

Division 5, Financial Services Branch
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

5th March 2017

Dear Sir

**ACCA's Response to Consultation on Enhancing Anti-Money Laundering
Regulation of Designated Non-Financial Businesses and Professions**

Financial Action Task Force (FATF) considers that designated non-financial business and professional (DNFBPs) which engage in specified transactions should be subject to similar statutory customer due diligence (CDD) and record-keeping requirements as undertaken by financial institutions in anti-money laundering and countering the financing of terrorism (AML / CFT). It further called for its member states to monitor and ensure compliance of the relevant DNFBP sectors with AML / CFT requirements.

As a global accountancy body, ACCA (the Association of Chartered Certified Accountants) has been long advocating for a consistent international approach on fighting money laundering and countering the financing of terrorism.

To strengthen and reinforce its long-term position as an international financial and commercial centre, Hong Kong is obliged to implement credible regime to enhance regulation of DNFBPs, so as to safeguard the integrity of our financial markets and achieve a safe business environment.

ACCA Hong Kong therefore welcomes the commitment of Financial Services and the Treasury Bureau (FSTB) to implement the FATF recommendation and is pleased to be able to contribute in paving the way for improved financial integrity.

While we support the overall scheme of enhancing anti-money laundering regulation of DNFBPs and agree, in principle, with most of the proposed measures set out in the consultation paper, we have the following comments in particular to the questions set out in Chapter 4 of the consultation:

Q4.1 We agree with the application of risk-sensitive approach in regulating the DNFBPs in AML / CFT matters.

Q4.7 FSTB proposes, instead of introducing one new single regulatory body for solicitors, accountants and estate agents, the prevailing investigation,

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disciplinary and appeal mechanisms under the respective governing Ordinances of the professions should be relied upon to enforce the statutory CDD and record-keeping requirements, whereas the trust or company service providers (TCSPs) would be regulated by the Registrar of Companies.

In practice, many TCSPs are owned and operated by solicitors or accountants, alongside with their respective professional firms. Given the executives in-charge of these types of TCSPs are solicitors or accountants who are exempted from processing valid licenses to be granted by the Registrar of Companies to carry out TCSP services, it would be helpful to clarify which licensing regime would apply to these types of TCSPs. And in case of non-compliance, whether these types of TCSPs should be regulated by the respective professional bodies, i.e. The Law Society of Hong Kong (The Law Society) or the Hong Kong Institute of Certified Public Accountants (HKICPA), or the Registrar of Companies.

Q4.8 We disagree to introduce new criminal sanctions for non-compliance with the statutory CDD and record-keeping requirements under the Anti-Money Laundering Ordinance AMLO by DNFBPs, in consideration of the lesser risks concerning these DNFBP sectors.

Q4.9 We do not agree that the Law Society, the HKICPA and the Estate Agents Authority (EAA) should be given inspection and search powers similar to those available to the AML regulation authorities for financial institutions under Part 3 of the AMLO. Under Part 3 of the AMLO, the authorised person is only empowered under section (9)(i) to enter the business premises of the financial institution, inspect and make copies of relevant records as well as make inquiries concerning the records. The 'search' power as suggested in the consultation does not appear to be available under Part 3.

In addition, as set out in the consultation paper, the risks of money laundering and terrorist financing are relatively low in the DNFBP sector as compared to financial institutions. As the DNFBPs are already regulated and investigated by their respective professional bodies under the respective Ordinances, we suggest the Law Society, the HKICPA and the EAA can rely on the current provisions of the respective Ordinances to make investigation, inspection, as well as inquiry to regulate their members.

Q4.10 To ensure smooth and orderly implementation of the licensing regime for TCSPs, we suggest that the provision of a 90-day transitional period be extended to 180 days for existing TCSPs to migrate to the new licensing regime. This would allow businesses to get prepared for the application of

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relevant licenses and put in place better CDD and record-keeping procedures to meet the requirements.

- Q12. To reduce the administrative burden and compliance costs of both the Registrar of Companies and the TCSPs, the validity of TCSPs licenses should be extended to five-year instead of three-year as proposed. Since the Registrar of Companies is empowered to suspend or revoke the license in case of non-compliance, the non-complying TCSPs would already be subject to review and penalty. Thus, a longer period of license validity would not result in non-performing TCSPs continue to operate and jeopardise the integrity of the financial market. On the contrary, having a longer validity period would reduce the frequency of license renewals and thus alleviate the administrative workload and compliance costs of the businesses and the Companies Registry.

Conclusion

ACCA Hong Kong welcomes the implementation of the FATF guidelines by FSTB which enhances the efforts of DNFBPs in combating money laundering and terrorist financing, making Hong Kong a clean and safe place for business and further consolidates Hong Kong as an international finance hub. While we have no reservation in fulfilling our international obligation, we need to strike a balance between mitigating risks and preserving the flexibility and competitiveness of our business environment, taking into the account the administrative burden and compliance costs of the business sectors.

ACCA upholds integrity as one of the organisation's core values and is a strong advocate of putting ethics at the heart of business. By strengthening the integrity and transparency of our financial markets, we could contribute in safeguarding Hong Kong's reputation as an open, trusted and competitive business environment.

Should there be any questions, please do not hesitate to contact the undersigned at 2973 1108.

Yours faithfully,



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