



# 9<sup>th</sup> IMF-Japan High-Level Tax Conference for Asian Countries Enhancing Transparency in Beneficial Ownership



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# Enhancing transparency in beneficial ownership

- Register of Significant Controllers (SCR)
- Customer Due Diligence (CDD) and Record Keeping (RK) Requirements for Trust or Company Service Providers (TCSPs)

# **Register of Significant Controllers**

# Register of Significant Controllers

- Commencement – 1 March 2018
- To fulfill HK's international obligations to combat money laundering and terrorist financing
- A company incorporated in HK (except listed company) is required to identify its significant controllers and maintain a SCR

# Major Requirements

- Taking reasonable steps to identify the significant controllers
- Entering the required particulars in the SCR
- Keeping the SCR up-to-date
- Allowing inspection and making copies of the SCR by law enforcement officers (including tax officers)
- Failure to comply with any of the requirements render the company and its responsible persons to a fine of HK\$25,000 and a further daily fine of HK\$700

# Significant Control

- Holds/shares > 25% of issues shares/profits
- Holds > 25% of voting rights
- Holds the right to appoint or remove a majority of board of directors
- Having the right to exercise significant influence or control over the company
- Having the right to exercise significant influence or control over the activities of a trust or a firm whose trustees or members satisfy any one or more of the above four conditions

# Identifying Significant Controllers

- Companies are required to take reasonable steps which include reviewing documents and information available, e.g.
  - Articles of association
  - Register of members
  - Shareholders agreement

# Required Particulars (1)

- Registrable person
  - name
  - correspondence address
  - identity card no./passport no. and issuing country
  - date of becoming a significant controller
  - nature of control over the company



## Required Particulars (2)

- Registrable legal entity
  - name
  - registration no.
  - address of registered or principal office
  - legal form and the law that governs it
  - date of becoming a significant controller
  - nature of control over the company

# Keeping a SCR

- SCR must be kept
  - in the English or Chinese language
  - at the company's registered office or a place in HK
- The company must notify the Registrar of Companies
  - the place where SCR is kept
  - a change in the place at which SCR is kept

# Offences for False Information/Statement

- a person commits an offence if he knowingly or recklessly makes a statement that is misleading, false or deceptive in the SCR
- the person is liable
  - on conviction on indictment to a fine of HK\$300,000 and imprisonment for 2 years
  - on summary conviction to a fine at HK\$100,000 and imprisonment for 6 months

# **Customer Due Diligence, Record Keeping Requirements and Licensing Regime for TCSPs**

# CDD and RK Requirements for TCSPs

- Amendments to Anti-Money Laundering and Counter-Terrorist Financing Ordinance to take effect on 1 March 2018
  - to extend statutory CDD and RK requirements to four DNFBPs: legal professional, accounting professional, TSCPs and real estate agents when they engage in specified transactions
  - to introduce a licensing regime for TSCPs administered by the Company Registry

# Activities Covered (1)

- A TSCP should conduct CDD and keep records when it prepares for or carries out a transaction concerning a trust or company service, by way of business, i.e.
  - forming companies or other legal person
  - acting or arranging for another person to act
  - as a director or secretary of a company

## Activities Covered (2)

- providing a registered office, business address or correspondence address for a company, a partnership or any other legal person/arrangement
- acting, or arranging for another person to act
- as a trustee of an express trust or a similar arrangement
- as a nominee shareholder for a person other than a listed company

# CDD Measures

- Identify the customer and verify the customer's identity
- Identify the beneficial owner (BO) and take reasonable measures to verify the BO's identity
- Obtain information on the purpose and intended nature of the business relationship, if a business relationship is to be established



# When to carry out CDD (1)

- Before business relationship is established
- Before carrying out an occasional transaction involving HK\$120,000 or above
- When there is a suspicion that the customer or the customer's account is involved in ML/TF
- When there are doubts on the veracity or adequacy of the information obtained during the CDD process

## When to carry out CDD (2)

- Exception possible only if -
  - it is necessary not to disturb the normal conduct of business with regard to that customers; and
  - any ML/TF risk is effectively managed
- Verification must be completed as soon as reasonably practicable

# Ongoing Due Diligence Requirement

- Review from time to time the documents, data and information relating to the customer
- Monitor the transactions of the customer to ensure that they are consistent with the nature of business, risk profile and source of funds
- Identify transactions that are complex, large or unusual or patterns of transactions that have no apparent economic or lawful purpose

# CDD by intermediaries

- TSCPs are allowed to carry out CDD measures by means of intermediaries, that include:
  - a legal professional
  - an accounting professional
  - an estate agent
  - a TCSP licensee
  - a financial institution
- Ultimate responsibility rests with the TSCP

# Record Keeping Requirements

- In relation to a transaction
  - original or a copy of the documents, and a record of the data and information, obtained in connection with the transaction
- In relation to a customer
  - original or a copy of the documents, and a record of the data and information, obtained in the course of identifying and verifying the identity of the customer or any BO of the customer
  - original or a copy of the files relating to the customer's account and business correspondence with the customer and any BO of the customer
- Maintain all necessary records on transactions, both domestic and cross-boundary, for at least 5 years

# Sanctions for breaching CDD and RK Requirements

- Disciplinary powers of the Registrar of Companies
  - publicly reprimand a licensee
  - order the licensee to take remedial actions
  - order the licensee to pay penalty not exceeding HK\$500,000
- Daily penalty not exceeding HK\$10,000 on failure to comply with the remedial action order

# Licensing Regime for TCSPs

- TCSPs are required to apply for a licence from the Registrar of Companies and satisfy a “fit and proper” test before they can provide trust or company services as a business in HK
- The Registrar will keep a register of all TCSP licensees, which will be open for public inspection

# “Fit and Proper” Test

- Applicants, and their directors, partners and/or ultimate owner, will be subject to a “fit and proper” test
- In determining whether a person is fit and proper to carry on a TCSP business, the Registrar will have regard to any matter that she considers relevant
- Other matters to be considered
  - whether the person has any criminal conviction
  - whether the person is an undischarged bankrupt or in liquidation or receivership



# Power of Inspection and Discipline

- Site inspection will be carried out to ensure compliance with the CDD and RK requirements
- A licensee will be subject to disciplinary sanctions if he fails to comply with the CDD and RK requirements

Thank You