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香港華人會計師公會

The Society of Chinese Accountants & Auditors

(在香港註冊成立之有限公司)
(Incorporated in Hong Kong as a company limited by guarantee)

17 March 2017

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

Dear Sir/Madam,

**Re: Suggestions on
Consultation on Enhancing Transparency of Beneficial Ownership of
Hong Kong Companies**

In response to the Consultation on Enhancing Transparency of Beneficial Ownership of Hong Kong Companies, the Society of Chinese Accountants & Auditors carried out a members' forum on 14 March 2017 to collect views from our members. We set out below our suggestions on the captioned issues.

1. Do you agree that enhancing transparency of company ownership is important for ensuring that Hong Kong remains an open, trusted and competitive place for doing business?

We agreed that enhancing transparency of the company ownership is important for ensuring that Hong Kong remains an open, trusted and competitive place for doing business. However, we believe that the data privacy of owners of the company should also be taken care as equal weight. In addition, the proposed enhancement should not create undue burden to the company as well as the owners of the company.

2. Do you agree that a balanced approach to legislation should be adopted, so as to ensure that our business environment stays competitive while we fulfil our international obligation to enhance transparency of company ownership?

We agreed that a balance approach to legislation should be adopted. So as to achieve the balanced approach and to ensure that our business environment stays competitive, we believe that maintaining data privacy of owners of company and avoiding undue burden to the company and the owners of the company are the utmost focuses.



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3. Do you agree with the proposed scope of application, i.e. covering all companies incorporated in Hong Kong, except listed companies regulated under the Securities and Futures Ordinance?

We agreed with the proposed scope of application to exempt listed companies as they are already regulated by the Securities and Futures Ordinance which imposes more stringent requirements as compared with the current proposed legislation.

4. Do you think that there should be an exemption for certain types of companies? If so, which, and why?

We do not aware any further exemption should be allowed for current types of companies.

5. Do you agree with the proposed definition of beneficial ownership, which takes into account the FATF's recommendations and the thresholds commonly adopted by other member jurisdictions?

We do not agree with the not less than 10% threshold as recommended by FATF. We believe that this will create undue burden to the Company or owners of the company which might be against / contradict the principle of balanced approach of the proposed legislation and may create adverse impact on doing business in Hong Kong.

6. Do you agree with the proposal of adopting more than 25% as the threshold for determining beneficial ownership?

We agreed with the proposal of adopting more than 25% as an appropriate threshold as we noted that under the Companies Ordinance (Cap 622), a special resolution of the company should be passed by 75% of the members present or by proxy who are entitled to vote at the meeting. In this connection, members with more than 25% issued capital or voting right should have influence to the operation of the company to a certain extent.



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7. Do you agree with the proposed content of the PSC register, which shall include registrable individuals and registrable legal entities which meet the relevant conditions in respect of beneficial ownership?

We agreed with the proposed content of the PSC register, which shall include registrable individuals and registrable legal entities which meet the relevant conditions in respect of beneficial ownership.

However, we foresee that the company may encounter difficulties in maintaining an up-to-date PSC register as there is no proposed statutory duty for PSC to inform the company for any changes. Sanctions in respect of this non-compliance should be considered under lenient approach when the company and its responsible persons have already exercised their due care to take reasonable steps to maintain an up-to-date PSC register.

8. Do you agree with the proposed format of keeping the PSC register and the required particulars?

We agreed with the proposed format of keeping the PSC register and the required particulars.

9. Do you agree with the ten-year record-keeping requirement?

We agreed with the ten-year record-keeping requirement.

10. Do you think companies should be given 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 (viz. solicitor, accountant, or trust and company service provider) who would have to be regulated under the AMLO?

We agreed that the companies should be given with such choice.

11. Do you agree with the proposed manner of keeping the PSC register (i.e. at the registered office of a company or any other place in Hong Kong)?

We agreed with the proposed manner of keeping the PSC register.



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12. Do you agree that the PSC register should be available for public inspection?

We strongly disagreed that the PSC register should be available for public inspection.

The main objective of the proposed legislation is to fulfill Hong Kong's international obligation as a member of FATF which sets international standards that assist the enforcement agents on combating money laundering and terrorist financing. We believe that allowing inspection of PSC register other than the enforcement agents will jeopardize the data privacy of the company's owners. We further believe that the current legislations on protection of data privacy of individuals contribute in a certain extent to the success of Hong Kong as an international financial center.

We agreed that the company should keep the PSC register to increase transparency of ownership of the company so as to assist enforcement agents to combat money laundering and terrorist financing, however, the owners' privacy should also be respected and protected by allowing only the enforcement agents for inspection.

13. If not, whether the PSC register should be accessible only to competent authorities? Why? Why not?

We agreed that PSC register should be accessible ONLY to competent authorities.

We also noted that the proposed payment of fee for members of public which include competent authorities to inspect the PSC register. We believe that such a fee should be in sufficient amount to cover the cost of the company and/or professional parties in respect of that inspection.

14. Do you agree with the proposed sanctions on companies for non-compliance with the requirements for keeping a PSC register and making available the PSC register for public inspection, and in respect of the making of false statements?

We agreed with the proposed sanctions on the companies for non-compliance with the requirements for keeping a PSC register and in respect of the making of false statements. As mentioned above, we strongly disagreed with the PSC register to be available for public inspection, we do not comment on the proposed sanction on not making available the PSC register for public inspection.



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15. Do you 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?

We agreed with the proposed sanctions.

16. Do you think companies should be allowed the option of restricting the participation and/or pecuniary rights of persons when the latter fail to respond to a notice of confirmation?

We agreed with the proposed restrictions.

17. Do you 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?

We agreed with the proposed rectification mechanism.

Should you require more information, please do not hesitate to contact me at (852) 2869 6680 or info@scaacpa.org.hk. Thank you very much.

Yours Faithfully,

Choi Kwok Wai, Ronnie
President
The Society of Chinese Accountants & Auditors

Encl.

Appendix ETBO: Supplementary Information – Other responses from SCAA Members

Consultation on Enhancing Transparency of Beneficial Ownership of Hong Kong Companies Questionnaire

(Please complete and return to the Secretariat of SCAA or email to info@scaacpa.org.hk. Thank you.)

1. Do you agree that enhancing transparency of company ownership is important for ensuring that Hong Kong remains an open, trusted and competitive place for doing business?

Yes

2. Do you agree that a balanced approach to legislation should be adopted, so as to ensure that our business environment stays competitive while we fulfil our international obligation to enhance transparency of company ownership?

Yes

3. Do you agree with the proposed scope of application, i.e. covering all companies incorporated in Hong Kong, except listed companies regulated under the Securities and Futures Ordinance?

Yes

4. Do you think that there should be an exemption for certain types of companies? If so, which, and why?

No

5. Do you agree with the proposed definition of beneficial ownership, which takes into account the FATF's recommendations and the thresholds commonly adopted by other member jurisdictions?

Yes

6. Do you agree with the proposal of adopting more than 25% as the threshold for determining beneficial ownership?

Yes

7. Do you agree with the proposed content of the PSC register, which shall include registrable individuals and registrable legal entities which meet the relevant conditions in respect of beneficial ownership?

Yes

8. Do you agree with the proposed format of keeping the PSC register and the required particulars?

Yes

9. Do you agree with the ten-year record-keeping requirement?

Yes

10. Do you think companies should be given 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 (viz. solicitor, accountant, or trust and company service provider) who would have to be regulated under the AMLO?

Yes

11. Do you agree with the proposed manner of keeping the PSC register (i.e. at the registered office of a company or any other place in Hong Kong)?

Yes

12. Do you agree that the PSC register should be available for public inspection?

No

13. If not, whether the PSC register should be accessible only to competent authorities? Why? Why not?

Yes so as to enable the law enforcement agencies and competent authorities to carry out their duties under the AMLO.

14. Do you agree with the proposed sanctions on companies for non-compliance with the requirements for keeping a PSC register and making available the PSC register for public inspection, and in respect of the making of false statements?

Yes, except making available for public inspection

15. Do you 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?

Yes

16. Do you think companies should be allowed the option of restricting the participation and/or pecuniary rights of persons when the latter fail to respond to a notice of confirmation?

Yes

17. Do you 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?

Yes

Other comments:

(a) Clause 3.4 (c) and (d) and last paragraph on page 20 – How to identify and ascertain under these conditions?

(b) Clause 3.8 requires PSC register to be up-to-date. It requires periodic review of the PSC register. We need guidelines to determine what the appropriate period would be.

(c) Clause 3.8 (d) requires correspondence address of the registrable individual but not the residential address. Surely residential address is very important as in other KYC requirements.

(d) Clause 3.9 requires the PSC register entry be supplied or confirmed by the registrable individual, or by another person with the knowledge of that individual. If the information or confirmation is not from the registrable individual, will this satisfy “reasonable steps to identify and ascertain the registrable individual” as stated in clause 3.11?

(e) Clause 3.14 provides the PSC register for public inspection. There are many legitimate commercial reasons why shareholder entered into trust arrangements. As the proposed new AMLO is for non-listed company, to allow public inspection will greatly reduce the flexibility of doing business in HK.

(f) Clause 3.18 stipulates the consequence to any person knowingly or recklessly makes in the PSC register a statement that is misleading, false or deceptive. Who will this person be? Will it cover independent service provider who is hired by the company to look after the PSC register whether or not he or she acts as company secretary?

(g) If the registered member is holding the shares upon trust for other person, how does a company identify the existence of a trust? If the company fails to identify a trust, who are liable?

Thank you very much for your valuable comment!

Enhancing Transparency of Beneficial Ownership of Hong Kong Companies

Points to consider:

1. **Disclosing beneficial ownership**

- (a) Does shareholders/members of listed companies need to disclose **Beneficial Ownership**?
- (b) For shareholders holding 5% or more in the share capital, there needs to disclose the owners/beneficial owners, what is the current minimum amount of capital does the 5% shareholder owns? What is the absolute amount?

2. **Purposes of amending the law “Anti-Money Laundering and Counter-Terrorist Financing”**

There are more than 1.3 millions companies in Hong Kong. The persons/companies involving Money Laundering and Terrorist Financing estimated would be how much? What is the percentage.?

What are the reasons for 1.3 million companies, most of which are not involving in money laundering and terrorist financing, to do the works for the very few cases which might be involved. ?

Would there be other means to solve the problems ?

3. **Genuine needs for making arrangement by companies/trusts for passing on wealth to dependants**

There would be genuine needs to use companies/trusts to distributing wealth to dependants and successor, but not for money laundering and terrorist financing purposes. Why these need to be disclosed to general public ? Government/International law enforcing units have such authority already.