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## Hong Kong Proposes Enhanced AML Obligations for Professionals and Beneficial Owner Registries for Hong Kong Companies

The Hong Kong Government has recently proposed to expand its anti-money laundering (“AML”) laws. This is expected to assist Hong Kong in keeping pace with AML developments in other financial centers, and to prepare for its upcoming FATF mutual evaluation in 2018.<sup>1</sup>

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### Key Proposals

- Hong Kong companies would be required to maintain a register of “beneficial owners” or “persons with significant control,” known as a PSC register.
- Solicitors, accountants, real estate agents, and trust or company service providers would be required to perform customer due diligence in certain circumstances.

### Beneficial Owner Registers

The government proposes to amend the Companies Ordinance to require Hong Kong companies to identify and maintain records of their “beneficial owners.” The definition of “beneficial owners” would also be significantly revised. These proposed rules would apply to all companies incorporated in Hong Kong, including companies limited by shares, companies limited by guarantee and unlimited companies. However, listed companies will be exempt given the existing regime already imposed on them under the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong).

If approved, such companies will be required to create a “PSC Register” of persons with “significant control.” Persons with “significant control” include both registrable individuals and registrable legal entities. This register would be available for public inspection on payment of a fee.

“Registrable individuals” are beneficial owners, as that term is newly defined under the proposed amendments.

Historically, a “beneficial owner” was defined as an individual who owns or controls, directly or indirectly, not less than 10% of the issued share capital of the corporation, or who is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights at general meetings of the corporation, or who exercises ultimate control over the management of the corporation.

Under the proposed amendments, “beneficial owners” would be individuals who meet one or more of the following specified conditions:

- Directly or indirectly holding more than 25% of shares;

<sup>1</sup> Hong Kong Financial Services and the Treasury Bureau, Consultation on Enhancing Anti-Money Laundering Regulation of Designated Non-Financial Businesses and Professions, available [here](#); and Hong Kong Financial Services and the Treasury Bureau, Consultation on Enhancing Transparency of Beneficial Ownership of Hong Kong Companies, available [here](#).

- Directly or indirectly holding more than 25% of voting rights;
- Directly or indirectly holding the right to appoint or remove a majority of directors;
- Otherwise having the right to exercise, or actually exercising, significant influence or control; or
- 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.

In its consultation paper, the government stated that they might “take this opportunity to align the threshold under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (the “AMLO”) with the proposed 25% threshold to be adopted under the Companies Ordinance.”<sup>2</sup> Accordingly, this revision would likely also apply to financial institutions that are currently subject to AML customer due diligence requirements.

“Registrable Legal Entities,” in turn, are defined as any legal entity immediately above the company in its ownership chain that meets the beneficial ownership definition.

Companies would be required to obtain and ascertain the accuracy of the following information required to be included in the PSC register: the beneficial owner’s name; his or her or its identity card or passport details, or company registration number; his or her or its address; the date he or she or it became a registrable individual or entity; and the nature of the control exerted over the company. If there is no person or entity that falls within the definition of registrable individual or legal entity, the new rules would also require that this be stated in the PSC register. Registrable individuals and entities would be required to comply with notices to ascertain and confirm the relevant particulars.

### **Customer Due Diligence and Recordkeeping Obligations for Solicitors, Accountants, Real Estate Agents and Trust and Company Service Providers.**

A proposed amendment to the AMLO would extend customer due diligence (“CDD”) recordkeeping requirements to three types of professions performing specified kinds of roles:

- **Solicitors and accountants**, when preparing for or carrying out transactions for clients concerning
  - i. the buying or selling of real estate;
  - ii. managing of client money, securities or other assets;
  - iii. management of bank, savings or securities accounts;
  - iv. organization of contributions for the creation, operation or management of companies;
  - v. creation, operation or management of legal persons or arrangements; or
  - vi. buying or selling of business entities;
- **Real estate agents**, when engaged in transactions concerning the buying and selling of real estate; and

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<sup>2</sup> See Hong Kong Financial Services and the Treasury Bureau, Consultation on Enhancing Anti-Money Laundering Regulation of Designated Non-Financial Businesses and Professions, p.19, available [here](#).

- **Trust or Company Service Providers (“TCSPs”)**, when preparing for or carrying out transactions for clients concerning
  - i. the forming of companies or other legal persons;
  - ii. acting, or arranging for another person to act, as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
  - iii. providing a registered office, business address, correspondence or administrative address or other related services for a company, a partnership or any other legal person or arrangement; or
  - iv. acting, or arranging for another person to act, as a trustee of an express trust or similar legal arrangement, or a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

Under these proposals, effectively, the current rules governing financial institutions would be extended to such professionals. Such professionals would be required to undertake customer due diligence measures in the following circumstances: (1) when establishing business relationships with new customers; (2) when carrying out transactions above HK\$120,000 with customers with whom they do not already have a business relationship; (3) where there are suspicions of money laundering and/or terrorist financing; and (4) when there are doubts about the veracity or adequacy of previously obtained customer identification data.<sup>3</sup>

In the first two scenarios, these professionals would be allowed to apply simplified CDD measures when dealing with specified categories of business that are considered to pose a lower risk. Simplified CDD would apply for clients who are financial institutions subject to AML regulation, listed companies, government organizations, certain types of pension schemes, investment vehicles where the managers are financial institutions supervised for AML/CFT compliance, and certain types of insurance policies.

Like financial institutions, such professionals would also be subject to enhanced CDD requirements when dealing with higher-risk situations, such as when a customer is a politically exposed person or is not physically present for identification purposes. Enhanced CDD requirements would include obtaining management approval for establishing or continuing the business relationship, and taking additional measures to mitigate the AML/CFT risk, such as enquiring with customers about their source of funds.

The proposed amendments would also codify additional recordkeeping rules, including requirements to maintain customer identification data collected, account files, business correspondence, and records of transactions with respect to each customer for a period of six years.

Enforcement of these proposed requirements would be implemented through the existing professional regulatory bodies for solicitors, accountants and estate agents. TCSPs would be required to apply for a license from the Registrar of Companies before they provide trust or company services as a business to the public; it will be a criminal offense to operate a TCSP business without a license.

## Background and Context

These proposals are intended to enhance Hong Kong’s regulatory regime for combating money laundering and terrorist financing to bring it up to date and in line with international requirements as promulgated by the Financial Action Task Force (“FATF”), an inter-governmental body that sets standards on combating money laundering and terrorist financing.

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<sup>3</sup> Notably, solicitors in Hong Kong are already required to conduct such diligence by the Law Society of Hong Kong under Practice Direction P.

Hong Kong has been a member of the FATF since 1991. As most clients will be aware, Hong Kong already maintains strict requirements in respect of AML compliance and reporting that are in line with many of the world's other financial capitals. However, in recent years, the FATF has increased its focus on CDD, including with respect to businesses that have not historically been subject to such requirements in many jurisdictions. Following the Panama Papers leak in April 2016, recent meetings of the G20 Finance Ministers have also paid particular attention to promoting greater transparency of beneficial ownership of legal persons, and the G20 has requested the FATF and the Global Forum of the OECD to improve the implementation of international standards on transparency of beneficial ownership information. The FATF and the Global Forum of the OECD are set to jointly recommend that G20 members lead by example and bring forward their plans to fully and effectively implement the FATF recommendations on beneficial ownership by the end of 2017.

The FATF has long recommended that financial institutions implement CDD measures to identify and verify customers and maintain records on customer identification and transactions for at least five years. Hong Kong has implemented such recommendations through the AMLO. However, the FATF also recommends that such requirements be applied to "designated non-financial businesses and professions," or "DNFBPs," which in its view present money-laundering and terrorist financing risks. Among others, DNFBPs include casinos, dealers in precious metals and stones, real estate agents, lawyers, notaries, accountants, and TSCPs. Member jurisdictions have generally been less robust about implementing CDD requirements for DNFBPs, and the FATF has in recent mutual evaluations emphasized their importance. Notably, in its recent mutual evaluation the United States was criticized by the FATF for not having CDD requirements for certain types of DNFBPs. Other jurisdictions, such as the U.K., already have such requirements, although such jurisdictions are in the minority. Hong Kong enacted the AMLO in April 2012 to implement the FATF's recommendations relating to financial institutions. Under the AMLO, certain types of financial institutions currently have a statutory obligation to conduct CDD on their customers and keep relevant records for a specified period. However, in Hong Kong – as in certain other jurisdictions – there are currently no such statutory regulations in respect of DNFBPs. The current proposed amendments to the AMLO are expected to bring Hong Kong in line with these international recommendations.

FATF's 2012 Recommendations (as updated in 2013, 2015 and 2016) also recommend that countries require companies to maintain information on beneficial ownership,<sup>4</sup> and in 2014 the FATF published additional guidance on how to implement this.<sup>5</sup> In response to this, in its latest AML Directive the EU has required that trusts and similar structures obtain and hold information on their beneficial ownership.<sup>6</sup> Hong Kong's latest proposal in requiring companies to maintain PSC registers can be seen as an effort to keep in step with these recommendations.

The proposed amendments are made in anticipation of Hong Kong's upcoming mutual evaluation by the FATF (scheduled for 2018). In the Hong Kong Government's view, given the recent emphasis on beneficial ownership, Hong Kong's efforts in implementing CDD requirements will be closely examined during this upcoming evaluation.

The Hong Kong Government launched its public consultation period on the proposals on January 6, 2017. The consultation period closes on March 5, 2017. We expect the proposed amendments to become effective, potentially in modified form, at some point shortly thereafter.

For more information please feel free to contact a member of Ropes & Gray's leading [anti-corruption / international risk](#) team.

<sup>4</sup> FATF, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations, February 2012 (updated October 2016), Recommendation 24, paragraph 8, available [here](#).

<sup>5</sup> FATF Guidance, Transparency and Beneficial Ownership, October 2014, available [here](#).

<sup>6</sup> Directive 2015/849 of the European Parliament and of the Council, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, 20 May 2015 (the "Fourth Anti-Money Laundering Directive").