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3 January 2018

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

Dear Hugo,

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

Follow-up to meeting on 21 December 2017

I refer to your email dated 28 December. The Administration's responses are set out in **Annex** for your information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Eureka Cheung', written over a horizontal line.

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

c.c.

Bills Committee Chairman	(Attn: Hon. Wong Ting-kwong, GBS, JP)
Registrar of Companies	(Attn: Ms Ada Chung)
Secretary for Justice	(Attn: Ms Nilmini Dissanayake Ms Rayne Chai)

Issues relating to the implementation of requirements under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 (“AML Bill”)

1. As mentioned in our reply dated 20 December [Ref: LC Paper No. CB(1)375/17-18(02)], the Financial Action Task Force (“FATF”) recommends that financial institutions (“FIs”) and designated non-financial businesses and professions (“DNFBPs”) should maintain records on customer identification and transactions for at least five years. In other words, jurisdictions have the discretion to consider the appropriate length of record-keeping in accordance with the risk-based approach provided that the threshold is met. The six-year record-keeping requirement now applicable to FIs under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (“AMLO”) has been drawn up having regard to the FATF Recommendations, relevant requirements in other Ordinances as well as views received during public consultations, and has worked smoothly for FIs since the commencement of the AMLO in 2012. As the AMLO is intended to be an overarching piece of enabling legislation, and its Schedule 2 provides a ready basis for extension to DNFBPs, we propose that DNFBPs be subject to the same customer due diligence and record-keeping requirements therein. Such a legislative approach received general support during the stakeholder consultation. That said, we are prepared to consider if any refinement is necessary having regard to the overall discussions of the Bills Committee.
2. As emphasised at the last Bills Committee meeting, estate agents in Hong Kong only need to conduct anti-money laundering (“AML”) and counter-terrorist financing measures in accordance with Schedule 2 of the AMLO when they are involved in transactions concerning the buying or selling of real estate which take place in Hong Kong. The geographical location of the real estate is immaterial. The “Hong Kong” element in the new section 5A(4) relates to the “involvement” and not to the location of the real estate. In other words, real estate could cover property within and outside Hong Kong.
3. Under Part 5 of the AMLO, a money service operator (“MSO”) who is licensed to operate a money service may only operate the business at any premises specified in the licence. The Customs and Excise Department (“C&ED”) has to be satisfied, among other things, that the premises are suitable to be used for the operation of a money service. By displaying the original of the licence in a conspicuous place will help the C&ED in identifying licensed MSO operating at specified premises, thereby enhancing the effectiveness of supervision. Owing to the nature of the trust or company service provider (“TCSP”) business, there is no similar requirement as regards the premises for TCSP licensees. The requirement to display the original of the licence in a conspicuous place at specified premises is therefore not applicable to a TCSP licensee.

Power of authorized persons and investigators under the AMLO

4. Under section 9 of the AMLO as amended, an authorized person may only enter

the business premises of a TCSP licensee for routine inspection for the purpose of ascertaining the compliance with any provision of the Ordinance and the relevant licensing conditions, etc. “Business premises” means, in this context, any premises at which the TCSP licensee carries on business (see new section 9(15)(i)). If entry is refused, the authorized person will have to apply for a warrant pursuant to section 17. If a TCSP licensee carries on a business at a home-office, the authorized person will have to apply for a warrant under section 17 if request for entry is refused. As for situations where the TCSP licensees conduct their businesses through mobile operations, whether a particular premises is one where the TCSP licensee carries on business depends on the facts of the case. In case of doubt, the authorized person may also make enquiries of the TCSP licensee and request access to any relevant record or document.

5. Section 12 of the AMLO provides for the powers of investigators appointed under section 11 to require a person to produce records or documents at a time and place specified in writing and to attend before the investigator for enquiry. The section does not provide for any power to enter premises. If the investigator intends to enter any premises for the purposes of his investigation, he has to apply for a warrant pursuant to section 17.

Regulation of trust or company service providers

6. As mentioned at the Bills Committee meeting, section 53B(2) is added in response to the views received during the stakeholder consultation that a rule-making power is to be reserved in the AML Bill for the Secretary for Financial Services and the Treasury to grant further exemption for a certain class of TCSP operators with a view to providing flexibility for the sector. We do not have any plan to exercise this power at present, but will conduct proper consultation should the need to exercise this power arise in future. The Regulation will also be subject to negative vetting in the Legislative Council.
7. The proposed new section 53I on fit and proper test basically follows section 30(4) of the AMLO relating to MSOs. In considering the conviction(s) reported in any particular case, the Registrar of Companies (“Registrar”) will consider all the relevant facts of the case to decide if a person is a fit and proper person to carry on a TCSP business or be associated with such a business.
8. Although the imposition of licensing conditions will depend on the circumstances of each case, it is envisaged that generally licensing conditions will only be imposed to comply with the necessary requirements of the FATF. For example, if a TCSP licensee is found not to have sufficient knowledge of the AML requirements, he/she will be required to attend training courses. Owing to the need to cater for individual circumstances, we do not consider it practicable to specify the conditions in the AML Bill.
9. The proposed new section 53Q(1)(b) provides for the power of the Registrar to suspend a licence until the occurrence of an event specified by the Registrar. The power is necessary as it is envisaged that there may be circumstances where the remedial action in question, for example, the production of relevant record, is to be made by the licensee. In such circumstances, the suspension should cease

to have effect when the licensee complies with the relevant requirement and it is impracticable for the Registrar to specify a definite timeframe for the suspension. We consider the same shall continue to apply to the C&ED on MSOs under the existing section 34 of the AMLO.

10. The proposed new section 53X is modeled on section 41 of the AMLO relating to MSOs. On the issues raised –
 - (a) A TCSP licensee is required to notify the Registrar of the cessation of business before the intended date of cessation as the Registrar needs to update the Register of TCSP licensees which is available for public inspection and needs the information for administering the licensing regime. Similar requirement is also found in section 135(1) of the Securities and Futures Ordinance relating to a licensed person.
 - (b) As the circumstances and reasons for a decision to cease business will vary from case to case and may not be foreseen beforehand, for consideration of reducing compliance burden we do not find it appropriate to specify a notification period.
 - (c) The relationship between a TCSP licensee and its clients is commercial and contractual in nature. We do not consider it appropriate to regulate such relationship under the AMLO.
 - (d) After receiving the notification of cessation of business, the Registrar will cancel the licence with effect from the intended date of cessation (section 53X(2)). A person commits an offence if the person carries on a TCSP business without a licence (section 53F).
 - (e) The Companies Registry will carry out site inspections to ensure compliance of the relevant requirements.

Transitional arrangements of the proposed licensing regime for TCSPs

11. Pursuant to the proposed new section 53ZQ(4), if a deemed licensee applies for a licence during the transitional period, the application is not granted and there is an application to review the decision, the deemed licence will only cease to have effect when the decision not to grant the licence is confirmed or otherwise varied by the Review Tribunal, or when the application for review is withdrawn (section 75(1)(c) of the AMLO). In other words, the deemed licence still has effect during the interim period.