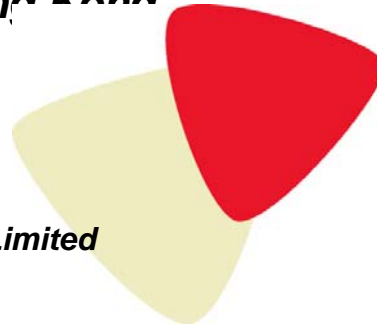


# Corporate Governance Roundtable 2017

## Corporate Governance & Transparency and TCSP's Role in Hong Kong

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### About Tricolor



➤ Companies registered with Companies Registry as at 31 Mar 2016

- 1,293,295 local companies (643 public, 12,832 guarantee and 1,279,820 private companies)
- 10,110 non-Hong Kong companies (from 80 countries)

➤ Companies listed on HKEX

- 1,973 listed companies at end of 2016 (1,713 MB / 260 GEM)
- 120 new listings in 2016 (99 incorporated in the Cayman Islands, 15 in PRC, 3 in Singapore, 1 in Bermuda, 1 in BVI and 1 in Hong Kong)

Tricolor as a TCSP

- ✓ Acquainted with knowledge of up-to-date regulatory requirements
- ✓ Uphold highest CG standards
- ✓ Adhere stringent KYC procedures
- ✓ Follow advice by FATF – Appoint a *fit and proper* professional **“Responsible Person”** to assume responsibility for compliance with HKICS AML/CTF Charter

➤ Restricting Corporate Directorship

Predecessor Ordinance	Companies Ordinance (Cap. 622)
<ul style="list-style-type: none"> <li>▪ A company must NOT have a director that is a body corporate</li> </ul> <p><i>Exception:</i> Private company which is not a member of a listed group</p>	<ul style="list-style-type: none"> <li>▪ A company must NOT have a director that is a body corporate</li> </ul> <p><i>Exception:</i> Private company which is not a member of a listed group <b>must appoint at least one director who is a natural person</b></p>

➤ Clarifying Standard of Director's Duty of Care, Skill and Diligence

Predecessor Ordinance	Companies Ordinance (Cap. 622)
<ul style="list-style-type: none"> <li>▪ No provision</li> </ul>	<ul style="list-style-type: none"> <li>▪ Setting out a mixed objective and subjective test for the standard in carrying out director's duty :                             <ul style="list-style-type: none"> <li>• the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company (<i>objective test</i>)</li> <li>• the general knowledge, skill and experience that the director has (<i>subjective test</i>)</li> </ul> </li> </ul>


*Note: The Companies Registry has published "A Guide on Directors' Duties" and has included a note in specified forms requiring directors to acquaint themselves with the general duties of directors outlined in the Guide*







➤ Availability of Corporate Information through Public Search

- *Cyber Search Centre Website (www.icris.cr.gov.hk)*
- *Company Search Mobile Service (www.mobile-cr.gov.hk)*
- *Public Search Centre (on-site at 13/F Queensway Government Offices, Hong Kong)*

1. Company Name	<ul style="list-style-type: none"> <li>• Search services on 1 (partial or exact name match search) to 4 are <b>free of charge</b></li> </ul>
2. Document Index	
3. Register of Charges Index	
4. Register of Disqualification Orders Index	
5. Disqualification Orders Particulars	<ul style="list-style-type: none"> <li>• Search services on 5 to 9 are available on <b>payment of prescribed fees</b></li> </ul>
6. Image Records of Registered Documents	
7. Directors Index	
8. Information on Registered Companies	
9. Various Lists of Companies	


## Examples of Corporate Information Available from Public Search



<div style="text-align: center;">  </div> <p style="text-align: center;"><b>Company Name Search</b></p> <ul style="list-style-type: none"> <li>• Current and previous names</li> <li>• Existing and dissolved companies</li> </ul>	<div style="text-align: center;">  </div> <p style="text-align: center;"><b>Document Index Search</b></p> <ul style="list-style-type: none"> <li>• List of documents filed by a company</li> <li>• Name of document, filing date, file size and processing status</li> </ul>	<div style="text-align: center;">  </div> <p style="text-align: center;"><b>Charge Index Search</b></p> <ul style="list-style-type: none"> <li>• List of registered charges of a company</li> <li>• Basic information on each charge</li> </ul>
<div style="text-align: center;">  </div> <p style="text-align: center;"><b>Image Record Search</b></p> <ul style="list-style-type: none"> <li>• Image records of registered documents from Document Index and Charge Index</li> <li>• Specified forms, resolutions, Articles and Audited Financial Statements etc.</li> </ul>	<div style="text-align: center;">  </div> <p style="text-align: center;"><b>Directors Index Search</b></p> <ul style="list-style-type: none"> <li>• List of current directors / reserve directors (<i>Company-based Search</i>)</li> <li>• List of companies of which a person is a current director / reserve director (<i>Director-based Search</i>)</li> <li>• Particulars of a director (<i>Director-based Search</i>)</li> </ul>	<div style="text-align: center;">  </div> <p style="text-align: center;"><b>Basic Company Information</b></p> <ul style="list-style-type: none"> <li>• Date of incorporation / registration / dissolution</li> <li>• Company name (and changes)</li> <li>• Type / status of company and mode of winding-up</li> <li>• Place of incorporation (registered non-Hong Kong company) etc.</li> </ul>

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## Availability of Corporate Information



- For **listed cos on HKEX**: Annual, Half Yearly and Quarterly (if required) financial information are required to be published on the websites of HKEX and individual listed entities
- For **HK-incorporated private cos**: Audited financial statements are only required to be filed with IRD

- **HK has signed agreements for Automatic Exchange of Information (AEOI) with many countries (*an initiative of OECD*)**
  - ➔ - Fellow countries / territories may request for exchange of information
  - AEOI will enable the discovery of formerly undetected tax evasion

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## Obligations of TCSPs under FATF Recommendations and FATCA



- Under FATF, DNFBPs (including **TCSPs**) which engage in specified transactions should be subject to similar FATF Recommendations including
  - **Customer due diligence (CDD)**
  - **Record-keeping requirements**
  - **Reporting of suspicious transactions etc.**
- Under the US Foreign Account Tax Compliance Act (FATCA), financial institutions should
  - Establish and carry out due diligence (i.e. “know-your-customer” or KYC) procedures under the prevailing anti-money laundering legislation to identify US accounts and clients
  - Obtain relevant US client’s consent
  - Report the relevant information to US Internal Revenue Service (IRS)
- TCSPs act as **an intermediary between clients and financial institutions** (e.g. opening of bank account), thus play a key role of facilitating the KYC compliance matters

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## Implementation of FATF Recommendations and Other KYC Obligations by TCSPs in Hong Kong



**Proper  
Client Due  
Diligence  
(CDD)**

### To implement CDD measures:

- Identify customers and verify their identity
- Identify the ‘beneficial owner’\* involved in the business or transaction
  - \* In case of trusts and other legal entities, should understand the ownership and control structure*
- Obtain information on the purpose and intended nature of the business relationship
- Additional measures required
  - Business relationship or occasional transaction with a ‘politically exposed person’ (PEP)
  - When client has not been physically present for identification purposes
  - In any other situation which by its nature presents a higher risk of money laundering

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## Implementation of FATF Recommendations and Other KYC Obligations by TCSPs in Hong Kong

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Proper Client Due Diligence (CDD)

Proper Record Keeping

To keep and maintain records for a specified period according to statutory requirements:

- Copy of, or references to the evidence of the client's identity obtained under CDD requirements
- Supporting records in respect of the business relationship which are subject of CDD measures or ongoing monitoring
- Transaction and business relationship records e.g. relevant correspondence, receipts, cheques to compile a satisfactory audit trail

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## Implementation of FATF Recommendations and Other KYC Obligations by TCSPs in Hong Kong

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Proper Client Due Diligence (CDD)

Proper Record Keeping

Suspicious Transaction Reporting

- TCSPs are obliged to maintain internal company policy and procedures and apply applicable laws of HKSAR for reporting suspicious transactions
- Suspicious Transaction Reports ("STRs") should be made to the Joint Financial Intelligence Unit ("JFIU") (their role is not to investigate suspicious transactions but to receive, analyze and store these reports and to disseminate them to the appropriate investigative unit)
- Failing to report may lead to prosecution carrying a maximum penalty of 3 months imprisonment and HK\$50,000 fine

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## Implementation of FATF Recommendations and Other KYC Obligations by TCSPs in Hong Kong

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Proper Client Due Diligence (CDD)

Proper Record Keeping

Suspicious Transaction Reporting

FATCA Reporting and Compliance

- TCSPs play an important role in facilitating the provision of KYC documents to the Compliance Departments of banks in Hong Kong, especially if those bank accounts are opened at the time when a TCSP is the intermediary

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## Implementation of FATF Recommendations and Other KYC Obligations by TCSPs in Hong Kong

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In January 2017, the Financial Services and the Treasury Bureau (FSTB) has issued 2 public consultations – Aiming at implementation before FATF mutual evaluation on Hong Kong in 2018

### Proposed amendments to AMLO (Cap. 615)

- Prescribe the **statutory CDD and record-keeping requirements** to be applicable to DNFBPs (including TCSPs)
- Introduce a **licensing regime for TCSPs**: TCSP needs to apply for a licence from the Registrar of Companies before providing trust or company services (*criminal offence if operating without licence*)
  - A “fit-and-proper” test
  - Possession of business registration certificate
  - Payment of licence fee
  - Other relevant factors relating to the risk of money laundering and terrorist financing of TCSP

FATCA Reporting and Compliance

Regulating TCSPs and Disclosure of Beneficial Ownership

1. “Enhancing Anti-Money Laundering Regulation of DNFBPs”

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## Implementation of FATF Recommendations and Other KYC Obligations by TCSPs in Hong Kong

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In January 2017, the Financial Services and the Treasury Bureau (FSTB) has issued 2 public consultations – Aiming at implementation before FATF mutual evaluation on Hong Kong in 2018

### Suggestions on required qualifications for the licenced TCSPs

- Professionalism and competence for compliance with the statutory CDD and record-keeping requirements
- Paragraph 18 of Sch. 2 of AMLO sets out certain class of “Specified Intermediary” with relevant professionalism
- Corporate TCSP must have a qualified “Responsible Person”

- Introduce a **licensing regime for TCSPs**: TCSP needs to apply for a licence from the Registrar of Companies before providing trust or company services (*criminal offence if operating without licence*)
  - A “fit-and-proper” test
  - Possession of business registration certificate
  - Payment of licence fee
  - Other relevant factors relating to the risk of money laundering and terrorist financing of TCSP

1. “Enhancing Anti-Money Laundering Regulation of DNFBPs”

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## Implementation of FATF Recommendations and Other KYC Obligations by TCSPs in Hong Kong

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In January 2017, the Financial Services and the Treasury Bureau (FSTB) has issued 2 public consultations – Aiming at implementation before FATF mutual evaluation on Hong Kong in 2018

- Some key proposed amendments to CO (Cap. 622)
  - Require **all Hong Kong incorporated companies** to
    - To take reasonable steps to identify and ascertain **People with Significant Control (PSC)** over the company
    - To keep a **Register of PSC**
    - To enter details of authorised person (can be a DNFBP) responsible for providing information / assistance to the law enforcement agencies when the need arises
    - If no such PSC, to enter a statement to that effect
  - PSC = Registrable Individual and Registrable Legal Entity with more than 25% direct / indirect interest, and/or rights to control the majority of directors and/or right to exercise significant influence or control
  - Register of PSC should be available for **public inspection** and must be kept for at least 10 years
  - Need to notify Companies Registry the place of location if not kept at the registered office or place where register of members are kept

2. “Enhancing Transparency of Beneficial Ownership of Hong Kong Companies”

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## Implementation of FATF Recommendations and Other KYC Obligations by TCSPs in Hong Kong

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Proper Client Due Diligence (CDD)

Proper Record Keeping

Suspicious Transaction Reporting

FATCA Reporting and Compliance

Regulating TCSPs and Disclosure of Beneficial Ownership

TSCPs must ensure controls and measures are in place:

- ✓ Cyber security
- ✓ Business ethics

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## Key Measures for Good Governance

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### Guidelines on Cyber Security

Source: Cyber Security Information Portal, GovHK ([www.cybersecurity.hk](http://www.cybersecurity.hk))

- 1 • Use strong password for user account
- 2 • Set up standard user account for daily use
- 3 • Disable guest account
- 4 • Enable password protected screen saver
- 5 • Use up-to-date anti-malware security software
- 6 • Use personal firewall
- 7 • Update operating system, application and browser
- 8 • Configure basic security settings for web browser
- 9 • Backup data regularly
- 10 • Completely remove data before disposal of computers

### Good Ethical Behaviors

- ✓ Ethical business conduct
- ✓ Corporate governance
- ✓ Staff training and development
- ✓ Fair employment practices
- ✓ Environmental protection
- ✓ Social contribution

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## Thank You

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