

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

5<sup>th</sup> March 2017

Dear Sir

**ACCA's Response to Consultation on Enhancing Transparency of Beneficial Ownership of Hong Kong Companies**

International bodies, such as the Financial Action Task Force (FATF), called for cooperation among its member states to take measures to prevent the misuse of legal persons for money laundering and terrorist financing, and to ensure that adequate, accurate and timely information on the beneficial ownership and control of legal persons can be obtained or accessed in a timely manner by competent authorities.

As a global accountancy body, ACCA (the Association of Chartered Certified Accountants) has been a longstanding supporter of the international approach on anti-money laundering and countering the financing of terrorism. To reinforce Hong Kong's position as an international financial centre and a responsible member of the international community, Hong Kong must be at the forefront of efforts to uphold the highest possible standards of business conduct and put in place legislations in line with international practice.

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

While we support the overall scheme of enhancing the transparency of beneficial ownership of Hong Kong companies, we are also well-aware of the regulatory burden and compliance costs on the businesses being regulated. It is with this consideration in mind that we set out the following comments in particular to the questions set out in the consultation:

- Q2. We support a balanced approach to legislation so as to ensure that our business environment stays competitive and flexible while we fulfil our international obligation to enhance transparency of company ownership.

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- Q3. We agree that the new legislation should apply to all companies incorporated in Hong Kong, except listed companies regulated under the Securities and Futures Ordinance.
- Q5 and 6. We also agree with the proposed definition of beneficial ownership and adopting more than 25% as the threshold for determining beneficial ownership, which takes into account the FATF's recommendations and the thresholds commonly adopted by other member jurisdictions.

However, we recommend that more specific guidelines should be issued that clearly specify if companies, or their authorised locally-based designated non-financial business and professional (DNFBP), are allowed to place reliance on self-declaration of a person or a legal entity to determine if he or it "has the right to appoint or remove a majority of directors"; or "has significant influence or control" over the company, especially when the person or the legal entity does not own any shares in the company. It would be difficult for investees or their authorised DNFBP to identify and confirm the identities and particulars of all beneficial owners (BO) if the other parties do not proactively disclose such "significant influence" or "control". Thereby it would be practical and fair to allow the companies or their authorised DNFBP to rely on self-declarations to identify the BO.

To ensure correct and up-to-date information to be entered into the "register of people with significant control" ("PSC register"), we consider that an individual or a legal entity with significant control over the company should have statutory obligation and duty to proactively inform the company whenever there are changes in beneficial ownerships, with or without formal share transfers. This can happen when, for instance, the shares are pledged as collateral for securing credit facilities and thus trigger the change of beneficial ownership. It is not uncommon that investees or their authorised DNFBP are not informed of any changes of beneficial ownership, especially when there are successive layers of control.

Without creating a statutory duty for the individual or legal entity with significant control over the company to proactively identify themselves, inform the company of the relevant particulars and update the company any changes in beneficial ownership, the company or its authorised DNFBP would not be able to ensure updated and transparent information can be kept and disclosed in the PSC register. In order to effectively enhance the transparency of beneficial ownership of Hong Kong companies, all parties have to cooperate and contribute to improving information integrity.

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Q7. We do not agree with the proposed content of the PSC register as it would create undue burden to the companies being regulated. If the PSC of a company is another local Hong Kong incorporated company, the company needs not go further than declaring that the PSC is that other company. As that other company will in turn be required to take reasonable steps to trace any further beneficial owners.

The current proposed PSC register will create duplicated effort of requiring the updating of the PSC records of all the companies under the same group when there is a change of beneficial ownership of the holding company at the top level of the hierarchy. Reliance upon a scheme similar to the existing register entry of Hong Kong incorporated entities would be a reasonable and effective balance that reduces unnecessary administrative burden and compliance costs on the part of the companies or their authorised DNFBP.

However, if the beneficial owner is a foreign entity, whether or not it is registered in Hong Kong, the company or its authorised DNFBP must take reasonable steps to ascertain any further PSC as stipulated in appendix B of the consultation paper.

Q10. It would be practical and flexible to give companies the choice to meet the requirement of nominating a person for cooperation with law enforcement agencies by authorising a natural person resident in Hong Kong or a local DNFBP who would have to be regulated under Anti-Money Laundering Ordinance.

Q12. Access to the PSC register is a controversial issue. To the extent that the register serves as a mechanism to curb and counter international crime, it is appropriate that it should be accessible to law enforcement agencies that are charged with tackling crime. However there is no strong argument for the general public to be granted access to information collected for the purpose of facilitating criminal enforcement action.

A balance must be drawn between transparency, trust and confidentiality. Some individuals may have valid personal or commercial reasons for not wanting their particulars to be entirely on a public record. While this should not be an excuse of not holding the PSC accountable by the law enforcement agencies, there is no justification for compromising personal confidentiality, safety or security by granting public access to the PSC register.

In light of the ease with which information can be accessed, duplicated and shared via the internet, it is more appropriate for information to be

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kept private as a default option, and shared only with responsible individuals operating within a statutory framework of responsibilities, as opposed to the publication of general register in the public domain.

Q11. Regarding the manner of keeping the PSC register, we suggest to centralise them at the Companies Registry as oppose to the registered offices of the companies. This is to ride on the existing statutory documents filing mechanism and expand on the scope of information to be reported. With the Companies Registry acting as the gatekeeper, it would not only standardise the record keeping and documents filing procedures, but also enhance the efficiency of retrieving information at one central point by the authorised users.

Q14. We agree with the proposed sanctions on companies for non-compliance with the requirements for keeping a PSC register and in respect of the making of false statements. However, as mentioned earlier, high degree of accuracy and quality of information can only be attained when the PSC are charged with the statutory responsibilities of proactively disclosing information and updating the companies or their authorised DNFBP for any subsequent changes in beneficial ownerships, if any.

It would not be fair to levy sanctions on companies or their authorised DNFBP for making false statements without regulating the PSC. By just giving the option to companies of restricting the participation and / or pecuniary rights of persons when the latter fail to respond to a notice of confirmation would not be effective to ensure proper information could then be obtained. Given companies and their authorised DNFBP are subject to criminal sanctions at level 4 for non-compliance of keeping a PSC register and level 6 for knowingly or recklessly making false statements, the same sanctions should apply to PSC to ensure their cooperation and proactive disclosure.

Q15. We agree with the proposed sanctions on a notice addressee who has been served with a notice to confirm beneficial ownership for failing to comply with the notice, and in respect of the making of false statements in the reply to the notice. And we agree that a rectification mechanism should be included to enable applications to the court from anyone aggrieved by the entry in or omission from a PSC register as a registrable individual or a registrable legal entity.

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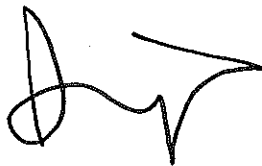
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## Conclusion

ACCA Hong Kong welcomes the implementation of the FATF guidelines by FSTB which enhances the transparency of beneficial ownership of Hong Kong companies, making Hong Kong a cooperative member of the international community and further consolidates Hong Kong's position as an international finance centre. Besides balancing the fulfilment of international obligation to enhance transparency of company ownership and the flexibility of the business environment, we also need to strike a balance between improving transparency and protecting commercial or personal confidentiality. To facilitate the effective enforcement of the legislation, we also need to treat each party fairly and provide actionable guidelines to different stakeholders so that each party knows their responsibilities and obligations. 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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5<sup>th</sup> 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.

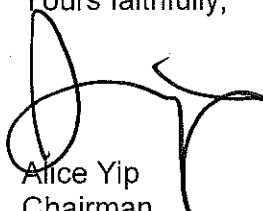
## Conclusion

ACCA Hong Kong welcomes the implementation of the FATF guidelines by FSTB which enhances the efforts of DNFBS 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.

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