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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 Anti-Money Laundering Regulation of Designated
Non-Financial Businesses and Professions

In response to the Consultation on Enhancing Anti-Money Laundering Regulation of Designated Non-Financial Businesses and Professions, 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 with the application of a risk-sensitive approach, whereby the CDD measures to be undertaken by DNFBPs should be commensurate with the risk profiles of customers?

Principally, we agreed with the suggestion as there is no 'one and for all' approach applicable to changing environment nowadays. Especially for AML issue, higher standard and professional skepticism should be maintained for customer with suspicious background

2. Do you agree that DNFBPs should be subject to enhanced CDD measures when dealing with customers presenting a high risk of money laundering or terrorist financing?

In fact, we believe that for those potential high risk customers, professional skepticism should be maintained or referral to JFIU should be made, instead of setting up different standards. Furthermore, it is always full of discretion when determining those 'high risk' customers and in order to minimize any potential misuse, one standard should be adopted.



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3. Do you think DNFBPs should be allowed the flexibility to undertake simplified CDD measures on low-risk cases, with reference to the list of eligible customers and products as specified in the AMLO?

Yes, as mentioned in part (1) above, there is no hard and fast rule to attack money launder and DNFBP should be allowed to keep the flexibility and simplified CDD should be implemented.

4. Do you think there are other justified addition to the specified list of customers and products eligible for simplified CDD treatment under the AMLO by DNFBPs? If so, what are they; and what are the justifications (please support with statistics where applicable)?

No.

5. Do you agree that DNFBPs should be subject to a six-year record-keeping requirement on a par with financial institutions?

Yes.

6. Do you agree with the proposed designation of the respective regulatory authority for solicitors, accountants, real estate agents and TCSPs?

Yes, we agree with that principally because accountants, solicitors and real estate's agent are regulated by their professional bodies. Furthermore, their professional knowledge and experience should be more competent than a TCSP licensee. However, an alternative should be kept to allow them to determine whether they are regulated by their professional bodies or CR.

7. Do you agree that, instead of introducing one new single regulatory body for solicitors, accountants and estate agents, the prevailing investigation, 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?

Ditto.



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8. Do you consider it necessary to introduce new criminal sanctions for non-compliance with the statutory CDD and record-keeping requirements under the AMLO by DNFBPs?

No. This should be white collar crime. Unless otherwise providing their intention for non-compliance was evil, we believe that penalty sanction should be sufficient for HK at this stage.

9. Do you think that the Law Society, the HKICPA and the EAA should be given inspection and search powers similar to those available to AML regulatory authorities for financial institutions under Part 3 of the AMLO?

We strongly disagree with that as they are not legal enforcement agencies under HK Law system.

10. Do you agree with the provision of a 90-day transitional period for existing TCSP operators to migrate to the new licensing regime?

Since this is a large regime and large exercise for all HK companies, we shall consider impact which might brought to service provider. Let take BVI as an example, they allow 9 months period for filing register of directors in 2016 starting from 1 January 2016 and should be ended on 30 September 2016. Eventually, BVI government extended 3 months and totally of 1 year was spent on this exercise, therefore, we strongly suggested 270 days or more transitional period should be provided.

11. Do you think the criteria for determining the fitness and properness of TCSPs appropriate? If not, what criteria should be included or excluded?

We suggest that those who should be fit for TCSPS should be lawyers, qualified accountants and qualified company secretaries.



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12. Do you agree with the three-year validity of a TCSP licence (renewable on application)? If not, what should be the validity period?

World is changing and laws and regulations as well as corporate governance concept are also changing every days. If a licensee is granted a license without fulfilling the CPD requirement since then, CR is only enabled to remove the licensee from the list after 3 years period of time, which damage done could be irreversible. Therefore, we suggest the license period be reduced to 2 years to maintain competency of licensee.

13. Do you agree that any persons operating TCSP business without a valid licence should be liable to criminal sanctions (including a fine at level 6 and/or imprisonment of up to six months)?

We disagree. Imprisonment sanction could definitely help to safeguard and upkeep the standard. However, it might also come into our attention that there are many service providers in market and provision of different similar services currently. We shall strike a balance between criminal offence and heavy penalty sanction, which may also impose same level of threatening effect to them.

14. Do you agree with the proposed supervisory sanctions for TCSPs in respect of non-compliance with statutory CDD and record-keeping requirements?

Ditto.

15. Do you agree with the re-constitution of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal to cover appeals against future decisions of the Registrar of Companies in respect of the licensing and disciplinary regime for TCSPs?

We agree with that as it is expected quite a number of disputes and cases will be occurred and tribunal does not only reduce the litigation cost, but also provide additional level in the court system for appeal.

16. Do you agree that the threshold for determining controlling interest of beneficial ownership under the AMLO should be revised from not less than 10% to more than 25%, to align with the future requirement under the Companies Ordinance?

We afraid we cannot agree with that as 25% threshold is viewed as fair percentage in our member's eye. If any member with more than 10% shareholdings is



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required to be reported in for BO, then HK would definitely lose their privilege, which in our opinion, we shall serve as gatekeeper and maintain HK as an international financial center without giving up privacy given to shareholders as the first day they selected HK.

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 EAML: Supplementary Information – Other responses from SCAA Members

Regulation of Designated Non-Financial Businesses and Professions

Points to consider:

1. Registration/Exemption from Registration of No-Financial Businesses and Professions

Monitoring by HKICPA :

Can non Practicing Certificate holders (“PC Holders” carry on non-financial businesses and professional in Hong Kong, other than “Auditing” and issue of “Audit Reports” ?

If yes, how could they be monitored by HKICPA? Or, in future, also only monitoring PC Holders ?

2. Share Capital

(a) What is the distribution of share capital of the non-listed companies in Hong Kong ?

For a company with HKD10,000 capital, 25% is HKD 2,500,

For a company with HKD1,000,000 capital, 25% is HKD250,000

Would the law in future also monitoring all these companies ?

(b) Changes in beneficial owner(s) :

A person can transfer the beneficial ownership to other persons, e.g. to dependants, relatives, etc via deeds, etc. without notifying the company. How would the company or authorised persons know of such a change and recording in the records.

Does the company have the right to change the beneficial owners without these documents ?

3. Rights of Companies/Responsible Person to demand the registered shareholders to disclose the beneficial owners

Would the law be amended authorising the company/responsible person to demand the registered shareholders to disclose the beneficial owners ?

What would be their responsibilities and exclusions when incorrect or not up-to-date data are received/supplied?

4. Obtaining names of persons required alert, e.g. so called “sanctioned persons list, politically related persons”

There are needs for financial institutions to check against the so-called “notifiable or to be alerted persons, high risk customers”, do DNFBPs need to check the names of their clients against these lists ? It would be very costly to obtain such service of obtaining these lists.

5. New single regulatory body for solicitors, accountants and esttes agents.

Prefer to have new single regulatory body rather than the prevailing professional bodies as same standard could be applied to all, not to have different standards for disfferent professional bodies.

Members have to bear these costs by increasing their annual fees and may be more unnecessary monitoring and checking.