

For discussion  
on 8 January 2018

**Legislative Council  
Panel on Financial Affairs**

**Proposed Creation of a Permanent Directorate Post  
in the Companies Registry**

**PURPOSE**

This paper seeks Members' support for the proposed creation of a permanent directorate (D2) post of Registry Manager ("RM") in the Companies Registry ("CR") with effect from 1 March 2018, or with immediate effect upon approval by the Legislative Council ("LegCo"), whichever is the later.

**BACKGROUND**

2. We need dedicated support at directorate level in the CR to head, and continuously oversee the operation of, a new Registry to be set up to implement a new licensing regime for trust or company service providers ("TCSPs"). The licensing regime is instituted for the purpose of enforcing statutory customer due diligence ("CDD") and record-keeping requirements for TCSPs so as to fulfil Hong Kong's international obligation under the Financial Action Task Force ("FATF"), thereby strengthening our reputation as an international financial centre and a safe and clean city for doing business.

**JUSTIFICATION**

**The need for enhancement of the anti-money laundering and counter-terrorist financing ("AML/CTF") regime of Hong Kong**

3. The FATF is an inter-governmental body established in 1989 that sets international standards on combating money laundering and terrorist financing ("ML/TF"). Over the years, the FATF has developed an

elaborate set of 40 recommendations, based on which the international community has been strengthening regulation to combat ML/TF. Member jurisdictions take turns to evaluate the domestic AML/CTF regime of each other, and assess the extent to which the relevant FATF recommendations are observed, both in terms of technical compliance and effectiveness of implementation.

4. Hong Kong has been a member of the FATF since 1991. The FATF will conduct a mutual evaluation (“ME”) of the AML/CTF regime of Hong Kong in 2018/19. To prepare for the ME, the Government has conducted a gap analysis which suggests that one of the key deficiencies in our AML/CTF regime vis-à-vis the FATF recommendations is the absence of statutory CDD and record-keeping requirements for designated non-financial businesses and professions (“DNFBPs”) (viz. solicitors, accountants, estate agents and TCSPs) when they engage in specified transactions.

5. Given the openness of Hong Kong’s economy, we expect keen interest and heightened scrutiny from other FATF members in the upcoming ME. If no remedial actions are taken to address the above deficiencies in the run-up to 2018, it is almost certain that Hong Kong will receive adverse ratings. Hong Kong will then be subject to an enhanced follow-up procedure. This will affect our reputation as an international financial centre and a safe and clean city for doing business.

6. To enhance AML/CTF regulation of DNFBPs, the Government introduced the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 (“AML Bill”) into LegCo on 28 June 2017 to –

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

## **The need for a TCSP licensing regime**

7. CDD and record-keeping requirements are the main strands of an effective AML/CTF regime to counter money laundering activities and ensure the integrity of a financial system. The FATF considers that, in addition to financial institutions, DNFBPs that engage in specified transactions should also be subject to similar statutory CDD and record-keeping requirements. The FATF also requires competent authorities or self-regulatory bodies with adequate powers to be designated to monitor and ensure compliance with AML/CTF requirements by the relevant DNFBP sectors, including TCSPs.

8. In the absence of an overarching regulatory body for the TCSP industry, the Government proposes under the AML Bill that a licensing regime be instituted under the CR to enforce the statutory CDD and record-keeping requirements for TCSPs.

9. Under the new licensing regime, TCSPs will be required to apply for a licence from the CR and satisfy a fit-and-proper test before they can provide trust or company services as a business in Hong Kong. It will be a criminal offence to operate a TCSP business without a licence. The Registrar will be empowered to grant, renew, refuse, suspend or revoke a licence, or impose or vary the conditions on a licence. TCSP licensees will be required to obtain prior approval from the Registrar in respect of any person proposing to become an ultimate owner, a partner or a director of a licensee and give notifications to the Registrar of any changes in reported particulars within the statutory time period. TCSP licensees will also be required to comply with the statutory CDD and record-keeping requirements as set out in the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (“AMLO”). We do not propose to impose criminal sanctions for non-compliances with the AMLO requirements in view of the lesser risks concerning TCSPs when compared with financial institutions.

10. On enforcement, the Registrar will be empowered to conduct on-site inspections, investigate any non-compliance of TCSP licensees, initiate disciplinary actions, impose sanctions (such as public reprimand, remedial order, pecuniary penalty and suspension or revocation of the licence) and institute prosecution actions in appropriate cases.

11. To take on the new regulatory role in respect of TCSPs, the Government proposes that a new TCSP Registry be set up under the CR. Subject to LegCo's scrutiny of the AML Bill, the new TCSP Registry is expected to commence operation on 1 March 2018, which will comprise a Licensing Division and a Compliance Division. The main duties of the two Divisions are as follows –

Licensing Division

- (a) to vet applications for grant/renewal of licences from TCSPs;
- (b) to carry out the fit-and-proper test on applicants (including their ultimate owners, partners or directors (if any));
- (c) to process applications for approval to become an ultimate owner, a partner or a director of a TCSP licensee;
- (d) to register notifications reporting changes in particulars of TCSP licensees;
- (e) to provide general support services such as counter services, shroff services for receiving applications and collecting fees;
- (f) to maintain a Register of TCSP licensees (“the Register”) for public inspection;
- (g) to provide certified copies of an entry from the Register;
- (h) to issue certificates stating that the name of a person has or has not been entered or removed from the Register; and
- (i) to attend to public enquiries, perform administrative work of the Registry, perform IT system tests, etc.

Compliance Division

- (a) to conduct on-site inspections to ensure that TCSP licensees comply with the statutory CDD and record-keeping requirements;
- (b) to review regularly the policies and procedures on CDD and record-keeping of licensees to ensure that risk mitigation measures and controls are in place for TCSP licensees;
- (c) to investigate suspected cases of breaches of statutory provisions governing the conduct of TCSP licensees and complaint cases received from other regulatory authorities or members of the public;
- (d) to initiate disciplinary actions and impose sanctions on licensees for failing to comply with the statutory CDD or record-keeping requirements or any conditions imposed on the

- grant or renewal of a licence; and
- (e) to institute prosecution actions for carrying on a TCSP business without licence and in other appropriate cases.

12. It is estimated that the new TCSP Registry will handle a caseload of around 10 000 TCSPs, involving 7 500 corporations and 2 500 individuals, from its inception. The TCSP Registry will have to determine if an applicant for a licence is a fit and proper person for carrying on trust or company services business in Hong Kong. Vetting of applications for applicants that are partnerships or corporations will require more time and resources as the fit-and-proper test will apply to the owners, partners and directors, as appropriate, of the partnerships or corporations concerned. It is projected that for a caseload of 10 000 applications, around 17 500 individuals will be subject to the fit-and-proper test. Interviews would also have to be conducted whenever necessary.

### **The need for a permanent RM post**

13. An RM, who is a directorate (D2) officer, will head the new TCSP Registry and be responsible for the overall management and daily operation of the new Registry, including assisting the Registrar in devising strategies in implementing and enforcing the new licensing and regulatory requirements.

14. The TCSP Registry will be set up on a permanent basis to administer the TCSP licensing regime and oversee the AML/CTF-related conduct of TCSP licensees under the AMLO. In addition to the core licensing work which includes the assessment of whether an applicant is a fit and proper person, enforcement measures such as on-site inspections, regular review of policies and procedures on CDD and record-keeping requirements, disciplinary measures and prosecution actions will have to be undertaken on a continuous basis in order to uphold the regulation of TCSP licensees and ensure the effectiveness of the licensing regime. The review and co-ordination work requires supervision and close monitoring from senior management. Hence, there is a genuine need to have a dedicated and permanent directorate grade officer to head and lead the TCSP Registry to ensure smooth operation, and assist the Registrar and the Financial Services and the Treasury Bureau in addressing the increasingly

complex regulatory issues involved given the fast-changing security landscape and corresponding international AML/CTF standards.

15. The detailed job descriptions of the proposed RM (Trust and Company Service Providers) (“RM(TCSP)”) post are set out at **Annex 1**.

### **Non-directorate support**

16. The proposed permanent RM(TCSP) post will be supported by a team of 59 non-directorate staff of the Solicitor, Companies Registration Officer, Analyst Programmer, secretarial and clerical grades. The proposed organisation chart of the TCSP Registry is at **Annex 2**.

### **ALTERNATIVE CONSIDERED**

17. There is an existing permanent RM post in the CR. However, the incumbent of the post is already fully stretched with her own schedule of duties including assisting the Registrar in the overall management and operation of the CR and overseeing other new initiatives to be implemented, including the enhanced regulation of licensed money lenders, introduction of a new beneficial ownership disclosure regime under the Companies Ordinance (“CO”) (Cap. 622), implementation of the Open-ended Fund Companies regime, implementation of new provisions in a major amendment exercise to the CO and revamping the CR’s Information System, etc. The existing RM directly oversees three major operational areas in the CR (namely the Company Formation and Enforcement Division, the Registration Division and the Public Search Division) and is the only directorate officer supporting the Registrar in providing strategic and high-level guidance to other managers of the operational Divisions. Having regard to the on-going nature of the additional duties involved in the operation of the new TCSP Registry, the existing RM will have no spare capacity to take up the duties of the proposed RM(TCSP) post.

## **FINANCIAL IMPLICATIONS**

18. The proposed creation of the permanent RM post will incur an additional notional annual salary cost at mid-point of \$2,094,600. The full annual average staff cost, including salaries and staff on-cost, is \$3,134,000. All the funds involved will be borne by the CR Trading Fund.

19. The additional notional annual salary cost at mid-point for the 59 non-directorate posts as mentioned in paragraph 16 above is \$30,480,300 and the full annual average staff cost, including salaries and staff on-cost, is \$39,353,000. The funds will also be borne by the CR Trading Fund.

## **ADVICE SOUGHT**

20. Members are invited to comment on the proposal.

**Financial Services and the Treasury Bureau  
Companies Registry  
28 December 2017**

**Proposed Job Description  
Registry Manager (Trust and Company Service Providers)**

**Rank** : Registry Manager (D2)

**Responsible to** : Registrar of Companies (D4)

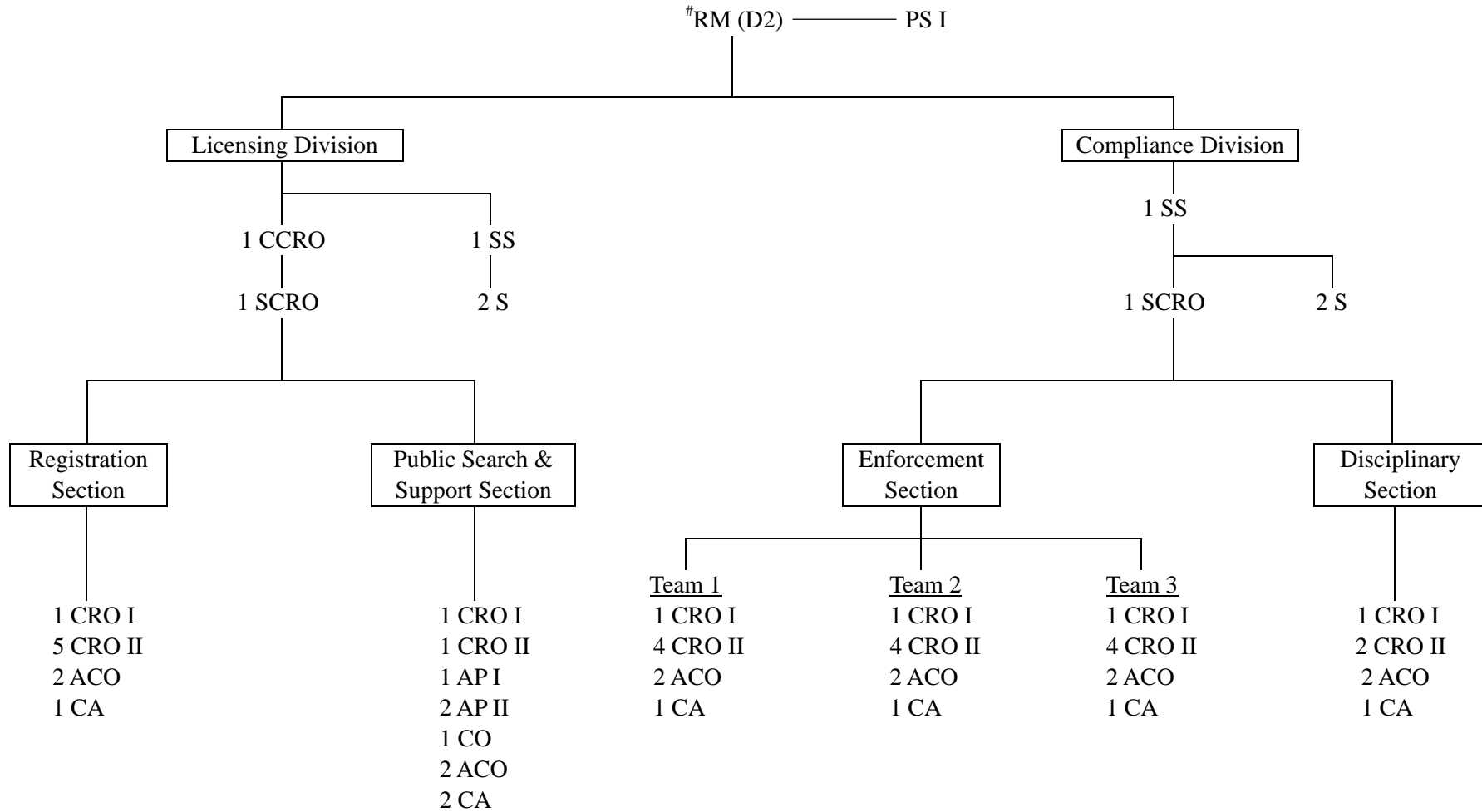
**Duties and Responsibilities**

- (1) overall planning of the operation and supervision of the Trust and Company Service Providers Registry including accommodation matters, design of the operation of the licensing regime and renewal procedures, manpower planning, setting up and maintaining an IT system to facilitate operation, compiling guidelines for compliance by licensees of trust or company service providers;
- (2) overall planning, co-ordination and supervision of the Licensing and Compliance Divisions;
- (3) ensuring the provision of licensing services within the statutory framework;
- (4) ensuring the proper conduct of investigations, site inspections and disciplinary matters;
- (5) supporting the Registrar of Companies in handling media enquiries and implementing publicity measures, including speaking at seminars, engaging relevant stakeholders and professional bodies, and attending international conferences and evaluation meetings of the Financial Action Task Force whenever necessary to present the case for Hong Kong;
- (6) advising the Registrar of Companies and the Financial Services and the Treasury Bureau on policy and operational issues relating to anti-money laundering issues, risk assessment reports and regulation of TCSP licensees;



- (7) considering and providing input to legislative proposals from an operational perspective and attending meetings of the Bills Committee of the Legislative Council whenever required; and
- (8) any other duties as may be assigned by the Registrar of Companies.

**Proposed Organisation Chart of the Trust and Company Service Providers Registry**



**Legend**

RM – Registry Manager;      SS – Senior Solicitor;      S – Solicitor;      CCRO – Chief Companies Registration Officer;  
 SCRO – Senior Companies Registration Officer;      CRO I – Companies Registration Officer I;      CRO II – Companies Registration Officer II;  
 API – Analyst/Programmer I;      APII – Analyst/Programmer II;      CO – Clerical Officer;      ACO – Assistant Clerical Officer;  
 CA – Clerical Assistant

# Proposed new post