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3 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

**Re: Public Consultation - Enhancing Transparency of Beneficial Ownership of Hong Kong Companies**

The Financial Transparency Coalition (FTC) is a global network of nonprofit organizations, governments, and experts working together to curtail illicit financial flows. We believe there is a need for greater transparency regarding company owners, as hidden company ownership is a big contributor to the over \$1 trillion that leaves developing countries illicitly every year. It allows tax evaders, criminals, and corrupt officials to move money undetected, often into banks in the U.S. and Europe. This outflow of cash deprives developing country economies of much needed capital while denying governments of tax revenue, threatening to wipe out potential benefit gained from foreign investment.

To address the problem, countries should collect beneficial ownership information on companies, trusts, and other legal entities that are registered within their borders, and make information about companies publicly available in central registers. If ownership information was available, investigators around the world, journalists, and civil society could peel back the layers of ambiguous ownership that anonymous companies create and address information asymmetry that is detrimental to the global financial system.

Please find below our submission to the public consultation on this important matter. For any follow-up please contact Pooja Rangaprasad at [pooja@financialtransparency.org](mailto:pooja@financialtransparency.org).

Regards,

A handwritten signature in blue ink, appearing to read "Porter McConnell".

Porter McConnell  
Director  
Financial Transparency Coalition

cc: Pooja Rangaprasad

**Enhancing Transparency of Beneficial Ownership of Hong Kong Companies - Public Consultation**  
**Financial Transparency Coalition Reponses**  
**3 March 2017**

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, it is of paramount interest to business that transparency of company ownership is improved in Hong Kong. A [survey](#) by professional services firm EY shows that 91% of business leaders believe that it is important to know the ultimate beneficial owners of the entities that they do business with. Respondents to this survey believe that beneficial ownership transparency would mitigate the risk of fraud, bribery and corruption. You can read more about the business case for beneficial ownership transparency [here](#), [here](#), [here](#) and [here](#).<sup>1</sup>

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?

There is no trade off between maintaining a competitive business environment and increasing transparency of company ownership - thus the idea of a 'balanced approach' is misguided. Enhancing beneficial ownership transparency is a win-win development for Hong Kong - it simultaneously levels the playing field for small, medium as well as large businesses, makes the business environment more competitive as outlined above, while demonstrating that Hong Kong is an exemplary member of international community, fulfilling its obligations and setting standards for other countries and jurisdictions.

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?

No. Beneficial ownership registration requirements should not be waived for corporations listed in a stock exchange simply on the basis that some other institution holds the beneficial ownership information. Waivers should take place only if the required beneficial ownership information is already publicly available and a direct link to such source of information is provided. After all, it's generally understood that listed companies should disclose more than unlisted companies. Hong Kong's registry of beneficial ownership information should incorporate all companies registered in the jurisdiction.

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

No. All types of companies present money laundering risks and creating exceptions for specific legal forms would be likely to encourage the use of such company structures by those seeking to escape the transparency requirements.

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<sup>1</sup> <http://www.ey.com/gl/en/services/assurance/fraud-investigation---dispute-services/ey-global-fraud-survey-2016>  
[www.OwnershipTransparency.com](http://www.OwnershipTransparency.com)  
<http://bteam.org/plan-b/ending-anonymous-companies-report-published/>  
<http://bteam.org/wp-content/uploads/2015/11/B20-Beneficial-Ownership-in-Practice.pdf>  
<https://www.globalwitness.org/en/reports/chancing-it/>

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?

No. FATF does not set the threshold at 25% but only mentions it as one example used in some jurisdictions. The consultation background document mentions five jurisdictions using the 25% threshold to report beneficial ownership information. However, this number includes four EU jurisdictions (the UK, Italy, Spain, Belgium) that are in fact currently in negotiations to lower this threshold, as the EU is revising its Anti-Money Laundering Directive. The European Parliament [has proposed](#) that the threshold should be set at 10%. Moreover, financial institutions complying with the US FATCA need to report on any American beneficial owners reaching the threshold of 10%. In other instances such as American publicly traded companies, ownership must be disclosed to the Securities and Exchange Commission at a 5% threshold.<sup>2</sup>

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

No, see above. The threshold for determining beneficial ownership should remain at 10% or be lowered further. A threshold of 25% or above would make the reporting of beneficial ownership vulnerable to abuse. It would require only four individuals with 25% ownership of shares each to escape the reporting requirements.

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?

No. All entities in chain company structures should be assigned as registrable legal entities, not only those that are immediately above the company in the company's ownership chain.

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

No. The registrable individuals should also disclose whether they are politically exposed persons (PEPs) or related to a PEP.

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?

If this provision creates barriers to law enforcement gaining timely and accurate access to information about a company's beneficial owners by creating an extra layer between them, then no, we do not agree that companies

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<sup>2</sup> <http://www.europarl.europa.eu/news/en/news-room/20170227IPR64164/citizens-should-get-access-to-data-on-firm-owners-to-fight-money-laundering>

should be given the choice as described above. As discussed below, we believe providing a central public database that provides information about companies' beneficial owners will provide law enforcement with the access they need to help determine a company's owners and follow up with them directly regarding a company's activities, if they are in question. Nothing should replace this database but there could be an additional requirement for companies to nominate a local/resident person to cooperate with law enforcement agencies should any issue arise. Moreover, we strongly support having all DNFBPs being 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)?

No. There should be a central PSC register where all legal entities incorporated in Hong Kong should disclose their PSCs. It is inadequate to require companies to keep their PSC register at their registered office (or elsewhere) because this does not ensure competent authorities timely access to adequate, accurate and current information on the beneficial ownership of the company.

Having a central register in an electronic form would be the most cost efficient solution for both companies and public authorities.

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

Yes. The individual PSC registers and the central PSC register for all legal entities incorporated in Hong Kong should be publicly available electronically in an open data format. Whereas competent authorities would have access to all information disclosed in the registers, the public should have access to at least:

- (a) the name of the registrable individual or registrable legal entity;
- (b) the date of birth of the registrable individual;
- (c) the nationality of the registrable individual;
- (d) 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;
- (e) 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;
- (f) the date when the person became a registrable individual, and the date when the legal entity became a registrable legal entity; and
- (g) the nature of the control of the registrable individual or of the registrable legal entity over the company in accordance with the specified conditions.

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

N/A

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. In order to be effective it is vital that the PSC register is backed up with effective sanctions. The proposed model of criminal sanctions, combining fines and potential imprisonment matches that of other jurisdictions such as the UK.

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, see above.

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. A beneficial owner who does not want to disclose their identity should not be allowed to receive any benefits from the ownership nor take part in any decision making process regarding the company.

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, creating the rectification mechanism promotes accuracy of the register by enabling individuals to verify and have corrected information included in the register that impacts them. The proposal could be improved by allowing third party users of the register to notify authorities when they have found inaccuracies in a company listing. A [complaint mechanism](#) like this already exists for the UK register.<sup>3</sup>

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<sup>3</sup> <https://www.gov.uk/government/organisations/companies-house/about/complaints-procedure>