

# **Enhancing Transparency of Beneficial Ownership of Hong Kong Companies**

## **Public Consultation**

### **FOREWORD**

1. This consultation document is issued by the Financial Services and the Treasury Bureau (FSTB) for seeking views on the conceptual framework and broad parameters of a legislative proposal to enhance transparency of corporate beneficial ownership.
2. FSTB welcomes written comments on or before 5 March 2017 through any of the following channels –

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# CHAPTER 1

## INTRODUCTION

### Purpose

- 1.1 This document sets out for public consultation the conceptual framework and broad parameters of a legislative proposal by the Financial Services and the Treasury Bureau to enhance the transparency of Hong Kong company ownership in an effort to meet prevailing international standards to combat money laundering and terrorist financing. Views and comments from members of the public, in particular the stakeholders concerned, are welcome to facilitate our formulation of the details of the legislative proposal.

### Background

- 1.2 Despite the essential and legitimate roles companies play in conducting business in the global economy, there are increasing international concerns over the misuse of companies, particularly those with complex ownership and control structures, as a way to disguise and hide crime proceeds, facilitate money laundering, or serve illicit purposes such as tax evasion, corruption, or terrorist financing. Often the ultimate ownership of such companies is obscured, such that those with illegal motives can distance themselves from the assets which they really control. This poses challenges to law enforcement, particularly in investigation of the identity of known or suspected criminals who conceal the true purpose of an account or property, or the source or use of certain funds held through companies or layers of companies in a complicated structure in a jurisdiction or across different jurisdictions.
- 1.3 The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 that sets international standards on combating money laundering and terrorist financing. As far as transparency of beneficial ownership is concerned, the FATF requires member jurisdictions to take measures to prevent the misuse of legal persons for money laundering and terrorist financing, and to ensure that there is **adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities**. The FATF defines a beneficial owner as a natural person who ultimately has a

controlling ownership interest in a legal person, or who exercises control of the legal person through other means. The relevant FATF requirements in respect of beneficial ownership and determination of beneficial ownership are extracted in **Annex A** to this document.

- 1.4 Hong Kong has been a member of the FATF since 1991. As the international community strengthens regulation in accordance with the FATF recommendations, Hong Kong is obliged to implement a credible regime to enhance transparency of beneficial ownership, so as to safeguard the integrity of our financial markets, and to ensure that our reputation as an international financial centre is reinforced by an open, trusted and competitive business environment.

### **Hong Kong's Present Regime**

- 1.5 At present, the Companies Ordinance (Cap. 622) requires a company incorporated in Hong Kong to disclose information on its members (including the shares held by each member and the paid-up capital), directors and company secretaries, by keeping the information in the relevant registers kept by the company at its registered office (or a prescribed place), and filing the information with the Companies Registry via an annual return, for public inspection. The current law focuses on the disclosure of legal ownership, and does not require a company to ascertain, keep or file information about its ultimate beneficial owner (i.e. the natural person who ultimately owns or controls the company after lifting the veil of corporate layers), except in the case of a listed corporation which is required under the Securities and Futures Ordinance (Cap. 571) to keep a register of those individuals or entities owning 5% or more interests in any class of voting shares (including any beneficial owner of such interests).<sup>1</sup>

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<sup>1</sup> Generally, under the Securities and Futures Ordinance (SFO), a person comes under a duty of disclosure when (i) the person acquires 5% or more interests in any voting shares in a listed corporation; (ii) there are any changes in the percentage level or nature of the interests in such shares; or (iii) the person ceases to have 5% or more interests in such shares. The person shall give notification to the listed corporation concerned and to The Stock Exchange of Hong Kong of the interests which the person has, or ceases to have, in voting shares in the listed corporation. A beneficial owner of a listed corporation who comes under a duty of disclosure, as summarised above, must give a notification under the SFO. Every listed corporation shall keep a register of interests in shares and short positions under section 336(1) of the SFO. Whenever a listed corporation receives information from a person given in performance of a duty imposed on the person by any relevant provision (including the notification mentioned above), the listed corporation is under a duty to record it in the register. The register shall, for the purposes of enabling members of the public to ascertain the identity and the particulars of persons who are the true owners of voting shares in the listed corporation, be made available for inspection. Any member of the corporation or any other person may require a copy of any such register on payment of a fee.

- 1.6 Separately, the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO) (Cap. 615) currently requires a financial institution to take reasonable measures, as part of the customer due diligence process, to verify the identity of the ultimate beneficial owner in relation to a customer, including measures to enable the financial institution to understand the ownership and control structure of a corporate customer. However, the information gathered under the AMLO is not normally accessible to law enforcement agencies, unless when a court order is obtained to mandate a specific financial institution to produce the relevant records. This is often time-consuming, and can only be accomplished when an investigator knows the financial institution with which a suspicious company has established a business relationship, and is thus not very effective in disrupting illicit financial flows.
- 1.7 To enhance transparency of beneficial ownership, we need to put in place a regime under the Companies Ordinance to enable beneficial ownership information of companies to be captured and maintained so as to serve the purpose of allowing law enforcement agencies timely access to such information when necessary.

### **The Need for Change**

- 1.8 As a member of the FATF, Hong Kong will undergo a mutual evaluation conducted by other member jurisdictions in respect of our efforts to combat money laundering and terrorist financing, the extent of our compliance with the FATF recommendations, and the effectiveness of our implementation of the relevant regimes. The upcoming mutual evaluation on Hong Kong is scheduled for 2018. As a matter of priority, we need to implement a statutory regime on transparency of beneficial ownership of companies before the mutual evaluation, so as not to adversely affect the overall rating of Hong Kong in the mutual evaluation. Our compliance in this respect has a bearing on our hard-earned reputation as a major international financial and business centre in the world.
- 1.9 In addition, the importance of promoting greater transparency of beneficial ownership of legal persons received particular attention at the recent meetings of the G20 Finance Ministers in 2016. The G20 has requested the FATF and the Global Forum of OECD to improve the implementation of international standards on transparency of beneficial

ownership information, including its availability and international exchange. The FATF and the Global Forum will jointly recommend that G20 members lead by example and bring forward their plans so as to fully and effectively implement the FATF recommendations on beneficial ownership, amongst other requirements, by the end of 2017. Hong Kong, as a member of the FATF, needs to step up our efforts in this regard, which will be closely watched and evaluated during the upcoming 2018 FATF mutual evaluation.

## CHAPTER 2

### CONCEPTUAL FRAMEWORK OF THE LEGISLATIVE PROPOSAL

- 2.1 Hong Kong is an open, trusted and competitive place to invest and do business. We are committed to ensuring that it remains so in the fast-changing world when economies race to improve their competitiveness. We believe that enhancing the transparency of company ownership is an important step to increase trust in Hong Kong business, as it will help prevent illicit activities, improve corporate accountability, and inspire confidence in businesses, investors, employees and consumers that companies are acting fairly. This in turn will enhance the competitiveness of Hong Kong companies.
- 2.2 Enhanced transparency is therefore good for business and good for growth. Businesses and individuals who behave honestly and responsibly should not be prejudiced by those who do not play by the rules. This underlines the importance of having an effective system for identifying and handling poor business behaviour, so as to inspire confidence in Hong Kong companies and create an environment where honest entrepreneurs are willing to invest in employment and growth. At the same time, such a system should keep regulatory burden and compliance costs to the minimum, such that businesses will thrive in a facilitating environment and our companies will stay competitive globally.
- 2.3 As a member of the FATF, Hong Kong should join the international community in efforts to combat money laundering and terrorist financing. Having regard to the recommendations of the FATF, we propose to enhance the transparency of corporate ownership by requiring companies incorporated in Hong Kong under the Companies Ordinance to provide beneficial ownership information or declare that there are no people with significant control. The principal objectives of the statutory regime are to prevent the misuse of legal persons for money laundering and terrorist financing, and to ensure that there is adequate, accurate and up-to-date information on the beneficial ownership (i.e. the natural person who ultimately owns or controls the company) and control of legal persons for timely access by law enforcement agencies when the need arises. Sanctions will be imposed for non-compliance to give teeth to the beneficial ownership regime.

2.4 We consider that a balanced approach to legislation should be adopted, complementing the need to have an effective system for identifying and dealing with misuse of legal persons for money laundering and terrorist financing, whilst addressing concerns to minimise regulatory burden and compliance costs on businesses. The regulatory measures to be introduced should be commensurate with the risks that they seek to mitigate, without incurring undue burden on companies being regulated. It is with this consideration in mind that we put forward the proposals set out in this consultation document.

- **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?**
- **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?**

## CHAPTER 3

### BROAD PARAMETERS OF THE LEGISLATIVE PROPOSAL

#### Scope of Application

- 3.1 To provide for a statutory regime on transparency of beneficial ownership, we propose to amend the Companies Ordinance to require companies incorporated in Hong Kong to obtain and hold up-to-date beneficial ownership information for public inspection upon request. The requirement to keep beneficial ownership information will apply to all companies incorporated in Hong Kong under the Companies Ordinance, including companies limited by shares, companies limited by guarantee, and unlimited companies.
- 3.2 Listed companies will be exempted from the proposed requirements as the Securities and Futures Ordinance has a more stringent regime requiring every listed corporation to keep a register of interests in shares. At present, we do not intend to exempt any other particular class of companies, unless a case can be made for exemption on the basis that the companies are bound by disclosure and transparency rules (in Hong Kong or elsewhere) broadly similar to the ones being proposed in relation to beneficial ownership.
- **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?**
  - **Do you think that there should be an exemption for certain types of companies? If so, which, and why?**

#### Defining Beneficial Ownership

- 3.3 The FATF defines “beneficial owner” of a legal person as a natural person who ultimately owns or controls the legal person. As illustrated in the interpretative note of the relevant FATF recommendation and FATF guidance on the recommendation, this may be based on a threshold, such as where an individual owns or controls more than 25% of the legal entity through direct or indirect shareholding; or it may also be determined on the basis of whether an individual exercises control

over the management of the entity through other means. Countries requiring companies to declare beneficial ownership in accordance with the FATF recommendations, such as the UK, Italy, Spain, Belgium and Switzerland, have adopted similar thresholds.

3.4 We propose adopting a similar definition for the purpose of Hong Kong's statutory regime on beneficial ownership, such that a beneficial owner in relation to a company is an individual who meets one or more of the following specified conditions –

- (a) directly or indirectly holding more than 25% of the shares;
- (b) directly or indirectly holding more than 25% of the voting rights;
- (c) directly or indirectly holding the right to appoint or remove a majority of directors;
- (d) otherwise having the right to exercise, or actually exercising, significant influence or control; or
- (e) 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.

3.5 When the AMLO was enacted back in 2012, with reference to the then FATF recommendation, “beneficial owner” was defined, in relation to a corporation, to mean 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. We may take this opportunity to align the threshold under the AMLO with the proposed 25% threshold to be adopted under the Companies Ordinance. To enable Hong Kong to achieve uniformity with any future changes in the international standard in a timely manner, we may provide in the proposed legislation that this threshold may be amended by notice published in the Gazette (subject to negative vetting by the Legislative Council).

- **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?**

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

### **A Company’s Duty to Keep a “Register of People with Significant Control”**

- 3.6 For the purpose of keeping accurate and timely beneficial ownership information in accordance with the FATF recommendation, we propose that a company be required to identify and keep a “register of people with significant control” over the company. A person with significant control (PSC) is an individual (i.e. a natural person) who meets one or more of the specified conditions set out in paragraph 3.4 above qualifying as a beneficial owner under the FATF framework (hereafter referred to as “registrable individual”).
- 3.7 We believe that a beneficial owner may hold an interest in a company indirectly through successive layers of holding companies in a chain of ownership. To facilitate identification of the holding structure in such cases, we propose that a company should also be required to identify and register a relevant legal entity with significant control over the company. To minimise administrative burden on companies, we propose that a legal entity – whether or not it is formed or incorporated in Hong Kong – is registrable only if it meets one or more of the specified conditions set out in paragraph 3.4 above, and that it is a legal entity immediately above the company in the company’s ownership chain (hereafter referred to as “registrable legal entity”). A graphical illustration of the beneficial ownership register requirements of some common holding structures is set out in **Annex B**.
- 3.8 We propose that a company should keep an up-to-date “register of people with significant control” (PSC register), in addition to its respective registers of members, directors and company secretaries as currently required under the Companies Ordinance. When a company has identified a registrable individual or a registrable legal entity, the company should obtain and ascertain the accuracy of the following required particulars in relation to the individual and the legal entity for entry into its PSC register –
- (a) the name of the registrable individual or registrable legal entity;

- (b) the number of the identity card, or the number and issuing country of any passport, of the registrable individual;
- (c) the legal form of the registrable legal entity (including the law by which it is governed) and the company registration number or the equivalent in its place of incorporation or formation;
- (d) the correspondence address (excluding post office box number) of the registrable individual, and the address of the registered or principal office of the registrable legal entity;
- (e) the date when the person became a registrable individual, and the date when the legal entity became a registrable legal entity; and
- (f) the nature of the control of the registrable individual or of the registrable legal entity over the company in accordance with the specified conditions.

3.9 The company should keep the PSC register in the English or Chinese language, and enter the required particulars of one or more registrable individuals and registrable legal entities meeting the relevant conditions, and any relevant change to the particulars, in the PSC register. The PSC register cannot be empty and, where a company knows or has reasonable cause to believe that there is no registrable individual or registrable legal entity in relation to the company, a statement to that effect should be entered. The required particulars of a registrable individual and any relevant change must not be entered into the PSC register unless supplied or confirmed by the registrable individual or by another person with the knowledge of that individual, while those of a registrable legal entity and any relevant change must be entered in the PSC register once ascertained by the company.

3.10 Any entry in relation to a registrable individual or registrable legal entity may be removed from a company's PSC register and destroyed after the end of ten years from the date on which the individual or the legal entity ceased to be a registrable individual or registrable legal entity. This is in line with a similar existing requirement for the register of members under the Companies Ordinance.

- **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?**

- **Do you agree with the proposed format of keeping the PSC register and the required particulars?**
- **Do you agree with the ten-year record-keeping requirement?**

### **Ways to Obtain and Verify Beneficial Ownership Information**

- 3.11 To ensure the availability and accuracy of beneficial ownership information which may not be readily available or apparent, we propose requiring a company to take reasonable steps to identify and ascertain its registrable individuals and registrable legal entities (if any). Such reasonable steps to be taken may include reviewing a company's register of members, articles of association, statement of capital, relevant covenants or agreements, and serving a notice on any person or any legal entity (i) that the company knows or has reasonable cause to believe to be registrable in relation to the company; or (ii) that knows or may have reasonable cause to know the identity of a person or legal entity with significant control over the company.
- 3.12 At this stage, we consider it sufficient for a company to identify and confirm the identity and particulars of an individual or a legal entity with significant control over the company, without creating a statutory duty (and an offence for non-compliance) for the latter to proactively identify themselves and inform the company of the relevant required particulars. We are mindful that to do otherwise would put an onerous burden on persons forming, owning or controlling companies, and hence affects the competitiveness of our business environment.
- 3.13 To facilitate cooperation of companies with law enforcement agencies in determining beneficial ownership, we propose requiring companies to enter into the PSC register details of an authorised person responsible for providing information and further assistance to the law enforcement agencies when the need arises. To provide flexibility for companies, we have considered the option of allowing companies the choice of either authorising a natural person resident in Hong Kong, or a locally-based designated non-financial business and professional (DNFBP, viz. accountants, solicitors, or trust or company service providers), as the authorised person. A prerequisite for this option is that the relevant DNFBP should have a broadly comparable statutory duty to conduct customer due diligence and verify beneficial ownership information in accordance with the FATF requirements. We are separately consulting

stakeholders on a proposal to cover DNFBPs under the AMLO such that they too will have to meet customer due diligence and record-keeping requirements currently applicable to financial institutions under the Ordinance. With this caveat, we are open to the option of allowing the engagement of DNFBPs, and will welcome views on whether a practical approach should be taken for companies to fulfil the requirement by authorising a person for cooperation with law enforcement agencies.

- **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?**

### **Public Inspection of PSC Register**

3.14 We propose that the PSC register should be available for inspection by any member of the company or person on the register without charge, or other members of the public on payment of a fee, at the company's registered office or any other place in Hong Kong as determined by the company. The Company Records (Inspection and Provision of Copies) Regulation (Cap. 622I) will apply in relation to the rights to inspect and take copies of a PSC register. A company must notify the Registrar of Companies in a timely manner the place where the PSC register is kept (if that place is not the company's registered office or a place at which the register of members is kept), and any change to that place. Such returns as kept by the Registrar of Companies will facilitate access by competent authorities, including law enforcement agencies, to the beneficial ownership information of a company when the need arises.

3.15 The FATF requirements on beneficial ownership aim to prevent the misuse of legal persons for money laundering and terrorist financing by ensuring that competent authorities, particularly law enforcement agencies, will have timely access to adequate, accurate and current information on the beneficial ownership and control of legal persons of a company. We believe that the proposed manner for keeping of a PSC register strikes a balance between the relevant transparency, privacy and business efficacy considerations which our proposed regime on beneficial ownership seeks to address.

- **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)?**

- **Do you agree that the PSC register should be available for public inspection?**
- **If not, whether the PSC register should be accessible only to competent authorities? Why? Why not?**

### **Sanctions for Non-compliance and False Statement**

3.16 The Companies Ordinance provides for criminal sanctions against a company and its responsible persons for non-compliance with the requirements in respect of the keeping of a register of members, directors and company secretaries respectively. We propose similar criminal sanctions against a company and its responsible persons for non-compliance with the requirements for the keeping of a PSC register. The maximum penalty for such non-compliance would be a fine at level 4 (i.e. \$25,000) and a further daily fine of \$700.

3.17 Under the Companies Ordinance, a company and its responsible officer will also be subject to criminal sanctions for failing to make available company records for public inspection. We propose similar criminal sanctions against a company and its responsible persons for non-compliance with the requirement for making available a PSC register for public inspection. The maximum penalty for such non-compliance would be a fine at level 4 (i.e. \$25,000).

3.18 If any person knowingly or recklessly makes in the PSC register a statement which is misleading, false or deceptive in any material particular, he or she may commit an offence under section 895 of the Companies Ordinance and may be liable on conviction on indictment to a fine of \$300,000 and to imprisonment for two years; or on summary conviction to a fine at level 6 (i.e. maximum of \$100,000) and to imprisonment for six months.

- **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?**

3.19 To ensure effectiveness of the regime, we also propose imposing a statutory obligation on a notice addressee whom the company knows or has reasonable cause to believe to be a registrable individual or a registrable legal entity; or whom the company knows or has reasonable cause to believe that the person knows the identity of someone who is a registrable individual or a registrable legal entity in relation to the company or knows the identity of someone likely to have that knowledge, to comply with a notice to ascertain and confirm the relevant required particulars or the relevant changes. A maximum penalty of a fine at level 4 (i.e. \$25,000) on such persons is proposed for non-compliance with the notice requirements. This penalty will be consistent with that proposed to be imposed on a company and its responsible persons for failing to comply with the requirements for keeping a PSC register.

3.20 If any person knowingly or recklessly makes, in a document replying to a company's notice, a statement which is misleading, false or deceptive in any material particular, he or she may commit an offence under section 895 of the Companies Ordinance and may be liable on conviction on indictment to a fine of \$300,000 and to imprisonment for two years; or on summary conviction to a fine at level 6 (i.e. maximum of \$100,000) and to imprisonment for six months.

- **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?**

3.21 The above penalties apart, we have considered the option of whether a statutory provision should be included in the Companies Ordinance to allow companies the option of restricting any participation rights (e.g. voting rights) or pecuniary rights (e.g. dividend rights) of a notice addressee who is believed to be a registrable individual or a registrable legal entity or who is believed to know the identity of such an individual or entity if the notice addressee fails to respond to a notice for disclosure. We are mindful that companies may find this useful in encouraging a response from beneficial owners whereas company members and people with significant control over a company may find this draconian. We have an open mind and would like to invite views on this option.

- **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?**

### **Power of Court to Rectify Register**

3.22 We propose that if an interested person is aggrieved by an entry in a company's PSC register, the person may apply to the court for rectification of the PSC register. The court may refuse the application, or order such rectification and payment by the company of any damages sustained by any aggrieved person. Those who may apply to the court for such rectification include a person, whose name, without sufficient cause, is entered in or omitted from a PSC register as a registrable individual or a registrable legal entity, any member of the company, or any other person who is a registrable individual or a registrable legal entity in relation to the company.

- **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?**

### **Consultation and Next Steps**

3.23 We wish to hear views from the public in formulating the proposed legislation. We have therefore set out in this consultation document a conceptual framework and broad parameters of the legislative proposal as well as the specific questions for consultation.

3.24 Members of the public, in particular companies incorporated in Hong Kong, are invited to offer their views and comments to us by 5 March 2017. Taking into account the views and comments received, and subject to progress in the preparatory work, we aim to introduce a bill into the Legislative Council in the second quarter of 2017.

## CHAPTER 4

### OVERVIEW OF CONSULTATION QUESTIONS

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?
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?
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?
4. Do you think that there should be an exemption for certain types of companies? If so, which, and why?
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?
6. Do you agree with the proposal of adopting more than 25% as the threshold for determining beneficial ownership?
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?
8. Do you agree with the proposed format of keeping the PSC register and the required particulars?
9. Do you agree 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?

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)?
12. Do you agree that the PSC register should be available for public inspection?
13. If not, whether the PSC register should be accessible only to competent authorities? Why? Why not?
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?
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?
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?
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?

## **FATF Standard on Transparency of Beneficial Ownership**

### **Recommendation 24**

- The FATF requirements in respect of beneficial ownership are commonly referred to as Recommendation 24.<sup>2</sup> The FATF has not stipulated the best desirable model to implement the recommendation. Member jurisdictions should craft the most suitable method and implement the relevant recommendation in light of their domestic laws and circumstances.
  
- The key elements of Recommendation 24 are as follows –
  - (a) Countries should take measures to prevent the misuse of legal persons for money laundering and terrorist financing and ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities;
  
  - (b) Countries may choose the mechanisms they rely on to achieve this objective, although they should also comply with the minimum requirements set out by the FATF;
  
  - (c) Countries should ensure that either information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country; or there are mechanisms in place so that the beneficial ownership of a company can be determined in a timely manner by a competent authority;
  
  - (d) Countries should require companies to take reasonable measures to obtain and hold up-to-date information on the companies' beneficial ownership. Measures taken should be proportionate to the level of risk or complexity induced by the ownership structure of the company or the nature of the controlling shareholders;
  
  - (e) Competent authorities, in particular law enforcement authorities, should have all the powers necessary to be able to obtain timely

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<sup>2</sup> International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations (February 2012).

access to the beneficial ownership information held by relevant parties;

- (f) Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control. It also includes those persons who exercise ultimate effective control over a legal person;
- (g) A controlling ownership interest depends on the ownership structure of the company. It may be based on a threshold, e.g. any person owning more than a certain percentage of the company (e.g. 25%);
- (h) There should be a clearly stated responsibility to comply with the requirements as well as liability and effective, proportionate and dissuasive sanctions, as appropriate for any legal or natural person that fails to properly comply with the requirements; and
- (i) Countries should rapidly, constructively and effectively provide international cooperation in relation to beneficial ownership information.

## **Determination of Beneficial Ownership**

- According to the FATF’s “Guidance on Transparency of Beneficial Ownership”, beneficial ownership information of legal persons should be determined through identification of the natural persons who ultimately have a controlling ownership interest in a legal person, and the natural persons (if any) exercising control of the legal persons through other means. The following are some examples given –
  - (a) Natural person(s) who directly or indirectly holds a minimum percentage of ownership interest in a legal person (for example, any persons owning more than a certain percentage (say, 25%) of a company);
  - (b) Shareholders who exercise control alone or together with other shareholders, including through any contract, understanding, relationship, intermediary or tiered entity;

- (c) Natural person(s) who exerts control of a legal person through other means such as personal connections to persons in positions held within the legal person or that possess ownership;
- (d) Natural person(s) who exerts control without ownership by participating in the financing of the enterprise, or because of close intimate family relationships, historical or contractual association, or if a company defaults on certain payments;
- (e) Natural person(s) responsible for strategic decisions that fundamentally affect the business practices or general direction of the legal person; or
- (f) Natural person(s) who exercises executive control over the daily or regular affairs of the legal person through a senior management position, such as a chief executive officer, chief financial officer, managing or executive director or president.

**Examples of Meeting Conditions of  
Being a Registrable Individual and a Registrable Legal Entity  
For Entry into a PSC Register**

Figures 1-2: Examples of meeting the conditions for being a registrable individual for entry into a PSC register

Figure 1: Person 1 and Person 2 being registrable individuals for entry into the PSC register of Company A.

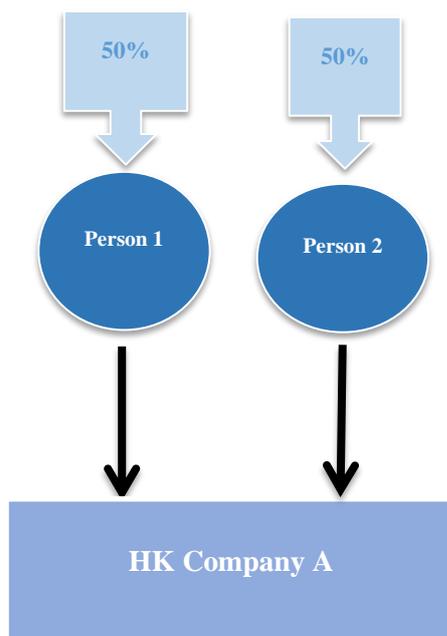


Figure 2: Person 1 being a registrable individual for entry into the PSC register of Company B, Person 2, Person 3 and Person 4 not being registrable individuals of Company B.

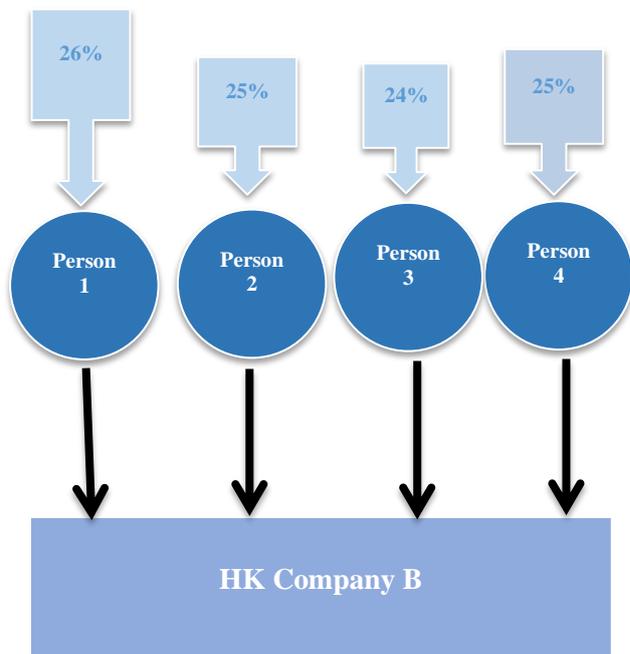
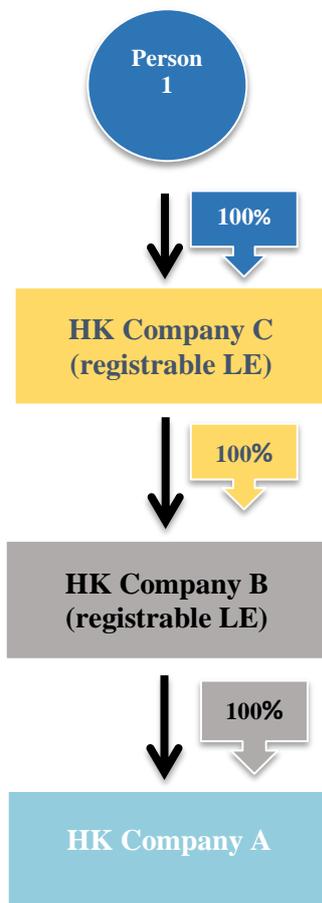


Figure 3: Example of being a registrable individual and a registrable legal entity (“registrable LE”) in a chain company structure for entry into a PSC register



**Scenario 1 (Company A’s PSC register):** Particulars of Person 1 (registrable individual) and HK Company B (registrable LE) need to be entered.

**Scenario 2 (Company B’s PSC register):** Particulars of Person 1 (registrable individual) and HK Company C (registrable LE) needed to be entered.

**Scenario 3 (Company C’s PSC register):** Particulars of Person 1 (registrable individual) need to be entered.

Figure 4: Further example of a registrable individual holding direct and indirect interest over a company

Particulars of Person 1 (registrable individual) need to be entered into the respective PSC register of HK Companies D and E even though he is holding interests in these two HK companies through a non-HK Company F.

Particulars of non-HK Company F, being registrable LE, need to be entered into the PSC register of HK Company E.

Particulars of HK Company E, being registrable LE, need to be entered into the PSC register of HK Company D.

