Please also explain the relationship, if any, between "ultimate control", "significant control" and "significant influence" in relation to a company subject to AML/CTF regulation.**

We consider it unnecessary to define the term "ultimate control", which is used in its ordinary meaning in the AMLO. The AML Bill makes no reference to the terms "registrable person", "significant control", "significant influence" or any other terms in the CO Bill. These terms should therefore not affect the meaning of the term "ultimate control" referred to in the Bill.

8. **The proposed section 53D(3) requires the Registrar of Companies**

[2] According to paragraph 15 of FATF's Guidance on Transparency and Beneficial Ownership (October 2014), "beneficial owner refers to "the natural person(s) who *ultimately owns or controls* a customer and/or the natural person on whose behalf a transaction is being conducted", including "those persons who exercise *ultimate effective control* over a legal person or arrangement", and the italicised terms refer to "situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control", The FATF definition seems to focus on the natural persons who actually own and take advantage of capital or assets of the legal person, or exert effective control over it (whether or not they occupy formal positions within that legal person).

("Registrar") to make the register of TCSP licensees available for public inspection during normal office hours. Should the Registrar also be required to publish the register online (e.g. via the website of the Companies Registry ("CR")) for around-the-clock access?

Apart from making the register of TCSP licensees available for public inspection during normal office hours, the CR will consider the feasibility of publishing the register online for around-the-clock access in the future.

9. **The proposed section 53E(2) and (3) provides that an entry in or extract from the register certified by the Registrar would constitute "evidence" of the facts stated therein, while under the proposed section 53E(4) a certificate signed by the Registrar is "conclusive evidence" of the facts stated in it. Please explain why the Registrar's certificate under the proposed subsection (4) would be "conclusive" and cannot be rebutted by evidence to the contrary.**

The proposed section 53E(2) and (3) concerns a certified copy of the entry or extract of the register. The Registrar only certifies that the copy is a true copy of the entry or extract in the register but does not certify that any information contained therein is true. On the other hand, for a certificate referred to in the proposed section 53E(4), the Registrar indeed certifies the relevant fact, e.g. "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". As it is the Registrar who maintains the register and therefore has the best knowledge of that fact, it is appropriate to treat the certificate signed by the Registrar as conclusive evidence of that fact.

10. **Please consider whether the proposed section 53F should make it a criminal offence for a TCSP licensee to carry on a trust or company service ("TCS") business: (a) from a mobile (rather than fixed) location; (b) at an address other than that specified in the licence under the proposed section 53N(2)(b); or (c) in breach of any conditions imposed under the proposed sections 53J, 53L and 53M.**

The proposed section 53F seeks to make it an offence for a person to carry on a TCS business without a licence, irrespective of the location where the business is carried on and whether the business is carried on at the business address specified in the licence. Given the nature of the TCS business, there is no particular requirement regarding the location or facilities of the business premises to be met for the operation of the business and there is no special reason for prohibiting the licensee from carrying on TCSP business other than at a fixed location. In this connection, the licensee will be required to notify the Registrar of any change in the particulars submitted in connection with its application, which would include particulars of its business address previously provided to the Registrar (section 53W). In the event of a breach of any conditions imposed by the Registrar on granting a licence, the Registrar may, under the proposed section 53Z(1) and (2)(a)(iii), exercise the Registrar's disciplinary power in respect of the licensee. It is not our policy intent to impose a criminal sanction in such a situation.

11. **Clause 27 proposes adding a new Schedule 3A to specify various fees payable under the proposed Part 5A. It is noted that the application fees payable under the proposed sections 53G(2)(b)(ii) and 53K(2)(c) for granting and renewing a licence ($3,440 and $2,910 respectively, plus $975 for each person subject to the fit and proper test) are non-refundable upon revocation, suspension or cancellation of a licence: see proposed sections 53R(5) and 53X(3):**

    (a) **Are there any circumstances in which these fees would be refundable at all? For example, would the fee be refunded if a licence application is withdrawn (see section 53ZQ(4)(c))?**

    (b) **The amounts proposed in Schedule 3A in respect of TCSPs appear to be slightly higher than those set out in Schedule 3 in respect of MSOs. How are the proposed fees calculated?**

    (a) We do not envisage the need to provide for refund in the AML Bill of any fees paid if the application is withdrawn. We do

not consider it necessary to make statutory provision for a refund in the case of a withdrawal of the application. It can be dealt with administratively on a case-by-case basis.

(b) The fees proposed in Schedule 3A are devised on a full-cost-recovery basis.

12. **For an applicant who is a corporation, the fit and proper test would apply to each director and "ultimate owner" under the proposed section 53H(3). Should the test also apply to each manager, secretary or officer of the corporation? How about a shareholder who owns 25% or less of the issued share capital of the corporation (and as such does not fall within the definition of "ultimate owner")?**

Regarding the fit and proper test for an applicant that is a corporation under the proposed section 53H(3), our policy intent is to focus on whether the directors (who are the main persons responsible for managing the corporation) and the ultimate owners are fit and proper to be associated with a TCS business. It is not our policy to extend the fit and proper test to the other persons mentioned in question 12.

It seems that the 25% ownership threshold, which would also apply under the new definition of "beneficial owner" in section 1(1) of Schedule 2 (as amended by clause 26), is intended to align with the definitions of "registrable person" and "significant control" under the CO Bill. Why is the line drawn at 25% for AML/CTF purposes?

When the AMLO was enacted back in 2012, the threshold of defining "beneficial owner" was set at "not less than 10%". Having reviewed the latest FATF requirement and the prevailing practice of other jurisdictions, we propose adopting a revised threshold of "more than 25%" for defining beneficial ownership across-the-board in the AMLO. This will be in line with the proposed future requirement under the Companies Ordinance (Cap. 622) for companies incorporated in Hong Kong to identify and maintain beneficial ownership information.

13. The questions in paragraph 12 above also apply in relation to:

(a) the revocation or suspension of a corporation's licence under the proposed section 53Q(2)(c); and

(b) the Registrar's approval for a person to become an ultimate owner or a director of a TCS licensee under the proposed sections 53S and 53U.

Please refer to our response in question 12.

14. In the proposed section 53I, a conviction involving a finding of fraud, corruption or dishonesty only appears under paragraph (b)(iii) in relation to convictions outside Hong Kong, but not under (a) in respect of convictions under local law. Should a similar item relating to such a conviction be added under paragraph (a)? If so, should section 30(4)(a) relating to MSOs also be similarly amended?

Under the proposed section 53I, the Registrar must, *in addition to any other matter that the Registrar considers relevant*, have regard to those matters under the proposed 53I(a) to (e). Even if a conviction involving a finding of fraud, corruption or dishonesty in Hong Kong is not added as an offence under the proposed 53I(a), in determining whether a person is fit and proper for the purposes of the proposed section 53H, the Registrar may take the conviction into account as the Registrar has the discretion to have regard to any other matter that the Registrar considers relevant (which can include, among others, such an offence). This applies equally to MSOs when the CCE considers whether an applicant is a fit and proper person in accordance with Part 5 of the AMLO.

15. For the purpose of determining whether corporation A is a fit and proper person under the proposed section 53I(e), would it also be a relevant consideration if a director or an ultimate owner of corporation A is also a director or an ultimate owner of corporation B which is in liquidation or subject to winding up or receivership?

In determining whether corporation A is a fit and proper person for the purposes of the proposed section 53H, the matter to be considered under the proposed section 53I(e) is whether corporation A itself is in liquidation or subject to winding up or receivership.

If it comes to the Registrar's attention that a director or an ultimate owner of corporation A is also a director or an ultimate owner of corporation B which is in liquidation or subject to winding up or receivership, then the Registrar may, depending on the circumstances of the case, treat this as one of the matters that he or she considers relevant under section 53I to decide whether the director is a fit and proper person for the purpose of granting/renewing the relevant TCSP licence.

16. **Under the proposed sections 53J(4), 53L(4) and 53M(4), a condition would take effect at the time the licensee receives the notice informing him of the decision, while the 21-day period under the existing section 59(1) for applying for a review of the decision starts to run from the juncture "after the notice ... has been sent". Please explain the discrepant methods of reckoning time.**

For an application for a review of the decision under the existing section 59(1), the 21-day period should start to run from the juncture "after the notice informing the person of the decision has been sent", which is certain and does not involve the need to ascertain the time of receipt of notice. The review tribunal may on application by that person extend the time if satisfied that there is a good cause for doing so (section 59(2) and (3)).

17. **The proposed sections 53R(3) and 53ZA(3) require the Registrar to give the licensee "a reasonable opportunity to be heard" before revoking or suspending a licence or exercising a disciplinary power:**

    (a) **Would the Registrar send the licensee a notice to show cause, indicating her intention to exercise the relevant power and the grounds for doing so, and ask the licensee to respond? How much time would the licensee be given to respond?**

(b) Would the licensee be able to state his case in writing and/or orally with the assistance of his legal representative?

(a) The CR would give the licensee a reasonable opportunity to be heard before exercising the power, which will generally include notifying the licensee of the intention of and the grounds for exercising the power. The CR would also give the licensee reasonable time to respond depending on circumstances of each case.

(b) The licensee would be able to give representation, with or without the assistance of legal representative.

18. Under section 34(8) of Cap. 615, an MSO licensee who fails to surrender the revoked licence within the time specified in the notice of revocation commits an offence punishable by a fine at level 5. Should a similar provision be added to the proposed section 53R in relation to the revocation of a TCSP licence?

To minimize the compliance burden, it is our policy intent that the requirement to surrender the revoked licence should not apply to a TCSP licensee as we do not see an added benefit in asking a TCSP licensee to return the revoked licence. We consider it more crucial and effective for the Registrar to update the position in the register of licensees for public inspection once the licence is revoked, suspended or cancelled. Further, as licences will be issued electronically for applications delivered in electronic form, licensees can print and save the file containing the softcopy of the licence at any time. It will not be meaningful for the CR to require the licensee to return the printed copy of the licence to the Registry under such circumstances.

19. Would a licensee who, without reasonable excuse, allows another person to become an ultimate owner, partner or director of the licensee without first applying for the Registrar's approval commit an offence under the proposed sections 53S(6), 53T(6) and 53U(6)?

Depending on the circumstances of the case, a licensee who, without

reasonable excuse, allows another person to become an ultimate owner, etc. without first applying for the Registrar's approval may have committed an offence under the proposed sections as a secondary party. In any event, the Registrar may, by virtue of the proposed section 53Z(1) & (2)(b), exercise his or her disciplinary power in respect of the licensee for a contravention of section 53S(1), 53T(1) or 53U(1) (i.e. where a person becomes an ultimate owner, partner or director of the licensee without the Registrar's prior approval).

20. **Should the proposed section 53X(1) require the licensee to notify the Registrar of his intention to cease business, say, at least a week (or 48 hours) before the intended date of cessation, and to return the licence to the Registrar for cancellation (see section 41(1)(b))?**

As the circumstances, reasons and urgency for a decision to cease business may vary, it is not our policy intent to increase the compliance burden by stipulating a fixed period for this purpose so long as notification is given before the intended date of cessation. As stated in the response to question 18 above, a licensee is not required to return the licence upon cessation of business.

21. **The proposed 53Z(2)(a)(i) refers to "a requirement set out in Schedule 2 that applies to a DNFBP who is a TCSP licensee". How, if at all, is that expression different from "an AML/CTF requirement that applies to a DNFBP who is a TCSP licensee" under the proposed section 5A(5) where "AML/CTF requirement" is defined as "a requirement set out in Part 2, 3 or 4 of Schedule 2"?**

There is no legal difference in the two expressions.

22. **Under the proposed section 53ZB, should the Registrar be required:**

(a) **to consult the public or stakeholders (e.g. TCSPs) before publishing guidelines indicating how she proposes exercising the disciplinary power to impose a pecuniary penalty; and**

(b) **to publish the guidelines electronically (e.g. via CR's website)**

under the proposed subsection (2)(b)?

(a) While there is no statutory requirement to conduct consultation before publishing guidelines under the Bill, the CR plans to consult relevant stakeholders on the draft guidelines prior to the commencement of the legislative proposals.

(b) Under the proposed subsection (2)(b), the guidelines must be published in the Gazette and in any other way the Registrar considers appropriate. The CR plans to publish the guidelines on its website once the Bill comes into force.

23. In relation to the proposed section 53ZC:

(a) As a pecuniary penalty ordered under section 53Z(3)(c) would not in any event exceed $500,000 (which is well within the District Court's civil jurisdictional limit of $1,000,000 under section 32 or 33 of the District Court Ordinance (Cap. 336), why does the proposed section 53ZC(3) seek to invoke the civil jurisdiction of the Court of First Instance ("CFI") instead?

(b) Please identify the relevant provisions of the Rules of the High Court (Cap. 4A) which govern how the Registrar would apply to CFI to register an order to pay a pecuniary penalty.

(c) Under section 17A of the Public Finance Ordinance (Cap. 2), any fine or penalty imposed by or under the authority of any Ordinance must be paid into the general revenue ("GR"). Please confirm whether any pecuniary penalty or money recovered pursuant to an order registered under the proposed section 53ZC would be paid into the CR Trading Fund under Cap. 430B, or to GR in accordance with section 17A of Cap. 2.

(a) It is our policy intent to regard the penalty as one imposed by the CFI. The jurisdictional limit is not an issue here as the Registrar is not seeking to institute a civil claim against the

TCSP licensee in the CFI.

(b) The Registrar is not relying on the Rules of the High Court (Cap. 4A) for an application to register an order to pay a pecuniary penalty. Application for registration will be made in accordance with the procedures prescribed in the proposed section 53ZC(2) and (3).

(c) Section 5 of the Trading Fund Ordinance provides that "Notwithstanding any provision of another Ordinance, the income received for the provision of a government service in respect of which a trading fund is established under section 3 is to be paid into the trading fund." The administration and enforcement of the provisions of AMLO regarding TCSP licensee is proposed to be included as services provided by the trading fund in the amendment to Resolution of the Legislative Council Establishing Companies Registry Trading Fund (see clause 39 of the Bill). Hence, any pecuniary penalty or money recovered pursuant to an order registered under the proposed 53ZC will be paid into the CR Trading Fund.

24. **Under the proposed section 53ZD, the Registrar may exercise her disciplinary power against a director of a corporate licensee in certain circumstances. Please consider whether a manager, secretary or other officer of the licensee should similarly be subject to disciplinary actions, given that a director, manager, secretary or other similar officer of a body corporate may be punished for an offence under section 43Q of the Employment Ordinance (Cap. 57) if the offence is proved to have been committed by the corporation with their consent or connivance, or attributable to their neglect.**

It is our policy intent to exercise disciplinary power against the director of a corporate licensee only, in addition to the licensee, as directors should be primarily responsible for any breaches committed by a corporate licensee.

25. **In relation to a licensee who is a partnership, please advise whether:**

(a) a financial penalty (as opposed to a criminal fine) imposed on the partnership under the proposed section 53Z(3)(c) would be levied against the assets of the partnership,[3] or enforceable against every partner jointly with the others in accordance with section 11 of the Partnership Ordinance (Cap. 38); and

(b) the Bill should also enable the Registrar to exercise a disciplinary power against an individual partner who caused or allowed the partnership's contravention of an AML/CTF requirement or failed to take reasonable steps to prevent it.

(a) There being no restriction in the section confining the penalty to be paid out of the partnership assets, every partner in the partnership will be jointly liable with the other partners for the pecuniary penalty imposed on the partnership under the proposed section 53Z(3)(c) in accordance with section 11 of the Partnership Ordinance (Cap. 38).

(b) The disciplinary action specified under the proposed section 53Z(3) against the partnership licensee will be (a) the partnership (the names of whose partners are known to the public) will be publicly reprimanded, (b) the partners will be the ones who actually take the remedial action for the partnership, and/or (c) every partner in the partnership will be jointly liable with the other partners for the pecuniary penalty. In that sense the disciplinary powers will cover the individual partner indirectly and it is not necessary to amend the Bill so as to enable the Registrar to exercise a disciplinary power against an individual partner.

26. New offences of obstructing an authorized officer would be created under the proposed sections 53ZF(5) and 53ZG(5). Unlike, for example, section 10(1) of the Product Eco-responsibility Ordinance (Cap. 603) which refers to "wilfully

[3] See section 5(10) of Cap. 615 and *R* v. *Stevenson & Sons (A Partnership) and others* [2008] 2 Cr. App. R. 14.

obstructs", no adverb is used here to qualify "obstructs". Please advise what mental element or mens rea, if any, is required for the commission of these offences.

The mental element required under the proposed sections 53ZF(5) and 53ZG(5) will be the defendant's voluntariness and intention or recklessness in the performance of the act that results in the authorized officer being obstructed in the exercise of the statutory power.

27. **Under the proposed section 53ZJ, paragraph (e) would permit a specified person to disclose information for the purpose of seeking or giving legal or other professional advice "in connection with any matter arising under" the Bill, while paragraph (f) allows disclosure "in connection with any judicial or other proceeding to which the specified person is a party". Is it the Bill's policy intent to allow disclosure under paragraph (f) only in connection with proceedings arising under the Bill? If so, should paragraph (f) make this clear?**

Like paragraphs (b), (c) and (g) in the same section, the disclosure under paragraph (f) is not to be limited to disclosure in connection with proceedings arising under the Bill.

28. **In relation to the proposed section 53ZK:**

(a) **Please provide examples of public officers who may be authorized by the Financial Secretary under subsection (6) to receive information under subsection (1)(d)(vii).**

(b) **Please consider whether the Estate Agents Authority ("EAA") should be added to subsection (1)(d) insofar as a TCSP and an estate agent may both be implicated in a real estate transaction involving a TCS (e.g. the formation of a company or trust to hold the subject property) and the information gathered by the Registrar about the TCSP may also be relevant to EAA's investigations under the Estate Agents Ordinance (Cap. 511).**

(c) **What are the justifications for allowing disclosures under**

the proposed subsection (1)(e)? Does FATF require the Registrar to make such disclosure to overseas authorities? If so, please identify the relevant provisions of FATF's Recommendations.

(a) Public officer in this regard may include, but not limited to, the government officials appointed in the Financial Services and the Treasury Bureau.

(b) The reason why we did not include the EAA in subsection 1(d) is that it will be a very rare situation for a TCSP licensee and a real estate agent to be involved in the same specified transaction involved by a TCSP as defined in Schedule 1 to the AMLO.

(c) The FATF requires competent authorities of individual jurisdictions to rapidly, constructively and effectively provide, using a lawful basis, the widest range of international cooperation in relation to ML/associated predicate offence and TF. We believe the proposed subsection 1(e) can achieve this purpose by facilitating overseas authorities in investigating any transnational ML/TF activities involving TCSPs.

29. **How would an instrument in electronic form be delivered by non-electronic means under the proposed section 53ZP(6)(b)(ii)?**

One example of delivering an instrument in electronic form by non-electronic means under the proposed section 53ZP(6)(b)(ii) would be the delivery by hand of a CD-ROM, DVD-ROM, USB or other portable electronic storage device containing a softcopy of an instrument in an electronic form.

Clause 20 – amended section 54 of Cap. 615

30. **Why is the Registrar's decision under the new section 53O(1)(b) and (2)(b) to grant or renew a licence for a period shorter than three years not a "specified decision" subject to review under the amended section 54 (see paragraph (e) of the proposed definition)?**

Please note that in any event, the applicant/licensee may apply for renewing or, as the case may be, further renewing that licence (with a validity period shorter than three years) and the decision under the proposed section 53O(1)(b) and (2)(b) is subject to judicial review as another remedy.

Section 81 of Cap. 615 – legal professional privilege

31. **Section 81(1) of Cap. 615 preserves any claims, rights or entitlements arising on the ground of legal professional privilege. Section 39A(2) of the Legal Practitioners Ordinance (Cap. 159) provides that solicitor-client privilege exists between a foreign lawyer and his client to the same extent as the privilege exists between a solicitor and his client. Since Cap. 615 as amended by the Bill would also apply to foreign lawyers, please consider whether it is necessary to amend section 81(2), which currently mentions counsel and solicitor only, to include a foreign lawyer who is qualified and registered to practise foreign law in Hong Kong as a legal practitioner whose client's name and address may be subject to disclosure under Cap. 615 despite section 81(1).**

The current wording of s.81(2) of the AMLO already covers foreign lawyers – "Subsection (1) does not affect any requirement made under this Ordinance to disclose the name and address of a client of a legal practitioner *(whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor)*."

Clause 25 – amended Schedule 1 to Cap. 615

32. **TCS is proposed to be defined under clause 25(3) to include "acting ... as a nominee shareholder for a person other than a corporation whose securities are listed on a recognized stock market" (see paragraph (d)(ii) of the proposed definition). Why is acting as a nominee shareholder for a listed corporation excluded?**

Shareholdings in listed corporations are subject to stricter disclosure requirements under the Securities and Futures Ordinance. The

reasons for excluding a TCSP acting as a nominee shareholder for a listed corporation is to avoid regulatory overlap and duplication of efforts in collecting CDD information with the Securities and Futures Commission.

Clause 26 – amended Schedule 2 to Cap. 615

33. Please explain why the sunset clause in section 18(5) of Schedule 2 is sought to be repealed (see Clause 26(102)). Would it accord with FATF's Recommendations to let financial institutions continue to conduct CDD via a lawyer, an accountant or a TCSP licensee?

In order to facilitate compliance by existing regulatees under the AMLO, we propose removing the sunset clause in section 18(5) of Schedule 2 so that financial institutions will have the flexibility to continue to rely on solicitors, accountants and TCSP licensees (whom will be regulated under the Bill) as intermediaries to carry out CDD measures. This accords with the FATF Recommendations of permitting financial institutions to rely on third parties (either financial institutions or DNFBPs that are supervised or monitored) to conduct CDD measures.

Clauses 30, 34 and 36 – proposed changes to Cap. 50, Cap. 159 and Cap. 511

34. While clauses 30(2) and 34(1) refer to "failed to comply with an AML/CTF requirement", clause 36(3) refers to "contravened or failed to comply with an AML/CTF requirement". Please explain the difference, if any, between these two expressions, and why the latter formulation is proposed to be used in relation to Cap. 511.

There is no legal difference in the current context. The only reason for including "contravenes" is because Cap. 511 uses both the expressions (see ss 27(2)(g), 28(1), (29(1)(a) & (d)). As the provision would be enforced in the context of that Ordinance, "contravene" was included from a drafting perspective to fit in with that Ordinance.

Public consultation

35. **Please provide details of the views received from January to March 2017 on the scope, coverage and parameters of the legislative proposal, and how those views have been addressed in the Bill (see paragraphs 25 to 27 of the LegCo Brief (File ref: B&M/4/1/41C)).**

Please refer to the copy of consultation conclusion published on 13 April 2017 in Appendix regarding details of the views received during the public consultation on the scope, coverage and parameters of the legislative proposal; and how we intended to address these views in the Bill.

The Administration's responses on questions raised in the Assistant Legal Adviser's letter dated 12 July

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 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?**

   The Registrar is required to give reasons for the imposition of a condition, which is subject to review before the Review Tribunal. If a condition is validly imposed and becomes effective, the Registrar should not be required to review from time to time the decision of imposition and to give reasons why the Registrar does not remove the condition. In the case of the licensee requesting for removal of the condition, it is for the licensee to satisfy the Registrar that the ground for imposition no longer exists.

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)?**

   Not all decisions by an authority under the AMLO must be made subject to a review before the Review Tribunal. As the ground for imposing a condition is known and already subject to review before the Review Tribunal, the removal of the condition will normally involve the simple question as to whether the ground of imposition still exists (as opposed to the reasonableness and propriety of the condition). It is not our policy intent to complicate the licensing regime by making such a decision subject to review, especially when all the conditions will be subject to review by the Registrar on every renewal of the licence.

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?**

The policy intent for the proposed section 53ZD is to empower the Registrar to exercise disciplinary power against the director of a corporate licensee for the licensee's contravention of a requirement set out in Schedule 2, in order to satisfy FATF Recommendation 35 according to which sanctions should also be applicable to the directors and senior management of DNFBPs for failure to comply with AML/CTF requirements.

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?**

In light of technological development, we have no objection to add a new provision similar to the proposed section 80(1A)(e) in Part 2 of the AMLO (Amendment) Bill 2017 under section 80(1) in Part 7 of the AMLO so as to allow greater flexibility for the CCE to serve notices or documents on an MSO by electronic means and not

necessarily confined to the stipulated non-electronic means under the existing provision.

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.**

Some Chinese characters may be written or printed in different forms in the existing legislation. According to the Department of Justice ("DOJ")'s latest internal Guidelines for using Standard Characters (標準字) in drafting Chinese legislation, "户" is a standard character and "戶" is a variant character (異體字). In drafting amendments to an Ordinance or its subsidiary legislation, standard characters should be used even if variant forms of characters are used in the legislation being amended.

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?**

A variant form of character is not a grammatical or clerical mistake, and does not raise an issue of interpretation. Nevertheless, variant characters in legislation will be dealt with when the next opportunity arises (e.g. when an amendment exercise covers a provision that also contains a variant character). The DOJ will review and consider the general approach (including the appropriateness of exercising any editorial power under Cap. 614) in handling variant characters in legislation in the future.

7. **It is further noted that while clause 7 (the proposed section 5A(3), (4) and (5) of Cap. 615) renders "client" as 客户, 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.**

The Chinese text has adopted "客户" instead of "當事人" for "client" in those provisions. We understand only the legal professionals would refer a client as a "當事人" in Chinese. For the accounting professionals, estate agents and TCSPs, they are likely to refer their "customers/clients" as "客户". Actually, according to clause 26(12) (which adds a new definition of "customer"), customer already includes a client. For clarity and consistency sake, we will consider amending "client" to "customer" in the English text of the proposed section 5A(3), (4) and (5).

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.

We note that "providing guidance" is rendered as "提供導引" in the existing section 7(1) and have no strong view in amending "提供指引" to "提供導引" for "provides guidance" in the proposed section 7(5A)(b) to ensure consistency within section 7.

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.**

The wording in the definition of "ultimate owner" in the proposed section 53A largely resembles that in the existing definition of "ultimate owner" in section 24. We consider it appropriate to keep the wording in the two provisions consistent. Also, the variation in the Chinese rendition for the word "control" is necessary to better reflect the meaning of the relevant phrase in the context.

Appendix

Consultations on Legislative Proposals to Enhance Anti-Money Laundering and Counter-Terrorist Financing Regulation in Hong Kong

Consultation Conclusions

Financial Services and the Treasury Bureau
April 2017

Chapter 1

Introduction

1.1 The Financial Services and the Treasury Bureau conducted two consultation exercises from 6 January to 5 March 2017 on legislative proposals to enhance anti-money laundering and counter-terrorist financing ("AML/CTF") regulation in Hong Kong. The public was consulted on a proposal to amend the Companies Ordinance (Cap. 622) to require companies incorporated in Hong Kong to maintain beneficial ownership information. Relevant stakeholders were consulted on a proposal to amend the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615, "AMLO") to require designated non-financial businesses and professions ("DNFBPs") to observe statutory customer due diligence ("CDD") and record-keeping requirements.

1.2 We received 58 responses to the proposal of amending the Companies Ordinance to enhance transparency of beneficial ownership of Hong Kong companies. A list of the respondents is set out in **Annex A**, and an analysis of respondents by background is at **Annex B**.

1.3 For the proposal of amending the AMLO to enhance regulation of DNFBPs, we received 69 written submissions and 131 identical letters in standard template. A list of the respondents is set out in **Annex C**, and an analysis of respondents by background is at **Annex D**.

1.4 During the consultation period, we also attended eight consultation sessions with key stakeholders. A list of the professional bodies and industry associations which attended these sessions is at **Annex E**.

1.5 Respondents came from a good mix of backgrounds, including statutory organisation (namely, the Office of the Privacy Commissioner for Personal Data ("Privacy Commissioner")), 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.

1.6 Overall speaking, there is broad support for the Government to enhance AML/CTF regulation in Hong Kong in fulfilment of our international obligations under the Financial Action Task Force ("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 views regarding the precise scope, coverage and parameters of the legislative proposals, by and large reflecting their sectoral interests or backgrounds. In Chapters 2 and 3, we will give a summary of the views received on the two proposals and our responses.

1.7 We would like to take this opportunity to thank all respondents who sent in submissions or participated in the consultation sessions for their valuable views and comments on the legislative proposals. Having regard to the responses, we will fine-tune certain parameters of the legislative proposals to address stakeholders' concerns as discussed in Chapters 2 and 3. The way forward is set out in Chapter 4.

1.8 Encouraged by the general support from the respondents for the legislative exercise, we will proceed to prepare the amendment bills based on the consultation conclusions. Our target is to introduce the two amendment bills into the Legislative Council in the 2016-17 legislative session.

Chapter 2

Consultation on Proposal to Enhance Transparency of Beneficial Ownership of Hong Kong Companies

Comments Received and Our Responses

Overview

2.1 We received 58 written submissions in response to the proposal of amending the Companies Ordinance to enhance transparency of beneficial ownership of Hong Kong companies. We have carefully analysed the submissions, and below is a summary of the major views expressed and our responses.

Conceptual Framework of the Legislative Proposal

2.2 Despite the essential and legitimate roles companies play in conducting business in the global economy, there are increasing international concerns over the misuse of companies, particularly those with 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 FATF, the international standard-setter for AML/CTF regulation, requires member jurisdictions (Hong Kong being one) to put in place a mechanism for ensuring that there is adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by the competent authorities.

2.3 In accordance with the FATF requirement, we propose to enhance the transparency of corporate ownership by requiring companies incorporated in Hong Kong to provide beneficial ownership information. We consider that a balanced approach to legislation should be adopted, complementing the need to have an effective system for identifying and dealing with misuse of legal persons for money laundering and terrorist financing ("ML/TF"), whilst addressing concerns to minimise regulatory burden and compliance

costs on businesses.

2.4 A majority of the respondents agreed that enhancing transparency of company ownership was important for ensuring that Hong Kong remained an open, trusted and competitive place for doing business. They also supported the adoption of a balanced approach to legislation, so as to ensure that additional regulatory burden and compliance costs would be minimised while fulfilling our international obligation to enhance transparency of company ownership. Individual respondents opined that the legislative proposal would impose compliance burden on Hong Kong companies especially the small and medium enterprises ("SMEs"), with one suggesting that it could lead to a loss of confidentiality surrounding company ownership, and another considering that sensitive information of beneficial owners should not spread more widely than absolutely necessary for compliance and enforcement purposes. A few respondents suggested that increasing the powers of investigative authorities might be a more effective way of addressing the issue in question, while another few requested that companies be allowed a grace period to migrate to the new regime.

2.5 We are pleased to note that respondents are largely in support of our legislative objectives. Guided by these principles, we will take care to ensure that the final piece of legislation will enhance transparency of the corporate ownership regime in Hong Kong, without unnecessarily increasing the compliance costs of Hong Kong companies.

Scope of Application

2.6 To provide for a statutory regime on disclosure of beneficial ownership, we propose requiring all companies incorporated under the Companies Ordinance in Hong Kong to keep a register of people with significant control ("PSC register") over the company. Listed companies will be exempted from the requirement as they are subject to more stringent disclosure requirements under the Securities and Futures Ordinance (Cap. 571).

2.7 The majority of the respondents supported the proposed scope of application. A few respondents considered that the regime should be expanded to cover companies incorporated elsewhere but registered in Hong Kong. Individual respondents also suggested exempting from the proposed requirement specific classes of companies, such as dormant companies, companies in liquidation, companies limited by guarantee, companies listed elsewhere in the world, subsidiaries of listed companies, financial institutions, SMEs, companies held by private trusts, shell companies, private limited companies without public interest, funerary industry, and non-profit organisations.

2.8 We note that there is no consensus among respondents on what further types of companies other than listed companies should be exempted from the beneficial ownership regime. Meanwhile, no strong or evidence-based justifications have been put forward for the suggested exemptions. Given the FATF's unequivocal intention to catch legal persons of all forms, carving out the various types of companies will undermine the effectiveness of the disclosure regime and run the risk of subjecting these companies to possible abuse. While we will **maintain** the original proposal of exempting only listed companies regulated under the Securities and Futures Ordinance, we will reserve a **general rule-making power** in the legislation for the Secretary for Financial Services and the Treasury to promulgate further exemption by way of subsidiary legislation should the need arise in future. As regards foreign companies registered in Hong Kong, we are mindful that they may be subject to disclosure requirements of the jurisdictions in which they are incorporated. To place these companies under the proposed regime may dissuade them from coming to Hong Kong for fear of regulatory overlap.

Defining Beneficial Ownership

2.9 The FATF defines "beneficial owner" of a legal person as a natural person who ultimately owns or controls the legal person. This may be determined on the basis of a threshold, such as where an individual owns or controls more than 25% of the legal person through direct or indirect shareholding; or it may also be

determined on the basis of whether an individual exercises control over the management of the legal person through other means. Such definition is widely adopted by FATF jurisdictions with beneficial ownership regimes including those in the European Union.

2.10 We propose adopting a similar definition for our regime such that a beneficial owner in relation to a company is an individual who meets one or more of the following specified conditions –

(a) directly or indirectly holding more than 25% of the shares;

(b) directly or indirectly holding more than 25% of the voting rights;

(c) directly or indirectly holding the right to appoint or remove a majority of directors;

(d) otherwise having the right to exercise, or actually exercising, significant influence or control; or

(e) having the right to exercise, or actually exercising, 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, or would do so if they were individuals.

2.11 There is general support for the proposed threshold of "more than 25%" for determining beneficial ownership. Several respondents suggested using a more stringent threshold of "10% or less" or "25% or above". Few others suggested relaxing the threshold to "more than 50%" or "more than 30%" of beneficial ownership. A couple of respondents suggested using a "more than 25%" threshold for beneficial owners with normal risk profiles and a "10%" for those with high risk profiles.

2.12 A number of respondents sought clarification in respect of the requirement of exercising significant influence or control over a

company through other means (i.e. specified conditions (d) and (e) in paragraph 2.10 above). Some of them argued for their removal altogether, on the grounds that these conditions appeared too wide and open-ended, difficult to test objectively, and might lead to legal uncertainties or increase in compliance cost. Others suggested that guidelines should be issued to define the conditions with more precision.

2.13 We note the broad support for our proposed threshold of "more than 25%" for determining beneficial ownership. The threshold and the specified conditions for determining beneficial ownership have been formulated with reference to the FATF recommendation as well as similar regimes of other advanced economies. Given that beneficial owners may exercise ownership and control of a company through complex structures and obscure means (the holding of voting right or shares or directorship is but one of the more common and straightforward means), specified conditions (d) and (e) are important safeguards to ensure the effectiveness of the regime. For more clarity, apart from including relevant provisions on the specified conditions in the legislation, the Companies Registry will issue guidelines to facilitate better understanding of their application.

Content and Format of PSC Register

2.14 We propose that a PSC register should be kept in either the English or the Chinese language, containing required particulars of registrable individuals (i.e. beneficial owners) and registrable legal entities (i.e. the vehicles through which beneficial owners exercise control of a company).

2.15 An individual is registrable if he/she meets one or more of the specified conditions (listed in paragraph 2.10 above) qualifying as a beneficial owner, whereas a legal entity – whether or not it is formed or incorporated in Hong Kong – is registrable if it meets one or more of the specified conditions and that it is a legal entity immediately above the company in the company's ownership chain.

2.16 The required particulars of a registrable individual or registrable legal entity include –

(a) the name of the registrable individual or registrable legal entity;

(b) the number of the identity card, or the number and issuing country of any passport, of the registrable individual;

(c) the legal form of the registrable legal entity (including the law by which it is governed) and the company registration number or the equivalent in its place of incorporation or formation;

(d) the correspondence address (excluding post office box number) of the registrable individual, and the address of the registered or principal office of the registrable legal entity;

(e) the date when the person became a registrable individual, and the date when the legal entity became a registrable legal entity; and

(f) the nature of the control of the registrable individual or of the registrable legal entity over the company in accordance with the specified conditions.

2.17 To facilitate contact between companies and the competent authorities in investigating beneficial ownership, we also propose requiring companies to enter into the PSC register an authorised person who will serve as a contact point for providing information about the PSC register and further assistance to law enforcement agencies if necessary. Companies have the flexibility to designate either a natural person resident in Hong Kong or a DNFBP which is subject to proper AML/CTF regulation as the authorised person.

2.18 The majority of the respondents agreed with the proposed content of the PSC register, including that the register should include registrable individuals and registrable legal entities meeting the specified conditions, with their required particulars recorded in the proposed format. One respondent suggested that contact methods

other than correspondence address, such as email address and contact phone numbers, should also be added to provide an easier and faster way of communication. A few respondents considered that personal data should not be recorded or recorded in full in the PSC register if the register was to be open for public inspection. One respondent suggested the specific manner for entering the required particulars.

2.19 Most respondents also supported the proposal of designating an authorised person for cooperation with law enforcement agencies. Some respondents considered that the role of authorised persons should be reserved exclusively for DNFBPs such as accountants, solicitors or trust and company service providers ("TCSPs"). Others sought clarification in respect of the liability of DNFBPs when serving as authorised persons, noting that the duty – and failing which the liability – to keep PSC register should rest with a company and not its authorised DNFBPs.

2.20 We note the overall support for the proposed content and format of the PSC register, including that it should include the required particulars of registrable individuals and registrable legal entities. The required particulars for entry in the PSC register are important information to enable determination and investigation of beneficial ownership by the competent authorities. Currently, certain particulars of the members of a company are required to be entered in the legal ownership register (i.e. the register of members) which a company needs to keep for public disclosure under the Companies Ordinance.

2.21 On the issue of designating an authorised person for cooperation with law enforcement agencies, we follow closely the FATF recommendation that the authorised person can either be a natural person resident in the country, or a suitably supervised DNFBP. We believe allowing companies the flexibility of designating either of the two options is important for ensuring that they will have a choice befitting their circumstances. As it is the responsibility of a company to keep a PSC register, and the authorised person serves no more than a contact point for providing information about the PSC register and further assistance to law enforcement agencies if

necessary, we consider it **not** necessary to impose any liability on the authorised person other than that, as in all circumstances, he/she should not provide deceptive, false or misleading information.

Ways to Obtain and Verify PSC Information

2.22 To ensure the availability and accuracy of beneficial ownership information, we require companies to take reasonable steps to identify beneficial owners, obtain and confirm their required particulars before entering them into the PSC register. Such reasonable steps to be taken may include reviewing a company's register of members, articles of association, statement of capital, relevant covenants or agreements, and serving a notice on any person or any legal entity that (i) the company knows or has reasonable cause to believe to be registrable in relation to the company; (ii) the company knows or has reasonable cause to believe to know the identity of someone who/which is a registrable individual/registrable legal entity in relation to the company; or (iii) the company has reasonable cause to believe to know the identity of someone likely with that knowledge.

2.23 While the majority of respondents were not in dispute with the proposed ways of obtaining and verifying beneficial owner information, some respondents considered that the net of notice addressees had been cast too wide, and were concerned about the compliance burden and possible abuse in the event of companies serving such notices indiscriminately. Individual respondents suggested that guidance should be provided for what "reasonable steps" a company should take to identify and verify beneficial ownership information.

2.24 There is disagreement among some respondents over the duty of a company and its registrable individuals or registrable legal entities with respect to the keeping of PSC register. Some respondents argued that instead of placing an onerous burden on a company to identify and confirm the particulars of its beneficial owners and registrable legal entities, beneficial owners should have their fair share of the burden and be required to identify themselves

proactively to the company. Others opined that instead of having to identify the ultimate beneficial owners, the tracing of beneficial owners should stop at the tier of locally incorporated companies in the ownership chain (which by design are obliged to keep PSC registers). A few respondents considered it suffice for registrable individuals alone to be identified and not registrable legal entities as well. A few others, however, argued that all legal entities in a company's ownership chain, not just the legal entity immediately above the company, should be recorded in the PSC register.

2.25 We note the diverse comments on the roles and responsibilities of companies and their beneficial owners. We understand the concern of some respondents about the efforts involved in tracing the ultimate beneficial owners. We, however, note the FATF's clear requirement for identification of the natural persons who ultimately have a controlling ownership interest in a legal person or are exercising control through other means. Should the identification of beneficial owners stop at any intervening level in an ownership chain, it would fall short of meeting the rigorous FATF standard.

2.26 Meanwhile, the purpose of identifying and registering a relevant legal entity with significant control over the company is to facilitate identification of the holding structure in which a beneficial owner holds an interest in a company indirectly through successive layers of holding companies in an ownership chain. To require a company to identify and register all entities in a chain of company structures, while useful from a transparency perspective, will inevitably increase compliance burden on the company. Given that the primary objective of keeping a PSC register is to enable the identification of ultimate beneficial owners (and not each and every vehicle through which they exercise control), we believe it more appropriate for the tracing of legal entities to stop at the tier immediately above the company as currently proposed.

2.27 We note the suggestion of some respondents that a statutory duty should be imposed on beneficial owners to proactively identify themselves to the company. We are mindful that it would put an

onerous burden on persons forming, owning or controlling companies, with implications on enforcement when the persons reside outside our jurisdiction. Having carefully studied all options, we believe the definitions of registrable individuals and registrable legal entities as currently proposed have struck a proper balance among all competing considerations.

2.28 To address respondents' concern about compliance burden on notice addressees, we propose to **modify** our proposal by re-casting the net so as to cover only the first two tiers of notice addressees discussed in paragraph 2.22 above. We also **propose** adding a statutory defence in the legislation, such that an addressee not responding to a company's notice can argue on the ground of it being a frivolous or vexatious claim.

Place of Keeping PSC Register and Accessibility

2.29 In the consultation document, we propose requiring a company to keep the PSC register at its registered office or prescribed place for public inspection upon request. This takes into account the FATF requirement of ensuring transparency of beneficial ownership information, while balancing against the privacy considerations of companies.

2.30 The majority of the respondents agreed with the proposal of keeping the PSC register at a company's registered office or prescribed place. A small number of respondents suggested the alternative of filing a confidential PSC register with the Companies Registry via an annual return, so as to spare companies the trouble of having to entertain requests for disclosure and inspection at their registered offices/prescribed places. Two respondents proposed that beneficial ownership information should be kept by licensed TCSPs, accountants or solicitors.

2.31 As regards accessibility of beneficial ownership information, a vast majority of the respondents, including the Privacy Commissioner, considered that the PSC register should be made available for inspection by the competent authorities only and not general members of the public, citing reasons such as privacy concerns,

compliance burden and competitiveness considerations, while noting that the relevant FATF recommendation required only that beneficial ownership information be made available for access by the competent authorities, and that among the countries requiring beneficial ownership disclosure, UK was the only exception of allowing public access. A small number of respondents suggested access by DNFBPs in addition to the competent authorities, whereas several others considered that a court order should be required for the competent authorities to access PSC registers. Only a notable few, mainly from international advocacy background, opined that Hong Kong should maintain a central PSC register for unrestricted public access.

2.32 We note the majority view for the PSC register to be kept at a company's registered office or prescribed place for exclusive access by the competent authorities. Having regard to privacy considerations, international practices and the FATF recommendation, we agree that access to PSC registers should be restricted to the competent authorities only. We will **fine-tune** the legislative proposal accordingly.

2.33 On the suggestion of some respondents for a confidential PSC register to be filed with the Companies Registry via an annual return, we see merit in the proposal as it would ensure even more "timely access" by the competent authorities as required by the FATF. It will also prepare us for the day when the FATF shall tighten up its standard to require the keeping of beneficial ownership information at a centralised place (we note increasing discussions in the FATF and the European Union towards this direction). This said, we are mindful of the lack of consensus on this issue, and the potential compliance burden at the initial stage on some SMEs for having to file regular returns on PSC registers. We will keep in view international development and revisit the issue of establishing a centralised register should the need arise in future.

2.34 For consideration of reducing compliance costs for companies, we do not consider it appropriate to mandate the keeping of PSC registers by licensed TCSPs or other DNFBPs. For equity reason,

we also do not see the case for granting preferential treatment to DNFBPs by allowing them access to PSC registers, when other members of the public would not have the right to access and inspect PSC registers.

Record-Keeping Requirement

2.35 Drawing reference from similar requirement under the Companies Ordinance in respect of the keeping of registers of members, we propose in the consultation document requiring a company to keep the relevant PSC information for ten years from the date one ceases to be a registrable individual or registrable legal entity.

2.36 A good number of respondents, including the Privacy Commissioner, considered this requirement disproportionate when balancing against privacy and AML/CTF considerations. The Privacy Commissioner considered it more reasonable to have a shorter retention period, say six years, having regard to the six-year record-keeping requirement under the AMLO. Other respondents suggested a retention period of five years in line with the minimum requirement of the FATF. A few respondents suggested a retention period of seven years to align with the requirement under the Inland Revenue Ordinance (Cap. 112) for keeping tax records.

2.37 In light of the observation of the Privacy Commissioner and the prevalent view, we will **modify** the proposal to require instead the keeping of beneficial ownership records for six years in line with the requirement under the AMLO.

Sanctions for Non-compliance

2.38 To ensure effectiveness of the regime, we propose imposing criminal sanctions against a company and its responsible persons for non-compliance with the requirement of keeping a PSC register. The maximum penalty for non-compliance is a fine at level 4 (i.e. $25,000) and a further daily fine of $700. Notice addressees will be subject to similar sanctions (without the daily fine element) for failure to comply with notice requirements.

2.39 If any person knowingly or recklessly makes in the PSC register a statement which is misleading, false or deceptive in any material particular, he/she may commit an offence and 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.

2.40 Most of the respondents agreed with the proposed sanctions. Several respondents considered that the sanctions were overly severe, with one suggesting the issue of warning letters in lieu of criminal sanctions. One respondent opined that the proposed sanctions were too lenient, suggesting instead a fine at $10,000,000 and imprisonment for ten years for non-compliance. Another respondent suggested that criminal sanctions should also be imposed on beneficial owners and not just companies.

2.41 Apart from criminal sanctions, we consulted the public on the specific issue of whether companies should be allowed the option of restricting any participation rights (e.g. voting rights) or pecuniary rights (e.g. dividend rights) of a notice addressee who had failed to respond to a notice for disclosure of beneficial ownership. While some respondents expressed support for the notion of a restriction notice, even more were in opposition, considering it draconian and an infringement on private property and rights.

2.42 We note the majority support for the proposed sanctions against companies and their responsible persons as well as notice addressees, which have been formulated with reference to the existing sanctions under the Companies Ordinance in relation to the keeping of registers of members. Given the controversy surrounding the notion of restriction notice, we will **not** pursue it at this stage.

Power of Court to Rectify Register

2.43 We propose setting up a rectification mechanism to enable anyone aggrieved by an entry in a company's PSC register to apply to the

court for rectification of the PSC register. The court may refuse the application, or order such rectification and payment by the company of any damages sustained by any aggrieved person. Respondents offered unanimous support for the proposal.

Chapter 3

Consultation on Proposal to Enhance Anti-Money Laundering Regulation of Designated Non-Financial Businesses and Professions

Comments Received and Our Responses

Overview

3.1 We received 69 written submissions, together with 131 identical letters in standard template, in response to the proposal of amending the AMLO to enhance regulation of DNFBPs. We have carefully analysed the submissions, and below is a summary of the major views expressed and our responses.

Scope of Coverage of the Legislative Proposal

3.2 In accordance with the FATF's requirements, we propose amending the AMLO to prescribe statutory CDD and record-keeping requirements applicable to solicitors, accountants, real estate agents and TCSPs when these professionals engage in specified transactions. [1] Schedule 2 to the AMLO prescribes the circumstances under which CDD measures must be carried out by financial institutions, the required steps to complete due diligence, and the duty of keeping transaction records for six years. It provides a ready basis for extending the requirements to DNFBPs.

3.3 Respondents generally agreed with the proposed approach of using Schedule 2 to the AMLO as a basis to prescribe statutory CDD and record-keeping requirements for DNFBPs. One respondent, however, opined that it would be preferable to have a dedicated piece of legislation that was more tailored towards the needs of DNFBPs rather than expanding the scope of the AMLO which was first drawn up with financial institutions in mind. A couple of respondents sought clarification on the coverage of "solicitors"

[1] 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.

under the AMLO, asking if it would cover "in-house" solicitors who provided legal advice to their employers in the capacity of employees.

3.4 While offering general support for Hong Kong to step up AML/CTF regulation by extending the AMLO requirements to DNFBPs, the Estate Agents Authority ("EAA"), together with other respondents from the real estate sector, argued that the sector should be exempted from the statutory CDD and record-keeping requirements under the AMLO due to the low ML/TF risks of the sector (the argument being that it does not make much economic sense to launder money through property transactions given the high costs involved and yet slow turnover) and the limited role played by estate agents in property transactions. They further submitted that the relatively low education requirements for entry into the trade also made it difficult for estate agents to conduct statutory CDD (especially in the event of identifying and verifying beneficial ownership) as compared with other DNFBP sectors such as solicitors and accountants.

3.5 Without disputing the need for the legal profession to be subject to AML regulation, the Law Society of Hong Kong ("LSHK") also argued that solicitors and foreign lawyers should be treated separately from other DNFBP sectors and be excluded from the proposed legislation. They considered that there was already an effective and enforceable AML/CTF mechanism as embodied in a practice direction (i.e. Practice Direction P) issued by the LSHK, which set out mandatory requirements of CDD, record-keeping and staff training for law firms, solicitors or foreign lawyers practising in Hong Kong to follow. Under the Legal Practitioners Ordinance ("LPO") (Cap. 159), the LSHK could refer any breach of a practice direction it issued to the Solicitors Disciplinary Tribunal for adjudication and application of disciplinary and sanction measures as appropriate. Subjecting solicitors and foreign lawyers to the AMLO regime would be disproportionate to the low ML/TF risks engendered by the sector. The LSHK also quoted that other international financial centres such as London and New York did not impose statutory provisions on solicitors for CDD and record-keeping requirements.

3.6 A few respondents suggested that dealers in precious metals and stones, mah-jong parlours, the Hong Kong Jockey Club, and the wine and art trade were also prone to ML/TF risks. These sectors should therefore be regulated under the AMLO as well.

3.7 We note the general consensus on the proposed extension of the AMLO to cover DNFBPs, such that they will be subject to the CDD and record-keeping requirements in Schedule 2 to the AMLO when they engage in specified transactions. On the question of "in-house" solicitors, we duly observe the FATF's defined scope of lawyers which covers sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to "in-house" professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to AML/CTF measures.

3.8 We fully recognise the unique nature of business and risk profile of the real estate sector in Hong Kong, and that practitioners may have varying capacity or expertise to conduct CDD measures for property transactions. We however do **not** see a convincing case to carve out the sector, given its coverage under the FATF's defined scope of DNFBPs. It is the FATF's clear requirement that CDD and record-keeping requirements should apply to real estate agents when they are involved in transactions for their clients concerning the buying and selling of real estates. In this connection, we note that real estate agents in Hong Kong are already required by the EAA, vide various practice circulars issued for AML/CTF purpose, to identify and verify the identity of a customer (which amounts to simplified CDD in the AMLO parlance), make further inquiries or consult their management where in doubt, and report suspicious transactions to law enforcement agencies as appropriate. We see no grounds to derogate from the prevailing practice by offering exemption in the AMLO.

3.9 We also fully appreciate the existing regulatory regime applicable to solicitors and foreign lawyers under the Practice Direction P issued by the LSHK. We note, however, that these guidelines do not have the force of law, and the very absence of the core FATF principles that solicitors should observe CDD and record-keeping

requirements when they engage in specified transactions from the law will very likely result in our failing the FATF requirements. We observe, for instance, that comparable jurisdictions such as Singapore received unfavourable ratings in the mutual evaluation for their DNFBP regimes notwithstanding the presence of guidelines issued by relevant regulatory bodies on CDD and record-keeping requirements. The assessors specifically pointed out that those CDD requirements were only set out in circulars but not in law as required by the FATF recommendations. US also failed the FATF test due to the absence of statutory CDD requirements for DNFBPs. UK, another comparable jurisdiction, already sets out statutory requirements under the Money Laundering Regulations 2007 whereby independent legal professionals must apply CDD and record-keeping measures when they participate in specified transactions. As in the case with other DNFBPs which are also subject to prevailing AML guidelines issued by their regulatory bodies, we consider it appropriate for solicitors to be subject to the AMLO requirements to ensure fairness and consistency across the board.

3.10 On the suggestion by a few respondents that dealers in precious metals and stones should also be regulated under the AMLO, we note the FATF's recommendation that CDD measures should apply when these dealers engage in cash transactions. Our understanding from the trade, however, is that cash transactions are no longer 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/CTF 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 dealers in precious metals and stones to regulation under the AMLO in future. As regards dealers in the wine and art trade, we note that they fall outside the FATF's defined scope of DNFBPs. While the FATF's definition of "casino" does not expressly cover mah-jong parlours or the Hong Kong Jockey Club, we note that they were not classified as "casino" when assessed by the FATF in the third round of mutual evaluation for Hong Kong.

Risk-sensitive Approach for Applying CDD Measures

3.11 In accordance with the risk-based approach advocated by the FATF for combating money laundering, we consider that the conduct of CDD measures [2] should operate in a risk-sensitive manner, whereby the extent of such measures to be undertaken should depend on the types of customers, business relationship or transactions and the associated risks. To encourage DNFBPs to develop effective measures to assess money laundering risks and to reduce undue burden on them, we propose that DNFBPs be allowed the flexibility to apply simplified CDD when dealing with specified customers or products in low-risk situations. Meanwhile, DNFBPs are expected to undertake customary CDD measures in normal circumstances, and enhanced CDD measures when dealing with customers presenting high ML/TF risks.

3.12 The majority of the respondents agreed with the application of a risk-sensitive approach, whereby the CDD measures to be undertaken by the respective DNFBP sectors should be commensurate with the risk profiles of their customers as well as business natures. Some respondents underlined the importance of recognising the ever-changing risk landscapes in different sectors,

[2] Unless otherwise provided in the AMLO, we propose that, as in the case of financial institutions, DNFBPs should undertake the following customary CDD measures in usual circumstances –
(a) Identifying the customer or any person purporting to act on behalf of the customer;
(b) Verifying the customer's identity using documents, data or information from a reliable, independent source;
(c) Identifying a beneficial owner where there is one, and take reasonable measures to verify the identity of the beneficial owner;
(d) Understanding the ownership and control structure of those customers who are legal persons or trusts (or other similar arrangements); and
(e) Obtaining information on the purpose and intended nature of the business relationship.

and considered that regulatory bodies should give clear and concise sector-specific guidance to practitioners on the appropriate level of CDD measures to be undertaken. A couple of respondents opined that DNFBPs which were small in scale might lack the resources and expertise to follow the risk-sensitive approach.

3.13 There is a broad consensus among the respondents that DNFBPs should be subject to enhanced CDD measures when dealing with customers presenting high ML/TF risks. Meanwhile, they should also be allowed the flexibility to undertake simplified CDD measures on low-risk cases, with reference to the list of eligible customers and products specified in the AMLO.

3.14 While the majority of the respondents did not propose any addition to the specified list of customers and products eligible for simplified CDD treatment under the AMLO, a few suggested adding scenarios such as when DNFBPs were acting as clients of a DNFBP, or acting for long-term clients or for products/clients that were already subject to rules and regulations of other approved governing bodies. Some respondents opined that a "one-size-fits-all" approach would not be appropriate in light of the diverse business natures of DNFBPs. Affected DNFBP sectors should therefore be given the flexibility to expand the list of eligibility for simplified CDD treatment in their respective sector-specific guidelines.

3.15 While arguing for a carve-out of the estate agent sector from the AMLO, the EAA and other industry associations further submitted that if a final decision was made to cover real estate agents under the AMLO, the following scenarios and caveats should be depicted in the legislation, in addition to further guidelines to be published by the EAA on their application –

(a) CDD should only be conducted upon the signing of a Provisional Agreement for Sale and Purchase;

(b) Simplified CDD should be applied if non-cash transactions (or less than a certain amount of cash, say $120,000) or vendors of property transactions were involved;

(c) No CDD should be mandated for sale or purchase of subsidised housing, first-hand residential sales or property transactions by auctions;

(d) Company search for CDD purpose should only cover one layer and be conducted on a declaration basis to minimise operational costs by the sector; and

(e) Real estate agents should be required to terminate a business relationship if and only if they had reasonable suspicions of money laundering or terrorist financing.

3.16 We note the general agreement among respondents on the application of a risk-based approach for undertaking CDD, with customary CDD to be conducted in normal circumstances, simplified CDD for low-risk cases and enhanced CDD for high-risk situations. We appreciate that DNFBPs may have varying capacity or expertise to follow the risk-sensitive approach especially at the initial implementation stage. To address any concern they may have, we will include an enabling provision in the AMLO to allow regulatory authorities to issue **sector-specific guidelines** as they consider appropriate for implementation of the Schedule 2 requirements, to guide DNFBPs through the application of the risk-based approach having regard to the business nature and risk profile of the respective sectors.

3.17 For the real estate sector, we fully appreciate the unique nature of property transactions in Hong Kong and the important intermediary role real estate agents play in the process. We thank the EAA for the constructive list of suggestions on how this could be reflected in the legislation if the sector is to be covered under the AMLO. Our response to the individual suggestions is set out in the ensuing paragraphs.

3.18 As explained in paragraph 3.8 above, we will have difficulty passing the FATF test if the real estate sector is to be carved out altogether from the AMLO. It will render the regime equally ineffective if we were to carve out certain types of property

transactions (e.g. subsidised housing or auctioned properties as suggested by the EAA) from the AMLO notwithstanding the FATF requirements. Instead of blanket exemption irrespective of the ever-changing business landscape, we consider it more appropriate for the EAA to issue guidelines on the corresponding levels of CDD to be undertaken in response to the varying nature and risk profiles of property transactions.

3.19 Having regard to the FATF recommendation, we consider it reasonable for statutory CDD measures to trigger **not** at the property-viewing stage, but only when a transaction is actually taking place as typified in the signing of a Provisional Agreement for Sale and Purchase. Given the involvement of financial institutions and solicitors in first-hand sales of residential properties, we also see room for simplified CDD to be conducted in accordance with the risk-based approach advocated by the FATF and further guidelines to be issued by the EAA. This may also apply to non-cash transactions.

3.20 On the issue of when to terminate a business relationship, given the wide range of financial institutions and DNFBPs covered under the AMLO, we see **no** justification for real estate agents alone to deviate from the requirements therein (which largely follow the FATF language) by seeking alternative interpretation of the obligations.

3.21 As regards the manner of conducting company search or other identity verification for the purpose of conducting CDD, we consider it too onerous to burden the AMLO with nuances which may vary from sector to sector. For the case of real estate agents, we are of the view that such procedural details should be left to the guidelines to be promulgated by the EAA having regard to the sector's unique nature of business and risk profiles. We will include an **enabling provision** in the AMLO to allow the EAA the discretion to issue guidelines as it deems fit in relation to the operation of the Schedule 2 requirements. We will continue to liaise with the EAA and the trade closely to follow through the issue of appropriate guidelines to cater for various circumstances as necessary and where justified in accordance with the risk-based

approach.

Record-keeping Requirement

3.22 At present, financial institutions are required to maintain identification data, account files, business correspondence and records of transactions for a period of six years under the AMLO. For consistency, we propose that DNFBPs be subject to the same requirement when they come under the regulation of the AMLO.

3.23 Close to half of the respondents expressed support for DNFBPs to be subject to the six-year record-keeping requirement on a par with financial institutions. A few respondents considered it suffice for records to be kept for five years, having regard to the FATF recommendation of keeping records for at least five years. Several others suggested following the requirement of seven years for keeping tax records under the Inland Revenue Ordinance.

3.24 We note respondents' general preference for the six-year record requirement, and individual inclination for a slight variation of the requirement. Balancing all views, we will **maintain** the original proposal of applying a six-year requirement to DNFBPs, in line with that observed by financial institutions under the AMLO.

Designation of Regulatory Authority

3.25 For solicitors, accountants and real estate agents, they are currently subject to professional self-regulation by the respective regulatory bodies, which have promulgated guidelines on CDD and record-keeping procedures for voluntary or mandatory compliance by members. The LSHK, the Hong Kong Institute of Certified Public Accountants ("HKICPA") and the EAA share broadly similar powers under their respective Ordinances to deal with professional misconduct of registered professionals.

3.26 To minimise the compliance burden on these sectors, and having regard to the principle of professional autonomy, we propose leveraging on the existing regulatory regimes applicable to the three sectors under the LPO, the Professional Accountants

Ordinance ("PAO") (Cap. 50) and the Estate Agents Ordinance ("EAO") (Cap. 511) respectively to enforce the statutory CDD and record-keeping requirements. The LSHK, the HKICPA and the EAA will take on statutory oversight for monitoring and ensuring compliance of their respective professions with the AMLO requirements. Non-compliance with the requirements will be handled in accordance with the prevailing investigation, disciplinary and appeal mechanisms under the three Ordinances governing professional misconduct.

3.27 For TCSPs, as there is currently no statutory regulatory regime for firms or body corporates providing trust or company formation services in Hong Kong, we propose introducing a licensing regime to enforce CDD and record-keeping requirements for TCSPs while entrusting the Registrar of Companies as the licensing authority.

3.28 Respondents generally supported the proposal to designate the LSHK, the HKICPA and the EAA to become the respective regulatory authorities for enforcing CDD requirements for solicitors, accountants and real estate agents under the AMLO. One respondent was concerned about the resource implication of designating a professional body to be a regulatory authority, considering that extra manpower and financial resources would be required to conduct additional compliance checks and investigations.

3.29 A few respondents cast doubt on the designation of the Companies Registry as the regulatory body of TCSPs on the ground that it was not a professional association. A few respondents suggested the alternative of designating the Hong Kong Institute of Chartered Secretaries ("HKICS") to take up the regulatory role for TCSPs.

3.30 A couple of other respondents also suggested that there should be a single and dedicated AML/CTF agency in Hong Kong to ensure consistency in procedures and treatment of offences for all DNFBPs.

3.31 We note the general support from respondents for the proposal to entrust the current professional regulators for DNFBPs with the

enforcement of CDD and record-keeping requirements under the AMLO. We also respect the wish of some for the HKICS to assume the role of licensing authority for the TCSP regime. We note, however, that the TCSP sector comprises players from not only the company secretary profession, but also the legal, accountancy, trustee and other professions. The Companies Registry, being a government agency, is better placed to administer the licensing and regulatory regime for TCSPs.

3.32 We have considered the option of introducing one new single regulatory body for DNFBPs in respect of the AML/CTF regulatory regime as some respondents suggested. We are, however, mindful of the administrative burden and compliance cost implications for the respective professions, which are already subject to a rigorous professional regulatory system under the relevant Ordinances. Having regard to the principle of professional autonomy, and considering that the professional regulators have already established an AML/CTF regime for the respective professions, we believe it more appropriate to task the LSHK, the HKICPA, the EAA and the Companies Registry to take on the statutory role of overseeing AML/CTF compliance as proposed. We will continue our dialogue with the regulatory bodies and render all necessary assistance to facilitate their migration to the AMLO regime.

Sanctions for Non-compliance

3.33 The LPO, the PAO and the EAO have already stipulated a set of appropriate disciplinary and sanction measures ranging from reprimands, order for remedial actions, to civil fine, and suspension or revocation of licence. We propose relying on the existing sanction measures, without imposing further criminal sanctions on non-compliance, having regard to the lesser risks concerning these DNFBP sectors vis-à-vis financial institutions.

3.34 While some of the respondents were silent on this issue, the majority of those who responded expressed agreement with our proposed sanctions for non-compliance of DNFBPs, i.e. for the aforementioned regulatory bodies to leverage on the existing

disciplinary mechanisms applicable to respective DNFBP sectors under their existing Ordinances to enforce the statutory CDD and record-keeping requirements. There is some support for new criminal sanctions to be introduced for non-compliance with the statutory CDD and record-keeping requirements by DNFBPs so as to put more teeth into the law and ensure fairness under the AMLO.

3.35 Some respondents indicated support for the LSHK, the HKICPA and the EAA to be given inspection and search powers similar to those available to AML/CTF regulatory authorities for financial institutions under the AMLO. A few cautioned that, as these professional bodies were not law enforcement agencies, any extra powers to be given must be strictly defined and limited in scope.

3.36 We will go along with the majority view that the respective regulatory bodies should continue to rely on the applicable disciplinary and sanction measures under their respective Ordinances to handle non-compliance of the AMLO requirements. This should provide sufficient deterrent effect which is also proportionate to the risks associated with the DNFBP sectors, and we do **not** consider it necessary to impose further criminal sanctions.

3.37 We will **maintain** the original proposal of not granting inspection and search powers to the LSHK, the HKICPA and the EAA, noting the concern or reservation of many about the notion of doing otherwise. Given the relatively low risks involved in the DNFBP sectors vis-à-vis financial institutions, we believe this is a more proportionate response in accordance with the risk-based approach advocated by the FATF.

Licensing Regime for TCSPs

3.38 For the purpose of enforcing CDD and record-keeping requirements for TCSPs, we propose setting up a licensing regime whereby any person providing trust or company services as a business will be required to obtain a licence from the Companies Registry subject to the applicant and its directors/partners/ultimate

owners (where applicable) meeting a fit-and-proper test.[3] Like other DNFBPs, TCSPs will be subject to the CDD and record-keeping requirements stipulated in Schedule 2 to the AMLO.

3.39 We propose that it would be a criminal offence[4] for any person or corporation to provide trust or company services as a business without a licence. Non-compliance of the licensed TCSPs with the statutory CDD and record-keeping requirements, on the other hand, will be disciplined and subject to a range of supervisory sanctions, including public reprimand, remedial order and a pecuniary penalty not exceeding $500,000. We do not intend 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.

Coverage, Exemptions and Definitions

3.40 There is broad support for the introduction of a licensing regime for TCSPs under the AMLO for the purpose of overseeing their compliance with AML/CTF requirements. A few respondents considered the licensing regime potentially disturbing and imposing too many responsibilities on TCSPs.

3.41 A number of respondents, including professional associations, sought clarifications in respect of the definition of TCSPs, and enquired whether accountants and solicitors who (as is often the case) set up separate legal entities (i.e. other than CPA firms or law firms) to operate TCSP business would be required to obtain a licence.

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[3] Criteria of a fit-and-proper test include consideration of the following – (i) criminal and bankruptcy records of the applicant (for natural persons), any ultimate owners, or the partners/directors (in cases of partnership/legal persons); (ii) where the applicant is a corporation, whether it is in liquidation or receivership; and (iii) any failure to comply with the requirements under the AMLO and guidelines to be issued by the Companies Registry.

[4] 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 in connection with an application for the grant or renewal of a licence 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.

3.42 Individual respondents put forward miscellaneous suggestions for exemption of different categories of operators engaging in the business, such as trust companies registered under the Trustees Ordinance (Cap. 29), trustees for private trusts/bare trusts; trustees for offshore domicile funds; companies managing products under the Mandatory Provident Fund/Occupational Retirement Schemes; companies managing unit trusts licensed by the Securities and Futures Commission; bank-affiliated trust service providers; banks performing the roles of TCSPs as part of their overall wealth management services provided to customers; companies operating business centres or providing business addresses; and companies providing solely clerical services.

3.43 Some respondents flagged up the need for definitions of "client/customer/business" to be stipulated in the legislation, and sought clarifications in respect of the liability of TCSPs in case of non-compliance with CDD requirements where multiple trustees were involved or where they were bound by the non-refusal requirement under the Mandatory Provident Fund/Occupational Retirement Schemes. They raised particular concern about the latter scenario, noting that under the AMLO a DNFBP might have to terminate a business relationship where CDD led to AML suspicions.

3.44 We note the general support for a licensing regime to be set up for TCSPs and clarifications sought in respect of its precise scope of coverage. While we have been adopting the FATF language in defining the business of TCSPs, we will make sure that it is clearly translated into the legislation.

3.45 To avoid regulatory overlap, we propose to exempt authorised institutions and licensed corporations which are providing TCSP service as an ancillary to their principal business (e.g. as an in-house service for clients within the same institutions) from the licensing requirements, considering that such authorised institutions and licensed corporations are already subject to CDD and record-keeping regulation under the AMLO by the Hong Kong Monetary Authority and the Securities and Futures Commission respectively.

3.46 As regards solicitors and accountants who engage in the TCSP business, we propose considering their cases along the same principle of avoiding regulatory overlap. Our thinking is that for accountants and solicitors providing TCSP services, insofar as they are covered by the regulatory remit of the HKICPA and the LSHK, we do **not** see the need for them to obtain a licence. If accountants and solicitors operating TCSP business with persons not being accountants or solicitors (as the case may be), they will be required to obtain a TCSP licence from the Companies Registry. Under such circumstances, the non-accountant or non-solicitor directors/partners/ultimate owners of the TCSP entities will be subject to the fit-and-proper test as well as disciplinary proceedings administered by the Companies Registry, whereas their accountant/solicitor counterparts will continue to be subject to the conduct and disciplinary proceedings of the HKICPA or the LSHK. We will continue discussions with the HKICPA and the LSHK to ensure a clear delineation of regulatory roles between them and the Companies Registry, while ensuring that no persons or entities engaged in TCSP services would be left out in the regulatory regime.

3.47 Apart from exemption of accountants and solicitors in the manner proposed above, we note that no consensus emerges from the responses for exempting other categories of TCSP operators as suggested by individual respondents. We will, however, reserve a **rule-making power** in the legislation for the Secretary for Financial Services and the Treasury to grant further exemption for a certain class of TCSP operators should the need arise in the future.

3.48 We do **not** see the need to define in the legislation such generic term as "client/customer/business". There is well-established case law on how such should be interpreted in the ordinary meanings of the words while having regard to the facts of individual cases under consideration. The Companies Registry will nevertheless promulgate **guidelines** on the licensing requirements.

Fit-and-proper Test

3.49 Diverse views were expressed regarding the fit-and-proper test for applicants of TCSP licences. Some respondents, notably the more established in the TCSP industry, suggested the need to beef up the fit-and-proper test by including prudential criteria such as experience, competency, qualifications, training and financial soundness (e.g. imposing a capital requirement for entry). A few respondents suggested modelling on the current accreditation and monitoring procedures under the AML/CTF Charter of the HKICS. A few respondents further suggested that only professionals who were current members of the HKICS, lawyers or accountants should be allowed to provide TCSP services. The smaller establishments, on the other hand, supported the licensing criteria as proposed in the consultation document and considered that the fit-and-proper test should not become a hurdle for market entry at the expense of small and medium businesses.

3.50 Considering that the TCSP licensing regime is introduced for the purpose of enforcing CDD and record-keeping requirements for the TCSP industry and not as a professional registration system for individual practitioners, we believe it **not** necessary to raise the threshold or alter the nature to include professional registration requirement or other prudential criteria in the fit-and-proper test. This will ensure that any compliance cost of the licensing requirements is kept to the minimum for TCSP operators.

Transitional Period

3.51 Many respondents considered the proposed 90-day transitional period too short to allow their migration to the licensing regime, and asked for an extension to at least 180 days or even one year if possible. A few respondents also asked whether there would be a grace period in case of potential backlog of TCSP licence applications.

3.52 To address the concern of respondents, we will include a **deeming provision** in the legislation to the effect that an applicant for a TCSP licence will be deemed to be operating with a licence from

the day it files an application with the Companies Registry. It is our original plan for the licensing regime to become fully operative by the end of the 90-day transitional period when all applications will have been processed and licences issued. Given the deeming provision, the length of the transition period will not have much bearing on the existing TCSP operators other than that they will have to make an application within the period. This notwithstanding, we are prepared to **extend** the transition period from 90 days to 120 days to further facilitate existing TCSP operators' migration to the licensing regime.

Validity of TCSP Licence

3.53 The majority of the respondents supported the proposed three-year validity of a TCSP licence which is renewable on application. Individual respondents counter-proposed shorter (one to two years) or longer (five years) validity period for a TCSP licence, as well as auto-renewal or fast-track arrangements for TCSP licensees seeking renewal of their licenses.

3.54 We note the majority preference and will **maintain** the proposal of a three-year TCSP licence which is renewable on application.

Sanctions on TCSPs

3.55 There was no dispute among respondents that any persons operating TCSP business without a valid licence should be liable to criminal sanctions, and that only supervisory sanctions (not criminal) for TCSPs in respect of non-compliance with statutory CDD and record-keeping requirements should be introduced. While some respondents stressed the importance of consistency and coordination of enforcement practices across different DNFBP sectors, a few considered the proposed sanctions too stringent for TCSPs, disproportionately affecting smaller establishments in the market.

3.56 Given the general support for criminal liability to be imposed on unlicensed TCSP operations, we will **maintain** the proposed sanction level (i.e. a fine at level 6 and/or imprisonment of up to

six months), which is comparable to that applicable to the licensing regime for money service operators under the AMLO.

3.57 For non-compliance of TCSP licensees with the statutory CDD and record-keeping requirements under the AMLO, we **maintain** the view of not introducing any criminal offences having regard to the relatively low risk of this sector. The range of supervisory sanctions that we propose at present, i.e. public reprimand, remedial order and a pecuniary penalty not exceeding $500,000, is in line with the maximum level of civil sanction that may be triggered against solicitors and accountants.

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal ("Review Tribunal")

3.58 We propose amending Part 6 of the AMLO to expand the scope of reviewable decisions of the Review Tribunal to cover appeals against future decisions made by the Registrar of Companies in implementing the licensing and disciplinary regime for TCSPs.

3.59 The majority of the respondents agreed with the proposed re-constitution of the Review Tribunal. One respondent remarked that the scope of the Review Tribunal should not cover decisions made by other professional bodies to be designated as regulatory bodies for DNFBPs under the AMLO. Another respondent opined that the Review Tribunal should be cautious of the different judgment levels to be applied on DNFBPs given that their business natures are completely different from financial institutions. There is also one suggestion that representatives from the TCSP sector should be invited to serve on the Review Tribunal to bring in sectoral perspectives and to consider appeals from TCSPs in the future.

3.60 We note the majority support for the proposed re-constitution of the Review Tribunal. We will take care to ensure a balanced representation in the Review Tribunal, with members possessing the necessary competence and expertise to consider appeals against future decisions of the Companies Registry in respect of the licensing and disciplinary regime for TCSPs.

Threshold of Beneficial Ownership

3.61 When the AMLO was enacted back in 2012, the threshold of defining "beneficial owner" was first set at "not less than 10%". Having reviewed the latest FATF requirement and the prevailing practice of other jurisdictions, we propose adopting a revised threshold of "more than 25%" for defining beneficial ownership. This will be in line with the future requirement under the Companies Ordinance for companies incorporated in Hong Kong to identify and maintain beneficial ownership information.

3.62 Respondents generally welcomed the proposal of revising the threshold for determining controlling interest of beneficial ownership under the AMLO from the current "not less than 10%" to "more than 25%". A few respondents suggested that the "more than 25%" threshold should apply to normal circumstances whereas the "not less than 10%" threshold should be retained for high-risk situations; while a few respondents were also of the view that threshold should stay at "not less than 10%". One respondent noted that the current proposal of "more than 25%" seemed to exclude scenarios where a person owned exactly 25% of the controlling interest.

3.63 We note that the 10% threshold is not one mandated by the FATF. While we see merit in retaining it for high-risk situations to cater for the eventuality when the FATF shall raise its bar again in future, we are mindful of the need to keep regulatory burden to the minimum especially for the DNFBP sectors which carry lesser risks than financial institutions. On balance, we suggest **removing** the 10% threshold for high-risk situations while adopting a threshold of over 25% across the board.

Chapter 4

Conclusion

4.1 Hong Kong is an open, trusted and competitive place to invest and do business. Underpinning our status as an international financial centre is a robust AML/CTF regime which we have built over the years. It helps prevent illicit activities, improve corporate accountability, and inspire confidence in investors that Hong Kong is a clean and safe place for doing business. This in turn enhances the competitiveness of Hong Kong as recognised globally by renowned international organisations.

4.2 As a member of the FATF, Hong Kong will soon undergo a mutual evaluation to be conducted by other FATF jurisdictions in respect of our AML/CTF efforts, the extent of our compliance with the FATF recommendations, and the effectiveness of our implementation of the relevant regimes. As a matter of priority, we need to address the gaps identified in our AML/CTF regime by enhancing transparency of beneficial ownership and supervision of DNFBPs, so as not to adversely affect the overall rating of Hong Kong in the mutual evaluation, which is scheduled in 2018. Our compliance in this respect has a bearing on our hard-earned reputation as an international financial centre. Maintaining the status quo is not an option.

4.3 In drawing up the legislative proposals, we are guided by the principles that the amended AML/CTF regime should enable Hong Kong to meet the FATF standards so as to maintain our competitiveness as an international financial centre. At the same time, the additional regulatory burden and compliance costs on businesses should be minimised as far as reasonably practicable. We are encouraged to see that these guiding principles are widely shared by respondents, who also offer many constructive suggestions for fine-tuning the legislative parameters.

4.4 Encouraged by the broad-based support for enhancing AML/CTF regulation, we will proceed to prepare amendment bills on the two proposals. The amendment bills will take into account views

received during the consultations and the refinements we discussed in Chapters 2 and 3. Our target is to introduce the amendment bills into the Legislative Council by July 2017. We look forward to the community's continuous support for our efforts to ensure that Hong Kong remains a safe, clean and trusted place for doing business.

Annex A

Consultation on Proposal to Enhance Transparency of Beneficial Ownership of Hong Kong Companies

List of Respondents

1. ACCA Hong Kong
2. Acota Limited
3. Alberta Sie Ki
4. Alice Lau Wai-yung
5. Alpadis Trust (HK) Limited
6. A-Swiss Corporate Services Limited
7. AXA Group
8. Baillie Gifford Asia (Hong Kong) Limited
9. Blickle
10. Business and Professionals Alliance for Hong Kong
11. Cathay Pacific Airways Limited
12. Centre for Budget and Governance Accountability
13. CJ Campion
14. Computershare Hong Kong Trustees Limited and Computershare Hong Kong Investor Services Limited
15. DLA Piper Hong Kong
16. Equiom Corporate Services (Hong Kong) Limited
17. Ernst & Young Advisory Services Limited
18. Estera Corporate Services (HK) Limited
19. Federation of Hong Kong Industries
20. Financial Transparency Coalition
21. Frances Chan Lai-fun
22. Global Witness
23. Hong Kong Aircraft Engineering Company Limited
24. Hong Kong General Chamber of Commerce
25. Hong Kong Trustees' Association
26. Hong Kong Institute of Certified Public Accountants
27. Jane Moir
28. Liberal Party
29. Mandy Mo
30. May Lam
31. Mazars Corporate Recovery & Forensic Services Limited
32. Mazars Corporate Secretarial
33. Oxfam Hong Kong
34. Privacy Commissioner for Personal Data, Hong Kong
35. Richard Stoneman

36. Society of Trusts & Estates Practitioners
37. Sovereign Trust (Hong Kong) Limited
38. Swire Pacific Limited
39. Swire Properties Limited
40. The Chinese General Chamber of Commerce
41. The Chinese Manufacturers' Association of Hong Kong
42. The Hong Kong Association of Banks
43. The Hong Kong Chinese Importers' & Exporters' Association
44. The Hong Kong General Chamber of Small and Medium Business
45. The Hong Kong Institute of Chartered Secretaries
46. The ILS Group Limited
47. The Law Society of Hong Kong
48. The Society of Chinese Accountants and Auditors
49. The Y. Elites Association
50. Tricor Services Limited
51. Victon Registrations Limited
52. Vistra Corporate Services (HK) Limited
53. Zurich Insurance Company Ltd
54. 鄭俊鴻

55 – 58. Four respondents requested not to disclose his/her identity

Annex B

Consultation on Proposal to Enhance Transparency of Beneficial Ownership of Hong Kong Companies

Analysis of Respondents by Background

Types of Respondents	No. of Submissions
Statutory body	1
Industry associations and professional bodies	14
Political parties	2
International advocacy/civil society	5
Individual firms/companies	25
Individual members of the public	11
Total	**58**

Annex C

Consultation on Proposal to Enhance Anti-Money Laundering Regulation of Designated Non-Financial Businesses and Professions

List of Respondents

1. ACCA Hong Kong
2. Acota Limited
3. Alberta Sie Ki
4. Alice Lau Wai-yung
5. Alpadis Trust (HK) Limited
6. AML Accelerate
7. Ander Consulting (HK) Limited
8. Anthony Chiu Ling-cheong
9. Anthony Rogers
10. Ashurst Hong Kong
11. A-Swiss Corporate Services Limited
12. Baker & McKenzie
13. CJ Campion
14. Clifford Chance
15. Computershare Hong Kong Trustees Limited and Computershare Hong Kong Investor Services Limited
16. Dominik
17. Equiom Corporate Services (Hong Kong) Limited
18. Estate Agents Authority
19. Estate Agents Management Association
20. Estera Corporate Services (HK) Limited
21. Fiduserve Corporate Services Ltd
22. Frances Chan Lai-fun
23. Group of International Finance Centre Supervisors
24. Hatari Express Limited
25. Hong Kong Chamber of Professional Property Consultants Limited
26. Hong Kong General Chamber of Commerce
27. Hong Kong Institute of Certified Public Accountants
28. Hong Kong Institute of Estate Agents
29. Hong Kong Property Agencies Association
30. Hong Kong Property Services (Agency) Ltd.
31. Hong Kong Real Estate Agencies General Association
32. Hong Kong Trustees' Association
33. Joint Council of Estate Agents Associations
34. Liberal Party
35. May Lam

36. Mazars Corporate Recovery & Forensic Services Limited
37. Mazars Corporate Secretarial
38. Midland Realty
39. Mr Kwok, I-Professional
40. Natalia Seng
41. Pacific Jade Corporate Services Ltd
42. Primasia Corporate Services Limited
43. R. Miu
44. Society of Trusts & Estates Practitioners
45. Sovereign Trust (Hong Kong) Limited
46. State Street Bank and Trust Company
47. The Chinese General Chamber of Commerce
48. The Law Society of Hong Kong
49. The Hong Kong Association of Banks
50. The Hong Kong Institute of Chartered Secretaries
51. The ILS Group Limited
52. The Society for Chinese Accountants & Auditors
53. The Y. Elites Association
54. Thomson Reuters
55. Tricor Services Limited
56. Victon Registrations Limited
57. Vistra Corporate Services (HK) Limited
58. Zurich International Life Limited
59. 馬少雄
60. 鄭俊鴻

60 – 68. Nine respondents requested not to disclose his/her identity

69 – 199. 131 standard letters from real estate agents

Annex D

Consultation on Proposal to Enhance Anti-Money Laundering Regulation of Designated Non-Financial Businesses and Professions

Analysis of Respondents by Background

Types of Respondents	No. of Submissions
Industry associations and professional bodies	17
Political party	1
International advocacy/civil society	4
Individual firms/companies	29
Individual members of the public	149[5]
Total	**200**

[5] The count includes 131 standard letters from real estate agents.

Annex E

Professional Bodies and Industry Associations Present at Consultation Sessions on the Two Legislative Proposals

1. Estate Agents Authority and industry associations
2. Federation of Hong Kong Industries
3. Hong Kong General Chamber of Commerce
4. Hong Kong Institute of Certified Public Accountants
5. Hong Kong Small and Medium Enterprises Association
6. Hong Kong Trustees' Association Ltd.
7. Society of Trust and Estate Practitioners
8. The Chinese General Chamber of Commerce
9. The Chinese Manufacturers' Association of Hong Kong
10. The Hong Kong General Chamber of Small and Medium Business
11. The Hong Kong Institute of Chartered Secretaries
12. The Law Society of Hong Kong