GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

HONG KONG (CHINA)

2019 (Second Round)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Hong Kong (China) 2019 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

March 2019
(reflecting the legal and regulatory framework as at December 2018)

Please cite this publication as:
OECD (2019), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Hong Kong (China) 2019 (Second Round) : Peer Review Report on the Exchange of Information on Request* , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris.
https://doi.org/10.1787/34f9b9a8-en

ISBN 978-92-64-91154-3 (print)
ISBN 978-92-64-73027-4 (pdf)

Global Forum on Transparency and Exchange of Information for Tax Purposes
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

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Corrigenda to OECD publications may be found on line at: *www.oecd.org/about/publishing/corrigenda.htm*.

Table of contents

Reader's guide 5

Abbreviations and acronyms 9

Executive summary 13

Overview of Hong Kong 21

Part A: Availability of information 27

A.1. Legal and beneficial ownership and identity information 27
A.2. Accounting records 61
A.3. Banking information 76

Part B: Access to information 89

B.1. Competent authority's ability to obtain and provide information 89
B.2. Notification requirements, rights and safeguards 99

Part C: Exchanging information 105

C.1. Exchange of information mechanisms 105
C.2. Exchange of information mechanisms with all relevant partners 117
C.3. Confidentiality 118
C.4. Rights and safeguards of taxpayers and third parties. 127
C.5. Requesting and providing information in an effective manner 128

Annex 1: List of in-text recommendations 143

Annex 2: List of all exchange of information mechanisms 145

Annex 3: Methodology for the review 149

Annex 4: Hong Kong's response to the review report 153

Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 150 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to www.oecd.org/tax/transparency and http://dx.doi.org/10.1787/2219469x.

Abbreviations and acronyms

2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference (ToR)	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015.
AI	Authorised Institution
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
AMLO	Anti-Money Laundering and Counter-Terrorist Financing Ordinance
BRO	Business Registration Office
C(A)O 2018	Companies (Amendment) Ordinance 2018
CCASS	Central Clearing and Settlement System
CDD	Customer Due Diligence
C&ED	Customs and Excise Department
CIR	Commissioner of Inland Revenue
CO	Companies Ordinance
CR	Companies Registry
DCIR(O)	Deputy Commissioner of Inland Revenue (Operations)
DCIR(T)	Deputy Commissioner of Inland Revenue (Technical)
DIPN 47	Departmental Interpretation and Practice Notes No. 47
Disclosure Rules	Inland Revenue (Disclosure of Information) Rules
DNFBP	Designated Non-Financial Business and Profession

DTC	Double Tax Convention
EOI	Exchange of Information
EOIR	Exchange Of Information on Request
FATCA IGA	Foreign Account Tax Compliance Act Intergovernmental Agreement
FATF	Financial Action Task Force
FI	Financial Institution
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
HKEX	Hong Kong Exchanges and Clearing Limited
HKICPA	Hong Kong Institute of Certified Public Accountants
HKMA	Hong Kong Monetary Authority
Hong Kong	Hong Kong Special Administrative Region of the People's Republic of China
IA	Insurance Authority
IO	Insurance Ordinance
IRD	Inland Revenue Department
IRO	Inland Revenue Ordinance
JFIU	Joint Financial Intelligence Unit
KYC	Know-your-customer
MLO	Money Lenders Ordinance
ML/TF	Money laundering/terrorist financing
MSO	Money Service Operator
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
OSCO	Organised and Serious Crimes Ordinance
PDPO	Personal Data (Privacy) Ordinance
PRG	Peer Review Group of the Global Forum
SCR	Significant Controllers Register
SDD	Simplified Customer Due Diligence

SEHK	Stock Exchange of Hong Kong
SFC	Securities and Futures Commission
SFO	Securities and Futures Ordinance
SVF	Stored Value Facility
TCSP	Trust or Company Service Provider
TIEA	Tax Information Exchange Agreement
TO	Trustee Ordinance
TT Section	Tax Treaty Section

Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request by the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter Hong Kong) on the second round of reviews conducted by the Global Forum against the 2016 Terms of Reference (ToR). It assesses the legal and regulatory framework as at 21 December 2018 and the practical implementation of this framework, in particular in respect of EOI requests received during the period from 1 October 2014 to 30 September 2017. This report concludes that Hong Kong is rated **Largely Compliant** overall. In 2011 the Global Forum evaluated Hong Kong against the 2010 ToR for legal implementation of the EOIR standard (2011 Phase 1 report) and in 2013 for its implementation in practice (2013 Phase 2 report). The 2013 Phase 2 report concluded that Hong Kong was rated Largely Compliant overall.

Comparison of ratings for First Round Report and Second Round Report

Element		First Round Report (2013)	Second Round EOIR Report (2018)
A.1	Availability of ownership and identity information	PC	PC
A.2	Availability of accounting information	LC	LC
A.3	Availability of banking information	C	LC
B.1	Access to information	C	C
B.2	Rights and Safeguards	C	C
C.1	EOIR Mechanisms	LC	C
C.2	Network of EOIR Mechanisms	PC	C
C.3	Confidentiality	C	C
C.4	Rights and safeguards	C	C
C.5	Quality and timeliness of responses	C	C
	OVERALL RATING	**LC**	**LC**

C = Compliant; **LC** = Largely Compliant; **PC** = Partially Compliant; **NC** = Non-Compliant

Progress made since previous review

2. Since the adoption of the Phase 2 report in 2013, Hong Kong has received more EOI requests and has partly acted upon the gaps identified in respect of ensuring ownership and accounting information in respect of trusts and has widened its tax treaty network, particularly by participating in the Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention). The 2013 Report made recommendations in respect of five elements: on availability of ownership information with nominees, not all trustees were covered by the anti-money laundering law (element A.1), availability of accounting information with trusts (element A.2), to renegotiate some treaties that were not in line with the standard in respect of domestic tax interest requirement, which limits the access powers of the competent authority to a certain extent (elements B.1 and C.1). Hong Kong was also recommended to continue to expand its EOI network (element C.2).

3. Hong Kong has partially addressed the above recommendations. The supervisory gap persists with respect to ownership and accounting information of trusts managed by non-professional trustees. Hong Kong has addressed the issues of domestic tax interest largely and taken a major step to expand its treaty network by virtue of participation in the Multilateral Convention from 1 September 2018.

Key recommendation(s)

4. The legal and regulatory framework for availability of legal and beneficial ownership information is in place in Hong Kong, but it needs improvements in that it does not cover all relevant legal entities/arrangements. Also, since the provisions for trust or company service providers (TCSPs) and the Significant Controllers Register (SCR) were just introduced on 1 March 2018, there is a need for monitoring the effective supervision by Hong Kong of these new measures.

5. There is also scope for improvement in adequate supervision of trusts with nexus to Hong Kong to ensure the availability of reliable accounting records at all times.

6. In terms of identifying the beneficial owners of trusts as per standards, the financial institutions (FIs) dealing with trusts must identify beneficiaries entitled to a vested interest in more than 25% of the capital of the trust property. This is not fully in line with the ToR since the beneficiaries with less than 25% stake are not identified as beneficial owners.

7. Certain entities and arrangements (including those solely earning non-taxable income) are only required to file tax returns every two to three years but not annually. This may pose a risk to the maintenance of reliable accounting records at all times. Hong Kong is recommended to take measures to ensure that accounting records of all relevant entities and arrangements are available.

8. Since there is a steep increase in the total number of requests received by Hong Kong as compared to the previous review period by about ten times, timeliness of responses has deteriorated and status updates have not been provided in all cases. However, the peers were generally satisfied and the performance improved to an effective level towards the end of review period, as a result of measures taken by Hong Kong to enhance its resources and maintain effective exchange of information. Hong Kong is recommended to continue to enhance its resources to ensure that timely responses and systematic status updates are provided as appropriate.

Overall rating

9. Hong Kong has addressed most of the recommendations contained in the 2013 Report, although not fully with respect to monitoring the compliance with ownership and accounting record-keeping requirements in respect of trusts managed by non-professional trustees. In addition, Hong Kong has the legal framework to ensure the availability of beneficial ownership information, albeit there are a few deficiencies with respect to the scope of application and the definition of beneficial owners. In light of the above, all elements are rated Compliant, except for elements A.1 rated Partially Compliant as well as elements A.2 and A.3 rated Largely Compliant. On balance, Hong Kong is overall rated Largely Compliant with the EOIR standard.

10. In the current review period, Hong Kong received a total of 636 requests and sent 4 requests.

11. This report was tabled for approval at the PRG meeting in February 2019 and was adopted by the Global Forum on 15 March 2019. A follow-up report on the steps undertaken by Hong Kong to address the recommendations made in this report should be sent to the PRG no later than 30 June 2020 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but needs improvement	The new requirement for each company to have a Significant Controllers Register (SCR) allows not recording any significant controller (beneficial owner) in the SCR in certain situations.	Hong Kong is recommended to adequately address the legal gap that may arise in respect of not having any significant controller and thereby no beneficial owner recorded in the SCR.
	Legal ownership information of foreign companies that have a nexus to Hong Kong is available only when they have a bank account or engage a licensed trust or company service provider (TCSP).	Hong Kong is recommended to ensure that updated and accurate legal ownership information of foreign companies that have a nexus to Hong Kong is available in all cases.
	Beneficial ownership information of partnerships that do not engage a bank, a licensed TCSP or other AML obliged service provider may not be available. Also, although partnerships in Hong Kong do not have legal personality, only those partners with more than a 25% stake are identified as beneficial owners of partnerships.	Hong Kong is recommended to ensure that accurate beneficial ownership information of all partnerships carrying on business in Hong Kong is available at all times and retained for at least five years.
	AML obliged service providers dealing with trusts must identify beneficiaries entitled to a vested interest in more than 25% of the capital of the trust property. This is not fully in line with the ToR since the beneficiaries with less than 25% stake are not identified as beneficial owners.	Hong Kong is recommended to ensure that all the beneficiaries of a trust with nexus to Hong Kong are identified and available for access by the Competent Authority.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
EOIR Rating: Partially Compliant	The amended AMLO has introduced a licensing regime for those who wish to provide trust or company services "by way of business". The CR has been conducting on-site visits to the TCSPs on a risk basis. Given the recent introduction of these measures, more experience is needed to further demonstrate the effectiveness of supervision by CR over the licensed TCSPs.	Hong Kong is recommended to monitor the TCSP supervisory programme to ensure the effective implementation of recent changes to the AMLO.
	The amended CO has introduced a SCR to capture the beneficial ownership information. Supervision is under progress and given its recent implementation, more experience is needed to further demonstrate the effectiveness.	Hong Kong is recommended to monitor the supervisory measures in place to ensure that the SCR are populated accurately by all companies.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place		
EOIR Rating: Largely Compliant	The recently amended AMLO obliges the professional trustees to maintain records of every transaction and retain them for a period of at least 5 years. While supervisory measures are initiated, more experience is required to further demonstrate the effectiveness.	Hong Kong is recommended to monitor the supervisory programme for effective implementation of AMLO requirements on TCSPs acting as trustees to maintain records.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
	Certain entities and arrangements (including those solely earning non-taxable income) are only required to file tax returns every two to three years but not annually. This may pose a risk to the maintenance of reliable accounting records at all times.	Hong Kong is recommended to take measures to ensure that accounting records of all relevant entities and arrangements are available.
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place but needs improvement	Banks are allowed to do simplified customer due diligence (CDD) which exempts the requirement to identify and verify the beneficial owner of investment vehicles, where the person responsible for carrying out measures that are similar to the CDD measures in relation to all the investors of the investment vehicle could be an institution from a wide range of countries that could be treated as equivalent jurisdictions.	It is recommended that Hong Kong ensures that beneficial ownership information of all investment vehicles coming from equivalent jurisdictions is available in Hong Kong in all cases at all times.
	Banks dealing with trusts must identify beneficiaries entitled to a vested interest in more than 25% of the capital of the trust property. Similarly only partners with more than 25% stake are identified as beneficial owners in partnerships, although they do not have any legal personality. This is not fully in line with the ToR.	Hong Kong is recommended to ensure that all the beneficiaries of a trust with nexus to Hong Kong are identified as beneficial owners and available for access by Competent Authority. Hong Kong is also recommended to ensure that all the beneficial owners of partnerships are identified and available for access by Competent Authority.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
EOIR Rating: Largely Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place	DIPN 47 sets out the guidelines for exchange of information under tax treaties but does not clearly specify that information received under tax treaties cannot be shared with other law enforcement and supervisory agencies (like JFIU) without the consent of the supplying jurisdiction.	Hong Kong should consider refining DIPN 47 to make it clear that the IRD is not obliged to disclose information obtained through EOI requests to the JFIU unless it is duly authorised to do so under the relevant EOI agreement.
EOIR Rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
EOIR Rating: Compliant	Since there is a steep increase in the total number of requests received by Hong Kong as compared to the previous review period by about ten times, timeliness of responses has deteriorated and status updates have not been provided in all cases. However, the peers were generally satisfied and the performance improved to an effective level towards the end of review period, as a result of measures taken by Hong Kong to enhance its resources and maintain effective exchange of information.	Hong Kong is recommended to continue to enhance its resources to ensure that timely responses and systematic status updates are provided as appropriate.

Overview of Hong Kong

12. This overview provides some basic information about Hong Kong that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of Hong Kong's legal, tax or financial systems.

Legal system

13. Hong Kong is a Special Administrative Region of the People's Republic of China. The legal system of Hong Kong is based on the rule of law and the independence of the judiciary. The constitutional framework for the legal system is provided by the Basic Law of Hong Kong which was enacted by the National People's Congress in accordance with the Constitution of the People's Republic of China. All the systems and policies practised in Hong Kong must be based on the provisions of the Basic Law. Furthermore, no law enacted by the legislature of Hong Kong may contravene the Basic Law. The Basic Law ensures that the legal system in Hong Kong will continue to give effect to the rule of law, by providing that the laws previously in force before 1 July 1997 in Hong Kong shall be maintained, save for any that contravene the Basic Law and subject to any amendment by the legislature of Hong Kong. A prominent feature of the Basic Law is the underlying principle of "one country, two systems" whereby the socialist system and policies shall not be practised in Hong Kong, and the previous capitalist system is to remain unchanged for 50 years. Treaties are given effect in Hong Kong by legislation and constitute part of Hong Kong's domestic law. Therefore, they have the same force and effect of domestic law in Hong Kong.

14. The major courts in Hong Kong include the Magistrates' Courts, the District Court (includes the Family Court), the High Court (comprises the Court of First Instance and the Court of Appeal) and the Court of Final Appeal which is the highest appellate court in Hong Kong. The judiciary is responsible for the administration of justice in Hong Kong. It hears all prosecutions and civil disputes (including tax disputes).

Tax system

15. In Hong Kong, the Inland Revenue Ordinance (Cap. 112) (IRO) governs the taxation of individuals, corporations, partnerships, sole-proprietorships and trustees, whether incorporated or unincorporated. The IRO is administered by the Inland Revenue Department (IRD). It provides for the levying of three separate direct taxes: profits tax, salaries tax and property tax. The standard tax rate is 15% for salaries tax, property tax and profits tax for unincorporated businesses, while the profits tax rate for corporations is 16.5%. There is no capital gains tax, value added tax and withholding tax levied on dividends or interest in Hong Kong. Royalties and fees paid to non-resident entertainers or sportsmen for their performance in Hong Kong are subject to withholding tax on their assessable profits charged under profits tax.

16. Hong Kong's tax system adopts the "territorial principle", i.e. taxes are only levied on income or profits arising in or derived from Hong Kong and not on income or profits sourced outside Hong Kong even if remitted to Hong Kong. Liability to tax is determined not on residence status, but on the source of income. Therefore, the IRO contains no exemption from profits tax for non-Hong Kong companies.

17. Profits tax is levied on corporations, partnerships, sole proprietorships and trustees. Whether a company is liable to profits tax depends on the nature and extent of its activities in Hong Kong: the person must carry on a trade, profession or business in Hong Kong; the profits to be charged must be from such activity and be arising in or derived from Hong Kong.

Financial services sector

18. Hong Kong has a very strong and vibrant financial services sector led by the banking system, capital markets and a sizeable insurance sector.

19. Hong Kong has a large, well developed banking system with one of the highest concentrations of banking institutions in the world. At the end of 2017, there were 191 institutions with total assets of HKD 22.7 trillion, equivalent to 853% of Hong Kong's GDP.

20. The securities and futures markets in Hong Kong are operated by the Hong Kong Exchanges and Clearing Limited (HKEX). A wide variety of products are traded in the stock market, ranging from ordinary shares to options, warrants, Callable/Bull Bear Contracts, Exchange Traded Funds, Real Estate Investment Trusts, unit trusts and debt securities. For the derivatives market, index futures, stock futures, interest rate futures, bond futures, gold futures, index options, stock options, etc. are traded on the Hong Kong Futures Exchange or the Stock Exchange of Hong Kong (SEHK). An active over-the-counter market, which is mainly operated and used by professional

institutions, trades swaps, forwards and options in relation to equities, interest rates and currencies.

21. Stock markets of Hong Kong are amongst the largest in the world. As at 31 December 2017, total market capitalisation amounted to HKD 34 trillion (USD 4.4 trillion), the 6th largest worldwide, or 1 277% of GDP. The market listed 2 118 companies, of which 1 051 were from the People's Republic of China (H-shares, red chips and Chinese private enterprises), representing 66.2% of total market capitalisation. Within the regulatory framework, the Securities and Futures Commission (SFC) has regulatory oversight of the HKEX and its subsidiaries.

22. The Government acts as a facilitator and co-ordinator of market reforms pursued by the SFC and the HKEX where necessary. Parties who are engaged in regulated activities under the Securities and Futures Ordinance (Cap. 571) (SFO) are required to be licensed by or registered with the SFC, unless otherwise exempted. As at 31 December 2017, there were 2 660 licensed corporations. Unit trusts and other collective investment schemes (including those set up in the form of trusts) that are offered to the public in Hong Kong are legally required to obtain prior authorisation from the SFC, unless an exemption under s. 103 of the SFO applies.

23. As at 30 September 2018, there were 161 authorised insurers in Hong Kong, including 48 long term insurers, 94 general insurers and 19 composite insurers (i.e. authorised to write both long term and general businesses). There were a total of 100 121 individual insurance intermediaries and 3 195 insurance agencies/broker firms (i.e. 90 685 individual insurance agents (including responsible officers and technical representatives); 9 436 individual insurance brokers; 2 417 insurance agencies and 778 insurance broker firms). According to the annual statistics for 2017, the total gross premiums of the Hong Kong insurance industry increased by 8.3% to HKD 489.2 billion. The value added by the insurance industry accounted for 3.7% of GDP. The Insurance Authority (IA), independent of the Government, is a statutory body established under the Insurance Ordinance (Cap. 41) (IO). The IA took over the statutory functions of the former Office of the Commissioner of Insurance on 26 June 2017. The principal functions of the IA are to regulate and supervise the insurance industry for the promotion of the general stability of the insurance industry and for the protection of existing and potential policy holders. The IA will implement the statutory licensing regime and take over the regulation of insurance intermediaries from the existing three Self-regulatory Organisations (the three SROs are the Insurance Agents Registration Board established under the Hong Kong Federation of Insurers, the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association) in 2019. In the interim, the existing self-regulatory system for insurance intermediaries will continue.

FATF evaluation

24. The Financial Action Task Force (FATF) has recently commenced its 4th round mutual evaluation on Hong Kong jointly with the Asia/Pacific Group on Money Laundering. The mutual evaluation report will be considered by FATF Plenary in June 2019 and the APG Plenary in July 2019. The (previous) follow-up report of the 3rd round mutual evaluation of Hong Kong (dated 2012) noted the following in respect of CDD and availability of beneficial ownership information on legal entities and arrangements.

25. R.10 was rated as LC since Hong Kong has made significant progress in improving its compliance with R.10. The technical deficiencies in the legislation were addressed with the entry into force of the relevant provisions of the AMLO. In respect of R.33, which was rated as PC, the report observed that there were inadequate measures to ensure that accurate information is held on the beneficial ownership and control of legal persons and further information on the companies register pertains only to legal ownership/control (as opposed to beneficial ownership), which is not verified and is not necessarily reliable. Also, since corporate and nominee directors are permitted, it further obscures beneficial ownership and control information. In respect of R.34, inadequacy of measures to ensure that there is accurate information on the beneficial ownership and control of trusts and legal arrangements was noted, notably given that providers of trust services, other than those which are financial institutions, are not subject to or monitored for anti-money laundering and counterfinancing of terrorism (AML/CFT) obligations.

Recent developments

The new Companies Ordinance (Cap. 622) (CO)

26. The CO enacted in July 2012 took effect on 3 March 2014, and was subsequent to the previous Phase 2 report published in 2013. The new CO includes provisions that, among others, require a private company to have at least one natural person (not necessarily a resident of Hong Kong) as a director and enhance the transparency of company information. For example, it requires companies (except private companies and small guarantee companies) to prepare a more comprehensive directors' report which includes an analytical and forward-looking business review. The new CO repeals a company's power to issue share warrants to bearer (s. 139(1)).

27. Further, the Companies (Amendment) Ordinance 2018 (C(A)O 2018) was enacted on 24 January 2018 and came into operation on 1 March 2018. It amends the CO and requires every company incorporated in Hong Kong, except for listed companies which are subject to separate disclosure

requirements under the SFO, to obtain and maintain accurate and up-to-date beneficial ownership information by keeping a SCR. It also requires all local companies to designate a representative who is a legal professional, an accounting professional, a licensed TCSP, or a natural person resident in Hong Kong who is a director, employee, or shareholder to provide assistance relating to the SCR to competent authorities.

28. A company is required to take reasonable steps to ascertain and identify individuals and legal persons that have significant control over the company (significant controllers) and maintain a SCR containing accurate and up-to-date information on the identities of significant controllers, including their names, correspondence addresses (for individuals)/registered or principal office address (for legal persons), and nature of control over the company.

Amendments to Anti-Money Laundering and Counter-Terrorist Financing Law

29. The Hong Kong Government has completed the following legislative exercises to strengthen the AML/CFT capability of Hong Kong:

- introducing the Anti-Money Laundering and CounterTerrorist Financing Ordinance (Cap. 615) (AMLO) to codify the CDD and record-keeping requirements to FIs, and to put in place a licensing regime requiring Money Service Operators (MSOs) to apply for a licence from the Customs and Excise Department (C&ED) and satisfy a "fit-and-proper" test before they can provide money services in Hong Kong
- amending the AMLO to extend the CDD and record-keeping requirements therein to designated non-financial businesses and professions (DNFBPs), and to introduce a licensing regime requiring TCSPs 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 Hong Kong
- amending the CO to require companies incorporated in Hong Kong to keep beneficial ownership information
- introducing the Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance (Cap. 629) to implement a declaration/disclosure system for cross-boundary movement of currency and bearer negotiable instruments.

Participation in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention)

30. To put in place a legal framework for Hong Kong to agree with other jurisdictions to exchange tax information on a multilateral basis, the Inland Revenue (Amendment) (No. 5) Bill 2017 was passed on 24 January 2018 which empowers the Chief Executive in Council to make orders for giving effect to the Multilateral Convention and other relevant tax agreements that apply to Hong Kong. The Government of the People's Republic of China made a declaration to the OECD to extend the application of the Multilateral Convention to Hong Kong in May 2018. The Inland Revenue (Convention on Mutual Administrative Assistance in Tax Matters) Order made under s. 49(1A) of the amended IRO was gazetted on 13 July 2018. The Multilateral Convention entered into force in Hong Kong on 1 September 2018.

Part A: Availability of information

31. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that legal and beneficial ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

32. The 2013 Report noted that the information on legal ownership of all relevant entities and arrangements in Hong Kong is available by a combination of requirements under the company law and the AML framework, except in the case of nominees, bearer shares and trusts run by non-professional trustees in Hong Kong. Accordingly, Hong Kong was recommended to address these legal gaps. It was also recommended to monitor whether all Hong Kong trustees of private express trusts and foreign trusts maintain information that identifies the settlors and beneficiaries in all cases.

33. Hong Kong has amended the CO to close the legal gaps related to bearer shares but the gap in respect of non-professional trustees and nominees that are not covered by an AML obligation is not fully addressed, notwithstanding there is a new requirement under the AMLO to licence all the TCSPs operating by way of business. In-text recommendations are therefore continued in respect of non-professional trustees and nominees under certain situations.

34. The 2016 ToR requires that beneficial ownership information on relevant entities and arrangements should be available along with the legal ownership. The amendments to the CO bring in a requirement to maintain a SCR with each company, which complements the requirement under the AMLO for FIs and DNFBPs to keep beneficial ownership information, to meet the beneficial ownership requirements under the FATF. These requirements also assist in meeting the relevant requirements under the 2016 ToR to a great extent.

35. However, the legal framework on the availability of beneficial ownership information is not yet complete as some gaps are noted that need to be addressed, i.e. where an entity or arrangement is not in itself obliged to maintain beneficial ownership information and in the circumstances where it does not engage an AML obliged service provider. In addition, there is a need to monitor the recent supervisory framework to ensure that the SCR are populated accurately by all companies, and that the private trusts that are administered by licensed TCSPs as per the amended AMLO as well as non-professional trustees maintain ownership information in line with the ToR.

36. The new table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
Deficiencies identified in the implementation of the legal and regulatory framework	**Underlying Factor**	**Recommendations**
	The new requirement for each company to have a Significant Controllers Register (SCR) allows not recording any significant controller (beneficial owner) in the SCR in certain situations.	Hong Kong is recommended to adequately address the legal gap that may arise in respect of not having any significant controller and thereby no beneficial owner recorded in the SCR.
	Legal ownership information of foreign companies that have a nexus to Hong Kong is available only when they have a bank account or engage a licensed trust or company service provider (TCSP).	Hong Kong is recommended to ensure that updated and accurate legal ownership information of foreign companies that have a nexus to Hong Kong is available in all cases.
	Beneficial ownership information of partnerships that do not engage a bank, a licensed TCSP or other AML obliged service provider may not be available. Also, although partnerships in Hong Kong do not have legal personality, only those partners with more than 25% stake are identified as beneficial owners of partnerships.	Hong Kong is recommended to ensure that accurate beneficial ownership information of all partnerships carrying on business in Hong Kong is available at all times and retained for at least five years.

	AML obliged service providers dealing with trusts must identify beneficiaries entitled to a vested interest in more than 25% of the capital of the trust property. This is not fully in line with the ToR since the beneficiaries with less than 25% stake are not identified as beneficial owners.	Hong Kong is recommended to ensure that all the beneficiaries of a trust with nexus to Hong Kong are identified and available for access by the Competent Authority.
Determination: The element is in place but needs improvement		
Practical Implementation of the standard		
Deficiencies identified in the implementation of EOIR in practice	**Underlying Factor**	**Recommendations**
	The amended AMLO has introduced a licensing regime for those who wish to provide trust or company services "by way of business". The CR has been conducting on-site visits to the TCSPs on a risk basis. Given the recent introduction of these measures, more experience is needed to further demonstrate the effectiveness of supervision by CR over the licensed TCSPs.	Hong Kong is recommended to monitor the TCSP supervisory programme to ensure the effective implementation of recent changes to the AMLO.
	The amended CO has introduced a SCR to capture the beneficial ownership information. Supervision is under progress and given its recent implementation, more experience is needed to further demonstrate the effectiveness.	Hong Kong is recommended to monitor the supervisory measures in place to ensure that the SCR are populated accurately by all companies.
Rating: Partially Compliant		

A.1.1. Availability of legal and beneficial ownership information for companies

37. The 2013 Report analysed the legal framework for availability of legal ownership information for companies, enforcement measures for non-compliance and experience of Hong Kong in providing legal ownership information to EOIR partners (2013 Report, paras 80-132).

38. The main piece of legislation at that time was the CO. While the ordinance was repealed and replaced with a new one in 2014, there have been no significant changes in terms of ensuring legal ownership whereas new requirements to ensure availability of beneficial ownership with the companies have been introduced. The recent amendments in respect of SCR to reflect beneficial ownership information, subject to certain conditions, is discussed separately under the section on the availability of beneficial ownership information.

Types of companies

39. As at May 2018, there were 1 407 130 locally incorporated companies registered with the Companies Registry (CR) comprising:

- 1 392 603 private companies limited by shares, the liability of their members is limited to the amount, if any, unpaid on the shares respectively held by them
- 523 non-listed public companies limited by shares
- 216 listed public companies limited by shares
- 13 774 companies limited by guarantee without share capital: the liability of their members is limited to such amount as the members may respectively undertake to contribute to the assets of the company in the event of it being wound up
- 14 unlimited companies with or without share capital, in which there is not any limit on the liability of their members.

40. There were also 10 668 non-Hong Kong companies registered under the CO. There is no minimum share capital for incorporation in Hong Kong. As during the previous review period, the vast majority of companies are private companies.

Availability of legal ownership information

41. Legal ownership and identity requirements for companies are mainly found under the company law and AML/CFT regulatory framework (2013 Report, paras 80-87). The following table[1] shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

Legislation regulating legal ownership information of companies

Type	CO	IRO	AMLO
Companies Limited by Shares	All	None	Some
Companies Limited by Guarantee	All	None	Some
Unlimited Company	All	None	Some
Foreign Company with a nexus to Hong Kong	None	None	Some

Companies Ordinance requirements

42. First, the Hong Kong CO requires every company incorporated in Hong Kong to maintain at its Hong Kong registered office or a prescribed place a register of members (legal owners), including their names and addresses, the shares held by each member, the distinguishing number of each share if it has a number, the amount paid on the shares, and the date on which a person became and ceased to be a member (s. 627; entries in the register of members relating to persons who cease to be members must be retained for 10 years). Any person may request for sight of that register (s. 631). The CR conducts investigations upon receipt of a complaint that a company has failed to make its register of members available for inspection or has failed to properly maintain the register, and has in general the powers to investigate and, where appropriate, initiate prosecution action on their own. Site inspections will be conducted as considered appropriate during investigation of complaints on failure to properly maintain the register.

43. Changes of ownership are effective once the name of the new member is entered in the company's register of members. If a company fails

1. The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" in this context means that every entity of this type created is required to maintain ownership information for all its owners (including where bearer shares are issued) and that there are sanctions and appropriate retention periods. "Some" in this context means that an entity will be required to maintain information if certain conditions are met.

to keep a register of its members as required by the CO, the company and its officers are liable for prosecution (see the section below on supervision and enforcement).

44. Second, all companies formed under Hong Kong law are obliged to register and file annual returns with the CR that identify the legal owners of the company.[2] Upon registration, the companies must indicate their form and provide their articles of association, particulars of directors and company secretary and the name, address and shareholding of each founder member. Any change of directors should be notified within 15 days (s. 645). In addition, private companies having share capital and public companies must file an annual return (s. 662) that confirms the accuracy of the data held on the Registry and declares compliance with the requirements imposed by law, e.g. that the company's register of members is current as at the date of the year to which the annual validation relates (2013 Report, paras 91-92). In terms of retention requirements of dissolved companies, every person who was a director of the company immediately before the dissolution must ensure that the company's books and papers are kept for at least 6 years after the date of dissolution.

Tax law requirements

45. The tax laws do not require corporations to provide any ownership information (legal or beneficial) upon registration or in their annual tax returns. However, if information about the chain of ownership is relevant in ascertaining the tax liabilities of any person under the IRO, the IRD will require the taxpayers to provide the ownership information (e.g. whether the company is entitled to utilise losses brought forward to set-off against its assessable profits of subsequent years; whether a lender is an associate of a company such that the deduction claim of the respective interest expenses by the company may be denied; whether a non-resident is a closely connected person with the local taxpayer such that the profits of the non-resident are deemed to be taxable profits in Hong Kong and chargeable in the name of the local taxpayer; and whether the CIR has the power to determine the true market value of assets for the purposes of computing depreciation allowances if the buyer and seller of the assets are related parties, etc.).

46. Since the launch of a "one-stop company incorporation and business registration service" in February 2011, simultaneous application for company incorporation and business registration is mandatory and profits tax files are opened instantly for all companies registered with the CR. The business particulars registered with the Business Registration Office (BRO) of the IRD are the business name, description and nature of business, business address

2. Accessible at: www.icris.cr.gov.hk/csci/.

and date of the commencement of business (and name of representative for non-Hong Kong companies). If these business particulars are changed, the company should notify the BRO within one month of the change. In case the company updates its shareholding information, while the updates to CR's records are not automatically transmitted to IRD, the IRD can readily obtain all the shareholding information of a company maintained with the CR.

47. All companies carrying on business in Hong Kong are required to file tax returns to the IRD. For companies chargeable to profits tax, they are required to file tax returns annually and furnish completed tax returns within a reasonable time, normally one month (IRO, s. 51(1)). For companies that are not required to file tax returns on a given year (e.g. newly incorporated companies, companies that have continuously sustained losses, companies that ceased business temporarily and has not yet recommenced business), they have to notify the IRD when they have profits chargeable to profits tax or recommence business, and the IRD will also issue tax returns to these companies every two or three years to review their tax positions for a particular review year as well as previous years, unless the companies report the cessation of business. If a company is chargeable to profits tax for any year of assessment and has not received a tax return from the IRD, it is required to inform the CIR in writing that it is so chargeable within four months after the end of the basis period for the year of assessment concerned (IRO, s. 51(2)).

48. In view of the above, the tax authorities have no ownership information on Hong Kong companies unless it uses its access powers to gather it on a case-by-case basis, but in practice this does not represent a primary source of information in the case of an EOI request on legal ownership information.

AML requirements

49. Hong Kong's statutory AML/CFT framework comprises a number of legislation including (but not limited to) the AMLO and the Organised and Serious Crimes Ordinance (Cap. 455) (OSCO). The AMLO, which came into effect on 1 April 2012 and was amended in early 2018, imposes legal obligations on FIs and DNFBPs to take preventive measures including CDD and record-keeping. As defined under Part 2 of Schedule 1 to the AMLO, DNFBP means (a) an accounting professional; (b) an estate agent; (c) a legal professional; or (d) a TCSP licensee.

50. Under the AMLO, specified FIs have a statutory obligation to conduct CDD on their customers and keep the relevant records for at least five years, including authorised institutions (AIs); licensed corporations; authorised insurers, appointed insurance agents, and authorised insurance brokers, licensed MSOs, and stored value facility (SVF) licensees. Money lenders are subject to similar obligations under their licensing conditions

imposed by the Licensing Court under the Money Lenders Ordinance (Cap. 163). Non-compliance may render them liable to administrative and criminal sanctions. DNFBPs including legal professionals, accounting professionals, estate agents and TCSPs are subject to the same CDD and record-keeping requirements under the AMLO when preparing for or carrying out specified transactions. In summary, under the AMLO, FIs and DNFBPs are required to conduct CDD before establishing a business relationship with a customer. The CDD measures include the following:

- identifying the customer and verifying the customer's identity on the basis of reliable information
- identifying any beneficial owner in relation to the customer and take reasonable measures to verify the beneficial owner's identity
- where the customer is a legal person or trust, understanding the ownership and control structure of the legal person or trust
- obtaining information on the purpose and intended nature of the business relationship
- if a person purports to act on behalf of the customer, identifying the person and verifying his identity and his authority to act on behalf of the customer.

51. AML obliged persons must continuously monitor business relationships, on a risk-based approach, by reviewing the customer's information from time to time to ensure they are updated and relevant; conducting appropriate scrutiny of the customer's transactions to ensure that they are consistent with their knowledge of the customer; and identifying and examining any transactions that are complex and have no apparent economic or lawful purpose. Where there is a higher money laundering/terrorist financing (ML/TF) risk, e.g. the customer is not physically present for identification purposes, the customer is a politically exposed person, in situations specified by the regulators, or in other circumstances that by nature may present a higher risk, AML obliged persons must take enhanced CDD measures, e.g. obtaining approval from senior management to establish the business relationship, taking reasonable measures to establish the customer or beneficial owner's source of fund. On the other hand, where the customer presents a lower ML/TF risk (e.g. the Government or a public body), simplified CDD measures may be conducted.

52. In view of the above, the AMLO is a secondary source of availability of legal ownership information and wherever an AML obliged service provider is engaged by a company (Hong Kong or non-Hong Kong), legal ownership information is likely to be available, subject to regular update and effective supervision.

Legal ownership information – Enforcement measures and oversight

53. Hong Kong informed that in practice 86% of companies provide timely annual returns to the CR. In 2015 and 2016, 70 545 and 42 162 companies were struck off the register, respectively. In 2017, 64 128 companies were struck off, which represents 34% (approx.) of the non-filers. This was explained as a result of off-site monitoring of non-filers. The representatives of the CR indicated at the on-site that there are verifications on legal and beneficial ownership conducted by the 10 staff members who conducted on-site verifications at the registered offices addresses of companies. CR would check the correctness of the information on legal ownership by reference to latest annual returns and, if necessary, other documents of the companies inspected. If discrepancies are noted during the site inspections, clarifications will be sought from the company. If some of the required information was not found in the register of members, letters requesting rectifications of the registers will be issued and follow-up actions, including prosecutions, will be taken. Hong Kong has reported that in the review period 9 374 summonses were issued to companies which failed to file annual returns. On conviction, the court will order the company to file the outstanding annual returns. On average, 80% of the default companies would file the outstanding annual returns; and if the default continues, the CR will take follow-up actions, including striking off the company.

54. During the review period, the CR has reported an average compliance rate of around 86% and the details of the compliance ratios for filing annual returns are as follows:-

Compliance rates of annual returns with the CR

Financial year	Private companies	Public companies	Guarantee companies	Non-Hong Kong companies
2014-15	85% [a]	88%	-	95%
2015-16	86% [a]	86%	-	95%
2016-17	88%	89%	92%	99%

Note: a. The percentage covers the compliance ratio in respect of guarantee companies. Given the changes in the filing requirements of annual returns of guarantee companies under the new CO, separate compliance ratio has been prepared for guarantee companies since 2016-17.

55. While the aforementioned filing rates are satisfactory, there is scope for improvement in ensuring the compliance for the remaining non-filers which are more than 100 000 in number on average (although Hong Kong authorities advised that a substantial number of which has been subsequently de-registered/struck-off).

56. The recently amended AMLO has also introduced a licensing regime for those who wish to provide trust or company services "by way of business". The CR is the regulator for this purpose which conducts a "fit-and-proper test"[3] before issuance of licences to ensure that there is no criminal record (amongst other fit-and-proper criteria) for the applicants and that they are capable of applying the obligations under the AMLO effectively. By the end of September 2018, 5 452 licences have been issued. The Hong Kong authorities explained that they would interpret the terms "by way of business" broadly. The question of whether the provision of a service amounts to the carrying on of a business is a question of fact and will have to be considered taking into account all the circumstances, including factors such as whether the person (a) undertakes one or more of the activities of a TCSP, (b) advertises or publicises his/her business activity or receives referrals from other companies, (c) aims to make a profit when he carries out the activity, and (d) carries out the activity with reasonable or recognisable continuity.

57. To promote the awareness of TCSPs and members of the public of the TCSP licensing regime, CR has undertaken the following out-reach and publicity activities:

a. Up to the end of December 2018, CR organised or participated in 30 seminars on the TCSP licensing regime to raise the awareness of companies and TCSPs of their statutory obligations and to ensure that the TCSP licensees understand the nature and level of their ML/TF risks. More than 10 000 attendees have joined the seminars.

b. A dedicated website for TCSPs was set up in January 2018 to provide detailed information including guidelines, forms, external circular, information pamphlets, frequently asked questions, other publicity materials such as video and demonstration video on the TCSP licensing regime. About 400 000 visits of the website were recorded up to the end of December 2018.

c. A dedicated telephone hotline was set up to respond to public enquiries. Up to the end of December 2018, CR received 19 623 enquiries related to the TCSP regime.

d. CR has broadcast radio API, published press release and posters, issued circular emails to professional bodies, and published articles in magazines of professional bodies.

3. In particular, the CR must check whether the person has been convicted of a ML/TF offence or other offence for which it was necessary to find that the person had acted fraudulently, corruptly or dishonestly, whether the person has failed to comply with any requirement under the AMLO and whether the person is bankrupt or in liquidation or subject to a winding up order or receivership (s. 53I of the AMLO).

e. Meetings were held with key stakeholders and relevant professional bodies (such as the Hong Kong Trustees' Association, the Hong Kong Institute of Chartered Secretaries, the Society of Trust and Estate Practitioners) to exchange views on the latest market/business trend with a view to facilitating the implementation of the TCSP licensing regime; and through regular meetings of the Companies Registry Customer Liaison Group comprising representatives from the major professional bodies (such as the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Certified Public Accountants, the Law Society of Hong Kong, the Hong Kong Association of Banks) and major customers, CR has strengthened the partnership with the sector.

58. The CR has also taken punitive actions against TCSPs which carried on trust or company service without a licence. Up to end December 2018, 124 summonses were issued to prosecute companies for providing service without a licence.

59. However, given the possibility for provision of corporate services (directorship, assisting in setting-up and managing a company, etc.) not by way of business but on a voluntary or uncompensated basis, Hong Kong is recommended to monitor that provision of company services in such cases does not affect the availability of ownership information and its effective exchange in practice.

Availability of legal ownership information in practice

60. The 2013 Report noted that during the period from 1 July 2009 to 30 June 2012, the Hong Kong competent authority received 34 EOI requests relating to ownership information of companies, all ownership information relating to companies was provided and 30 cases were replied to within 90 days. Similarly, in the current review period, Hong Kong received 245 EOI requests for ownership information (including legal ownership) which were responded to by the Hong Kong competent authority without any difficulty. There has been no adverse input from peers with respect to the availability or quality of legal and beneficial ownership information in Hong Kong.

Recommendations from previous report – follow-up

61. The 2013 Report noted that there is no requirement for nominees not covered by the AMLO to maintain ownership information and therefore recommended that a legal obligation may be created for the same. Two sets of provisions address the issue.

62. Hong Kong authorities advised that they have put in place mechanisms to prevent misuse of nominee shares: under ss.653P, 653J and 653K of the C(A)O 2018, a company is required to identify and ascertain its significant controllers, i.e. the beneficial owners, and enter their required particulars into the SCR. Section 6 of Part 2 of Schedule 5A to the C(A)O 2018 also provides that a share held by a nominee for another person is regarded as being held by that other person. Such clarification caters for the scenario that a nominee shareholder holds shares on behalf of a beneficial owner so that the latter can be identified and recorded in the SCR. However, it does not adequately address the scenario of availability of ownership information with nominees holding less than 25% stake, since they are not meant to be covered by the definition of significant controllers.

63. Hong Kong authorities further advised that according to s. 1 of Part 1 of Schedule 1 to the AMLO, anyone who by way of business in Hong Kong acts or arranges for another person to act as a nominee shareholder of a company for another person is considered to be providing trust or company service and is required to obtain a licence from the CR under s. 53F of the AMLO. In considering whether a person is providing a trust or company service by way of business, it will be relevant to take into account factors listed in para 56 above.

64. TCSPs providing the relevant services would be easily considered as providing such service by way of business. A licensed TCSP is required to comply with the statutory CDD and record-keeping requirements set out in Schedule 2 to the AMLO when providing trust or company services by way of business. Under s. 20 of Part 3 of the said Schedule 2, a TCSP licensee is required to keep records of its customers (and beneficial owners) and transactions for at least five years. A licensed TCSP acting as a nominee shareholder for another person by way of business is required to identify all nominators, regardless of the percentage of shares it holds as a nominee. However, the previous recommendation was to address the legal gap in respect of the nominees not covered by AMLO, and the amended AMLO would still not sufficiently capture the situations of nominees not acting "by way of business". There was no adverse peer input in relation to nominees in Hong Kong so far. However, since the aforementioned legal requirement under the C(A)O 2018 as well as the AMLO, only partially address the gap, an in-text recommendation is continued. Hong Kong is recommended to ensure that legal as well as beneficial ownership information is available in respect of nominees that are holding less than 25% stake and are not acting by way of business.

Availability of beneficial ownership information

65. Under the 2016 ToR, a new requirement of the EOIR standard is that beneficial ownership information on companies should be available. In Hong Kong, this aspect of the standard is largely met.

66. The newly amended CO in 2018 requiring the companies to maintain a SCR complements the AML/CFT framework, which was in place during the review period, to ensure the availability of beneficial ownership information, while there are no specific requirements under the tax law to ensure the same. Each of these legal regimes is analysed below.

Legislation regulating beneficial ownership information of companies

Type	CO	IRO	AMLO
Companies Limited by Shares	Some	None	Some
Companies Limited by Guarantee	Some	None	Some
Unlimited Company	Some	None	Some
Foreign Company that has a relationship with an AML-obliged service provider	None	None	Some

The Amended Companies Ordinance 2018

67. The C(A)O 2018 was enacted on 24 January 2018 and came into operation on 1 March 2018. It requires every company incorporated in Hong Kong, except for listed companies which are subject to separate disclosure requirements under the SFO, to obtain and maintain up-to-date beneficial ownership information by keeping a SCR. The information is not further compiled in a central register but remains with each company.

68. A company is required to take reasonable steps to ascertain and identify individuals and legal persons that have significant control over the company (significant controllers) and maintain a SCR (at its registered office or any other place in Hong Kong) containing information on the identity of significant controllers, including their names, correspondence addresses (for individuals)/registered or principal office address (for legal persons), and nature of control over the company.

69. The information of a significant controller contained in the register must be kept for at least six years after the date the person concerned ceased to be a significant controller of the company. A company must make available its SCR for inspection on demand by a law enforcement officer, including an officer of the IRD. If the company fails to do so, the officer may apply to the Court of Hong Kong for an order to compel immediate inspection.

Definition of Significant Controllers

70. A person has significant control over a company if the person meets one or more of the following conditions – (i) the person holds, directly or indirectly, more than 25% of the issued shares in the company (or if the company does not have a share capital, the person holds, directly or indirectly, a right or rights to share in more than 25% of the capital or profits of the company); (ii) the person holds, directly or indirectly, more than 25% of the voting rights of the company; (iii) the person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company; (iv) the person has the right to exercise, or actually exercises, significant influence or control over the company; or (v) the person has the right to exercise, or actually exercises, 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.

71. Under the law, companies are required to take reasonable steps to ascertain and identify significant controllers and go down the chain of ownership (including foreign companies or legal arrangements) to identify the natural person at the end of the chain, as well as all the natural/legal persons in the chain. Significant controllers of a company to be included in the SCR include both registrable legal entity and registrable person. A registrable legal entity is a legal entity which is a member of the company and has significant control over the company. A registrable person includes a natural person that has significant control, directly or indirectly, over the company based on the conditions set out in para 70 above. To illustrate, for example, if a natural person X, through Company A, holds 100% of shares of Company B, both natural person X and Company A should be listed as significant controllers of Company B.

72. If the company knows or has reasonable cause to believe that a person is a significant controller of the company, the company must send notice to that person. The addressee of the notice is required to comply with the requirements of the notice within one month from the date of the notice. Failure to comply with the requirements in the notice is a criminal offence under s. 653ZA of the CO. The authorities indicated that complaints about any defaults in keeping SCR may be received from the company itself, relevant stakeholders and law enforcement agencies. Investigation will be conducted once a complaint case is received. Companies may also report to the CR when the notice addressees fail to comply with the requirements.

73. The authorities have taken measures to familiarise companies and raise awareness on the new SCR requirement. The CR has issued "Guideline on the Keeping of Significant Controllers Registers by Companies" to provide further explanation and examples on the new requirements. Moreover, external circulars, pamphlets and FAQs were published. Dedicated hotline

and email account have been set up to handle the more complicated enquiries. Since January 2018 and up to 30 September 2018, 27 684 enquiries (daily average of 167 enquiries) were received. However, it is too early to ascertain whether the level of awareness is sufficient to ensure a good implementation of the new obligations.

74. The definition of significant controller is generally in line with the ToR although it does not include the default treatment of senior management officials as significant controllers, when no beneficial owner can be identified based on control by ownership (direct/indirect) or control by other means. Hong Kong has clarified that all the individuals that meet any one of the five conditions mentioned (in para 70) above will be identified as significant controllers. According to the CO, although there is no explicit mention of treating senior management officials as the significant controllers, if a person has the right to exercise, or actually exercises, significant influence or control over a company (e.g. a person who is not a member of the board of directors but is regularly consulted on board decisions, or a person whose recommendations are always followed by members of the company), he/she is also considered as a significant controller. That said, since there is still a possibility that senior management officials would not be treated as beneficial owners in case such officials do not exercise significant control by ownership (directly or indirectly) or by other means and therefore no person is treated as significant controller, Hong Kong is recommended to address this gap to ensure the availability of accurate beneficial ownership information of companies in SCR in all cases.

75. While a secondary source of beneficial ownership information could be the AMLO (the AML/CFT Guidelines provide for default treatment of senior management officials as beneficial owners), the gap presented is not fully addressed, since it is not necessary to engage an AML obliged service provider in all cases. However, Hong Kong has clarified that in practice 97% of the registered companies engage AML obliged service providers, who are required under s. 5(1)(a) of Schedule 2 to the AMLO to ensure that CDD records (including beneficial ownership information) are up to date and relevant for all cases, and for high-risk cases, under the AML/CFT Guidelines to update the beneficial ownership information at least annually and more frequently if necessary. That said, because the risk based approach to reviewing CDD may not be necessarily at least annual (except for high-risk clients), the legal gap is still not fully mitigated by the AMLO and needs to be addressed to ensure that the possibility of not recording a significant controller in the SCR does not lead to non-availability of beneficial ownership information.

76. It was also not possible to ascertain as to how many companies have already populated their SCR although the CR and the professionals indicated that as per law all the companies ought to have a SCR in place.

77. In addition, s. 2 of Schedule 5C of the new CO allows not having any significant controller and thereby no beneficial owner to be recorded in the SCR. Further, the company is also not required to report to CR about the non-existence of any significant controller.

78. Hong Kong is recommended to adequately address the legal gap that may arise in respect of not having any significant controller and thereby no beneficial owner recorded in the SCR to ensure that beneficial ownership information is available at all times.

79. In terms of retention of SCR, the CO requires that every person who was a director of the company immediately before its dissolution, either by liquidation, deregistration or striking-off, must ensure that the company's books and papers (including the SCR) are kept for at least six years after the date of dissolution.

Beneficial ownership of listed corporations under the Securities and Futures Ordinance[4]

80. There are also requirements under SFO applicable to corporations listed in Hong Kong irrespective of their place of incorporation. Part XV of the SFO requires corporate insiders (i.e. substantial shareholders directors, shadow directors (in relation to a body corporate, means a person in accordance with whose directions or instructions (excluding advice given in a professional capacity) the directors of the body corporate are accustomed to act) and chief executives) of a Hong Kong listed corporation (i.e. a publicly traded company) to give notice to the SEHK and the listed corporation concerned (through SEHK) on the occurrence of certain events:

- Substantial shareholders (i.e. individuals and corporations who are interested in 5% or more of any class of voting shares in a listed corporation) must disclose their interests, and short positions (i.e. holding, writing or issuing financial instruments such as equity derivatives), in voting shares of the listed corporation.
- Directors and chief executives of a listed corporation must disclose their interests, and short positions in any shares in a listed corporation (or any of its associated corporations) and their interests in any debentures of the listed corporation (or any of its associated corporations).

4. The 2016 ToR provides that listed corporations are exempted if the relevant information can be obtained without giving rise to disproportionate difficulties. This section is included given the significance of the SEHK.

81. An "interest" in shares covers any kind of interest in the shares, for example – (a) if his name is listed in the register of members maintained by a corporation; (b) if the shares are held for him by another person such as his stockbroker, a custodian, a trustee or a nominee (e.g. in the Central Clearing and Settlement System (CCASS) or with HKSCC Nominees Limited, the CCASS depository); (c) if he is deemed by Part XV to be interested in the shares (see para 82 below for details); (d) if he enters into a contract (for example if he holds, writes or issues financial instruments including equity derivatives) that gives him a right to shares, or to a payment in the event of a change in the price of shares; (e) if he holds shares as security; and (f) if he is entitled to exercise rights attaching to the shares or control their exercise e.g. voting rights.

82. The calculation of the total number of shares in which a person is interested must include any interests, and derivative interests, in shares of the same listed corporation that any of the following persons and trusts have – (a) spouse and any child under the age of 18; (b) a corporation which a person controls (a corporation is a "controlled corporation" if he controls, directly or indirectly, one-third or more of the voting power at general meetings of the corporation, or if the corporation or its directors are accustomed to act in accordance with his directions); (c) a trust, if the person is a trustee of the trust (other than a bare trustee i.e. with no powers or duties except to transfer the shares according to the directions of the beneficial owner); (d) a discretionary trust, if the person is the "founder" of the trust, and can influence how the trustee exercises discretion; (e) a trust of which he is a beneficiary (discretionary interests may be ignored if the relevant shareholder who is not a director or a chief executive of the listed corporation concerned); (f) all persons who have agreed to act in concert to acquire interests in shares in the listed corporation, if he is a party to the agreement.

83. Every listed corporation is required to keep a register of the interests and short positions of substantial shareholders (which should include any information received in response to enquiries under s. 329 of the SFO); and a register of interests and short positions of directors and chief executives. A corporation is also required to continue to keep the register of interests and short positions of substantial shareholders and any index for six years after it ceases to be a listed corporation.

84. Section 329 of the SFO allows a listed corporation to make enquiries to establish who owns its shares. The powers are not limited to establishing the identities of the substantial shareholders (i.e. persons holding 5% or more of the shares) but extend to any person that has, or had, an interest or a short position in its shares. The listed corporation may also investigate the ownership of equity derivatives where the underlying shares are in the listed corporation concerned. At the on-site it was explained by the officials of SFC

that in practice, many listed corporations use s. 329 to obtain information about ownership of their shares. In terms of oversight, under ss.181(1) and 181(2) of the SFO, the SFC can require production of information relating to transactions by licensed persons or registered institutions and any person whom the SFC believes has an interest in the relevant securities, futures contracts or property investment arrangements. The information includes the particulars establishing the identity of the person on whose behalf, or by, from, to or through whom, the transaction has been carried out. Under s. 181(7) of the SFO, a person who fails to comply with the SFC's requirement to produce the information commits an offence and is liable to a maximum fine of HKD 200 000 and imprisonment of up to 1 year. From 1 October 2014 to 30 September 2017, the SFC prosecuted 22 persons for failure to disclosure interests and secured 21 convictions.

85. Overall the requirements under the SFO in respect of listed corporations ensure the availability of legal as well as beneficial ownership information in Hong Kong, which supplements the overall compliance with the ToR A.1.1.

Definition of beneficial owner(s) under the AML Legislation

86. Under Schedule 2 to the AMLO, beneficial owner in relation to a corporation means an individual who –

- owns or controls, directly or indirectly, including through a trust or bearer share holding, more than 25% of the issued share capital of the corporation
- is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights at general meetings of the corporation; or
- exercises ultimate control over the management of the corporation; or if the corporation is acting on behalf of another person, means the other person; and
- if no such natural person is identified, relevant natural persons who hold the position of senior management official.

87. An FI and a DNFBP should identify and record the identity of all beneficial owners, and take reasonable measures to verify the identity of: all shareholders holding more than 25% of the voting rights or share capital; any individual who exercises ultimate control over the management of the corporation; and any person on whose behalf the customer is acting.

88. For companies with multiple layers in their ownership structures, an FI and a DNFBP should ensure that it has an understanding of the ownership

and control structure of the company. The intermediate layers of the company should be fully identified. The manner in which this information is collected should be determined by the FI or the DNFBP, for example by obtaining a director's declaration incorporating or annexing an ownership chart describing the intermediate layers (the information to be included should be determined on a risk sensitive basis but at a minimum should include company name and place of incorporation, and where applicable, the rationale behind the particular structure employed). The objective should always be to follow the chain of ownership to the individuals who are the ultimate beneficial owners of the direct customer of the FI or the DNFBP and verify the identity of those individuals.

89. FIs and DNFBPs however, are not required to verify the details of the intermediate companies in the ownership structure of a company in all cases. That said, the AML guidance notes that complex ownership structures (e.g. structures involving multiple layers, different jurisdictions, trusts) without an obvious commercial purpose pose an increased risk and may require further steps to ensure that the FI or DNFBP is satisfied on reasonable grounds as to the identity of the beneficial owners. The need to verify the intermediate corporate layers of the ownership structure of a company will therefore depend upon the FI's or the DNFBP's overall understanding of the structure, its assessment of the risks and whether the information available is adequate in the circumstances for the FI or the DNFBP to consider if it has taken adequate measures to identify the beneficial owners. Where the ownership is dispersed, the FI or the DNFBP should concentrate on identifying and taking reasonable measures to verify the identity of those who exercise ultimate control over the management of the company. Nevertheless, Hong Kong may monitor the reliance on self-certification of ownership structure and ownership details of intermediate layers, such that FIs or DNFBPs are always in possession of accurate beneficial ownership information.

90. An AML obliged person must continuously monitor the business relationship with a customer and review from time to time documents, data and information relating to the customer that have been obtained by the AML obliged person for the purpose of complying with the requirements imposed under Part 2 of Schedule 2 to the AMLO to ensure that they are up to date and relevant. Further, all high-risk customers should be subject to a minimum of an annual review, and more frequently if deemed necessary by the FI, to ensure the CDD information retained remains up to date and relevant. For other customers, an FI should undertake reviews of existing records of customers on a periodic basis and upon certain trigger events which include: (a) when a significant transaction (including those that are unusual or not in line with the FI's knowledge of the customer) is to take place; (b) a material change occurs in the way in which the customer's account is operated; (c) when the FI's customer documentation standards change substantially;

or (d) when the FI is aware that it lacks sufficient information about the customer concerned. In itself, the CDD obligations of AML obliged entities would not be sufficient for fully meeting the ToR, notably because they do not cover all relevant entities and arrangements (since there is no obligation to engage with them in Hong Kong) and also because the risk based approach to reviewing CDD may not be necessarily at least annual (except for high-risk clients). However, the AML framework is a valuable complement to the new SCR obligations.

Foreign companies

91. Foreign companies with nexus to Hong Kong could be carrying on business or having a place of effective management or headquarters or might be relevant for EOIR purposes and therefore meet the nexus requirement under ToR A.1.1 to require the availability of legal ownership and beneficial ownership information (wherever an AML obligated service provider is engaged). Every foreign company must apply to the Registrar of Companies for registration as a registered non-Hong Kong company within one month of establishing a place of business in Hong Kong.[5] Although the registration form does not capture the information on legal or beneficial ownership, it captures the details of principal place of business in Hong Kong and place of incorporation. Further, a non-Hong Kong company registered in Hong Kong must have at least one authorised representative in Hong Kong to accept on the company's behalf service of any process or notice required to be served on the company.

92. The authorised representative must be located in Hong Kong since it should be (i) a natural person resident in Hong Kong, (ii) a solicitor corporation as defined by s. 2(1) of the Legal Practitioners Ordinance (Cap. 159), (iii) a corporate practice as defined by s. 2(1) of the Professional Accountants Ordinance (Cap. 50), (iv) a firm of solicitors, or (v) a firm of certified public accountants (practising). The Hong Kong identity card number or, in the absence of which, the number and issuing country of the passport of the authorised representative who is a natural person should be given (where available) at the time of registration. If the authorised representative is not a natural person, its business address in Hong Kong is required. Similar details must be provided for the company secretary or director of the company.

93. In view of the above, legal and beneficial ownership is likely to be available in Hong Kong whenever the foreign company concerned engages the service of an FI or a DNFBP as authorised representative/company secretary/director of a foreign company in Hong Kong. However, there is no such legal obligation for all foreign companies to engage a licensed TCSP resident

5. https://www.cr.gov.hk/en/companies_ordinance/docs/NN1_fillable.pdf.

in Hong Kong as the authorised representative/company secretary/director in all cases. Moreover the licensing regime for TCSPs providing company services "by way of business" was implemented recently.

94. Therefore, Hong Kong is recommended to ensure that updated and accurate legal ownership information of foreign companies that have a nexus to Hong Kong but without a bank account and without engaging an AML obliged service provider is available. In May 2018, Hong Kong has reported that there were 10 668 registered non-Hong Kong (foreign) companies. As for beneficial ownership of foreign companies, the 2016 ToR applies only to the extent the company has a relationship with an AML-obliged service provider that is relevant for the purposes of EOIR. Therefore, beneficial ownership information of foreign companies in Hong Kong is available whenever an AML-obliged service provider is engaged.

95. The IRD did not keep separate statistics about the number of EOI requests that sought beneficial ownership information in respect of foreign companies during the current review period. There were no adverse peer inputs to indicate difficulty in obtaining ownership information from Hong Kong in respect of foreign companies.

Beneficial ownership information – Supervision and enforcement mechanisms

96. Apart from the beneficial ownership information kept by AML obliged service providers, the main source of the most up-to-date beneficial ownership information is the SCR which became operative from March 2018. Since a guideline has been published and a publicity campaign was launched on the implementation of the SCR and a letter was sent to each local company, Hong Kong authorities expected that there would be a good compliance rate in maintaining the SCR

97. At the on-site visit interactions, the Hong Kong authorities mentioned to the assessment team that the CR would conduct on-site visits to cover on a risk-based approach private companies (which are around 1.4 million in number) to ensure the existence and accurate population of SCR to ensure availability of beneficial ownership information; such efforts are in progress (e.g. 3 539 companies were inspected between March and December 2018). Hong Kong authorities advise that it is noted from the site inspections that most of the companies comply with the new SCR requirements and less than 1% of the companies inspected were prosecuted for failing to keep the SCR. Hong Kong has further advised that from October to December 2018, the CR has issued 26 summonses on companies which failed to keep the SCR. It remains to be seen whether practical application of the rules will lead to appropriate identification of the significant controllers in all cases. Like in

most other jurisdictions, where foreign persons are involved in the ownership or control chain of the company, enforcement of these obligations extraterritorially may pose additional challenge since it is less likely that such foreign persons engage an AML obligated service provider in Hong Kong or have any other reporting requirements in Hong Kong. The Hong Kong authorities have reported that in the on-site visits conducted so far, there were no defaults identified in respect of non-residents or foreign companies in the ownership chain. However, it remains to be tested whether applicable enforcement measures are effective to ensure compliance in practice. Hong Kong is recommended to monitor the supervisory programme to ensure the effective implementation of SCR requirements by all local companies.

98. The regulatory authorities/bodies monitoring compliance of AML-obliged persons which would be responsible for maintaining the updated ownership information are as follows – the AIs and SVF licensees are supervised by the HKMA and it is the SFC for a licensed corporation; IA for an authorised insurer, appointed insurance agent or an authorised insurance broker; C&ED for a licensed MSO; and CR for money lenders. In respect of DNFBPs, it is the Law Society of Hong Kong for legal professionals; the Hong Kong Institute of Certified Public Accountants (HKICPA) for accounting professionals; CR for TCSP licensees; Estate Agents Authority for estate agents which is responsible for their code of conduct and disciplinary action.

99. The AMLO empowers the aforesaid regulatory authorities and bodies to take disciplinary actions, including public reprimand, remediation order and pecuniary penalty, against FIs and DNFBPs which contravene the CDD and record-keeping requirements set out in Schedule 2 to the AMLO. Regulatory authorities and bodies are also empowered under their respective Ordinances (i.e. Banking Ordinance (Cap. 155), SFO, IO, etc.) to impose other administrative sanctions (such as revocation of licence) for such contraventions including, in the most serious case, revocation of licences. A summary of the offences under the AMLO is provided below for reference.

Section	Particulars of offence	Maximum penalty	Sanction on summary conviction
s. 5(5)	A financial institution knowingly contravenes the CDD requirements	A fine of HKD 1m and imprisonment for 2 years	A fine at level 6 (HKD 100 000) and imprisonment for 6 months
s. 5(6)	A financial institution, with intent to defraud any relevant authority, contravenes the CDD requirements	A fine of HKD 1m and imprisonment for 7 years	A fine of HKD 500 000 and imprisonment for 1 year

Section	Particulars of offence	Maximum penalty	Sanction on summary conviction
s. 5(7)	A person who is an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution knowingly causes or knowingly permits the financial institution to contravene the CDD requirements	A fine of HKD 1m and imprisonment for 2 years	A fine at level 6 (HKD 100 000) and imprisonment for 6 months
s. 5(8)	A person who is an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution, with intent to defraud the financial institution or any relevant authority, causes or permits the financial institution to contravene the CDD requirements	A fine of HKD 1m and imprisonment for 7 years	A fine of HKD 500 000 and imprisonment for 1 year

100. The maximum civil penalty that can be imposed by the relevant regulatory bodies are also set out as follows:

- Law Society – HKD 500 000 (ss.9A and 10 of the Legal Practitioners Ordinance)
- HKICPA – HKD 500 000 (ss.34 and 35 of the Professional Accountants Ordinance)
- CR – HKD 500 000 in respect of TCSPs (s. 53Z(3) of the AMLO).

101. The on-site interactions revealed that the Hong Kong Trustees' Association is a voluntary 120-member association. The Law Society of Hong Kong is the governing body of all solicitors in Hong Kong, and Hong Kong has 2 000 solicitors working in commercial organisations, government and non-governmental organisations, 7 000 in private practice, 1 600 registered foreign lawyers, and 900 law firms (large, medium, and small). As for accountants, the HKICPA has some 42 000 members comprising Certified Public Accountants and Auditors and 1 800 firms.

102. Hong Kong authorities clarified that apart from the CR, no sanctions were applied by the regulatory bodies of DNFBPs in practice in the review period since the AML/CFT measures under AMLO were extended to DNFBPs since 1 March 2018, and the new regime had only operated for around nine months by the end of the review period in December 2018. That

said, the Law Society of Hong Kong and the HKICPA had been focusing their efforts on promoting the new statutory obligations and building the capacity of their members during this initial period. An AML/CFT monitoring programme had since October 2018 been incorporated into HKICPA's practice reviews which aimed at ensuring members' compliance with its standards. Hong Kong authorities advise that Law Society of Hong Kong would investigate all alleged breaches of AMLO by its members.

103. Under the new licensing regime, TCSPs are required to apply for licences from the CR and satisfy a "fitandproper"[6] test before they can provide trust or company services as a business in Hong Kong. TCSP licensees are required to comply with the AML/CFT requirements set out in the AMLO and the AML/CFT guideline published by the CR. Compliance with AML/CFT requirements by TCSPs is monitored by the CR through onsite inspection and off-site monitoring. The CR has set up a new inspection team to conduct on-site inspections of the applicants for TCSP licences and TCSP licensees based on a risk-based approach.

104. Up to the end of September 2018, 831 on-site inspections have been conducted. If non-compliances with the AML/CFT requirements are identified in the on-site inspections, follow-up actions will be taken which include issuing advisory letters or warning letters to require the applicants/licensees to remedy the noncompliances. Up to the end of September 2018, 48 advisory letters and 34 warning letters have been issued. If the applicants/licensees failed to remedy the non-compliances, licence will not be granted or disciplinary actions may be taken against the licensees. Prosecution actions may also be taken as appropriate.

105. Hong Kong authorities advised that as a result of the robust on-site inspections of the applicants of TCSP licences, up to the end of September 2018, 200 applications have been rejected or withdrawn. 83% of the withdrawn cases were withdrawn either during or after site inspections. Off-site monitoring of applicants for TCSP licences and TCSP licensees is conducted through interviewing the relevant persons and requiring applicants for TCSP licences and TCSP licensees to provide the relevant information to CR for monitoring the compliance of the AML/CTF requirements. Up to the end of September, 470 interviews have been conducted. Any person who carries on a trust or company service business in Hong Kong without a licence commits an offence and is liable on conviction to a maximum fine of HKD 100 000 and imprisonment up to six months. The CR has been taking actions against TCSPs which carried on trust or company service without a licence. Hong Kong has further advised that up to end December 2018, the number of on-site inspections conducted has been increased to 1 272, and 124 summonses

6. Please see footnote 3.

have been issued to prosecute companies for providing company service as a business without a licence. Hong Kong is recommended to monitor the supervisory programme to ensure the effective implementation of recent changes to the AMLO.

106. In terms of the oversight by the IRD with respect to ensuring the availability of legal and beneficial ownership information, as reported by the Hong Kong authorities, for all cases selected for review and audit, the assessors will also identify the legal ownership information and then verify with the information obtained from the CR and the BRO. Ultimate controlling interests in a person, including a trust, and beneficial owners in a company will be checked if the review or audit case involves transfer pricing or tax avoidance issues. However, the IRD does not keep statistics for the number of cases where the legal or beneficial ownership information is not available.

Availability of beneficial ownership information in practice (Peer Experience)

107. The availability of beneficial ownership information was not evaluated in the 2013 Report. During the current review period, Hong Kong was expressly asked to provide ownership information in 289 cases (exact number of cases seeking beneficial ownership information could not be provided by Hong Kong as no separate statistics were maintained by the IRD) to at least 15 of its EOI partners, who were satisfied with the quality of the information received. Hong Kong did not face any difficulties in providing the beneficial ownership information.

A.1.2. Bearer shares

108. As noted by the 2013 Report (paras 133-137), 333 public companies limited by shares were previously permitted, if so authorised by their articles of association, to issue share warrants to bearer. The issuance of share warrants to bearer was then required to be reflected in a company's register of members, which is available for public inspection (pre-amended CO s. 97).

109. The 2013 Report recommended that Hong Kong should continue to take necessary steps to ensure that robust mechanisms are in place to identify the owners of share warrants to bearer. As for public companies, Hong Kong authorities advised that the CR has gone through the records of all relevant public companies on the Companies Register as at 28 February 2014 and no share warrant to bearer was found to have been issued before the commencement of the new CO. As the new CO operative from March 2014 has repealed the power to issue bearer shares, the Hong Kong authorities confirmed that currently there are no share warrants to bearer in circulation.

110. As regards private company, pursuant to s. 29 of the old CO which had been in effect since 1933 (now s. 11 of the new CO), a private company must restrict a member's right to transfer shares. Accordingly, issue of share warrants to bearer has long been impossible for private companies.

111. As a cross-checking measure, the Stamp Duty Ordinance (Cap. 117) provides that the issuance of share warrants to bearer was chargeable with stamp duty (Head 3 of the First Schedule). Given this mandatory stamping requirement, the Hong Kong authorities were able to check the records of the IRD to determine if any share warrants to bearer had been issued. IRD's records reaffirm that there are currently no share warrants to bearer in circulation.

112. Therefore, in view of the above discussion, the previous in-box recommendation asking Hong Kong to take necessary steps to ensure that robust mechanisms are in place to identify the owners of share warrants to bearer or eliminate companies' ability to issue such shares is deleted.

A.1.3. Partnerships

113. Jurisdictions should ensure that information is available to their competent authorities that identifies the partners in, and the beneficial owners of, any partnership that (i) has income, deductions or credits for tax purposes in the jurisdiction, (ii) carries on business in the jurisdiction or (iii) is a limited partnership formed under the laws of that jurisdiction.

114. Hong Kong law provides for the creation of two types of partnerships: general partnerships governed by the Partnership Ordinance (Cap. 38); and limited partnerships governed by the Limited Partnerships Ordinance (Cap. 37). The general partnerships are legal arrangements while the limited partnerships apart from providing general management functions to the general partner, do not have any separate legal personality. As at end of 2017, there were approximately 28 000 partnerships registered with the BRO and 201 limited partnerships registered with the CR. Hong Kong authorities have further advised that there are around 1 500 partnerships with corporate partners (i.e. about 5% of partnerships).

Legal framework for availability of information that identifies the partners

115. Information is available to Hong Kong's competent authority that identifies the partners in any partnership that has income, deductions or credits for Hong Kong tax purposes, carries on business in Hong Kong, or is a limited partnership formed under Hong Kong law.

116. The Partnership Ordinance (s. 3) defines "partnership" as the relation which subsists between persons carrying on a business in common with a view of profit. As such, all partnerships (including foreign partnerships) carrying on business in Hong Kong should be chargeable to profits tax under the IRO (s. 14) and are subject to the relevant accounting and documentation requirements under the Ordinance. Such partnerships are obliged to provide an annual partnership tax return to the IRD identifying all partners. If a partnership has sustained losses continuously or has ceased business and not yet recommenced business, the IRD will also issue tax returns to this partnership every two to three years to review its tax positions for a particular review year as well as previous years.

117. Pursuant to the Limited Partnerships Ordinance (s. 3), a limited partnership must consist of one or more general partners, who have unlimited liability and one or more limited partners with limited liability. A limited partner cannot take part in the management of the partnership business and cannot have power to bind the firm (s. 5). A partnership is deemed to be a general partnership unless one or more partners are registered as limited partners under the Limited Partnerships Ordinance (s. 4).

118. The Limited Partnerships Ordinance (s. 2) applies to limited partnerships formed under Hong Kong law (and not foreign partnerships) that carry on business in Hong Kong. As these limited partnerships carry on business, they are subject to tax filing obligations.

119. Furthermore, all local and foreign partnerships carrying on business in Hong Kong are required to register with the BRO of the IRD under the Business Registration Ordinance (Cap. 310) and provide identification information of each partner upon registration. Any change of partners of a partnership should be notified to the BRO within one month of the change. The ownership information of partnerships is also verified when the assessors process the profits tax returns or carry out the desk audit or field audit of the cases.

120. In addition, the CR maintains a public register of all Hong Kong limited partnerships identifying all general and limited partners. Every limited partnership must be registered with the CR in accordance with the provisions of the Limited Partnerships Ordinance, or in default thereof will be deemed to be a general partnership and every limited partner will be deemed to be a general partner (s. 4). The following particulars are required to be given to the CR in the form of a statement for registration of a limited partnership (s. 7): the firm's name and its principal place of business; the general nature of the business; the full name of each of the partners; the term, if any, for which the partnership is entered into, and the date of its commencement; a statement that the partnership is limited, and the description of every limited partner as such; and the sum contributed by each limited partner, and whether paid

in cash or how otherwise (however the percentage of share of each partner is not recorded by the CR). If any change occurs to the above particulars during the continuance of a limited partnership, a statement specifying the nature of the change must be given to the CR within seven days (s. 8). The CR must keep a register and an index of all limited partnerships and imaged records of all statements registered under the ordinance (s. 13). The register and imaged records of the statements are retained permanently by the CR even after the dissolution of the partnership.

121. While the CR and the IRD maintain information on the identity of partners of partnerships, there is no specific legal requirement for general or limited partnerships under the respective ordinances to maintain such information themselves, for example in a register. However, knowledge of the identity of partners is likely, given the joint and several liability that rests on partners of general partnerships and general partners of limited partnerships. It is also necessary for partners to maintain this information in order to comply with the registration and tax filing obligations of the partnership.

122. The 2013 Report further noted that in practice, most requests for information on the identity of partners of general partnerships carrying on business in Hong Kong or limited partnerships formed under the laws of Hong Kong can be answered after consulting the databases maintained by the IRD/CR. The Hong Kong authorities are also able to obtain information from the relevant partnership directly if necessary.

Beneficial ownership information

123. The 2016 ToR introduce a requirement to identify the beneficial owners of any relevant partnership.

124. There are no requirements under the Partnership Ordinance and the Limited Partnerships Ordinance to either maintain beneficial ownership information (similar to SCR in companies) or to have an AML obliged service provider who can provide the same. There are no explicit requirements under the tax law in this respect either.

125. According to the Hong Kong authorities, beneficial ownership information in respect of any partnership (including foreign partnerships) will generally be available in practice, as in reality it is almost impossible for their business to operate without having a bank account in Hong Kong. In fact, Hong Kong authorities advised that all partnerships would need to open an account in a Hong Kong AML obliged FI to carry on business in Hong Kong for receiving payments from customers and making payments to suppliers. Hong Kong authorities further advised that a partnership would also likely engage the services of other AML obliged DNFBPs such as an accountant for filing tax returns or preparing financial statements. Subject

to the risk categorisation of the partnerships by FIs, which however may not lead to availability of updated beneficial ownership information in all cases at all times and needs to be addressed to be a fully appropriate backstop provision, this might mitigate the gap of the availability and retention of accurate beneficial ownership information. Hong Kong is recommended to ensure that accurate beneficial ownership information of all limited partnerships and general partnerships (including foreign partnerships) carrying on business in Hong Kong without a bank account and without engaging AML obliged service providers is available at all times and retained for at least five years.

126. Under the AML framework, the AMLO (s. 1 of Schedule 2) defines beneficial owner of a partnership as:

- (i) an individual who (a) is entitled to or controls, directly or indirectly, more than a 25% share of the capital or profits of the partnership; (b) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights in the partnership; or (c) exercises ultimate control over the management of the partnership; or
- (ii) if a person for whom the partnership is acting on behalf of, the other person.

127. The definition of beneficial ownership information excludes the cases of beneficial ownership below 25%, which is not in line with the ToR in respect of legal arrangements, which is the case in Hong Kong in respect of general partnerships as well as limited partnerships.

128. In terms of the retention requirements for identity information of partners of partnerships, the information with the CR and BRO is maintained permanently. If any licensed TCSP is engaged, the BO information and identity information of partners would be retained for at least five years after the end of the business relationship. In view of the gaps in the AMLO, vis-à-vis the ToR, in respect of the definition of beneficial ownership in partnerships and also because the risk based approach to reviewing CDD may not be necessarily at least annual (except for high-risk clients), Hong Kong is recommended to ensure that accurate beneficial ownership information of limited partnerships and general partnerships carrying on business in Hong Kong is available at all times and retained for at least five years.

Availability of partnership information in practice

129. During the current review period, four requests related to partnerships were received and peers did not raise any issue in their inputs regarding information related to partnerships.

A.1.4. Trusts

130. The 2013 Report noted that while the Hong Kong authorities are of the view that identity information in respect of trusts is available through a combination of AML and common law requirements, concern remains whether all Hong Kong resident trustees (where they are neither FIs nor lawyers) of private express trusts systematically keep documentation that identifies settlors and beneficiaries of the trust in all circumstances. It was therefore recommended that a statutory obligation be established to close this gap.

131. Further, although there were no EOI requests related to trusts in the previous review period, given the significant size of the trust sector in Hong Kong and its potential relevance to EOI with other jurisdictions, Hong Kong was also recommended to monitor whether Hong Kong resident trustees maintain information that identifies the settlors and beneficiaries of the trust in all cases.

Overview of trusts and TCSPs in Hong Kong

132. Trusts are recognised in Hong Kong's common law and statute law. Further, Hong Kong is a party to the *Convention on the Law Applicable to Trusts and on Their Recognition* (1985) (The Hague Convention) and provisions of the Hague Convention apply to Hong Kong by virtue of the *Recognition of Trusts Ordinance* (Cap. 76). The trust law regime in Hong Kong is mainly based on English common law (*Basic Law* Art. 8) as complemented by domestic legislation, notably the *Trustee Ordinance* (Cap. 29) (TO) which is the principal legislation relating to trustees in Hong Kong.[7]

133. Neither the number of private express trusts nor the number of professional or non-professional trustees in respect of express trusts (i) governed by the laws of Hong Kong, (ii) administered in Hong Kong, or (iii) in respect of which a trustee is resident in Hong Kong, could be ascertained.

134. Under common law, a trust arises wherever a person (a trustee) has control over property for the benefit of some other persons (beneficiaries) or for some objects permitted by law, in such a way that the real benefit of the property accrues, not to the trustee, but to the beneficiaries or objects of the trust. A valid trust requires three certainties: certainty of intention by the settlor to create a trust; certainty of trust property; and certainty of object. In addition, a trust must be completely constituted. The trust instrument

7. See also *Perpetuities and Accumulations Ordinance* (Cap. 257); *Wills Ordinance* (Cap. 30); *Recognition of Trusts Ordinance* (Cap. 76) and *Variation of Trusts Ordinance* (Cap. 253).

does not need to be in writing[8] but includes information on the settlor and trustee(s).The beneficiaries must be expressly designated or so defined that they are capable of being ascertained, otherwise the trust is void for uncertainty. In general, the identity of the persons linked to trust does not need to be registered or kept in Hong Kong. Some exceptions apply for certain categories of trusts and when the trustee voluntarily registers with the CR.

135. Other types of trusts capable of being created under the laws of Hong Kong include unit trusts (as well as other collective investment schemes constituted in the form of trusts such as pooled retirement funds and real estate investment trusts); and mandatory provident fund schemes and occupational retirement schemes which are subject to particular requirements of the SFC.

136. The TO governs, inter alia, the powers and duties of trustees. It is modelled on the *English Trustee Act* of 1925. The powers conferred by the *TO* on trustees apply to a trust if, and so far only as, a contrary intention is not expressed in the instrument creating the trust (s. 3). There is no general register of trusts in Hong Kong, though there is a voluntary register of trust companies under Part VIII of the TO (ss.77-108) and the registered information is available to members of the public.

137. Trustees appointed by certain bodies of persons or charities may be (not obligatory) incorporated under the *Registered Trustees Incorporation Ordinance (Cap. 306)* as registered trustee corporations, in which case they are required to submit to the CR the following information together with their application for registration with the CR: the nature and object of the corporation; its rules and regulations; copies of every deed and other instruments constituting the corporation; descriptions of all properties held by the corporation; the names, residential addresses, occupations and nationalities of the trustees of the corporation; the address of the principal office; and details of the common seal and regulations for the custody and use thereof (Schedule 1). As of August 2018, there were 96 registered trustee corporations.

138. Notice of any change in the address of the principal office or the appointment of any new trustee and the death, resignation or removal of any trustee must be given within 28 days after the change to the CR (Registered Trustees Incorporation Ordinance s. 9).

139. For unit trusts, real estate investment trusts and pooled retirement funds (in the form of a trust) seeking to be offered to the public in Hong Kong, applicants must complete and submit the relevant application forms and information checklists to the SFC for authorisation. The offering documents and constitutive documents must comply with the relevant

8. Except if trust property consists of real estate, whether with a legal or an equitable interest (*Conveyancing and Property Ordinance* (Cap. 219 s. 5(1) (b)).

requirements under the applicable product codes and guidelines issued by the SFC (including disclosing the identity of the management company and the trustee, including in case of change).

140. Unit trusts and other trusts that are offered to the public in Hong Kong are obliged to appoint a trustee acceptable to the SFC as required by the *Code on Unit Trusts and Mutual Funds* (Chapter 4). The trustee must be a bank licensed under the *Banking Ordinance* (s. 16), a trust company which is a subsidiary of such a bank, or a banking institution or trust company incorporated outside Hong Kong which is acceptable to the SFC. Other collective investment schemes (as defined under the *SFO*) constituted in the form of trusts such as pooled retirement funds and real estate investment trusts are also subject to similar requirements on the appointment of trustee.

141. As mentioned in paras 103 to 105 above, the CR is the relevant authority for the supervision of TCSP licensees under the AMLO. Under the licensing regime for TCSPs, TCSPs are required to apply to the CR for a licence and satisfy a fit and proper test before they can provide trust or company services as a business in Hong Kong. TCSP licensees are also subject to the supervision of the CR to ensure their compliance with the AML/CFT requirements through on-site inspections and off-site monitoring.

Trustees acting by way of business

142. Hong Kong has amended the AMLO (s. 53F) in March 2018 to clarify that anyone who by way of business is considered to be providing trustee services and is required to obtain a licence from the CR and register with the Registrar of Companies. As at September 2018, 6 798 applications for TCSP licences were received and 5 452 TCSP licences were granted by the CR. However, no estimates are available in respect of the total number of trusts registered under the Hong Kong trust law or foreign laws. It is also not ascertained as to how many of these trusts are administered by non-professional trustees and how many of them are yet to register with the CR.

143. A licensed TCSP is required to comply with the statutory CDD and record-keeping requirements set out in Schedule 2 to the AMLO when providing trust or company services by way of business. Under s. 20 of Part 3 of the said Schedule 2, a TCSP licensee is required to keep records of its customers (and their beneficial owners) and transactions for at least 5 years.

Non-professional trustees

144. There are no statutory obligations in Hong Kong to identify and maintain information on settlors and beneficiaries in the case of non-professional trustees which, as indicated in the 2013 report, are only subject to common law obligations. This had been considered insufficient. Hong Kong

authorities advised that when a non-professional trustee deals with the trust funds (for example opening a bank account, making an investment, disposing of assets), the transaction would normally entail the engagement of a FI. Whenever the FI is inside Hong Kong it would be subject to the CDD and record-keeping requirements under the amended AMLO. Even though the trustee is non-professional, professionals may also be engaged to assist with setting up and running the trust in Hong Kong, for example, a legal practitioner can assist with the preparation and maintenance of the trust deed, and an accountant can assist with the preparation of the trust accounts. Legal and accounting professionals are regarded as DNFBPs, which are subject to the CDD and record-keeping requirements under the amended AMLO. However, it is not ascertained as to what proportion of non-professional trustees administer Hong Kong/foreign trusts using the services of FIs and AML obliged persons in Hong Kong.

145. While the amended AMLO largely assists in addressing the legal gap identified in the 2013 Report, the laws of Hong Kong still do not completely address the situation of non-professional trustees. Since there are no means to ascertain the number of non-professional trustees and given the importance of the trust sector, Hong Kong is recommended to design and implement adequate supervisory programmes to ensure that all Hong Kong resident non-professional trustees that do not have a bank account nor engage an AML obliged service provider maintain information that identifies the settlors and beneficiaries of the trust.

Beneficial ownership information on trusts

146. The 2016 ToR requires the availability of beneficial ownership information including information on the identity of the settlor, trustee(s), protector (if any), all of the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust. This information is generally available under the AML legislation, subject to certain limitations as discussed below.

147. In terms of identifying the beneficial owners of trusts, the FIs/AML obliged service providers including the licensed TCSPs dealing with trusts must (i) identify and verify the identity of the trustees (unless these trustees carry on business from member countries of FATF or jurisdictions with equivalent AML framework as Hong Kong, i.e. which have in place AML/CFT legislation compliant with FATF Recommendations); (ii) identify and verify the settlor(s), any protector(s) any beneficiary with a vested interest or who is likely to benefit from the trust; and (iii) understand the nature of the trust structure and the nature and purpose of activities undertaken by the structure. In addition, s. 2(1)(b) of Schedule 2 mandates that where a customer is not a natural person, an AI should understand its ownership and

control structure, including identification of any intermediate layers (e.g. by reviewing an ownership chart of the customer). The objective is to follow the chain of ownerships to the beneficial owners of the customer. As discussed, beneficial owner defined under s. 1 of Schedule 2 to the AMLO refers clearly to "individuals", i.e. natural persons. The enforceable AML/CFT Guidelines (4.4.14) issued by AMLO supervisors also mention the same requirement which applies in the case of trusts to ensure a look through approach as necessary, in identifying the beneficial owners of the trust.

148. However, beneficiaries to be treated as beneficial owners are individuals who are entitled to a vested interest in more than 25% of the capital of the trust property, whether the interest is in possession or in remainder or reversion and whether it is defeasible or not. This is not in line with the 2016 ToR which do not set such a threshold. Hong Kong is recommended to ensure that all the beneficiaries of a trust with nexus to Hong Kong are identified and available for access by the Competent Authority.

Oversight and enforcement

149. In view of the recent amendment to the AMLO, all TCSPs providing trustee services in Hong Kong "by way of business" are required to register with the Registrar of Companies and obtain a licence from the CR to operate as trust service providers.

150. As per the data provided by Hong Kong authorities, the CR has conducted on-site inspections on the applicants for TCSP licences since the commencement of the TCSP licensing regime in March 2018. As at end of September 2018, 831 on-site inspections have been conducted. A risk-based approach is adopted to cover all the higher risk cases. Hong Kong authorities further advised that these visits were to check the fit and proper character of the applicant as well as to check whether recently licensed persons implemented AMLO properly.

151. While the members of Hong Kong Trustees' Association interviewed at the on-site demonstrated professionalism and general awareness with the AML obligations in respect of identification and maintenance of updated beneficial owner information for timely access by competent authorities, as per the responses provided, it was not evident that they were in practice trying to seek and verify the current beneficial owners, unless the customer requests for a change of the same. Further, given the recently introduced requirement for licences to operate as trustees providing trusteeship "by way of business", more experience of application of CDD obligations under AMLO by licensed TCSPs is needed and Hong Kong is recommended to monitor the same by adequate supervision of TCSPs' compliance with the CDD obligations under the AMLO.

Tax Law

152. The tax law requirements are not sufficient to adequately capture the identity or beneficial ownership information of trusts as required under the ToR, particularly given the possibility of exemptions from tax filing requirements by trustees. When there are no tax obligations that arise in Hong Kong, there are generally no tax reporting requirements and the IRD will not hold, within its records, the identity of the trustees, beneficiaries, settlors or protectors. It is noteworthy that in the absence of any mandatory registration requirements or compulsory income tax filings for all trustees with nexus to Hong Kong, it is difficult for Hong Kong authorities to determine the total number of such trusts.

Availability of trust information in EOI practice

153. Five EOI requests received during the current review period included a requirement to obtain information concerning trusts managed by professional trustees. Hong Kong has not encountered any difficulty in obtaining trust information to date, as confirmed by peers. Peer inputs received in relation to obtaining trust related information from Hong Kong were generally satisfactory.

A.1.5. Foundations

154. There are no laws or common law principles that govern the establishment of foundations in Hong Kong. The term "foundation" is a categorisation used for not-for-profit entities usually formed as a trust or company limited by guarantee for the purposes of relief of poverty, advancement of education or religion or other purposes beneficial to the community. Therefore the rules applicable to trusts and companies apply to non-for-profit entities in Hong Kong.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

155. The 2013 Report noted that the legal and regulatory framework for ensuring the availability of accounting records and underlying documentation is in place in Hong Kong. Relevant entities are subject to the obligations under the IRO and other ordinances specific to particular types of legal entities to keep reliable accounting records, including underlying documentation for a period of at least five years. Together, the tax and commercial obligations result in Hong Kong being able to provide accounting information to

its EOI partners when requested. The legal framework has not changed since 2013 and the same legal obligations continue to apply to all relevant entities/arrangements.

156. The 2013 Report noted that there were deficiencies in the legal and supervisory framework in respect of the availability of accounting records for trusts with nexus to Hong Kong and neither carry on business in Hong Kong nor derive income which is taxable in Hong Kong. Two recommendations were issued to address the legal gap as well as monitor the implementation of the same in practice. Although the amended AMLO obliges the professional trustees to maintain records of every transaction and retain them for a period of at least five years, the legal gap persists with respect to trusts managed by non-professional trustees and the supervision of licensed TCSPs is under progress. Therefore, Hong Kong is recommended to monitor the supervisory programme for effective implementation of AMLO requirements on TCSPs acting as trustees to maintain records.

157. Since the majority of the companies in Hong Kong are private companies that need not submit financial statements annually to the CR, the IRD is the main supervisory authority in Hong Kong to ensure the compliance of all relevant entities and arrangements in line with ToR A.2. The IRD's compliance regime is mainly based on desktop review, risk-based desk audit, field audit and investigation. It is seen that some 98 000 companies on average during the years of assessment 2014/15 to 2016/17, representing about 8% of the registered companies, were subject to the aforesaid review and audit. Further, it is seen that on average only 0.27% of the cases under the aforesaid review and audit resulted in penalties for not maintaining proper accounting records. Certain entities and arrangements (including those solely earning non-taxable income) are only required to file tax returns every two to three years but not annually. This may pose a risk to the maintenance of reliable accounting records at all times. Hong Kong is recommended to take measures to ensure that accounting records of all relevant entities and arrangements are available. Subject to the recommendations, it is considered that there is adequate supervisory programme in general to ensure the availability of reliable accounting records for all relevant entities and arrangements.

158. The new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: in place

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
	The recently amended AMLO obliges the professional trustees to maintain records of every transaction and retain them for a period of at least 5 years. While supervisory measures are initiated, more experience is required to further demonstrate the effectiveness.	Hong Kong is recommended to monitor the supervisory programme for effective implementation of AMLO requirements on TCSPs acting as trustees to maintain records.
	Certain entities and arrangements (including those solely earning non-taxable income) are only required to file tax returns every two to three years but not annually. This may pose a risk to the maintenance of reliable accounting records at all times.	Hong Kong is recommended to take measures to ensure that accounting records of all relevant entities and arrangements are available.
Rating: Largely Compliant		

A.2.1. General requirements

159. Jurisdictions should ensure that accounting records should (i) correctly explain all transactions, (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time and (iii) allow financial statements to be prepared.

160. The legal and regulatory framework for ensuring the availability of accounting records and underlying documentation is in place in Hong Kong. Relevant entities are subject to the obligations under the IRO and other ordinances specific to particular types of legal entities to keep reliable accounting records, including underlying documentation for a period of at least five years. All Hong Kong companies must keep accounts pursuant to the CO and those accounts must be audited. General and limited partnerships are entities carrying on business in Hong Kong and accordingly fall within the scope of the IRO. Together, the tax and commercial obligations result in Hong Kong being able to provide accounting information to its EOI partners when requested. The details of underlying documentation maintained by various entities and arrangements are discussed below in ToR A.2.2.

161. The 2013 Report noted that there were deficiencies in the legal and supervisory framework in respect of the availability of accounting records

for trusts with nexus to Hong Kong that neither carry on business in Hong Kong nor derive income which is taxable in Hong Kong. It was recommended to address the legal gap as well as monitor the implementation of the same in practice. Although the amended AMLO obliges the professional trustees to maintain records of every transaction and retain them for a period of at least five years (irrespective of whether any income arises in Hong Kong or whether the trust carries on a business in Hong Kong), the legal gap persists with respect to trusts that are managed by non-professional trustees and do not carry on any business in Hong Kong. Nonetheless, trustees have a duty under common law to keep clear and accurate accounts and produce them to any beneficiary when required. A trustee must also provide the beneficiaries with accurate information of the disposition of the trust fund.

162. Also, under the CO, all companies incorporated in Hong Kong including trust companies, whether registered under Part VIII of the TO or not, are required under s. 373 of the CO to keep accounting records. The registration of trust companies under Part VIII of the TO is under the administration of the Registrar of Companies. All trust companies registered under the TO are public companies incorporated under the CO and they are required to comply with the applicable statutory requirements of the CO, including the delivery of certified copies of financial statements together with annual returns to the CR. Section 89 under Part VIII of the TO provides that all moneys, property and securities received or held by any registered trust company in a fiduciary capacity shall always be kept distinct from those of the company and in separate accounts, and so marked in the books of the company for each particular trust as always to be distinguished from any others in the registers and other books of account to be kept by the company, so that at no time shall trust moneys form part of or be mixed with the general assets of the company; and all investments made by the company as trustee shall be so designated that the trusts to which such investments belong can be readily identified at any time.

163. Given the relatively recent introduction of the amended AMLO, the implementation in practice needs to be monitored in respect of professional trustees. Hong Kong is recommended to address the same by designing and implementing adequate supervision of trusts with nexus to Hong Kong to ensure the availability of reliable accounting records for trusts managed by professional trustees as well as non-professional trustees but which do not have any business in Hong Kong.

164. In terms of retention requirements, under s. 51C(1) of the IRO, every person (including company, partnership, sole proprietorship and trustee) carrying on a trade, profession or business in Hong Kong must keep accounting records and underlying documents for a period of not less than 7 years after the completion of the transactions, acts or operations to which they relate.

Section 377 of the CO requires that a company must preserve the records, or the accounts and returns, for 7 years after the end of the financial year to which the last entry made or matter recorded in the records, or the accounts and returns, relates.

165. With respect to retention period after liquidation, s. 758 of the CO requires that if a company is dissolved, every person who was a director of the company immediately before the dissolution must ensure that the company's books and papers are kept for at least six years after the date of the dissolution. In addition, where a company is being wound up, the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) provides that a liquidator will have to be appointed and to take into custody all the property of the company, including the company's records. Although there is not any explicit obligation that the liquidator must be in Hong Kong, it would be difficult to appoint a liquidator that is not a Hong Kong resident because the person needs to be physically present in Hong Kong for substantial period of time to see through the liquidation. In the case of winding up by Court order, under s. 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the books and papers should be disposed of in such way as directed by the Court. While the retention period is decided by the court on a case by case basis, the Hong Kong authorities point out that the court would take into account the six years deadline for civil claims and statutory retention period for dissolution. Hong Kong authorities further advised that till five years from the dissolution of the company, the company, the liquidators, or any person to whom the custody of the books and papers has been committed will be held responsible for the books and papers. In any event, s. 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance would not affect the directors' obligation to keep books and papers under s. 758 of the CO.

166. However, the CO (Part 9, Division 2, ss.359-366) allows small and medium sized companies, with less than HKD 100 million (EUR 10 million (approx.)) and eligible private companies with less than HKD 200 million (EUR 20 million (approx.)) of annual income and assets, not to give a true and fair view of the financial position of the company in the annual financial statements to be maintained by the company (before or after winding up/ dissolution), thereby may pose risk to the availability of reliable accounting records in such cases. Although the CO allows those companies that meet certain conditions not to give a true and fair view of their financial positions, Hong Kong authorities advised that the obligation to keep adequate accounting records is not affected and it does not imply that the accounting records of those companies are not reliable, since they are subject to separate accounting standards issued or specified by the HKICPA (i.e. the only body authorised in Hong Kong to register and grant practising certificates to certified public accountants) and would be prepared in compliance to them, except for an

attestation that they represent a true and fair view of the financial position. Such financial statements must also be audited. In preparing an auditor's report, the auditor must carry out an investigation that will enable it to form an opinion as to, amongst others, whether adequate accounting records have been kept by the company and whether the financial statements are in agreement with the accounting records. The Hong Kong authorities are however not in a position to indicate how many companies are considered as small and medium size companies nor could they provide statistics on audits performed.

167. It is also acknowledged that all companies are required to file tax returns to the IRD. While some of these companies may not be required to submit the tax return annually along with audited financial statements for specific reasons (e.g. it has not yet commenced business, sustained losses continuously for a few years, has ceased and not recommenced business), they are still required by the IRD to file tax returns every two to three years and submit financial statements for reviewing their tax positions for a particular year as well as the previous years.

168. Further, the IRO allows companies that are dissolved or those which get an exemption from the CIR (IRO, s. 51C(2)[9]) for not preserving

9. ***51C. Business records to be kept***

(1) Subject to subsection (2), every person carrying on a trade, profession or business in Hong Kong shall keep sufficient records in the English or Chinese language of his income and expenditure to enable the assessable profits of such trade, profession or business to be readily ascertained and shall retain such records for a period of not less than 7 years after the completion of the transactions, acts or operations to which they relate. (Amended 7 of 1986 s. 12)

(2) Subsection (1) shall not require the preservation of any records – (a) which the Commissioner has specified need not be preserved; or (b) of a corporation which has been dissolved.

(3) For the purposes of this section, records includes – (a) books of account (whether kept in a legible form, or in a non-legible form by means of a computer or otherwise) recording receipts and payments, or income and expenditure; and (b) vouchers, bank statements, invoices, receipts, and such other documents as are necessary to verify the entries in the books of account referred to in paragraph (a). (Added 48 of 1995 s. 10).

(4) Without limiting the generality of subsection (3), the records required to be kept and retained pursuant to subsection (1) in respect of any trade, profession or business carried on during any year of assessment by any person, include – (a) a record of the assets and liabilities of the person in relation to that trade, profession or business; (b) a record of all entries from day to day of all sums of money received and expended by the person in relation to that trade, profession or business and the

accounting records. Hong Kong authorities however, reported that while the IRO does not require dissolved company to preserve accounting records, such requirement has already been imposed under the CO. Hong Kong authorities also report no contraventions have come to their notice, although the CR does not specifically supervise such availability, and as an alternative source, the IRD can also contact another information holder such as a liquidator or accountant of the dissolved company using their access powers in case the accounting information was not available with the director. However, it remains that there may be practical difficulty for enforcement in case all directors of a dissolved company are non-residents and are not in Hong Kong, thereby posing risk to the availability of accounts for dissolved companies under s. 758 of CO, in such cases. Further, the specific exemption provision as reported by Hong Kong authorities serves to provide flexibility to cater for unforeseeable circumstances in the future, and in practice, the CIR has so far not exempted any companies from the requirement to preserve accounting records under s. 51C(2)(a) of the IRO. However, s. 51C(2)(a) is not limited to companies, and can apply to any business carried out by any legal entity or arrangement, and therefore the requirement under CO will not be sufficient to address the legal gap in respect of availability of reliable accounting records in such cases. The Hong Kong authorities confirmed that so far, there were no exemptions given to non-corporate entities/arrangements under s. 51C(2)(a).

169. In practice, Hong Kong authorities reported that information holders in Hong Kong had not refused to provide information by virtue of s. 51C(2) of the IRO. In other words, there was no EOI case received during the review period affected by this gap. Further, peers have not raised any issue in this context so far.

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matters in respect of which the receipt and expenditure take place; (c) where that trade, profession or business involves dealing in goods – (i) a record of all goods purchased, and of all goods sold in the carrying on of that trade, profession or business (except those sold in the course of cash retail trading customarily conducted in a trade, profession or business of the kind of which that trade, profession or business is one) showing the goods, and the sellers and buyers in sufficient detail to enable the Commissioner to readily verify the quantities and values of the goods and the identities of the sellers and buyers; and all invoices relating thereto; and (ii) statements (including quantities and values) of trading stock held by the person – (A) at the end of each year of assessment; or (B) where the Commissioner is satisfied that the accounts of such trade, profession or business are made up to a day other than 31 March, on that day in the year of assessment, and all records of stock takings from which any such statement of trading stock has been prepared; and (d) where that trade, profession or business involves the provision of services, records of the services provided in sufficient detail to enable the Commissioner to readily verify the entries referred to in paragraph (b).

170. Nonetheless, given that the exemption under CO for not giving a true and fair view in annual financial statements is applicable to even large companies with less than HKD 200 million (EUR 20 million (approx.)) of annual income and assets, and cumulatively, the exemptions under s. 51C of the IRO, could contribute to a risk for non-availability of reliable accounting records,[10] Hong Kong is recommended to address this legal gap to ensure the availability and retention of reliable accounting records in respect of all relevant legal entities.

171. In respect of requirements for foreign companies, every foreign company must register with the CR as a non-Hong Kong company within one month of establishing a place of business in Hong Kong. A foreign

10. ***III. Ensuring the maintenance of reliable accounting records (***Para 15-17 of the JAHGA Report):

15. Countries should have in place a system or structure that ensures that accounting records, consistent with the standards set out in the first three paragraphs of B.I (Maintenance of reliable accounting records), are kept. There are different ways in which this objective can be achieved. Countries should consider which system is most effective and appropriate in the context of their particular circumstances and the discussion below is intended to give examples of possible approaches without trying to be exhaustive. The design of the system and its composition are for each country to decide. Note that some of the approaches described below may not be sufficient on their own and may need to be combined with others to achieve the intended objective.

16. *Governing Law (including company law, partnership law, trust law) and Commercial Law*. For instance, the governing law may require the maintenance of reliable accounting records and provide for effective sanctions where this requirement is not met. Such sanctions may include effective penalties imposed on the Relevant Entity or Arrangement and persons responsible for its actions (e.g. directors, trustees, partners) and may, where possible and appropriate, include striking off an entity from a company or similar registry.

17. The applicable law may further require the preparation of financial statements and may require a person such as a company director ***to attest that the financial statements provide a full and fair picture of the affairs of the Relevant Entity or Arrangements***. The law may further require that the financial statements be audited. Furthermore, financial statements may have to be filed with a governmental authority or the law may require the filing of a statement to the effect that complete and reliable accounting records are being maintained and can be inspected upon request. Filing of incorrect information would typically trigger significant penalties or other sanctions. ***Such mechanisms either implicitly or explicitly assist in ensuring that reliable accounting records exist and enhance the integrity and credibility of the information*** (emphasis supplied).

company with place of effective management/headquarters in Hong Kong is also regarded as having a place of business in Hong Kong and is required to register with the CR. The CR will transmit daily the relevant information to the BRO of the IRD. Profits Tax files are opened upon receipt of the information from the CR and tax returns will be issued to these foreign companies.

A.2.2. Underlying documentation

172. Jurisdictions should ensure that accounting records should further include underlying documentation, such as invoices, contracts, etc. and should reflect details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the relevant entity or arrangement. These obligations are covered in the tax legislation and company legislation.

173. As noted by the 2013 Report (para 249), all legal entities and arrangements that carry on a trade, profession, or business[11] in Hong Kong (including foreign entities) have a statutory obligation to maintain underlying documentation (IRO, ss.51C(3) and 51C(4)). Underlying documentation to be maintained includes vouchers, bank statements, invoices, receipts, and other documents necessary to verify the entries in the books of account (IRO, s. 51C). While contracts are not explicitly mentioned, all contracts that relate to accounting entries and are necessary to verify the entries in the books of account must be maintained. The same legal requirement in respect of all relevant legal entities and arrangements continues in the current review period.

Oversight and enforcement

174. In respect of supervising the obligations to keep accounting records under the CO, the CR monitors compliance with these obligations for local public and guarantee companies (by annual filings), whereas those under the tax law are monitored by the IRD.

11. "A company carrying on business in Hong Kong" is not limited to a company that "derives profits chargeable to tax in Hong Kong". Whether a company carries on business in Hong Kong is a question of fact. Decisions of the Hong Kong Courts and the Privy Council (the highest appellate court for Hong Kong before July 1997) indicate that there is a **very low threshold** for a person to carry on business in Hong Kong. In the case of a company incorporated for the purpose of making profits for its shareholders, any gainful use to which it puts any of its assets *prima facie* amounts to carrying on business. A company need not have extensive activities in Hong Kong before it is considered to be carrying on business in Hong Kong.

Companies Registry

175. Under the CO, Hong Kong local public and guarantee companies are required to deliver certified copies of financial statements together with annual returns. For registered non-Hong Kong companies where s. 789 of the CO applies, a certified true copy of the company's latest published accounts must be delivered with the company's annual return. The CR has also introduced an Annual Return e-Reminder service free of charge at the e-Registry. Companies and their officers can register for this service and receive electronic notifications for delivering annual returns. However, it is noted that the 1.4 million private companies are not covered by the requirements under the CO to submit their financial statements along with the annual returns.

176. The CR also conducts compliance checks regularly to identify companies that fail to file annual returns for taking prosecution actions or striking off actions. From 1 October 2014 to 30 September 2017, 2 787 notices for filing outstanding annual returns/accounts were issued to public/guarantee/non-Hong Kong companies. 1 375 summonses were issued and 950 companies (69%) were convicted. If the CR receives reports of failure to keep accounting records, appropriate investigation and follow-up actions will be taken. The CR conducted investigation into a total of 8 complaint cases which were received from 1 October 2014 to 30 September 2017 on failure to keep accounting records. Hong Kong authorities further advise that among the 8 complaint cases on failure to keep accounting records, investigation had been completed for 6 cases, and no prosecution was required for them. Investigation into the remaining two cases are reported to be in progress as at January 2019.

177. The CR has organised educational and promotional activities to promote compliance with statutory filing requirements under the CO. These include maintaining a thematic section on "Compliance" on its website which provides information on the obligation of a company and its officers, publication of posters, information pamphlets and circular letters, etc.

Inland Revenue Department

178. Since the majority of the companies in Hong Kong are private companies that need not submit financial statements annually to the CR, the IRD becomes the primary supervisor to monitor the companies' compliance with the obligation to keep accounting records under tax law. Any person chargeable to profits tax is required to furnish a completed tax return (IRO, s. 51(1)). Tax returns are not pre-filled by the IRD. All the data (e.g. turnover, dividend income, interest income, and various expenses) in the tax returns is provided by the taxpayers. The tax return must include details of the assessable profits or losses and be accompanied by a statement of the person's financial position/balance sheet and the profit and loss account. The IRD has

an automated system to monitor the filing of tax returns. According to the Hong Kong authorities, most of the companies submit their tax returns with audited financial statements on time. When a taxpayer fails to submit a tax return within the stipulated time limit, the IRD would take follow up actions such as issuing compound letter and writ of summons, before proceeding to court action. Most taxpayers comply with their filing obligations upon receipt of these formal notices. If a company does not file the tax return issued to it, the IRD may issue an estimated assessment to it and in case the company finds the estimated assessment excessive, it may lodge an objection within one month from the date of the notice of assessment and file the tax return and audited financial statements in support of the objection. If no objection is lodged by the company and the tax return remains outstanding, the IRD may issue additional estimated assessment(s) to the company to press for the submission of tax return and audited financial statements. In respect of partnerships/trusts which carry on business in Hong Kong and chargeable to profits tax, tax returns are to be filed with IRD annually. For those companies/partnerships/trusts that are not chargeable to profits tax (e.g. those that have sustained losses continuously or have ceased business and not yet recommenced business), the IRD will issue tax returns to them every two to three years to review their tax positions for a particular review year as well as the previous years. The companies/partnerships/trusts also have to notify the IRD when they have profits chargeable to profits tax or recommence business. Foreign companies carrying on business in Hong Kong (including having a place of effective management or headquarters in Hong Kong) as well as Hong Kong incorporated companies operating business outside Hong Kong are required to keep accounting records under the IRO and CO respectively.

179. The Hong Kong authorities reported that there were around 1 216 000 companies registered with the BRO during the years of assessment 2014/15 to 2016/17. Tax returns are normally issued annually to the companies registered in Hong Kong. For newly incorporated companies, tax returns will not be issued until 18 months after the dates of their incorporation. For those companies which have sustained losses continuously or have no assessable profits for the past few years, the IRD would issue tax returns every two to three years to review their tax positions for a particular review year as well as the previous years. Despite so, if a company did not receive a tax return and has profits chargeable to tax, it is required to notify the IRD of its chargeability not later than 4 months after the end of the basis period for that year of assessment (IRO, s. 51(2)). Upon receipt of the notification, the IRD would immediately issue tax return to the company for completion. A company which fails to notify chargeability is subject to penalty. During the current review period, the on-time return filing rate for filers is around 90%. For those taxpayers who fail to submit tax returns on time, the IRD will follow up the

outstanding returns such as issuing reminders, imposing fines, raising estimated assessments or initiating prosecution actions as appropriate. During the current review period, the average number of sanctions for failure to submit tax returns is around 10 000 (i.e. 1.5% of the annual filers). In addition to a pecuniary penalty, the Court will order the defaulters to file the returns and financial statements. Tax returns are verified by the IRD officers and penalties are imposed when submission of false or incorrect information is identified. The IRD system allows for cross-checking of tax returns of different taxpayers as well as the identification of significant difference in the amount of assessable profits. Discrepancies identified would normally trigger audits.

180. Given that Hong Kong adopts a territorial basis of taxation, Hong Kong authorities stated that they do not maintain separate statistics for various entities/arrangements and between resident and non-resident persons for business registration, return filing and assessment purposes. Hong Kong authorities advised that from time to time, tax inspectors and assessors of the IRD visit premises of companies (including foreign companies) in Hong Kong to check whether the companies comply with the obligations to file tax returns and maintain accounting records.

181. As reported by the Hong Kong authorities, there were 678 000 tax filings on average during the years of assessment 2014/15 to 2016/17. This represents about 56% (678 000/1 216 000) filing rate. The non-annual filers, apart from companies which have sustained loss continuously and those that have ceased business temporarily, also comprise companies (domestic and foreign) solely earning non-taxable passive income (interests, dividends, capital gains since they are not chargeable to tax in Hong Kong), newly incorporated companies and companies only holding properties for self-use. Hong Kong authorities advised that the IRD will solicit tax returns from these companies every two to three years to examine their tax positions for a particular review year as well as the preceding years. Thus, these companies are also subject to the audit/review programme of the IRD. Hong Kong authorities report that there is only a small portion of companies which fails to comply with the obligation to file tax returns and the IRD will prosecute these companies for the failure to file tax returns. Among those taxpayers that are not required to file tax returns in a particular year, Hong Kong authorities reported that around 140 000 each year, or 12% of taxpayers, are newly incorporated companies. However, the IRD does not maintain separate statistics on the number of companies, foreign companies and other arrangements that earn non-taxable income, or earn no income, are loss making or temporarily ceased their business, out of the total population of registered taxpayers. Nevertheless, it can be inferred that the population would likely be more than 32% of the population of registered taxpayers since the 56% population would include taxpayers who file tax returns under the two-to-three-year filing cycle. As such, according to the Hong Kong authorities,

the same monitoring mechanism (i.e. desktop review, risk-based desk audit and field audit and investigation as set out in paras 182 to 189) applies to taxpayers who are not annual return filers. In respect of the population of non-annual filers, no separate statistics of penalties/prosecutions are maintained. Hong Kong authorities could not provide estimates as to what proportion of these non-annual filers were subjected to audits (desktop as well as in-depth) as some of them are subsumed in the 56% population and no separate statistics are maintained. It is therefore not clear as to how the obligations to maintain reliable accounting records on entities/arrangements with non-taxable income, and no income are satisfactorily enforced. Hong Kong is therefore recommended to take measures to ensure that accounting records of all relevant entities and arrangements are available.

182. Out of the 678 000 tax filings, 517 000 were selected for desktop review by the assessors of the Profits Tax Unit. For such cases, the assessors would conduct preliminary screening on the files, returns, accounts, information and documents filed by the taxpayers and ascertain whether the returned profits or losses are correct. During the years of assessment 2014/15 to 2016/17, after a preliminary screening, the Profits Tax Unit has further selected 75 450 companies on average for each year for a more comprehensive review. Where appropriate, the assessors will collect the accounting records and documents from the taxpayers, check the information from the public domain such as the CR or arrange on-site visit by tax inspectors. Hong Kong explained that the assessors can complete the desktop review within one year for a vast majority of the cases. A summary of the desktop review results for the years of assessment 2014/15 to 2016/17 is tabulated below.

Year of assessment	2014/15	2015/16	2016/17
Number of companies under in-depth review	72 920	73 800	79 629
Number of companies with adjustments made	7 288	7 262	7 739
Adjustments made [a]	HKD 29.79 billion	HKD 27.10 billion	HKD 43.87 billion
Tax involved	HKD 2.15 billion	HKD 1.77 billion	HKD 1.71 billion

Note: a. The adjustments mainly related to technical adjustments (i.e. adjusting the reported profits in accordance with the provisions of the IRO). If the company selected for desktop review is found to have failed to maintain proper accounting records, the case will be sent to the Field Audit and Investigation Unit for in-depth investigation.

183. Out of the 161 000 tax filings not subject to the above-mentioned review, around 7 100 companies each year are selected by computer analytical tools based on some pre-set criteria for risk-based desk audit. For such cases, special attention would be paid to the risk areas for which the case is selected. If warranted, the assessors would examine all aspects of the case. If irregularities are identified, the assessors will conduct in-depth

examination. The assessors are required to examine a desk audit case within 4 months from the case selection date and to complete 80% of the desk audit cases allotted within 12 months. During the years of assessment 2014/15 to 2016/17, the assessors of the Profits Tax Unit have completed desk audit cases in respect of 7 050 companies on average for each year. A summary of the risk-based desk audit results for the years of assessment 2014/15 to 2016/17 is tabulated below:

Year of assessment	2014/15	2015/16	2016/17
Number of companies under desk-audit	7 071	7 061	7 055
Number of companies with adjustments made	576	531	513
Adjustments made [a]	HKD 5.35 billion	HKD 4.40 billion	HKD 6.35 billion
Tax involved	HKD 0.19 billion	HKD 0.15 billion	HKD 0.12 billion

Note: a. The adjustments mainly related to technical adjustments (i.e. adjusting the reported profits in accordance with the provisions of the IRO). If the company selected for desktop review is found to have failed to maintain proper accounting records, the case will be sent to the Field Audit and Investigation Unit for in-depth investigation.

184. The Field Audit and Investigation Unit of the IRD is responsible for conducting field audits and in-depth investigations on both corporations and unincorporated businesses. The Hong Kong authorities explained that the Field Audit and Investigation Unit adopts a risk-based approach to direct audit efforts to high-risk cases optimising the use of resources. The cases opened for audit and investigation come from various sources, e.g. informers, referrals from other Government Departments and other operational units within the IRD, computer-aided selection tools, special projects based on intelligence from internal and external sources, etc. Potential cases will be subject to preliminary screening and further review by professional officers to assess their audit potential.

185. The field auditors and investigators would ascertain the correctness of the tax returns not only by examining books of account and records, but also by visiting the taxpayers' business premises, and interviewing key personnel and operational staff of the taxpayers. This approach provides a more thorough understanding of business operations and hence facilitates the detection of cases where tax evasion or avoidance is involved. At the same time, it gives the IRD's enforcement activities a more visible presence, and consequently encourages the keeping of reliable accounting records and the lodgement of correct tax returns.

186. The Hong Kong authorities reported that in practice, thousands of companies have been reviewed and preliminarily assessed for their non-compliance risk each year prior to the opening of permanent audit or investigation

files for in-depth investigation. Further, in the cases under audit or investigation, it normally involves more than one company owned by the target taxpayer and sometimes, a conglomerate involving a group of related companies is reviewed. The field auditors and investigators have to examine the returns and accounts of several companies involved in each case and finally only one case was counted upon settlement. As such, the number of companies that were subject to audit and investigation far exceeded the number of cases completed by the Field Audit and Investigation Unit each year. Hong Kong authorities indicated that during the years of assessment 2014/15 to 2016/17, the field auditors and investigators have reviewed 15 770 companies on average for each year.

187. Given the time and effort involved in processing each field audit and investigation case are substantial, the number of such cases completed by the Field Audit and Investigation Unit during each year of assessment is relatively small. A summary of the field audit and investigation results for the years of assessment 2014/15 to 2016/17 is tabulated below.

Year of assessment	2014/15	2015/16	2016/17
Number of companies under audit/ investigation	15 714	15 878	15 716
Number of cases completed with adjustments made	1 803	1 804	1 801
Adjustments made	HKD 12.9 billion	HKD 13.9 billion	HKD 12.4 billion
Tax involved and penalties collected	HKD 2.9 billion	HKD 1.8 billion	HKD 2.4 billion

188. In the course of review, the field auditors and investigators would examine, among others, whether the accounting records are properly kept by the taxpayers. If the taxpayers fail to maintain proper accounting records, penalties would be imposed. The number of cases for not maintaining proper accounting records and the amounts of penalties imposed for the years of assessment 2014/15 to 2016/17 are tabulated below.

Year of assessment	2014/15	2015/16	2016/17
Number of cases	287	260	221
Penalties imposed	HKD 15.3 million	HKD 13.2 million	HKD 11.0 million

189. The IRD's compliance regime is mainly based on desktop review, risk-based desk audit, field audit and investigation. It is seen that some 98 000 companies on average during the years of assessment 2014/15 to 2016/17, representing about 8% of the registered companies, were subject to

the aforesaid review and audit. It is also seen from the above table on details of penalties imposed, that on average 0.27% of the cases under the aforesaid review and audit resulted in penalties for not maintaining accounting records (around 260 cases out of the 98 000).

190. Subject to the recommendations issued, overall, the supervisory programme to ensure the availability of reliable accounting records for all relevant entities and arrangements appears to be generally adequate.

A.3. Banking information

Banking information and beneficial ownership information should be available for all account holders.

191. The 2013 Report concluded that the legal and regulatory framework ensuring the availability of banking information in Hong Kong was in place and its implementation was rated Compliant with respect to the standard, with a combination of the AML/CFT regime and overall supervision by the Hong Kong Monetary Authority (HKMA) on deposit-taking institutions to ensure that all records pertaining to accounts, as well as related financial and transactional information, are available in Hong Kong for at least seven years after closure of the account or completion of transaction. The 2013 Report also noted that, in practice, compliance with AML/CFT requirements is monitored by the HKMA through means such as off-site as well as on-site inspections and it has sufficiently dissuasive powers of sanctions under AML as well as the Banking Ordinance.

192. The EOIR standard now requires that beneficial ownership information (in addition to legal ownership) in respect of account holders be available. In this regard the requirements under the AML framework as laid out in the AML Guidance are applicable and the same analysis and conclusions as in Element A.1.1 apply here particularly in respect of the restriction to identify beneficiaries with more than 25% stake as beneficial owners of trusts and partnerships.

193. Banks are allowed to do simplified CDD which exempts the requirement to identify and verify the beneficial owner of investment vehicles, where the person responsible for carrying out measures that are similar to the CDD measures in relation to all the investors of the investment vehicle could be an institution from equivalent jurisdiction. It is recommended that Hong Kong ensures that beneficial ownership information of all investment vehicles coming from equivalent jurisdictions is available in Hong Kong in all cases at all times.

194. The HKMA is the authority responsible for monitoring compliance with the obligations to keep and maintain updated bank information under the Banking Ordinance and the AMLO. As part of the prudential supervisory processes of AIs, HKMA conducts on-site examinations and off-site reviews of individual institutions. There are sanctions for failure to maintain the banking records as well as CDD information including beneficial ownership information.

195. During the current review period, Hong Kong received 415 requests for banking information and was able to provide the information in most cases in a timely fashion.

196. The new table of determination and rating is as follows:

Legal and Regulatory Framework		
Deficiencies identified in the implementation of the legal and regulatory framework	**Underlying Factor**	**Recommendations**
	Banks are allowed to do simplified customer due diligence (CDD) which exempts the requirement to identify and verify the beneficial owner of investment vehicles, where the person responsible for carrying out measures that are similar to the CDD measures in relation to all the investors of the investment vehicle could be an institution from a wide range of countries that could be treated as equivalent jurisdictions.	It is recommended that Hong Kong ensures that beneficial ownership information of all investment vehicles coming from equivalent jurisdictions is available in Hong Kong in all cases at all times.
	Banks dealing with trusts must identify beneficiaries entitled to a vested interest in more than 25% of the capital of the trust property. Similarly only partners with more than 25% stake are identified as beneficial owners in partnerships, although they do not have any legal personality. This is not fully in line with the ToR.	Hong Kong is recommended to ensure that all the beneficiaries of a trust with nexus to Hong Kong, are identified as beneficial owners and available for access by Competent Authority. Hong Kong is also recommended to ensure that all the beneficial owners of partnerships are identified and available for access by Competent Authority.
Determination: in place but needs improvement		

Practical Implementation of the standard
Rating: Largely Compliant

A.3.1. Record-keeping requirements

197. A bank should at all times keep all records pertaining to the accounts as well as to related financial and transactional information. The relevant statutory and regulatory requirements are set out below. First, during the evaluation of a licence application, the HKMA will assess whether an institution's records and systems are adequate. In fact, one of the licensing criteria is that the HKMA must be satisfied that an institution has, and will, if authorised, continue to have, adequate accounting systems and adequate systems of control. In addition, under s. 55(1) of the Banking Ordinance, the HKMA may at any time examine the books, accounts and transactions of any AI.

198. The accounting records keeping requirements under s. 51C of the IRO are also applicable to banks. Banks are required under AMLO to meet the statutory CDD and record-keeping requirements. As such, banks are required to retain customer and transaction records for at least five years after the business relationship ends (s. 20 of Schedule 2 to the AMLO). Furthermore, banks have to ensure that in order to meet the record keeping requirements for transactions, documentation is maintained which must include:

- the currency and amount of a monetary transaction
- account name and number or other information by which it can be identified
- details of the counterparty, including account details
- the nature of the transaction
- the date of the transaction.

199. In addition to the above requirements applicable to all banks, banks carrying on a business in regulated activities under the SFO and the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (e.g. banks conducting securities business and banks acting as MPF intermediaries) are to keep, where applicable, such accounting, trading and other records as are sufficient to (i) explain, and reflect the financial position and operation of, such businesses; (ii) enable profit and loss accounts and balance sheets that give a true and fair view of its financial affairs to be prepared from time to time; and (iii) account for all client assets that it receives or holds.

Supervision and enforcement

200. The HKMA is the authority responsible for monitoring compliance with the obligations to keep and maintain updated bank information under the Banking Ordinance and the AMLO. Under s. 56(1) of the Banking Ordinance, for the purposes of an examination or investigation under s. 55, an AI must afford access to the person carrying out the examination or investigation and produce as may be required its books and accounts, to documents of title to its assets and other documents, to all securities held by it in respect of its customers' transactions and its cash and to such information and facilities as may be required to conduct the examination or investigation. Under s. 56(2), every director, every chief executive and every manager of an AI which, without reasonable excuse, contravenes s. 56 commits an offence and is liable to a fine and imprisonment upon indictment.

201. As part of the prudential and AML/CFT supervisory processes of AIs, the HKMA conducts on-site examinations and off-site reviews of individual institutions. During the course of these examinations and reviews, individual institutions are required to provide relevant information to the HKMA, including records pertaining to their books, accounts and transactions where necessary. If an institution fails to produce such records, it contravenes s. 56 of the Banking Ordinance, and every director, every chief executive/alternate chief executive and every manager of the institution commits an offence and is liable to a fine and imprisonment upon indictment. During the peer review period, the HKMA has not come across AIs failing to produce information requested by the HKMA in the prudential supervisory process.

202. At the on-site visits by the HKMA, the risk policy is checked; members in AML compliance are identified; sample CDD files are asked; a visit is usually pre-announced. Examinations involve random sample checking whereby AIs provide files selected by the HKMA for inspection. AIs are not told which files will be inspected in advance. They will interview relationship managers responsible for CDD; a closure meeting is usually held after the on-site with preliminary observations provided therein. Reports with detailed observations and feedback with management are also given subsequently. Following on-site examinations, and where appropriate, the HKMA may use the power under s. 59(2) of the Banking Ordinance to require an AI to commission an independent review, with the scope of review specified and agreed with the HKMA, including, for example, validity of sufficiency and effectiveness of remedial actions. The report of independent review will be submitted to the HKMA for ongoing supervision.

203. While the SCR requirement has been recently implemented, banks cannot access the SCR kept by companies and hence they would not update their beneficial ownership information based on such. The Hong Kong

Association of Banks mentioned during the on-site visit that although the recent initiative of updating the SCR for the 1.4 million private companies has been concluded, the beneficial ownership information with the banks would be updated based on the regular risk policy and there is no drive to immediately update the same, i.e. banks do not plan to immediately request their clients to give them updated information on beneficial ownership information based on their SCR.

Beneficial ownership information on account holders

204. The 2016 ToR specifically requires that beneficial ownership information be available in respect of all account holders. In Hong Kong, as per the AML regulations, banks have to conduct CDD to establish beneficial owners. Furthermore, banks have to ensure that in order to meet the record keeping requirements for transactions, documentation is maintained which must include the name and address of the customer, beneficial owner and underlying principal. For the definition of beneficial ownership, see A.1.

205. Where the bank is unable to complete the CDD process in accordance with paragraph 4.7.1 of the AML guidance, it must not establish a business relationship or carry out any occasional transaction for that customer and should assess whether this failure provides grounds for knowledge or suspicion of ML/TF and a report to the JFIU is appropriate. Verification of identity should be concluded within a reasonable timeframe. Where verification cannot be completed within such a period, the bank should as soon as reasonably practicable suspend or terminate the business relationship unless there is a reasonable explanation for the delay. Examples of reasonable timeframe are (para 4.7.8 of AML guidance):

- the bank completing such verification no later than 30 working days after the establishment of business relations
- the bank suspending business relations with the customer and refraining from carrying out further transactions (except to return funds to their sources, to the extent that this is possible) if such verification remains uncompleted 30 working days after the establishment of business relations
- the bank terminating business relations with the customer if such verification remains uncompleted 120 working days after the establishment of business relations.

206. The AMLO already requires banks to ensure that CDD records are up to date and relevant for all cases at all times. The AML guidance imposes an additional requirement that all high-risk customers (excluding dormant accounts) should be subject to a minimum of an annual review of

their profile, and more frequently if deemed necessary by the bank, to ensure the CDD information retained remains up to date and relevant. There are no specific timelines to update the CDD for medium and low risk customers, and Hong Kong is recommended to ensure that accurate beneficial ownership information is available and kept up to date for all account holders in all cases.

Simplified due diligence and reliance on third parties

207. The AMLO defines what CDD measures are and also prescribes the circumstances in which a bank must carry out CDD. Simplified customer due diligence (SDD) means that application of full CDD measures is not required. In practice, this means that banks are not required to identify and verify the beneficial owner. However, other aspects of CDD must be undertaken and it is still necessary to conduct ongoing monitoring of the business relationship. Banks must have reasonable grounds to support the use of SDD and should be able to demonstrate these grounds to the relevant authorities.

208. Banks may apply SDD to a customer that is an investment vehicle if the bank is able to ascertain that the person responsible for carrying out measures that are similar to the CDD measures in relation to all the investors of the investment vehicle falls within any of the categories of institution set out in s. 4(3)(d) of Schedule 2[12] to the AMLO.

209. An investment vehicle may be in the form of a legal person or trust, and may be a collective investment scheme or other investment entity. An investment vehicle whether or not responsible for carrying out CDD measures on the underlying investors under governing law of the jurisdiction in which the investment vehicle is established may, where permitted by law, appoint another institution ("appointed institution"), such as a manager, a trustee, an administrator, a transfer agent, a registrar or a custodian, to perform the CDD. Where the person responsible for carrying out the CDD measures (the investment vehicle or the appointed institution) falls within any of the categories of institution set out in s. 4(3)(d) of Schedule 2, a bank may apply

12. The person responsible for carrying out measures that are similar to the customer due diligence measures in relation to all the investors of the investment vehicle is – (i) a financial institution; (ii) an institution that – (A) is incorporated or established in Hong Kong; (B) has measures in place to ensure compliance with requirements similar to those imposed under Schedule 2 to the AMLO; and (C) is supervised for compliance with those requirements; or (iii) an institution that – (A) is incorporated or established in an equivalent jurisdiction; (B) has measures in place to ensure compliance with requirements similar to those imposed under Schedule 2 to the AMLO; and (C) is supervised for compliance with those requirements.

SDD to that investment vehicle provided that it is satisfied that the investment vehicle has ensured that there are reliable systems and controls in place to conduct the CDD (including identification and verification of the identity) on the underlying investors in accordance with the requirements similar to those set out in the Schedule 2.

210. For the avoidance of doubt, if neither the investment vehicle nor appointed institution fall within any of the categories of institution set out in s. 4(3)(d) of Schedule 2, the bank must identify any investor owning or controlling more than 25% interest of the investment vehicle. The bank may adopt a risk-based approach in determining if it is appropriate to rely on a written representation from the investment vehicle or appointed institution (as the case may be) responsible for carrying out the CDD stating, to its actual knowledge, the identities of such investors or (where applicable) there is no such investor in the investment vehicle. In making the risk-based determination, the bank should take into consideration whether the investment vehicle is being operated for a small, specific group of persons. Where the bank accepts such a representation, this should be documented, retained, and subject to periodic review. Where investors owning or controlling more than 25% interest are identified, the bank must take reasonable measures to verify their identity itself. However, this adoption of SDD for investment vehicles could be problematic if allowed for small groups of investors with entry/exit barriers, particularly if the investment vehicle is a trust where none of the beneficiaries have 25% stake. It is already noted that the existing CDD requirement in respect to trusts does not cover the situation of identifying beneficiaries with less than 25% stake in the capital/assets held by the trust. Similarly only partners with more than 25% stake are identified as beneficial owners in partnerships, although they do not have any legal personality. Hong Kong is recommended to ensure that all the beneficiaries of a trust with nexus to Hong Kong, are identified as beneficial owners and available for access by the Competent Authority. Hong Kong is also recommended to ensure that all the beneficial owners of partnerships are identified and available for access by the Competent Authority.

211. Jurisdictional equivalence and the determination of equivalence is also another important aspect in the application of CDD measures under the AMLO. For example, s. 4 of Schedule 2 restricts the application of SDD to overseas institutions that carry on a business similar to that carried on by a bank and are incorporated or established in an equivalent jurisdiction and is supervised for AML/CFT compliance there. Equivalent jurisdiction is defined in the AMLO as meaning: (a) a jurisdiction that is a member of the FATF, other than Hong Kong; or (b) a jurisdiction that imposes requirements similar to those imposed under Schedule 2.

212. The judgment on equivalence is one to be made by each bank in the light of the particular circumstances and senior management is accountable for this judgment. It is therefore important that the reasons for concluding that a particular jurisdiction is equivalent (other than those jurisdictions that are FATF members) are documented at the time the decision is made, and that the decision is made on up-to-date and relevant information. The AML guidance (para 4.16) also mandates that a record of the assessment performed and factors considered by the bank should be retained for regulatory scrutiny and periodically reviewed to ensure it remains up to date and valid. Since each bank may regard different jurisdictions as "equivalent jurisdictions", this leads to the absence of a harmonised and co-ordinated approach.

213. Given the wide range of countries which could be treated as equivalent jurisdictions by various banks allowing for SDD,[13] this may allow for non-identification and non-verification of beneficial ownership information in Hong Kong (since it may be difficult to obtain beneficial ownership

13. s. 4(3), Sch. 2 Of AMLO:

An AI may choose not to identify and take reasonable measures to verify the beneficial owner of a customer, if the customer is –

(a) a financial institution;

(b) an institution that – (i) is incorporated or established in an equivalent jurisdiction; (ii) carries on a business similar to that carried on by a financial institution; (iii) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and (iv) is supervised for compliance with those requirements by an authority in that jurisdiction that performs functions similar to those of any of the relevant authorities;

(c) a corporation listed on any stock exchange;

(d) an investment vehicle where the person responsible for carrying out measures that are similar to the customer due diligence measures in relation to all the investors of the investment vehicle is – (i) a financial institution; (ii) an institution that – (A) is incorporated or established in Hong Kong; (B) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and (C) is supervised for compliance with those requirements; or (iii) an institution that – (A) is incorporated or established in an equivalent jurisdiction; (B) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and (C) is supervised for compliance with those requirements;

(e) the Government or any public body in Hong Kong; or

(f) the government of an equivalent jurisdiction or a body in an equivalent jurisdiction that performs functions similar to those of a public body.

information from a person who has conducted the CDD and is resident in a foreign "equivalent jurisdiction"). It is recommended that Hong Kong ensure that beneficial ownership information of all investment vehicles coming from the equivalent jurisdictions is available in Hong Kong in all cases at all times.

214. Hong Kong also recently updated the AML guidance (4.3.10) (with effect from 1 November 2018) which ensures that (a) corporate trustees are also subject to identification and verification requirements similar to a customer that is a legal person, where applicable; (b) in the case of offshore investment vehicles owned by high net worth individuals (i.e. the ultimate beneficial owners), self-declarations in writing from the ultimate beneficial owners or the contractual parties cannot be accepted, when the investment vehicles are incorporated in a jurisdiction where company searches or certificates of incumbency (or equivalent) are not available. Hong Kong is recommended to monitor the effective implementation of these recent changes to guidance.

Introduced businesses

215. Section 18 of Schedule 2 to the AMLO provides that banks may rely upon intermediaries to perform CDD measures. However, where a bank relies upon an intermediary to perform CDD measures, the ultimate responsibility for ensuring that the CDD requirements under the AMLO and the AML/CFT Guideline are met remains with banks.

216. Under the AMLO, banks may only rely on CDD previously conducted by a person (referred to as the "intermediary" below) if the following criteria are met: the intermediary is in itself subject to and supervised for AML/CFT requirements either locally or in an equivalent jurisdiction; the bank must obtain from the intermediary the data or information that the intermediary has obtained in the course of CDD immediately after CDD has been carried out; and the bank must ensure that the intermediary will on request provide a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out the CDD measure without delay. Where the documents and records are kept by the intermediary, the bank should obtain an undertaking from the intermediary to keep all underlying CDD information throughout the continuance of the AI's business relationship with the customer and for at least five years beginning on the date on which the business relationship of a customer with the bank ends or until such time as may be specified by the respective regulatory authorities of the bank; the bank should also obtain an undertaking from the intermediary to supply copies of all underlying CDD information in circumstances where the intermediary is about to cease trading or does not act as an intermediary for the AI anymore. Banks are also obliged under the AMLO to continuously monitor the business relationship and ensure that the CDD

information (including those provided by intermediaries) is up to date and relevant. (The same obligations apply to DNFBPs when collecting beneficial ownership information, see A.1)

217. Under para 4.11.6 of the AML/CFT Guidelines, the bank should also conduct sample tests from time to time to ensure CDD information and documentation is produced by the intermediary upon demand and without undue delay; and whenever the bank has doubts as to the reliability of the intermediary, it should take reasonable steps to review the intermediary's ability to perform its CDD duties. If the bank intends to terminate its relationship with the intermediary, it should immediately obtain all CDD information from the intermediary. If the bank has any doubts regarding the CDD measures carried out by the intermediary previously, the bank should perform the required CDD as soon as reasonably practicable.

218. Intermediaries can only be financial institutions or certain DNFBPs (i.e. legal professional, accounting professional, licensed TCSP, and estate agent) which are subject to local or overseas AML/CFT requirements, and related supervision.

219. In practice, reliance on intermediaries to carry out CDD is relatively uncommon among banks. Hong Kong authorities further advise that no SDD is possible in the case of introduced business.

220. Based on the latest available information, Hong Kong authorities advised that no AI currently relies on a specified intermediary to conduct CDD. Also, no case of a bank using a chain of intermediaries has been found in on-site examinations in recent years.

Enforcement provisions to ensure availability of beneficial ownership information

221. Hong Kong has a large, well developed banking system with one of the highest concentrations of banking institutions in the world. At the end of 2017, there were 191 institutions with total assets of HKD 22.7 trillion, equivalent to 853% of Hong Kong's GDP. Under the requirements under the AMLO and the AML/CFT Guidelines for banks in Hong Kong (i.e. AIs under the Banking Ordinance) – The HKMA is the relevant authority under the AMLO for supervising AIs' compliance with the legal and supervisory requirements set out in the AMLO and the AML/CFT Guideline, including the CDD and record keeping requirements. The HKMA supervises banks' AML/CFT systems through a combination of on-site examinations and off-site reviews, which is integrated as part of the broader banking supervisory process. AML/CFT supervision is risk-based, and the frequency, intensity and scope of supervisory activities are linked to the ML/TF risk profile of individual banks, which takes into account both impact to the financial

system and risk level. AML/CFT on-site examinations comprise risk-focused examinations and thematic examinations, which are part of a cycle, culminating in best practices being provided to banks in training forums, which are conducted on an annual basis.

222. In the period between October 2014 and September 2017, the HKMA conducted 59 on-site examinations and 76 off-site reviews on the AML/CFT controls of AIs which covered, among others, the CDD and record keeping requirements and directed improvements to be made where appropriate. Hong Kong authorities further advised that these examinations covered 63 AIs, which accounted for a large portion of ML/TF risks of the banking sector in terms of customer base (95.7%) and cross-border transactions (93.5%). The scope of these examinations and reviews covered key AML/CFT systems and controls including identification and verification of beneficial owners as required under the AMLO. All AIs, regardless of size, are subject to supervisory engagement including biennial risk profiling, submission of institutional risk assessments to the HKMA and participation in regular AML/CFT seminars and training.

223. In the event that weaknesses in risk management programmes or non-compliance with legal and regulatory requirements are identified, the HKMA may require a range of corrective actions to be taken to address identified weaknesses and apply appropriate sanctions both under the AMLO and the Banking Ordinance.

224. In addition to programmed examinations, if there is reason to inquire whether a bank has contravened any of the specified provisions of the AMLO or reasonable cause to believe that an offence under the AMLO may have been committed, the HKMA may use powers under the AMLO to investigate the matter.

225. Sanctions have been applied where serious contraventions were found (e.g. arising from systemic deficiencies or failure to implement required remedial actions) that warranted greater deterrent effect beyond supervisory action. Up to December 2018, in four cases, the HKMA has imposed pecuniary penalties of HKD 7.5 million, HKD 7 million, HKD 5 million and HKD 12.5 million respectively, and issued public reprimands in respect of contraventions of specified provisions of the AMLO. In three of these cases, the banks were also ordered to take specified actions to remedy the contraventions. These sanctions were published for deterrence purpose.

226. In cases where the HKMA's investigations found that banks were not fully compliant but the impact of the deficiencies on risk were less serious and did not warrant the imposition of sanctions or there was insufficient evidence to establish a contravention, the HKMA has issued compliance advice letters to remind senior management of legal and regulatory requirements and

bring to their attention deficiencies which, if left unaddressed, could result in sanctions in the future.

227. The supervision and enforcement measures of the HKMA appear to be appropriate.

Availability of bank information in practice

228. Hong Kong received 415 requests related to banking information. Most of the requests have been addressed in a timely manner. Peer inputs have not indicated anything adverse in this regard.

Part B: Access to information

229. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information, and whether rights and safeguards that apply in the requested jurisdiction are compatible with effective EOI.

B.1. Competent authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

230. The 2013 Report found that the IRD had broad powers to access information in order to respond to a request for information in relation to a liability to foreign tax. It concluded that Hong Kong's legal and regulatory framework for accessing information was "in place" and its implementation was rated Compliant with the EOIR standard. No changes have been made to the legal framework since then.

231. The 2013 Report however, issued a recommendation to Hong Kong stating that access powers should not be limited by the domestic tax interest requirement that was embedded in three of its double taxation agreements. Hong Kong took actions to solve this issue (with success in two cases and in progress in the other case), and ensured its new treaties do not include a similar limitation. Therefore the recommendation is removed.

232. The IRD collects information primarily by sending written notices to the information holders (subjects of the request or third parties) but is also able to conduct interviews and use search and seizure powers, although the latter have not been used in practice so far for EOIR purpose. Hong Kong did not face systemic difficulties in the review period to access information and effectively exchanged information with EOI partners. Hong Kong received

636 EOI requests during the current review period and used its access powers in most cases, the rest of the information was readily available in the tax files and databases of the IRD or other government authorities such as the CR, BRO, Land Registry, etc.

233. The new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: in place
Practical implementation of the standard
Rating: compliant

B.1.1. Ownership, identity and bank information B.1.2 Accounting records

234. The 2013 Report analysed the procedures applicable to obtaining ownership, accounting and banking information (paras 274-291). Generally, the same procedures continued to apply in the current review period.

235. The competent authority in charge of exchange of information on request in Hong Kong is the Commissioner of Inland Revenue (CIR), on the basis of the EOI instruments of Hong Kong. Two Deputy Commissioners are also authorised representatives (Deputy Commissioner of Inland Revenue (Technical) (DCIR(T)) is responsible for overseeing the operations of the Tax Treaty Section (TT Section)).

236. Written guidelines, circulars and staff handbooks issued by the IRD set out the detailed procedures to be followed by officers of the IRD to collect information for the purposes of answering an EOI request.

The access powers of the competent authority

237. The IRD has put in place an effective system to gather information for EOI purposes. The staff of the TT Section processes the requests and usually seeks assistance from officers of the operational units to gather information unless the requested information is readily available in the databases of the IRD or other government authorities. There are mainly three possible information gathering measures:

- The tax officer can send a written notice to any person – subject of the request or third party information holder (including banks) – requiring that person to furnish information in his/her possession or control (IRO, s. 51(4)(a) together with s. 51(4AA)). In practice, this measure is mostly used to obtain accounting information (e.g. copies of ledgers and invoices), beneficial ownership information and banking information.

- The tax officer may also request the person to attend and be examined, and upon such examination to answer truthfully all questions put to him/her (IRO, s. 51(4)(b) together with s. 51(4AA)). No interviews or cross-examinations have been conducted so far for EOI purposes.
- When the information is held by another government authority or public body, the tax officer may send a written notice to its official, requiring that person to furnish any particulars, unless that person is under any express statutory obligation to observe secrecy (IRO, s. 52(1)). The IRD rarely resorts to this power.

238. The Hong Kong competent authority is not required to invoke special procedures, whether administrative or judicial to exercise its power to collect information, and exactly the same powers apply to collect all types of information concerned: ownership, accounting, banking or other type of information.

239. Sections 51 and 52 of the IRO clarify that the power of the CIR to obtain information is exercisable not only in respect of information possessed by a person, but also in respect of information in a person's control. The staff handbooks explain that the term "possession" does not mean physical possession only. It should also bear the meaning of legal possession (i.e. possession which is recognised and protected as such by law). If a person is the owner of the information that at the material time is kept by another party, say the record books held by auditors or lawyers, the person is still in possession of such information, and has to provide such information to the IRD. Hong Kong authorities confirmed at the on-site interactions that the IRD did not encounter practical difficulty in interpreting the term "in possession".

240. In practice, Hong Kong has mostly used the first power, i.e. requesting information by sending a written notice to the information holder (either subject of the request or a third party). Notices are rarely sent to other government authorities as the IRD has gained access to the databases of some government authorities (e.g. CR or Land Registry) in which legal ownership information of company or property is maintained.

Accessing legal ownership information in practice

241. The IRD does not maintain legal ownership information, but it can gain electronic access to the information available with the CR. Therefore, the IRD is not required to serve a notice to the CR pursuant to s. 52(1) of the IRO.

242. When a request for legal ownership information is received, the staff of the TT Section would seek assistance from the Inspection Unit of the IRD to gather information from the electronic database of the CR. The

information is usually provided immediately. The competent authority indicated that the information in the CR is considered to be accurate and reliable as it is checked before being entered into the database (see section A.1 above), and the IRD so far has not encountered issues where false information is collected.

243. In the rare cases where the information in the CR was not sufficient to answer the EOI request, the rest of the information was gathered directly from the subject of the request.

Accessing beneficial ownership information

244. The IRD can gather information on beneficial ownership from different sources. Generally, information can be gathered from the AML-obliged service providers, such as FIs. This is a paramount source of beneficial ownership information. After the entry into force of the C(A)O 2018, beneficial ownership information can now also be gathered from the SCR maintained by companies incorporated in Hong Kong (except listed companies).

245. In practice, the IRD usually collects beneficial ownership information from banks. Although there is a legal obligation for every company to keep a SCR to be accessible by law enforcement officers, the IRD has not gathered the beneficial ownership information from SCR to date as the provisions only came into operation recently. The competent authority is of the opinion that the information held by banks is globally accurate as banks are required to perform CDD procedures. It is more convenient to collect such information from banks as in most cases other banking information (e.g. bank statements, transaction details, etc.) is also requested by Hong Kong's EOI partners. Further, Hong Kong's EOI partners also generally request the identification of the beneficial owner of bank accounts (beneficial ownership along with banking information) than that of companies.

246. Hong Kong would not explicitly indicate to the banks that the information is requested for EOI purposes. The formal notice generally includes the following information: the account number or name of the account holder with its/his/her particulars for identification purposes (e.g. in the case of a company, company number/business registration number and place of incorporation; and in the case of an individual, date of birth, passport number and issuing country of the passport); a reference to the information gathering powers provided under the IRO, the time limit to provide the information, a detailed list of the information requested; and a reference to the sanctions provided under the IRO for failure to comply with the formal notice. Hong Kong authorities advised that in the case where the requesting jurisdictions have not provided the names of the relevant banks and account numbers, the requested bank information will be gathered directly from the subject of the request.

Ownership information requested during the review period

247. Hong Kong received 289 requests for ownership information including a number of requests for beneficial ownership information, mainly on corporations. Hong Kong authorities clarified at the on-site interactions that they did not maintain separate statistics about the number of EOI cases that specifically requested legal and/or beneficial ownership information. It had not happened that beneficial ownership was the only information required in an EOI request.

Accessing accounting information in practice

248. Hong Kong received 343 requests for accounting information, mainly on corporations. When financial statements are requested, the competent authority retrieves them directly from the tax file or the IRD's database since they are filed with the tax returns.

249. Most of the accounting information (business records, accounting books or underlying documentation) is gathered by the Profits Tax Unit from the subject of the request, with a deadline of normally 14 to 21 days to answer the written notice.

250. The response time depends on the degree of the accessibility of the information and the volume of information requested. The information holders can ask for an extension of the deadline when a large volume of information is involved. The extension request is considered on a case-by-case basis. Sometimes, the tax officer would follow up with the information holders by phone or letter to check progress of the gathering of information. In some complicated cases, this process may take up to several months, for example when the request relates to a transfer pricing case, which covers an analysis of the gross profit margin of a lot of transactions and requires representative transaction documents to support the analysis. On some occasions, the competent authority also consulted with the requesting authority and both sides mutually agreed on the scope of accounting records to be provided (e.g. provision of documents for a few representative transactions instead of all transactions).

251. The information gathering processes are mainly carried out by issuing written notices to the information holders. The tax officers rarely visit the premises of the company to collect information. However, it happened in a few cases where the subjects of the requests could not be located in the IRD's database and the notices sent to the addresses provided by the requesting jurisdictions were returned undelivered. Tax inspectors would visit the addresses to trace the whereabouts of the subjects of the requests. If the subjects of the requests could not be located after on-site visit, the competent authority would inform the requesting jurisdictions of such facts. However,

these would not be treated as failure to obtain information because the person in possession or control of the information is not located in Hong Kong.

252. Hong Kong authorities clarified that if they spotted irregularities in the course of examining the documents provided by the information holder, they would request additional information from the information holder. Hong Kong would also conduct their own investigations for cases where domestic tax interest is involved. Hong Kong authorities reported that they did come across quite a few cases where the amount involved was not reflected in the companies' accounts but was reflected in the bank statements and they would draw the attention of the requesting jurisdictions to any inconsistency noted.

Accessing information held by banks

253. The procedures for gathering banking information do not deviate from gathering other types of information, neither do the time limits for providing the requested information. Hong Kong received 415 requests for banking information, mainly on corporations and individuals. It also received a large number of group requests on financial account information. In practice, a notice is usually sent to the bank directly requiring the latter to provide the requested information within 14 to 21 days depending on the nature and volume of information requested, and banks generally comply with the deadline. Furthermore, for the purposes of responding to a request as soon as possible, the requested information is sometimes sought both from the bank and the subject of the request concurrently. The banking information may also be sought from the account holder when so required by the requesting authority.

254. For identification purposes, the name of bank, the name of the account holder and the identification number of the account holder (such as Hong Kong Identity Card number, passport number or business registration number) are normally required but the IRD indicated that when such information is not available, other identification information should be provided, such as the bank account number. The IRD added that there was no exhaustive list of "reasonable grounds", as set out in s. 3(2)(b) of the Inland Revenue (Disclosure of Information) Rules (Disclosure Rules), to approve a disclosure request. The particulars to be contained should, according to the competent authority, echo the information requirement provided in Article 5(5)(a) of the OECD Model TIEA, in order to find a balance between safeguarding against fishing expeditions and pursuing effective exchange of information.

255. When the identification information is not fully available or when bank information in respect of many bank accounts held by a subject of the request are requested by the EOI partner, the information would be obtained directly from the subject of the request if the requesting partner had not requested for exception from notification or prior notification.

256. During the current review period, most of the peers indicated that banking information was exchanged without difficulty. However, an EOI partner indicated that three out of its seven requests on banking information were responded in more than 180 days. Hong Kong authorities explained that in one of these three requests, clarification was sent to the EOI partner for establishing the foreseeable relevance of the information requested for the period after the investigation. For the remaining two cases, neither the bank account number nor the essential personal particulars of the individual account holders were provided in the EOI requests. Therefore, the banks could not identify the relevant bank accounts. Hong Kong had to gather the personal particulars from other sources first and then provide such information to the bank for identification of bank accounts and collection of the requested bank information. Further, in one of these three cases, the EOI partner requested details of around 80 transactions shown on the bank statements of the relevant bank accounts. Hong Kong authorities added that it took a relatively longer time (around 7 to 9 months) to process these three EOI requests due to the special circumstances of these cases. Under normal circumstances, banking information could be provided to EOI partners in a timely manner. As at October 2018, there were no EOI requests which were received during the peer review period and still pending information from banks.

257. Since the SCR has come into force in March 2018, it could serve as a primary source of beneficial ownership information or to cross-check the accuracy of the beneficial ownership information that the competent authority requests from banks only so far. Because of the risk based approach to reviewing CDD, the information held by banks may not always be up to date when the bank has no reason to doubt the accuracy of the information previously collected (except for high-risk clients).It is recommended that the competent authority exercises its access powers to ensure that most updated and accurate beneficial ownership information is provided to the requesting partners in any case where the beneficial ownership information collected is suspected of not being up to date.

B.1.3. Use of information gathering measures absent domestic tax interest

258. As described in the 2013 Report (paras 292-294), Hong Kong has no domestic tax interest requirement with respect to its information gathering powers for purposes of international exchange of information pursuant to its DTCs signed after 2010 and TIEAs signed after the enactment of the Inland Revenue (Amendment) (No. 2) Ordinance 2013. The IRO (ss. 49, 51, 51B and 52) was amended in 2010 and 2013 to allow exchange of information regardless of the existence of any domestic tax interest and the form of

the agreement, as well as to allow collection of information from any person in possession or in control of it. Hong Kong does not have the domestic tax interest issue under the Multilateral Convention either.

259. For the three DTCs signed prior to 2010, with Belgium, Thailand and Viet Nam, Hong Kong signed a protocol with Viet Nam on 13 January 2014 to upgrade the EOI Article to the 2004 version. The protocol came into force on 8 January 2015 and has effect in Hong Kong since the year of assessment 2016/17. For the DTCs with Belgium and Thailand, Hong Kong has been closely liaising with the relevant authorities of these two jurisdictions so as to upgrade the EOI article as soon as possible (see also section C.1 below).

260. The IRD set out work procedures in handling exchange of information on request in the Inland Revenue Departmental Circular No. 3/2018 (Circular). To ensure effective implementation of the Inland Revenue (Amendment) Ordinance 2010, it is stated specifically in the Circular that "By virtue of sections 49(1A) and 51(4AA) of the Inland Revenue Ordinance (IRO) introduced by the 2010 Amendment Ordinance, IRD officers are empowered to collect and release the information so collected to a treaty partner pursuant to specific and legitimate requests made by the treaty partner even though the IRD has no domestic tax interest in such information". Further, the staff handbooks of different operational units (i.e. Profits Tax, Individuals Tax, Property Tax and Field Audit and Investigation) were also updated accordingly to inform staff of the relevant units about the removal of the domestic tax interest requirement.

261. Hong Kong indicated that the type of information requested by EOI partners (without domestic tax interest) is mainly related to banking information. In practice, during the period under review, Hong Kong answered requests for information in which it had no domestic tax interest, for instance relating to persons not subject to tax in Hong Kong. On one occasion, Hong Kong could not provide part of the information requested by a treaty partner as the request was based on an EOI article in a pre-2010 treaty that has not yet been upgraded to the standard and required domestic tax interest for collection of information. Since the subject of the request in this case was dissolved, Hong Kong had no domestic tax interest in collecting the information. Hong Kong thus provided information available in its database to the treaty partner.

262. While the 2013 Report issued a recommendation to Hong Kong in respect of the domestic tax interest requirement, in view of the above discussion, the recommendation is deleted.

B.1.4. Effective enforcement provisions to compel the production of information

263. The powers of the Hong Kong's tax authority to obtain information are bolstered by enforcement provisions to compel production of information and sanctions in case of non-compliance by the information holders (2013 Report, paras 295-298).

264. The IRD has powers of discovery and inspection, and is able to compel testimony or production of any documents deemed relevant to their examination from taxpayers and third party information holders (IRO, s. 51B). A search warrant can be requested by an officer not below the rank of chief assessor. Court approval is required to exercise search and seizure power pursuant to the IRO for either civil or criminal matters (including but not limited to a request for information). Obstruction or hindering of the authorities' powers can be sanctioned with fines amounting to HKD 10 000 and with imprisonment for six months (IRO, s. 51B(4)).

265. Non-compliance with a written notice to provide information or be interviewed is subject to a fine up to HKD 10 000. In addition to giving judgment for the penalty or any less amount as aforesaid, the court may order the person against whom the proceedings were brought to do, within a time specified in the order, the act which he has failed to do (IRO, s. 51(4B)). The fine appears to be quite low and disproportionate. The same amount applies to individuals and companies (including banks). The fine of HKD 10 000 applies to each written notice rather than each piece of information not provided. Notwithstanding that, the IRD generally does not have practical difficulties in obtaining information for EOI purposes. The Hong Kong authorities indicated that banks in Hong Kong are very co-operative and generally provide banking information within the time limit specified in the formal notice. Hong Kong has so far never invoked the court order to compel the production of information for EOI purposes.

266. Section 80(2D) of the IRO provides that a person commits an offence if he/she, without reasonable excuse, gives any incorrect information in relation to any matter that affects his/her or another person's liability to tax of a territory outside Hong Kong for the purpose of EOIR.

267. The IRD occasionally encounters a situation where the required information is not provided to the department in full and/or within the time limit as required in the formal notice. Under these circumstances, the case officer would follow up proactively by issuing reminders or contacting the information holders directly through telephone, in order to urge for early submission of the requested information. Hong Kong authorities also explained that in practice, when the information holder challenged its obligation, the authority would first draw its attention to the relevant legal provisions under

the IRO describing its obligation to keep the information, then require it to comply with the notice issued to it and inform it of the sanctions in case of non-compliance. The IRD would institute prosecution action against the information holder if the latter fails to provide the requested information after the above measures have been taken.

268. During the peer review period, the IRD instituted prosecution actions against the information holders in two EOI cases to compel them to supply the information requested in the IRD's formal notices. After receipt of writs of summons issued by the IRD, the information holders furnished all the requested information, which were disclosed to the requesting jurisdictions. The above shows that the existing measures are effective in collecting information for EOI purposes.

B.1.5. Secrecy provisions

269. There are two types of secrecy or confidentiality provisions that are relevant for the purposes of this section: bank secrecy and professional secrecy. There are no provisions under Hong Kong's laws relating to the secrecy of ownership, identity or accounting information.

Bank secrecy

270. The IRO overrides confidentiality provisions applicable to banks and other financial institutions (2013 Report, paras 299-300). The Hong Kong authorities reported that there are no secrecy laws in the banking, insurance and securities sectors that would shield entities from sharing information with the Hong Kong competent authority when they are required to do so under the IRO.

Professional secrecy

271. The scope of attorney-client privilege is limited to oral or written communications in connection with, in contemplation of, and for the purposes of legal proceedings or in connection with the giving of legal advice, between a professional legal adviser and his/her client, or any person representing the client (2013 Report para 302).

272. The position of law continued during the current review period. In practice the IRD requested information from attorneys, accountants or other professionals in 46 EOI requests and no impediments to provide the requested information were encountered in the current review period.

B.2. Notification requirements, rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

273. The 2013 Report concluded that Hong Kong's rights and safeguards mechanisms were "in place" and their implementation was rated Compliant with the standard. Hong Kong legislation provided notification and review mechanisms to the subject of the EOI request. However, Hong Kong's EOI partner could request a waiver of the notification by providing reasonable grounds to support its request. Therefore, Hong Kong's notification and review mechanisms were considered as in line with the standard. The legislation has not changed since the last review.

274. The 2016 ToR have introduced a new requirement stating that notification rules must permit exceptions from time-specific post-exchange notification (post-notification) (an exception from the legal requirement to notify the taxpayer under investigation, within a specified time period, after sending the response to the requesting partner).

275. Post-notifications exist in Hong Kong. Similar to prior-notifications, exceptions exist in line with the standard, notably in case of urgency and when the notification is likely to undermine the chance of success of the investigation.

276. The Disclosure Rules provide notification and review mechanisms prior to providing the information to the requesting jurisdiction (2013 Report, paras 304-318). The review process was established as a two-tier review: first by the CIR and then by the Financial Secretary in case of refusal to amend the information or any part of the information that is to be disclosed or has been disclosed to the requesting partner, by the CIR. The request for review by the Financial Secretary must be made within a timeframe of 14 days following the CIR's decision. However, there are no inbuilt timelines to ensure the response of the Financial Secretary in the case of an appeal on the CIR's decision regarding the information disclosed or to be disclosed to the partner. Given the small portion of EOI cases involving amendment requests, it is considered that the notification and review mechanisms in Hong Kong did not unduly prevent or delay effective exchange of information in the review period but should be further monitored.

277. Therefore, the new table of determinations and ratings is as follows:

Legal and Regulatory Framework
Determination: In place

Practical implementation of the standard
Rating: Compliant

B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information

278. The Disclosure Rules provide notification and review mechanisms prior to providing the information to the requesting jurisdiction (2013 Report, paras 304-318).

279. Generally, the person who is the subject of an EOI request has the right to be notified and the right to review the information that is to be disclosed or has been disclosed to Hong Kong's EOI partner. The person is not necessarily the one who provides the information or the subject of the foreign tax investigation – the person concerned is the one about whom the information is provided, i.e. if bank information of a Hong Kong company is requested from a bank (information holder) and the Hong Kong company has transactions with the subject of the foreign tax investigation, the Hong Kong company, instead of the subject of the foreign tax investigation, will be notified.

Notification mechanism

280. There are two types of notification in Hong Kong: (i) prior notification is sent to the subject of the request (subject person) before disclosure of the information to the requesting jurisdiction; and (ii) post-notification is sent to the subject person at the time when the information is disclosed to the requesting jurisdiction. Generally, the subject person could request a copy of the information that is to be disclosed (in case of prior notification) or has been disclosed (in case of post-notification) to the requesting jurisdiction by giving a written notice within 14 days after the notice of disclosure request is given to the subject person. If such request is made by the subject person, a copy of the information will be provided to the subject person before the information is disclosed to the requesting jurisdiction (in case of prior notification) or even the information has already been disclosed to the requesting jurisdiction (in case of post-notification). If the subject person is a non-resident and the requesting jurisdiction could not provide the address of the subject person, the IRD will check whether there is any available address from other sources (e.g. bank in which the subject person opened a bank account). If no address is available to allow the IRD to serve the notification, then the issue of notification can be waived.

281. The review process is established as a two-tier review: first by the CIR and then by the Financial Secretary. The subject person may request the

information to be amended on the grounds that the information or that part of the information does not relate to the subject person or is factually incorrect. Such request must be made within 21 days after the notice providing a copy of the information is given to the subject person by the IRD. The CIR may, on the basis of the factual evidence available, approve the request for amendment, either fully or partially, or refuse the request. If the CIR refuses the request of the subject person to amend any part of the information that is to be disclosed or has been disclosed to the requesting jurisdiction, that person may, by giving a written notice within 14 days after the CIR's notice of decision, request the Financial Secretary to review the CIR's decision. Likewise, the Financial Secretary may approve, either fully or partially, or refuse the request. A written decision together with the reasons therefor will be given to the subject person. The decision of the Financial Secretary is final.

282. If the review procedure resulted in any correction to the information already exchanged with the foreign competent authority (i.e. in the case of post-notification), the Hong Kong competent authority would inform the foreign competent authority accordingly and provide the additional relevant information.

283. There are no inbuilt timelines to avoid delays in the response of the Financial Secretary in the case of an appeal on the CIR's decision regarding the information disclosed or to be disclosed to the requesting partner. Hong Kong is recommended to monitor the appeal procedures to the Financial Secretary to ensure that it does not unduly prevent or delay effective exchange of information.

Exceptions

284. As indicated by Hong Kong, the Disclosure Rules (s. 5(5)) provide for exceptions to the general rule of prior notification and post-notification. These include (i) cases where all the addresses of the subject person known to the CIR are undeliverable; (ii) prior or post-notification is likely to undermine the chance of success of the investigation in relation to which the request is made; or (iii) for urgent cases where prior notification is likely to frustrate the efforts of the requesting jurisdiction in timely enforcing the tax laws of its territory. An EOI partner may request a waiver of the prior or post-notification by stating clearly in the EOI request if any of the above exceptions is applicable to its case and provide reasons.

285. The Hong Kong authority would inform its EOI partners about the notification system applicable in Hong Kong when negotiating an EOI instrument and when receiving EOI requests from a new EOI partner. They would also seek clarification from the EOI partner when the EOI request does not expressly accept or oppose notifications to be made. The checklist used by

the Hong Kong competent authority to validate an incoming EOI request includes checking the presence of a statement, if applicable, confirming that the foreign competent authority is of the opinion that notification to the person who is the subject of the disclosure request is likely to undermine the chance of success of the investigation in relation to which the request is made, or confirming that the foreign competent authority is of the opinion that prior notification to the person who is the subject of the disclosure request is likely to frustrate the timely enforcement of the tax laws of the requesting jurisdiction, and giving reasons for the opinion.

286. Under the Multilateral Convention a reservation relating to the possibility for Hong Kong to inform its resident or national before transmitting information concerning that resident or national to another Party was made in Articles 4 and 5 of the Multilateral Convention. Hong Kong authorities advised that similar to the EOI requests lodged under DTC or TIEA, the requesting jurisdiction may request a waiver of the prior or post-notification by stating clearly in the EOI request if any of the exceptions mentioned above is applicable to its case and provide reasons.

Post notification

287. The 2016 ToR have introduced a new requirement stating that notification rules must permit exceptions from time-specific post-notification. The Disclosure Rules do not provide for any time-specific post notification per se, but notification post exchange is possible as a consequence to an exception to prior notification. Under s. 5(5) of the Disclosure Rules, the IRD is not required to notify the subject person prior to providing the information to the requesting jurisdiction under certain specified circumstances (i.e. cases where notification is likely to undermine the chance of success of the investigation in relation to which the request is made (First Situation); or urgent cases where prior notification is likely to frustrate the efforts of the requesting jurisdiction in timely enforcement of the tax laws of its territory (Second Situation)). Section 8(1) of the Disclosure Rules also provides that if the IRD is not required to notify the subject person prior to the disclosure of information in the Second Situation, it must, notify the subject person at the time when the information is disclosed to the requesting jurisdiction.

288. Accordingly, in the First Situation, the subject person will not be notified (s. 5(5)(b) of the Disclosure Rules) whereas in the Second Situation, the subject person will be notified at the time when the information is disclosed to the requesting jurisdiction (ss.5(5)(c) and 8 of the Disclosure Rules). If the requesting jurisdiction considers that it is not appropriate to issue notification at the time when the information is disclosed, it should in the first place request the Hong Kong competent authority not to issue notification to the subject person (i.e. in the First Situation).

Exercise of the right to review information and of granting exceptions to partners in practice

289. In practice, the IRD indicated that the notification issued to the subject person generally includes information such as (i) a reference to the requesting jurisdiction; (ii) a reference to the EOI instrument under which the request is made; and (iii) a general description of the information being requested. A template is also available with respect to notices to third-party information holders with information such as: (i) a reference to the access powers under the IRO; (ii) the sanctions for non-compliance; (iii) the information requested; (iv) the name of the subject person for the purposes of identification and obtaining the requested information; (v) the type of Hong Kong domestic tax if domestic tax interest is involved; and (vi) the time limit to provide the information.

290. Hong Kong authorities reported that the IRD has always kept its EOI partners informed of the details of the notification system in Hong Kong. Paragraph 80 of the Departmental Interpretation and Practice Notes No. 47 (DIPN 47) provides guidelines in dealing with requesting jurisdiction's request for not issuing notification or prior notification and quotes an example to illustrate the situation under which the Chief Assessor (Tax Treaty) would be satisfied that the urgency is genuine. In practice, the IRD would not adopt a stringent interpretation on this term, and would accept requests for not issuing notifications or prior notifications made by requesting jurisdictions if reasonable grounds are given to support their requests. During the current review period, notifications were not issued in relation to 357 EOI requests (i.e. 56.13% of the total EOI requests received) where the requesting jurisdictions confirmed with reasons that such notifications would likely undermine the chance of success of their investigations. In relation to three urgent EOI requests where the requesting jurisdictions stated that prior notifications would frustrate the timely enforcement of their tax laws, the IRD did not issue prior notifications. Instead, notifications were issued at the time when the information was disclosed to the requesting jurisdictions. The IRD did not deny any requests made by the requesting jurisdictions for not issuing notifications or prior notifications. There has been no adverse comment from EOI partners with respect to the notification system in Hong Kong.

291. During the current review period, the IRD received 211 requests from the subject persons for copy of the information to be disclosed to the requesting jurisdictions. Out of these, there were only six cases with valid amendment requests lodged by the subject persons, including two cases requiring the Financial Secretary to review the CIR's decision of refusing to amend the information to be provided to the requesting jurisdictions. These two requests took about 6 months on average to be processed by the Financial Secretary. Despite the notification and review mechanisms under

the Disclosure Rules, for a majority of the EOI cases, the replies could be sent out to the requesting jurisdictions within one month after the date of provision of the information to the subject persons for review. Given the small portion of EOI cases involving amendment requests, it is considered that the notification and review mechanisms in Hong Kong did not unduly prevent or delay effective exchange of information in the review period but should be further monitored.

Other rights and safeguards

292. There are no specific appeal rights provided for in the IRO in respect of the IRD's access powers to obtain information. Judicial review is possible in principle, but there were no cases of judicial review on EOIR so far. In practice, in the course of processing an EOI request, only the minimum information contained in the request necessary for Hong Kong to collect the information would be provided to the information holder. Notification issued to the subject person would include the name of the requesting jurisdiction while notice issued to the information holder would not include it. If the information holder has reasonable grounds to know the name of the requesting jurisdiction (e.g. claiming privilege against self-incrimination), the IRD would take a pragmatic approach to deal with the situation after striking a balance between the international standard and information holder's need. The IRD would seek prior consent of the requesting jurisdiction before disclosing its name to the information holder. Hong Kong authorities advised that during the current review period, only on one occasion, the information holder wished to know the name of the requesting jurisdiction. After obtaining the requesting jurisdiction's consent, such information was disclosed to the information holder.

Part C: Exchanging information

293. Sections C.1 to C.5 evaluate the effectiveness of Hong Kong's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Hong Kong's relevant partners, whether there are adequate provisions to ensure the confidentiality of information received, whether Hong Kong's EOI mechanisms respect the rights and safeguards of taxpayers and whether Hong Kong can provide the information requested in a timely manner.

C.1. Exchange of information mechanisms

Exchange of information mechanisms should provide for effective exchange of information.

294. The 2013 Report concluded that Hong Kong's network of EOI mechanisms was "in place" and its implementation in EOIR was rated Largely Compliant with the international standard.

295. At that time, Hong Kong had signed 29 DTCs, among which 25 were in force. All of the agreements signed after Hong Kong's endorsement of the international standard (i.e. following the legislative amendments in 2010 to remove the domestic tax interest requirement) meet the standard stipulated in Article 26 of the OECD Model Tax Convention. Hong Kong was recommended to continue its efforts to renegotiate the three DTCs with Belgium, Thailand and Viet Nam signed prior to 2010 that did not comply with the standard (i.e. with a domestic tax interest requirement). Since then, Hong Kong started negotiations with these three treaty partners. The protocol with Viet Nam was signed on 13 January 2014 and entered into force on 8 January 2015. Regarding the remaining two DTCs, the EOI relationship with Belgium is now up to the standard after Hong Kong participated in the Multilateral Convention, so that the only EOI relationship that is not up to the standard today is with Thailand, which sent EOI requests to Hong Kong occasionally, but it is acknowledged that Hong Kong is actively pursuing communication with Thailand with a view to upgrading the EOI Article as soon as possible.

296. On practical implementation, while it was acknowledged in the 2013 Report that Hong Kong had developed a sound system to exchange information with its treaty partners, notably with eight of its major trading partners, its EOI framework was restricted during the previous review period as it could not exchange information that preceded the effective date of the EOI agreement. Since the legislation had been amended just before the adoption of the 2013 Report, a monitoring recommendation was inserted to ensure the application of the new legislation complies with the standard. Since then, Hong Kong exchanged information that preceded the effective date of the EOI agreement with its EOI partner provided that such information relates to a taxable period that starts after the effective date of the EOI agreement. The recommendation is therefore addressed.

297. As at end of November 2018, Hong Kong has signed 40 DTCs and 7 TIEAs. Further, the Government of the People's Republic of China extended the territorial application of the Multilateral Convention to Hong Kong on 29 May 2018. The Multilateral Convention formally came into force in Hong Kong on 1 September 2018 (i.e. after the review period) following the completion of the necessary legislative procedures, i.e. gazetting the order for introducing the Multilateral Convention into the domestic legislation on 13 July 2018.

298. In total, Hong Kong has now 128 EOI partners and about one-third of these EOI relationships were in force during the review period as the Multilateral Convention and 6 DTCs were not in force by that time.

299. The EOIR standard now includes a reference to group requests in line with para 5.2 of the Commentary to Article 26 of the OECD Model Tax Convention. It is required that the foreseeable relevance of a group request should be sufficiently demonstrated and the requested information would assist in determining compliance by the taxpayers in the group. The procedures in Hong Kong with respect to processing a group request are very similar to those of individual requests. All these requests have been answered.

300. The new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

Other forms of exchange of information

301. Previously, Hong Kong's EOI policy was that information would only be exchanged upon request. Although Hong Kong had received information sent spontaneously by some treaty partners occasionally, it did not send information spontaneously to treaty partners during the current review period. However, Hong Kong had committed to providing information of six specific categories of tax rulings required by the OECD spontaneously to jurisdictions having EOI arrangement with Hong Kong and commenced first exchange in December 2017. Further, Hong Kong had committed to implementing the Common Reporting Standard for automatic exchange of financial account information in tax matters and commenced first exchanges with its treaty partners in September 2018.

C.1.1. Foreseeably relevant standard

302. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. All TIEAs and all but two of Hong Kong's DTCs follow the OECD Model TIEA and Model Tax Convention, using the term "foreseeably relevant". The remaining two DTCs with Belgium and Thailand use the term "as is necessary".

303. Nevertheless, Hong Kong authorities indicated that their interpretation on the term "as is necessary" is consistent with the Commentary to Article 26 of the OECD Model Tax Convention concerning "foreseeable relevance", i.e. there is no difference in their treatment of the request no matter the treaty uses the term "foreseeably relevant" or "as is necessary". In any event, Hong Kong is actively following up the matters with Belgium (though the DTC is now complemented by the Multilateral Convention) and Thailand.

Foreseeable relevance

304. As stated in the 2013 Report (para 336), when receiving an EOI request, the Hong Kong authority assesses its validity against the EOI instrument and the Disclosure Rules. The latter sets out the particulars to be contained in an EOI request to demonstrate the request meets the foreseeable relevance standard (the checklist). The checklist is patterned on Article 5(5) of the OECD Model TIEA, adapted to suit the circumstances of Hong Kong. This checklist is also communicated to the competent authorities of other jurisdictions through the Global Forum's competent authority secure website. The practical application of the Disclosure Rules are further explained in the IRD's administrative guideline – DIPN 47. Hong Kong has now more practical experience in answering EOI requests and is in the process of amending

DIPN 47 and the internal procedures to provide for more clarifications to staff of the IRD for handling EOI requests.

305. The Hong Kong competent authority requires that at least the following particulars should be included in an EOI request:

- the identity of the person or authority that makes the disclosure request (the competent authority)
- the identity of the person who is the subject of the disclosure request
- the purpose of the disclosure request and the tax type concerned
- the tax period for which the information is requested
- the nature of the information
- the relevance of the information to the purpose of the disclosure request.

306. In practice, the staff of the TT Section checks the latest competent authority list provided by the EOI partner and in the Global Forum's competent authority secure website to ascertain the identity of the person making the EOI request. On a few occasions, confirmations had to be sought from the requesting jurisdictions, as the person making the EOI request was not listed as competent authority in the aforementioned lists because the information contained therein was not complete or up to date.

307. Regarding the identity of the person who is the subject of the disclosure request (subject person), the name and address of the subject person are generally required for identification purposes, but the Hong Kong authorities also accept other types of identification, such as a bank account number, in accordance with para 58 of the Commentary to Article 5(5) of the Model TIEA: "Where a Party is asking for account information but the identity of the accountholder(s) is unknown, sub-paragraph (a) may be satisfied by supplying the account number or similar identifying information." In a few cases, Hong Kong received requests for which the only identifier was the bank account number and processed the request. This does not create any difficulty for Hong Kong as each bank account number is unique and enables the IRD to identify the bank concerned. Hong Kong authorities reported that clarifications were sent to the EOI partners occasionally for identifying the right subject persons as no or several persons could have met the particulars provided in the EOI requests (see Clarifications below).

308. DIPN 47 also expressly explains the conditions for a waiver, in respect of the requirement to provide "the name and address of any person believed to have possession or control of the information requested". DIPN 47 (para 78) specifies that "One possible instance in which the CIR may permit departure is where the requesting treaty partner has supplied the name of the

person believed to have possession or control of the information requested together with other essential particulars but has genuine difficulty in supplying that person's up-to-date address." In this regard, it is observed that the requirement to provide the name and address of the information holder is not specified as to the extent that they are known to the requesting authority and the explanation on the waiver covers only the address but not the name of the information holder. The competent authority explained that DIPN 47 only provides an example and the waiver is not limited to the address. Hong Kong reported that in practice, it is acceptable that the name of the information holder was not provided, especially concerning bank information where the account number had been provided. Concerning the address, the Hong Kong authorities indicated that it did not encounter any problem in retrieving the correspondence address when the person was registered with the IRD or the CR. Therefore, the absence of address is not an issue in practice and the waiver is generally granted when it is submitted to the Chief Assessor (Tax Treaty) for consideration.

309. In respect of "the purpose of the request" (i.e. the reason provided by the requesting authority), the Hong Kong authorities were satisfied with the explanations provided by their EOI partners, noting that some partners generally used a standard template and others adopted various styles, but the reason for making an request was always included in general. The Hong Kong authorities indicated that in practice, those particulars mentioned in para 305 above were rarely missing in the EOI requests received from treaty partners.

310. The remaining items of the checklist not set out in para 305 above are not mandatory. These items broadly correspond to those listed in the Model TIEA with a few minor amendments. Hong Kong authorities stated that in practice, they would follow the guidance provided in the Commentary to Article 26 of the OECD Model Tax Convention. DIPN 47 specifies that the requesting jurisdiction is expected to provide all items of the checklist as a general rule but the CIR may permit departure from this rule if reasonable grounds are given by the requesting jurisdiction. If any item in the checklist as detailed in para 305 is missing, the case will be submitted to DCIR(T) who will decide whether foreseeable relevance requirement is satisfied. The peer input received did not report any issues on this aspect but indicated that Hong Kong sent requests for clarification in some instances.

Clarifications

311. During the three-year period under review (1 October 2014 to 30 September 2017), no EOI request was declined because it did not meet the foreseeable relevance criterion. Hong Kong indicated that it would always prioritise seeking clarification or additional information rather than simply declining an EOI request.

312. Hong Kong has sought clarifications from the requesting jurisdictions in relation to 11.6% of the EOI requests received during the current review period. As a matter of comparison, Hong Kong sought clarifications in relation to approximately 32% of the EOI requests received during the review period covered in the 2013 Report (1 July 2009 to 30 June 2012). Clarifications mainly relate to:

- Identity: The name of the subject of the request was incomplete or there might be typographical errors in the name, so the IRD needed to clarify that the person identified in the IRD's database was the one that the requesting jurisdiction exactly referred to.
- Foreseeable relevance: The nexus between the information requested and the tax investigation was not provided. For example, a treaty partner requested information of a bank account by providing the bank account number. Hong Kong realised that the bank account was not held by the entity subjected to the partner's investigation. Hong Kong sought clarification of how the bank information was relevant to the investigation. The partner explained that its ongoing investigation suggested the opening of such bank account in Hong Kong was to hide untaxed illicit money on behalf of the target entity. Hong Kong was satisfied with the explanation and provided the requested information. No partner withdrew the request during the review period because of clarification sent by Hong Kong concerning foreseeable relevance.
- Information precedes the effective date of the EOI instrument: The relevance of the information requested for the period preceding the effective date of the EOI agreement was not provided. For example, partners sought information from Hong Kong, part of which related to a tax period before the effective date of the treaty and part of which related to a tax period after the effective date of the treaty. In some cases the partners were able to demonstrate that the information requested for the period before the effective date of the treaty was relevant to their investigations for the period after the effective date of the treaty. For such cases, the requested information was gathered and provided to the partners. In some other cases the partners failed to respond even after reminders were sent. Hong Kong considered that the partners no longer pursued the matters and closed the issue internally.
- Whether exceptions to notifications to the subjects of the request are applicable: Notification can be waived if requested by the EOI partner with sufficient justification on the urgency or impact it would have on the investigation. However, sometimes the reason for waiving the issuance of notification was not provided in the EOI request. On some occasions, confirmations were sought from the EOI partners on whether exceptions to notifications were applicable (e.g. criminal or uncooperative cases).

- Unclear or incomplete requests: For example, the tax year or tax type concerned was not clearly stated, documents attached to the EOI request were either incomplete or not in English, bank account number provided in the EOI request was found to be invalid, etc.

Group requests

313. Group requests relate to a group of taxpayers not individually identified. They are dealt with in para 5.2 of the commentary to Article 26 of the OECD Model Convention, which sets out the criteria for a group request to qualify as foreseeably relevant. Group requests are now covered by the 2016 ToR. The request should demonstrate that the requested information would assist in determining compliance by the taxpayers in the group. The main difference with individual requests relates to the information that must be included in the group request, which should cover: (i) a detailed description of the group, (ii) the specific facts and circumstances that have led to the request; and (iii) an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law supported by a clear factual basis.

314. Hong Kong's procedures to deal with group requests are very similar to those adopted for dealing with an individual request. There is no specific section dedicated to group requests in the Disclosure Rules but DIPN 47 (para 24) specifies that the 2012 version of the OECD Model EOI Article and its commentary have elaboration on how a request which relates to a group of taxpayers not individually identified should be treated. It further specifies that the IRD would accede to a group request if the treaty partner could substantiate that the request is related to tax purposes and that it could meet the standard of "foreseeable relevance". Hong Kong authorities indicated that group requests were an example where the requirement to provide the exact identities of the persons who are the subjects of the request could be waived.

315. Hong Kong and the United States exchange a substantial amount of financial information on request in connection with the information that reporting Hong Kong financial institutions provide the United States under the FATCA IGA. The requests that relate to information provided under the FATCA IGA are subject to special processes and procedures that may differ in some respects to those generally applicable to exchange of information requests.

C.1.2. Provide for exchange of information in respect of all persons

316. The 2013 Report found that none of Hong Kong's EOI agreements restricted the jurisdictional scope of the exchange of information provisions to certain persons.

317. Similarly, the new agreements that Hong Kong has entered into since the 2013 Report do not have such restrictions. All these DTCs provided for EOI with respect to all persons. All the TIEAs do not have a restriction with respect to the persons about which information can be exchanged.

318. DIPN 47 (para 28) highlights that "The tax administration of the treaty partner often has an interest in receiving information on activities carried on in Hong Kong by a particular person resident in a third jurisdiction because the tax liability of the latter as a non-resident taxpayer is at issue. There are also circumstances under which a person of a third jurisdiction is interposed in the chain of information flow."

319. During the current review period, Hong Kong did receive EOI requests concerning a person who was a resident in neither the requesting jurisdiction nor Hong Kong. Hong Kong was able to collect and provide information to the requesting jurisdictions concerning a person who was a resident in a third jurisdiction. Peers have not raised any issues in practice during the current review period.

C.1.3. Obligation to exchange all types of information

320. The 2013 Report (paras 339-341) identified that all but three of Hong Kong's DTCs (i.e. with Belgium, Thailand and Viet Nam) included provisions akin to Article 26(5) of the OECD Model Tax Convention, ensuring that all types of information could be exchanged. Concerning these three DTCs, the limitation is mitigated with respect to the DTC with Belgium as the DTC is now complemented by the Multilateral Convention. With respect to the DTC with Viet Nam, Hong Kong signed a protocol with Viet Nam on 13 January 2014 to upgrade the EOI Article, which came into force on 8 January 2015 and has effect in Hong Kong since the year of assessment 2016/17. However, the DTC with Thailand remains to be upgraded to the standard (as Thailand has not been reviewed yet by the Global Forum with respect to its EOI mechanism, it is not certain whether its domestic law allows for EOI up to the standard). Notwithstanding that, as Hong Kong has no bank secrecy laws that would restrict effective exchange of information, Hong Kong can obtain and exchange banking information in response to EOI requests from Belgium and Thailand. During the current review period, Hong Kong did exchange banking information with Belgium. With respect to Thailand and Viet Nam, they did not send Hong Kong any EOI requests for banking information.

321. All of the new DTCs that Hong Kong has entered into since the 2013 Report include Article 26(5) of the OECD Model Tax Convention which provides that a contracting party may not decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. Similarly, Hong Kong's TIEAs include Article 5(4) of the OECD Model TIEA.

322. In practice, Hong Kong had exchanged many types of information with its EOI partners, including banking information, accounting information, legal ownership and beneficial ownership information. Peers have not raised any issues during the current review period.

C.1.4. Absence of domestic tax interest

323. The 2013 Report noted that all but three of Hong Kong's DTCs contained provisions equivalent to Article 26(4) of the OECD Model Tax Convention, which provides that a contracting party may not decline to supply information solely because it has no interest in obtaining the information for its own tax purposes. The DTCs with Belgium, Thailand and Viet Nam did not contain such a provision as they were signed prior to the legislative amendments abolishing domestic tax interest requirement in 2010.

324. Since then, a protocol with Viet Nam was signed in 2014 incorporating provisions equivalent to Article 26(4) of the OECD Model Tax Convention. Negotiations are underway with Belgium (the DTC is now complemented by the Multilateral Convention) and Thailand.

325. All new DTCs that Hong Kong has entered into since the 2013 Report include Article 26(4) of the OECD Model Tax Convention, obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest.

326. In practice, Hong Kong reported that during the current review period, the IRD has received 229 requests involving persons who were not taxpayers in Hong Kong, and for which there was no domestic tax interest in obtaining the requested information. The information requested was mostly related to banking information (88.2% according to Hong Kong).

327. Peers have not raised any issues on Hong Kong's practice during the current review period.

C.1.5. Absence of dual criminality principles

328. The 2013 Report did not identify any issues with Hong Kong's EOI agreements in respect of dual criminality and no issues arose in practice. The new EOI agreements that Hong Kong has entered into since then do not include dual criminality provisions either.

329. Peers have not raised any issues in practice during the current review period.

C.1.6. Exchange information relating to both civil and criminal tax matters

330. Hong Kong's EOI agreements provide for exchange in both civil and criminal matters. The 2013 Report noted that no separate process was involved where an EOI request related to criminal investigation. The legislation has not changed since then.

331. Hong Kong advised that it exchanges information which is foreseeably relevant for carrying out the provisions of the DTCs or to the administration or enforcement of the domestic laws of treaty partners, irrespective of whether the conduct constitutes a crime under the laws of Hong Kong. The procedures for collection of information for EOI purposes are the same no matter if the information requested is in relation to a civil or criminal tax matter.

C.1.7. Provide information in specific form requested

332. There are no restrictions in the exchange of information provisions in Hong Kong's EOI instruments that would prevent the authorities from providing information in a specific form, as long as it is consistent with its own administrative practices. Hong Kong's TIEAs notably include Article 5(3) of the OECD Model TIEA, providing that information could be provided if specifically requested, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

333. In practice, the IRD had exchanged authenticated copies of original documents without difficulties during the previous review period. When a formal notice is issued to the information holder, the information holder is obliged to provide true and correct information to the IRD. Otherwise, such person will be subject to penalties under s. 80(2D) of the IRO for providing incorrect information. Therefore, in practice, the IRD would not, and it is not necessary to, request a person to sign an affidavit to indicate that the person would be liable to prosecution in Hong Kong if the information provided to the IRD was false or inaccurate.

334. During the current review period, a peer required the use of a statutory form and face to face interview to collect the requested information. Hong Kong explained to the requesting authority that in the light of the particular facts and circumstances of the case, conducting an interview with the subjects of the request in Hong Kong, who were closely related to the peer's investigation target, and collection of information through interview might not be appropriate as that would inadvertently alert the peer's investigation target of the present EOI request and in turn undermine the chance of success of the peer's investigation. It was then mutually agreed that Hong Kong would proceed to gather information without directly contacting the subjects of the request. Hong Kong also suggested that the peer might consider, where

appropriate, to seek further assistance under the Mutual Legal Assistance Agreement between both sides if the case turned out to be a criminal one. Nevertheless, Hong Kong provided the peer with the requested information that was available in the IRD's database, the public domain and the financial institutions in Hong Kong.

C.1.8. Signed agreements should be in force

335. At the time of the 2013 Report, four of Hong Kong's DTCs were not in force. Since then, the four treaties have entered into force and Hong Kong concluded 18 new agreements, among which 17 were already in force as at 21 December 2018, and the ratification process took less than two years in all cases. The DTC not in force as at 21 December 2018 was signed in May 2018 (with Finland). The ratification of the DTC with Finland has been completed, and the DTC will enter into force on 30 December 2018.

336. Since the 2013 Report, Hong Kong has ratified 17 new EOI instruments: 7 TIEAs and 10 DTCs.

Bilateral EOI mechanisms

			Total	Total without coverage under the Multilateral Convention
A	Total Number of DTCs/TIEAs	A = B + C	47	5 (Belarus, China, Thailand, United States, Viet Nam)
B	Number of DTCs/TIEAs signed but not in force	B = D + E	1 (Finland)	0
C	Number of DTCs/TIEAs signed and in force	C = F + G	46	5
D	Number of DTCs/TIEAs signed (but not in force) and to the Standard		1	0
E	Number of DTCs/TIEAs signed (but not in force) and not to the Standard		0	0
F	Number of DTCs/TIEAs in force and to the Standard		44	4 (Belarus, China, United States, Viet Nam)
G	Number of DTCs/TIEAs in force and not to the Standard		2 (Belgium, Thailand)	1 (Thailand)

337. A signed tax treaty needs to become a piece of the domestic legislation for it to be effective. Following a declaration by the Chief Executive in Council, the ratification procedures are as follows: (i) approval by the Executive Council; (ii) publication in the gazette; and (iii) tabling at the Legislative Council for negative vetting and commencement of the Order after the vetting period. The contracting party is then notified after completion of the ratification procedures in Hong Kong. Once both parties have ratified the treaty, it becomes effective.

The Multilateral Convention

338. Until 29 May 2018, Hong Kong did not participate in the Multilateral Convention. Hong Kong needed (i) to put in place a legal framework for entering into multilateral tax agreements and (ii) as a Special Administrative Region of the People's Republic of China, a declaration from the Government of the People's Republic of China to extend the application of the Multilateral Convention to Hong Kong.

339. Hong Kong hence introduced the Inland Revenue (Amendment) (No. 5) Bill 2017 into the Legislative Council on 18 October 2017 and the Amendment Ordinance was enacted on 24 January 2018, which empowers the Chief Executive in Council to make orders for giving effect to the Multilateral Convention and any other multilateral tax agreements that apply to Hong Kong.

340. Following China's deposit of the declaration at the OECD's Secretariat on 29 May 2018, the Chief Executive in Council made an order under s. 49(1A) of the IRO on 13 July 2018. The Multilateral Convention entered into force in Hong Kong on 1 September 2018.

C.1.9. Be given effect through domestic law

341. Each DTC is implemented as a piece of subsidiary legislation (Order) under the IRO (s. 49) (2013 Report, para 355). However, the 2013 Report identified a provision in the Disclosure Rules which did not fully meet the international standard (paras 356-358).

Implementation of the recommendation of exchanging information that precedes the effective date of the EOI instrument

342. During the previous review period, the Disclosure Rules impeded exchange of information that preceded the effective date of the EOI agreement. Hong Kong amended its law, effective as of 19 July 2013, to ensure the exchange of information exists or generated prior to the effective date of the EOI agreement but related to the carrying out of the provisions of the agreement or the administration or enforcement of the tax law of the requesting jurisdiction in respect of any period starting after the effective date of the agreement. Hong Kong has been recommended to monitor the implementation of the new provision.

343. Since then, many of Hong Kong's new EOI agreements explicitly indicate that "The requested Party shall disclose any information that precedes the date on which this Agreement has effect for the taxes covered by the Agreement, insofar the information is foreseeably relevant for a taxable period or taxable event following that date" (e.g. TIEAs with Denmark, Faroe Islands, Greenland, Iceland, Norway, Sweden; DTC with India).

344. In practice, Hong Kong has exchanged information that precedes the effective dates of the EOI instruments provided that such information relates to a taxable period that starts after the effective dates of the EOI instruments, whether or not the applicable instrument contains a specific provision to this effect. The recommendation is therefore considered implemented.

345. When the foreseeable relevance of the information preceded the effective date of the EOI instrument is not stated in an EOI request, Hong Kong would seek clarification from its EOI partner (13 clarifications were sought during the current review period on this aspect). When the EOI partner confirms the information relates to a tax period starting after the effective date of the treaty, Hong Kong would exchange the information with the partner. In a few cases where the partners did not provide the requested clarifications even after reminders were sent, the competent authority would consider that the EOI partners no longer pursued the matters. In some other cases the EOI partners expressly withdrew their EOI requests.

C.2. Exchange of information mechanisms with all relevant partners

The jurisdiction's network of information exchange mechanisms should cover all relevant partners.

346. The 2013 Report found that element C.2 was determined to be "in place, but needing improvement" and rated Partially Compliant. The main issue was the impossibility for Hong Kong to conclude TIEAs. Hong Kong was also recommended, as under element C.1, to bring all its EOI instruments to the standard and to ratify them expeditiously (see C.1.3 and C.1.8 above) – Hong Kong has addressed these recommendations.

347. Hong Kong's law was amended in 2013 to allow it to conclude TIEAs, in addition to DTCs. Hong Kong was hence recommended to enter into EOI agreements regardless of their form with all relevant partners, especially given Hong Kong's importance as an international financial centre. Since then, 7 TIEAs have been concluded and information has been exchanged under these agreements during the current review period. The recommendation is therefore considered as addressed.

348. Furthermore, Hong Kong has concluded 11 new DTCs, among which 10 were already in force as at 21 December 2018 and one will enter into force on 30 December 2018. Hong Kong has also concluded protocols to update the pre-existing agreements with China, Viet Nam and New Zealand, and exchanged notes with Japan concerning the expansion of the coverage of tax types under the existing DTC.

349. Given the continued expansion in the scope and network of exchange of information in the international community, Hong Kong has moved from the

established bilateral approach for implementing various new international standards to a multilateral approach whereby Hong Kong rides on the Multilateral Convention to implement the relevant initiatives. The IRO was amended in January 2018, which now provides the legal framework for Hong Kong to implement multilateral tax arrangements, including the Multilateral Convention.

350. Hong Kong's network of agreements now covers 128 jurisdictions across Europe, Asia and the Americas, mainly due to the recent extension of the application of Multilateral Convention to Hong Kong by China, with effect from 1 September 2018. The current network of EOI instruments of Hong Kong covers 126 Global Forum members and most of Hong Kong's principal trading partners.

351. Negotiations of new bilateral EOI agreements (DTCs and TIEAs) and protocols are ongoing with a number of jurisdictions, including a jurisdiction not participating in the Multilateral Convention (i.e. Cambodia).

352. Comments were sought from the jurisdictions participating in the Global Forum but no information was received which would suggest that Hong Kong has not entered into an agreement with any jurisdiction when it was requested to do so. Where a TIEA was under negotiation with a jurisdiction already participating in the Multilateral Convention, Hong Kong proposed to the partner that exchange of information be conducted via the Multilateral Convention, thereby obviating the need for entering into a TIEA separately (including Colombia, Ecuador (Multilateral Convention not yet in force), Poland, Singapore and Ukraine).

353. Hong Kong should continue to conclude EOI agreements with any new relevant partner who would so require.

354. The new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

C.3. Confidentiality

The jurisdiction's information exchange mechanisms should have adequate provisions to ensure the confidentiality of information received.

355. The 2013 Report concluded that all of Hong Kong's EOI agreements had confidentiality provisions in line with the standard. This is also the case for all of Hong Kong's EOI agreements and protocols signed since the first round review.

356. There are also general confidentiality provisions protecting tax information under Hong Kong's domestic tax laws. These provisions apply to information exchanged under Hong Kong's EOI instruments unless the respective EOI instrument stipulates different rules. The legislation has not been amended since 2013 but the internal guidelines have been updated and enriched.

357. Nevertheless, Hong Kong received an in-text recommendation in the 2013 Report due to the potential conflict between treaties and domestic law as treaties do not specifically override domestic law under Hong Kong's legal system. More specifically, the OSCO requires the tax authorities to share information on any suspicious transactions with the Joint Financial Intelligence Unit (JFIU).

358. In that respect, Hong Kong reiterated that, any EOI agreement that has been given the force of law under ss.49(1), 49(1A) and 49(1B) of the IRO shall have effect in relation to tax under the IRO despite anything in any enactment. The confidentiality provisions of an EOI agreement create obligations under international law. Although the IRD has the general obligations under the laws of Hong Kong to disclose tax information to the JFIU under certain circumstances for limited non-tax related purposes (such as recovery of proceeds from drug trafficking, organised and serious crimes and combating terrorist financing), according to Hong Kong authorities, exchanged information will be disclosed to the JFIU only if certain conditions are met: (i) non-tax use provisions are contained in the EOI agreement; (ii) the disclosure is allowed under the laws of both Hong Kong and the treaty partner; and (iii) prior consent has been obtained from the supplying party. The DIPN focuses on the situation where a treaty partner would request Hong Kong to accept the sharing of information for non-tax purposes. It does not expressly indicates that the same applies to Hong Kong authorities when proposing to share the exchanged information with the JFIU. The Hong Kong authority are revising the DIPN accordingly.

359. In practice, the IRD has implemented proper rules and procedures to ensure confidentiality of the information obtained through EOI requests. It has a stringent framework on staff appointment, management and departure matters. All IRD staff are subject to a secrecy duty, the breach of which may constitute a criminal offence. The information received from treaty partners is clearly labelled and kept either physically in locked cabinets or stored electronically with access restricted to limited authorised officers. In terms of training, to strengthen the security awareness of staff, the IRD has launched an Information Security Training Programme which covers guidelines on protection of taxpayers' information and data confidentiality. All IRD staff are required to complete at least one web course or classroom training on IT security every year. Accordingly, no case of breach of confidentiality has been encountered in the EOI context and no such case or concerns have been reported by peers either.

360. Finally, as recommended in the 2013 report, Hong Kong should consider refining DIPN 47 to make it clear that the IRD is not obliged to disclose information obtained through EOI requests to the JFIU unless it is duly authorised to do so under the relevant EOI agreement.

361. The new table of determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	DIPN 47 sets out the guidelines for exchange of information under tax treaties but does not clearly specify that information received under tax treaties cannot be shared with other law enforcement and supervisory agencies (like JFIU) without the consent of the supplying jurisdiction.	Hong Kong should consider refining DIPN 47 to make it clear that the IRD is not obliged to disclose information obtained through EOI requests to the JFIU unless it is duly authorised to do so under the relevant EOI agreement.
Determination: In place		
Practical implementation of the standard		
Rating: Compliant		

C.3.1. Information received: disclosure, use and safeguards

International instruments and sharing of information with foreign competent authorities

362. All of Hong Kong's EOI instruments have confidentiality provisions in line with Article 26(2) of the OECD Model Tax Convention. Hong Kong's EOI agreements are part of Hong Kong's domestic laws (IRO, s. 49).

The use of exchanged information for non-tax related purposes

363. The 2016 ToR clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where this is otherwise agreed between the parties and in accordance with their respective laws. This exception was introduced with the 2012 amendment to Article 26 of the OECD Model Tax Convention introducing this provision, which previously appeared in the commentary to this Article.

364. Hong Kong indicated that it has started incorporating the non-tax use provision into the DTCs and Protocols under negotiations and already incorporated this provision into the DTCs recently signed with India and Finland. Hong Kong clarified that information could not be used for non-tax related purposes solely based on reciprocity if such use is not expressly stipulated in the EOI agreement.

Tax confidentiality

365. Section 4 of the IRO provides that except in the performance of his duties under the IRO, an officer of the IRD shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person coming to his knowledge in the performance of his duties under the IRO. Section 49(5) of the IRO provides that where any arrangements have effect by virtue of that section, the obligation as to secrecy imposed by s. 4 shall not prevent the disclosure to any authorised officer of the government with which the arrangements are made of such information as is required to be disclosed under the arrangements. Therefore, disclosure of information to treaty partners under and in accordance with the relevant EOI instrument does not contravene the secrecy provisions under the IRO.

366. As described in the 2013 Report, there are strong confidentiality provisions protecting tax information in Hong Kong's domestic tax laws. These provisions also apply to information exchanged under Hong Kong's EOI instruments unless the respective EOI instrument stipulates different rules. The legislation has not been amended since 2013 but the internal guidelines have been updated and enriched.

367. According to the 2013 Report, the confidentiality rules apply to all types of information, including information provided in an EOI request and information transmitted in response to an EOI request. According to s. 4 of the IRO, any person working as an officer of the IRD or having been appointed under the IRO is subject to a secrecy duty. All IRD staff have taken the oath of secrecy for that purpose, which also applies to preserve the secrecy of the information exchanged with treaty partners. Breach of these provisions are subject to administrative and criminal sanctions with a maximum fine of HKD 50 000. In addition, there are more serious associated offences under other ordinances such as ss.60 and 161 of the Crimes Ordinance (Cap. 200) and the common law offence of "misconduct in public office". Finally, disciplinary actions under Civil Service Regulations may be imposed on staff in the civil service, resulting in dismissal and loss of pension benefits.

Domestic exception to tax confidentiality

368. Any person in Hong Kong, including IRD officers, have to report AML/CFT suspicious transactions to the JFIU according to the OSCO. Effectively, under Hong Kong law, exchanged information should be disclosed to the JFIU for certain high priority matters, such as recovery of proceeds from drug trafficking, organised and serious crimes and terrorist acts under the Drug Trafficking (Recovery of Proceeds) Ordinance, OSCO and United Nations (Anti-Terrorism Measures) Ordinance respectively.

369. In the 2013 Report, Hong Kong was recommended to resolve the conflict between domestic law and tax treaties, as treaties and domestic law have the same value along the hierarchy of legal system in Hong Kong.

370. The Hong Kong authorities assured that in practice, they have not so far, and would not in future disclose to the JFIU any information received under EOIR except as permitted under the applicable EOI instrument. In response to the recommendation in the 2013 Report, Hong Kong reiterated that any EOI agreement that has been given the force of law under ss.49(1), 49(1A) and 49(1B) of the IRO shall have effect in relation to tax under the IRO despite anything in any enactment. The confidentiality provisions of an EOI instrument create obligations under international law. Although the IRD has the general obligations under the laws of Hong Kong to disclose tax information to the JFIU under certain circumstances for limited non-tax related purposes, the IRD is allowed to disclose the information exchanged under EOI arrangements to the JFIU only for limited cases and upon certain conditions are met: (a) non-tax use provisions are contained in the EOI instrument; (b) use of the information for the said non-tax related purposes is allowed under the laws of both Hong Kong and the treaty partner; and (c) authorisation is given by the competent authority of the supplying party. In practice, no information obtained through EOI requests has ever been disclosed to the JFIU during the review period.

371. DIPN 47 sets out the guidelines for exchange of information under tax treaties but does not clearly specify that information received under tax treaties cannot be shared with other law enforcement and supervisory agencies (like JFIU) without the consent of the supplying jurisdiction. Hong Kong should consider refining DIPN 47 to make it clear that the IRD should not – unless it is duly authorised to do so under the relevant EOI agreement – disclose information obtained through EOI requests to the JFIU. The Hong Kong authority indicated their willingness to amend the DIPN accordingly.

Personal Data Privacy

372. The Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) established a principle where personal data must be used for the purpose for which the data

is collected or for a directly related purpose. An exemption exists when the use is for the purposes of the assessment or collection of any tax (PDPO, ss.58(1)(c) and 58(2)). The word "tax" is further defined under the PDPO to include "tax" of a jurisdiction outside Hong Kong which is covered by an EOI instrument that has been given the force of law under the IRO (PDPO, s. 58(1A)).

C.3.2. Confidentiality of other information

373. As stated in the 2013 Report, the confidentiality provisions in Hong Kong's EOI agreements and domestic law do not draw any distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for information, background documents to such requests, and any other documents reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction. The position remains the same for all of the new agreements entered into by Hong Kong since then.

Practical measures to ensure confidentiality of the information received

Practical measures to ensure confidentiality at the IRD level

374. As concluded in the 2013 Report, the tax administration has put in place appropriate policies and procedures to ensure confidentiality of the information exchanged and any other documents related to EOI requests (paras 371-375).

375. Hong Kong's approach to overall information security management is based on the ISO-27000 and ITIL standards. Key risk management processes are in place and adequate controls are instituted in an appropriate manner, with sensitive material adequately protected. In addition, the operational management processes are fit for purpose. A Corporate Risk Register was established in July 2017 to cover all aspects of risks (both IT and non-IT risks). Besides, a Risk Management Committee has been set up to oversee the development and implementation of the Risk Management Programme of the IRD and to ensure that appropriate measures are maintained to identify, assess and manage risks from a strategic and operational perspective.

376. The IRD has developed an IT Security strategy. Guidelines are provided to staff which are complemented by an Information Security Training Programme. Security awareness training courses are organised and periodic security reminders are issued to increase the security awareness of staff. All IRD staff are required to complete at least one web course or classroom training on IT security every year. Security risks are also regulated through strict access security control as well as through a Corporate Risk Register which documents all significant risks. Suitable security risk assessment and audits are conducted regularly.

377. With respect to electronic data, different measures are adopted by the IRD to protect the confidentiality of data, such as specific classification, unique identifiers, securely protected audit logs, a clear screen policy, centrally managed Internet gateway, stringent policy on access control and storage of sensitive data. Those measures are regulated by different sets of guidelines such as the "Practice Guide to IT Operations Management" (relating to the IRD Data Centre policies), the "Government-wide baseline IT Security Policy" and IRD IT Security Policy (relating to the encrypted storage rules). Finally, detailed procedures and guidelines on disposal of time-expired records and documents (i.e. inactive records and documents which have been retained for the specified period and are ready for disposal) have been laid down in the General Circular No. 2/2009 and IRD Circular No. 7/2018 (on Security and Handling of Departmental Records). According to the General Circular No. 2/2009, an authorisation from the Government Records Service is required prior to the disposal of such records and documents, including those relating to EOI requests.

378. Access to premises of the IRD by service providers (e.g. contractors, cleaners, etc.) is centrally controlled by the IRD and a secrecy provision is included in the contract signed with the service providers. Before the service providers can enter into the IRD's office, they have to be registered with the Administration Division which would issue badges to them and limit their access to the floors they would provide services. Hong Kong advised that service providers are alert to the confidentiality requirements and the risks of disclosure of confidential information and documents.

379. With respect to human resources security, background checks are conducted before offering appointments to potential appointees. For that purpose, the IRD works in co-ordination with the Hong Kong Police Force and the Independent Commission Against Corruption. IRD officers who would have access to confidential information are subjected to special requirements such as regular declaration of their assets. During the staff's tenure, he/she is required under the Civil Service Regulations to report to the IRD any criminal proceedings being instituted against him/her, with the exemption on minor non-duty related traffic offences. With regard to departure procedures, the supervisor of the departing officers is required to submit a hardcopy request to the Information System Division to terminate access rights of the departing officers from the date of departure. As a safeguard measure, the Personnel Registry will provide a list of officers who have left the IRD to the Information System Division on a bi-weekly basis to double check if their user accounts have been properly deleted. There is also a quarterly review by the system administrator on the list of existing officers supplied by the Personnel Registry to ensure that user access rights are granted to serving officers only.

380. Finally, the IRD has developed internal measures for detecting and monitoring unauthorised access to taxpayers' information through different

identification and authentication tools. Any breach of the confidentiality rules may constitute a criminal offence. Moreover, each officer has a duty to report any breach of security and can be subject to internal disciplinary actions for not reporting the breach. A supervisor may even be held accountable, pursuant to IRD Circular No. 31/2007 on Supervisory Accountability, if the misconduct is blatant, widespread or repeated. A specific team is set up to handle security incidents and the Government Security Officer of the Security Bureau will be informed of any breach of security which may involve the compromise of the classified information (i.e. top-secret, secret, confidential and restricted information).

381. In practice, the IRD indicated that it has not come across any improper disclosure of confidential information.

Practical measures to ensure confidentiality at the competent authority offices

382. The IRD, including the staff of the TT Section, implements a clean desk policy, requiring all staff to properly safeguard all official records and follow specific procedures on locking and disposal of confidential documents.

383. The handling of EOI requests by the TT Section or other operational units must adhere to the confidentiality rules. The responsible officers are required to stamp the request letter and all attached documents with the specified EOI chop ("restricted use – this confidential information is received under an EOI arrangement. Its use and disclosure are governed by the IRO and the EOI arrangement") in order to remind officers that the documents are sourced from Hong Kong's EOI partners and their disclosure are governed by the relevant EOI instrument and domestic rules; and all papers relating to EOI requests are inserted in a confidential envelope and delivered by hand to the case officers (considering that all the involved units are housed in the same building). All documentation relating to the processing of the EOI requests is kept in specific folders maintained for each request: the master folder (maintained by the TT Section) and the unit folder (maintained by the officer of the operational unit that is assisting in the information gathering process). Sub-files are also created for the EOI requests with domestic tax interest (allowing making copies of documents relating to domestic tax interest and issued or obtained through the information gathering process by the IRD. Correspondence between competent authorities, including the EOI requests, its attachments and the subsequent replies provided to the EOI partner cannot be copied to the sub-files).

384. In view of the unclear guidelines on sharing the exchanged information with the JFIU for non-tax related purposes (see discussion in C.3.1 above), Hong Kong advised that the guidelines concerning the use of the exchanged information for other purposes are proposed to be included in the

revised DIPN 47 to specifically mention that disclosure of information to the JFIU is not allowed without the authorisation of the competent authority of the supplying jurisdiction.

385. In practice, the IRD has never disclosed any information obtained through EOI requests to the JFIU. In the event that tax information is proposed to be disclosed to the JFIU, it will be reviewed and approved by the designated directorate grade officers. They must ensure that any disclosure is proper and legitimate. If the tax information is obtained under an EOI instrument, they must also ensure that (a) the relevant EOI instrument contains non-tax use provision; (b) the domestic laws of the supplying jurisdiction permit the use of the information for the said non-tax related purpose; and (c) the competent authority of the supplying jurisdiction authorises such use. As such, it is not possible that the information obtained through EOI requests would be provided to the JFIU without the prior approval of the EOI partners.

Notification and disclosure of information

386. As set out in the 2013 Report (paras 376-380) and in Part B above, Hong Kong authorities would issue a notice to the subject person or third party information holder to gather the information requested by the EOI partner. In that respect, templates have been issued by Hong Kong authorities, including the information generally to be contained in such notices. DIPN 47 (para 41) specifies that "The Department will only disclose the minimum information contained in a disclosure request necessary for Hong Kong to enable the information holder to locate the requested information and respond to the notice." The formal notice issued to information holder does not normally include the name of the requesting jurisdiction. The Hong Kong authorities reported that they generally would decline information holder's request for disclosing the name of the EOI partner to protect the confidentiality of the information exchanged. In case that the information holder has reasonable grounds to know the name of the requesting jurisdiction (e.g. claiming privilege against self-incrimination), Hong Kong will seek prior consent of the requesting jurisdiction before disclosure of the name. In practice, there was only one case during the review period where the information holder wished to know the name of the requesting jurisdiction. After obtaining the requesting jurisdiction's consent, such information was disclosed to the information holder.

387. Under the notification system in Hong Kong, a subject person would be informed of the name of the requesting jurisdiction and generally has the right to request a copy of the information to be disclosed to the requesting party. The Hong Kong competent authorities assured that copy of the information to be disclosed, does not contain the actual EOI request or its attachment, or any correspondence between the competent authorities.

C.4. Rights and safeguards of taxpayers and third parties

The information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties.

388. The international standard allows requested parties not to supply information which would disclose any trade, business, industrial, commercial or professional secret, or information which is the subject of attorney-client privilege or information the disclosure of which would be contrary to public policy. As noted in the 2013 Report (paras 301-303), all of Hong Kong's EOI agreements were in line with the standard. Element C.4 was considered as in place and rated Compliant in the 2013 Report and so remains.

389. Hong Kong's agreements mirrored those provided in the international standard, as established in Article 26(3) of the OECD Model Tax Convention. The communications between a client and an attorney or other admitted legal representative are privileged to the extent that the attorney or admitted legal representative acts in his/her professional capacity as an attorney. Hong Kong confirmed that during the review period, there was no case where a person refused to provide the requested information because of attorney-client privilege.

390. With respect to trade, business, industrial, commercial or professional secret, Hong Kong indicated that it would not interpret it too broadly but would follow the guidance provided in the commentary to the OECD Model EOI Article, which states that a trade or business secret is generally understood to mean facts and circumstances that are of considerable economic importance and that can be exploited practically and the unauthorised use of which may lead to serious damage (e.g. may lead to severe financial hardship). Hong Kong further added that financial information such as books and records, does not by its nature constitute a trade, business or other secret.

391. Hong Kong authorities advised that guidance was provided in DIPN 47 (paras 58 and 59): whether any piece of information amounts to a "trade or business secret" would not be interpreted in too wide a sense. The CIR will determine whether or not to pass on sensitive information. Ordinary tax secrecy protects trade and business secrecy in all jurisdictions alike, when these come into the hands of the tax authorities. It is not expected that tax authorities would demand access to trade and business secrets in the first place, as their information seeking powers generally permit the collection of "tax" information only. In any event, a taxpayer in Hong Kong can dispute the supply of any information claimed to be trade or business secrets, or initiate legal actions to challenge the IRD's actions in collecting such information. The issue will ultimately be decided by the courts. Hong Kong authorities confirmed that there was no instance during the review period where the

information holder refused to provide information because of trade or business secrets.

392. Finally, while public policy may be used as a ground for declining to disclose information, Hong Kong advised that the term "public policy" generally refers to the vital interests of a country, for instance where information requested relates to a state secret. Hong Kong authorities confirmed that this issue had never arisen in practice.

393. The table of determination and rating remains as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

C.5. Requesting and providing information in an effective manner

> The jurisdiction should request and provide information under its network of agreements in an effective manner.

394. In order for exchange of information to be effective, jurisdictions should request and provide information under their network of EOI mechanisms in an effective manner. In particular:

- *Responding to requests*: Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or providing an update on the status of the request.
- *Organisational processes and resources*: Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.
- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

395. The main EOI partner of Hong Kong was China during the previous review period. China remains a prominent EOI partner of Hong Kong due to the economic ties between the two jurisdictions, but new EOI partners emerged since the broadening of Hong Kong's network of EOI instruments. During the current review period, the main EOI partners of Hong Kong were France and Japan, followed by China.

396. The 2013 Report noted that Hong Kong had adequate human, technical resources and well documented organisational processes to deal with

EOIR. The peer inputs in the previous review period noted the good co-operation of Hong Kong and the timeliness of responses was high as 75% responses were provided within 90 days (46 out of 61 EOI requests) and status updates were provided whenever the responses took longer than 90 days.

397. Similarly, in the current review period, peer inputs received indicate that they were highly satisfied with the co-operation provided by Hong Kong. However, the timeliness of responses (36.5% in 90 days) and the consistency in providing status updates have deteriorated globally while there was a steep rise (1 043%) in the total number of requests received (636 in total in the current review period as compared to 61 in the previous review period). An year-wise granular analysis shows that the situation mainly deteriorated during a year period and that in the third year under review the results improved to an effective level, as a result of measures taken by Hong Kong to enhance its resources and maintain effective exchange of information. Hong Kong is recommended to continue to enhance its resources to ensure timely responses and systematic status updates are provided as appropriate.

398. The new table of recommendations is as follows:

Legal and Regulatory Framework		
This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.		
Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice	Since there is a steep increase in the total number of requests received by Hong Kong as compared to the previous review period by about ten times, timeliness of responses has deteriorated and status updates have not been provided in all cases. However, the peers were generally satisfied and the performance improved to an effective level towards the end of review period, as a result of measures taken by Hong Kong to enhance its resources and maintain effective exchange of information.	Hong Kong is recommended to continue to enhance its resources to ensure that timely responses and systematic status updates are provided as appropriate.
Rating: Compliant		

C.5.1. Timeliness of responses to requests for information

399. The international standard requires that jurisdictions should be able to respond to EOI requests within 90 days of receipt by providing the requested information or status updates on requests taking longer than 90 days to respond.

400. There are no specific legal or regulatory requirements in place which would prevent Hong Kong from responding to an EOI request or providing a status update within 90 days of receipt of the request.

401. The IRD keeps the following statistics through the electronic EOI register:

- the number of EOI requests received from each requesting jurisdiction
- the number of progress updates provided to each requesting jurisdiction
- the number of clarifications sent to each requesting jurisdiction
- the nature of information requested (accounting, banking, ownership, others) for each EOI request
- case status (in progress, completed, declined, withdrawn) of each EOI request.

402. During the current review period (1 October 2014 to 30 September 2017), Hong Kong received a total of 636 EOI requests. The number of requests for accounting information, banking information, ownership information and other types of information in respect of different types of subject person are tabulated below.

	Accounting	Banking	Ownership	Others [a]
Corporation	326	214	245	315
Partnership	4	0	0	0
Sole proprietorship	10	6	2	9
Fund/Trust	3	2	2	5
Individuals	N/A	193	40 [b]	167
Total	343	415	289	496

Notes: a. Other information includes tax returns; company information (such as company structure, establishment, business type, names of directors and employees); personal information (such as date of birth, address and relationship with the investigation target in the requesting jurisdictions); property information (such as date of purchase and sale, usage of property and sales proceeds) etc.

b. The requesting jurisdictions asked whether the subject individuals held any shares in other companies or owned any properties in Hong Kong.

403. Over the current review period, the number of requests where Hong Kong answered in 90 days, 180 days, one year or more than one year are tabulated below.

Timeliness of Hong Kong's responses over the review period

		Year 1 Oct 2014-Sep 2015		Year 2 Oct 2015-Sep 2016		Year 3 Oct 2016-Sep 2017		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received		161	25.3%	217	34.1%	258	40.6%	636	100%
Full response:	≤ 90 days	51	31.7%	42	19.4%	139	53.9%	232	36.5%
	≤ 180 days (cumulative)	82	50.9%	73	33.6%	173	67.1%	328	51.6%
	≤ 1 year (cumulative)	130	80.7%	130	59.9%	219	84.9%	479	75.3%
	> 1 year	23	14.3%	69	31.7%	6	2.3%	98	15.4%
Status update provided within 90 days (for responses sent after 90 days)		84	80.8%	123	73.2%	77	69.4%	284	74.2%
Declined for valid reasons		4	2.5%	6	2.8%	3	1.2%	13	2%
Failure to obtain and provide information requested		0	-	0	-	0	-	0	-
Requests withdrawn by the requesting jurisdiction		4	2.5%	6	2.8%	5	1.9%	15	2.4%
Requests still pending at date of review		0	0	6	2.8%	25	9.7%	31	4.9%

Notes: a. Hong Kong generally counts each written request from an EOI partner as one request, even where more than one subject person is involved in the request.

b. Hong Kong and the United States exchange a substantial amount of financial information on request in connection with the information that reporting Hong Kong financial institutions provide the United States under the FATCA IGA. The requests that relate to information provided under the FATCA IGA are subject to special processes and procedures that may differ in some respects to those generally applicable to exchange of information requests. Therefore this table does not reflect the exchanges under FATCA IGA.

c. The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued even if a clarification letter was issued to an EOI partner.

404. As of 21 December 2018, only 6 requests representing 0.9% of the total of requests received during the review period are still being processed. Hong Kong explained that these cases were complicated where extensive information and voluminous documents were required by the requesting jurisdictions. Hong Kong confirmed that in all of these six cases, status updates had been provided to the requesting jurisdictions. In general, the Hong Kong competent authority maintains contacts with the competent authorities of its EOI partners and communicates with the latter through emails on EOI matters. For major EOI partners such as Japan and China,

apart from regular email contacts, the competent authorities of both parties have regular working level meetings to deal with issues concerning EOI.

405. During the current peer review period, Hong Kong sent 74 clarification letters to its treaty partners. Generally, clarifications were sought where the information contained in the EOI requests was incomplete, e.g. the subject of the request was not readily identified based on the information provided, the tax year or tax type concerned was not clearly stated, reason for waiving the issuance of notification to the subject of the request was not provided, documents attached to the EOI request were either incomplete or not in English, bank account number provided in the EOI request was found to be invalid, etc. In some cases, the requesting jurisdictions had taken some time to provide the information requested in the clarification letters. While pending the responses from the requesting jurisdictions, Hong Kong indicated that it would, whenever possible, proceed with the information collection process in parallel. In 10 cases, the requesting jurisdictions could not provide further information to clarify the matters raised by the IRD (e.g. identification information of the subject persons, the foreseeable relevance of the requested information that precedes the effective date of the EOI instrument) and finally withdrew the EOI requests.

406. During the current peer review period, only 13 EOI requests (2% of total requests) were declined, mostly due to the following reasons: (a) The requested information preceded the effective date of the relevant EOI agreement and it did not relate to the carrying out of the provisions of the DTCs or the administration or enforcement of the tax laws of the requesting jurisdiction in respect of any period that started after the relevant EOI agreement had come into operation. In general, the IRD would provide a copy of the Disclosure Rules to the requesting jurisdictions, elaborate the relevant provisions and seek their clarifications before declining their requests. (b) The IRD would seek clarifications from the requesting jurisdictions on certain information that was essential for processing the EOI requests. Occasionally, the IRD did not receive any responses from the relevant requesting jurisdictions even after reminders were issued. As a result, these cases would be treated as declined for statistical purposes.

407. In respect of the 15 withdrawn requests, 10 followed requests for clarification (see above). The five other requests have been withdrawn mainly because of developments in the requesting jurisdictions. There was no adverse peer input in respect of withdrawn requests.

408. Hong Kong authorities informed that in practice, it took on average 30 days to obtain the information required to respond to an EOI request and less than 30 days for information that was electronically available with the IRD. Hong Kong further explained that if the EOI partner indicated that the information was urgently required, Hong Kong could send the information

in batches once it was available. Further, Hong Kong mentioned at the on-site interactions that banks usually provided information much more quickly than other information holders because banks were accustomed to answering queries from the IRD. As such, EOI cases requesting only bank information could be responded more quickly in general. On the other hand, for EOI cases requesting accounting information, particularly when underlying documents were requested and multiple years of information were involved, it would usually take a longer period of time to respond.

409. Hong Kong authorities further explained that the EOI requests completed beyond 6 months were usually very complicated cases and the scope of information requested was relatively wide: more than one type of information and voluminous documents were requested and a number of subject persons were involved. During the current review period, Hong Kong had received some EOI requests where more than 15 subject persons were involved in each request. Under the notification system in Hong Kong, the IRD is required to send the information to be disclosed to the subject person for review. It would be more efficient for the subject person to review the information in one go instead of by batches. In this regard, Hong Kong generally gathers all the information before responding to the requesting jurisdiction. However, if the EOI partner requested to waive the issuance of notification to the subject person (see ToR B.2.1 above), Hong Kong would send the information to the EOI partner by batches once it was available, so as to ensure earlier response time.

410. During the current review period, Hong Kong and the United States exchanged a substantial amount of financial account information on request in connection with the information that reporting Hong Kong financial institutions had provided to the United States under the Foreign Account Tax Compliance Act Intergovernmental Agreement (FATCA IGA). The Hong Kong authorities stated that during the current review period, the IRD had deployed tremendous resources to collect the required information for responding to these requests expeditiously. However, the requests relate to the completion and perfection of information provided automatically under the FATCA IGA, are subject to special processes and procedures agreed between the competent authorities in the IGA, and differ in some respects to those generally applicable to exchange of information on request. Therefore, these requests from the United States were not covered in the EOI statistics of this report including the statistical table under ToR C.5.1.

Internal process for status updates

411. Hong Kong sends an acknowledgement letter to the requesting jurisdiction when it receives an EOI request. While Hong Kong had systematically sent status updates by post when it was unable to answer a request within 90 days during the previous review period, this has not been the case in the

current review period. Hong Kong authorities explained that while they have an email alert system, the case officer is still required to retrieve and review the physical file. The case officer is also required to check with the officers of operational units handling the information gathering process about the progress and whether any difficulties were encountered before they issue an interim reply to the EOI partner. In fact, in some cases, an interim reply was issued shortly after the 90 days. Besides, in a few cases, where full responses would be issued soon after the 90 days deadline, Hong Kong would not issue status updates for such cases to avoid confusing the EOI partners.

412. In the current review period, peer inputs received indicated that they were satisfied with the co-operation provided by Hong Kong. However, the timeliness of responses (36.5% in 90 days) and the consistency in sending status updates have deteriorated since a steep rise in the total number of requests received (636 in total in the current review period as compared to 61 in the previous review period) along with the complexity of requests. During the current review period, there was no change of the procedures for processing EOI requests. The particular drop in the timeliness of responses to EOI requests in the 2nd year of review is mainly attributable to the substantial increase in the number of EOI requests received by Hong Kong and the increase in complexity of the cases, quite a portion of which involved a number of subject persons and/or required extensive and voluminous documents covering ownership, banking and accounting information as well as spanning for several years. Hong Kong has received group requests under FATCA which commenced to be received in the 2nd year of review. Given the time and resources devoted to handle the large number of group requests, the performance in processing EOI requests in the 2nd year of review was affected. Since the last EOIR review, the number of staff of the TT Section has been increased from 12 in 2013, to 26 in 2017, and to 40 in 2018 (increased by three times). Given the importance of facilitating effective exchange of information, the IRD plans to further increase the manpower resources within the TT Section by adding 8 staff with effect from 1 April 2019. Hong Kong is recommended to continue to enhance its resources to ensure timely responses and systematic status updates are provided as appropriate.

C.5.2. Organisational processes and resources

413. As noted in the 2013 Report (para 404), Hong Kong's legal and regulatory framework relevant to exchange of information for tax purposes is presided over by the Financial Services and the Treasury Bureau. Administration of EOI under Hong Kong's treaty network is the responsibility of Hong Kong's competent authority, i.e. the CIR. Under the IRO, the CIR, or his authorised representative, is empowered to obtain ownership, identity, accounting, or bank information for the purpose of responding to a specific

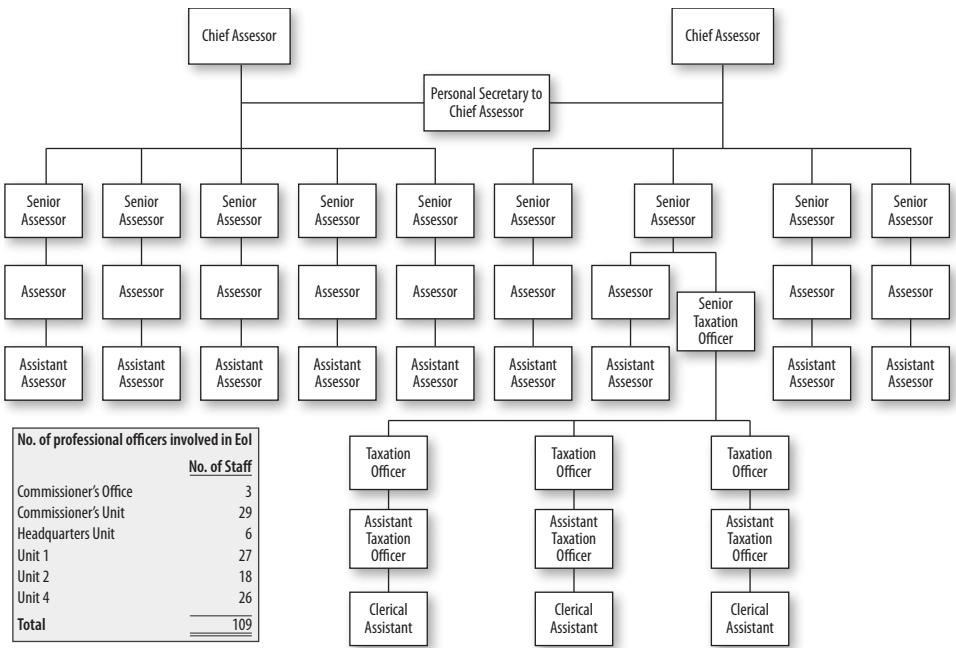
request for EOI in tax matters (IRO, s. 51). The overall hierarchy remains unchanged during the current review period.

Competent authority

414. The EOI agreements of Hong Kong provide that the competent authority of Hong Kong is the CIR or his authorised representative, i.e. DCIR(T) and Deputy Commissioner of Inland Revenue (Operations) (DCIR(O)). DIPN 47 (para 74) specifies that an EOI request may only be approved by the CIR personally, or by an officer of the IRD not below the rank of chief assessor authorised in writing by the CIR personally. It further specifies that the Chief Assessor (Tax Treaty) is an authorised officer. There are currently two such authorised officers in the IRD. Hong Kong authorities reported that there are a total of 109 professional staff involved in handling EOIR matters as at April 2018.

415. The organisation of the TT Section is shown below.

Tax Treaty Section: Organisational Chart



No. of professional officers involved in EoI	
	No. of Staff
Commissioner's Office	3
Commissioner's Unit	29
Headquarters Unit	6
Unit 1	27
Unit 2	18
Unit 4	26
Total	109

Note: The 2nd Chief Assessor is a new post created in the TT Section in April 2018. Both Chief Assessors report to DCIR(T), who reports to the CIR.

Resources and training

416. Hong Kong advised that all officers engaged in processing EOI requests in the IRD are provided with appropriate training. Professional officers are nominated to attend overseas training courses on matters relating to tax treaties and international tax issues (including topics on EOI, transfer pricing, the Multilateral Convention, Base Erosion and Profit Shifting etc.) organised by various organisations like OECD and Study Group on Asian Tax Administration and Research on a regular basis. Internal seminars on similar topics are also conducted for all professional officers of the IRD. The TT Section adopts a coaching system whereby on-the-job training is provided by senior officers to new comers. All staff of the TT Section are expected to read all the staff handbooks, tax treaty guidelines, DIPN 47, OECD Model EOI Article and its commentary, TIEA model and its Commentary, the Multilateral Convention, the Disclosure Rules and the relevant IRO provisions, etc. Experience sharing sessions and case studies on how to handle actual EOI cases are also held regularly to provide adequate training to the staff dealing with EOIR in the TT Section.

Inbound requests processing

417. Based on the OECD EOI Manual, the IRD has issued DIPN 47 (Revised) on Exchange of Information in January 2014 and various internal guidelines on processing incoming EOI requests, including (i) Departmental Circular No. 3/2018 on "Exchange of Information on Request under Comprehensive Double Taxation Agreements/Arrangement, Tax Information Exchange Agreements and the Convention on Mutual Administrative Assistance in Tax Matters"; (ii) TT Section Procedures for "Handling Incoming Exchange of Information Requests"; (iii) Chapter 27 of Unit 1 (Profits Tax) Staff Handbook; (iv) Chapter 25 of Unit 2 (Individuals Tax) Staff Handbook; (v) Chapter 29 of Unit 4 (Field Audit and Investigation) Staff Handbook; and (vi) Chapter 21 of Headquarters Unit (Property Tax) Staff Handbook. Hong Kong has more practical experience in handling EOI requests and is now in the process of further updating the guidelines in DIPN 47.

418. An EOI Register is maintained to record and keep track of all incoming EOI requests. Upon receipt of an EOI request, particulars of the request will be input into the EOI Register, which will be updated from time to time with the issue dates of the relevant letters (e.g. acknowledgement/clarification sent to the requesting jurisdiction, notification issued to the subject person and formal notice issued to the information holder) as well as status of the case.

419. Officers of the TT Section can access the online search functions of the EOI Register, from which they can obtain details of the case, such as case status, expiry date for 90-day response time and file movement of Unit Folders. In other words, the officers can obtain timely information about the status of the case prior to taking appropriate follow up actions. Besides, monthly reports are generated from the EOI Register and serve as management tools for monitoring the progress of an EOI request and also an indicator showing whether an EOI request has been processed effectively. Internal deadlines for processing an EOI request have also been specified in the relevant Staff Handbooks mentioned above.

420. When an EOI request is received by the Hong Kong competent authority, the request will be passed to the TT Section for handling. Case officer of the TT Section (i.e. Assessor (Tax Treaty) or Assistant Assessor (Tax Treaty)) will process the request by: (i) cross-checking the identity of the sender against the information available either on file or on the Global Forum's competent authority secure website; (ii) examining the request to ensure that the particulars prescribed in the Schedule to the Disclosure Rules have been provided; and (iii) reviewing the provisions of the relevant EOI agreement to see whether the provisions relating to the disclosure request are fully complied with. Hong Kong authorities reported that they would determine whether a request is valid, invalid or incomplete within seven working days from the date of receipt of the request, whenever practicable.

421. When an unclear or incomplete request is identified, DCIR(T) in the capacity of the Hong Kong competent authority will issue a clarification letter to the requesting jurisdiction. The IRD generally would not decline an unclear or incomplete EOI request without asking for clarification or additional information from the requesting jurisdiction. Hong Kong indicated that it would, whenever possible, proceed with the information collection process in parallel. If the essential information to process an EOI request is not provided in the request, Hong Kong will deal with the request once the required information/clarification is subsequently furnished by the requesting jurisdiction.

422. In most EOI requests, the information requested by the requesting jurisdictions covers more than one type of information. These requests will normally be passed to Unit 1 (Profits Tax) or Unit 2 (Individuals Tax) for collection of information. Where information needed to respond to an EOI request is already in the hands of the IRD, the TT Section would normally set a target date (i.e. 30 days after receipt of a valid request) for the Unit case officer to provide a draft reply to the TT Section for responding to the requesting jurisdiction. Where information needed to respond to an EOI request is already in the hands of another government department in Hong Kong, the Unit case officer will exercise his information gathering power under s. 52(1)

of the IRO. The TT Section would normally set a target date (i.e. 30 days after receipt of a valid request) for the Unit case officer to provide a draft reply to the TT Section for responding to the requesting jurisdiction.

423. The procedures used to access information held by other information holders are generally the same as discussed above. The Unit case officer will exercise his information gathering power and send a notice to the information holder requiring the information to be provided within a prescribed time limit, normally 14 to 21 days depending on the degree of accessibility of the information and the volume of documents involved. If the Unit case officer considers that the information provided by the information holder is insufficient to respond to the EOI request, he would take follow up actions to pursue further information. The TT Section would normally set a target date (i.e. 55 days after receipt of a valid request) for the Unit case officer to provide a draft reply to the TT Section for responding to the requesting jurisdiction.

424. After collecting the requested information, the Unit case officer will draft the main body of a reply to the requesting jurisdiction. The draft will be cleared by the Unit Liaison Officer/Chief Assessor and Unit Assistant Commissioner before being passed to the TT Section. On the basis of the input by the Unit case officer, Assessor (Tax Treaty)/Assistant Assessor (Tax Treaty) will draft the final reply for approval by DCIR(T) via Senior Assessor (Tax Treaty) and Chief Assessor (Tax Treaty). On occasions where the requests are directly handled by the TT Section (e.g. the requested information is related to bank information only), Assessor (Tax Treaty)/Assistant Assessor (Tax Treaty) will gather the relevant information and draft the final reply for approval by DCIR(T) via Senior Assessor (Tax Treaty) and Chief Assessor (Tax Treaty). In order to ensure that the information disclosed addresses the question asked by the EOI partner, the final reply to the requesting jurisdiction is reviewed by a number of senior officers including DCIR(T) before formal issue. Hong Kong sends its responses by regular post as well as by encrypted e-mail when requested by the EOI partner.

425. In general, where it is anticipated that a full response could not be provided within 90 days from the date of receipt of an EOI request for whatever reasons, the IRD would issue an interim reply to the requesting jurisdiction. The interim reply provides an update of the status of the EOI request, such as the information gathering process is still ongoing, the requested information has been gathered pending completion of the notification procedures in Hong Kong before disclosure of the information to the requesting jurisdiction, etc. In case the IRD has encountered any problem or requires further information from the requesting jurisdiction in processing the EOI request, it will also be mentioned in the interim reply. There are comprehensive guidelines and training for staff to ensure that timely response and update of status would be provided to the requesting jurisdictions.

426. There are no different processes involved where an EOI request relates to criminal investigation. The IRD is also responsible for criminal investigation of tax offences in Hong Kong and does not anticipate any difficulties in providing effective EOI assistance where an EOI request relates to a criminal investigation.

427. Hong Kong reported that generally, there are no practical difficulties for the IRD in obtaining information from information holder. However, the IRD did occasionally encounter situation where the required information was not provided in full and/or within the time limit. In order to urge for early submission of information, the Unit case officer would then follow up proactively by personal contact through telephone and also requesting the information holder to visit the IRD to discuss any outstanding issues and any difficulty encountered in retrieving the information, if necessary. If the EOI request also involved issues with domestic tax interest, the issue of additional tax assessment where appropriate on the income in question could be regarded as a tool to urge for early response. The IRD has experience in applying the abovementioned tools and found them successful in most of the cases.

428. The Hong Kong competent authority would not specifically request EOI partners to provide feedback on the usefulness of the information supplied. However, Hong Kong's EOI partners from time to time informed the result of their investigations (e.g. amount of tax recovered) after receipt of information provided by Hong Kong in response to EOI requests. The IRD however, does not maintain statistics concerning the feedback provided by the requesting jurisdictions.

Outbound requests processing

429. The 2016 ToR introduced inter alia a new requirement relating to the quality and completeness of EOI requests made by the assessed jurisdiction. The first criterion for an EOI request to be of "good quality" is that it satisfies the foreseeable relevance standard as contained in Article 5(5) of the OECD Model TIEA.

430. The IRD has issued the following internal guidelines on processing outgoing EOI requests, including (i) Departmental Circular No. 4/2018 on "Preparing and Sending Exchange of Information Requests under Comprehensive Double Taxation Agreements/Arrangement, Tax Information Exchange Agreements and the Convention on Mutual Administrative Assistance in Tax Matters"; (ii) TT Section Procedures for "Lodging Outgoing Exchange of Information Requests"; (iii) Chapter 27 of Unit 1 (Profits Tax) Staff Handbook; (iv) Chapter 25 of Unit 2 (Individuals Tax) Staff Handbook; (v) Chapter 29 of Unit 4 (Field Audit and Investigation) Staff Handbook; and (vi) Chapter 21 of Headquarters Unit (Property Tax) Staff Handbook.

431. When an officer of operational units (Unit 1 (Profits Tax), Unit 2 (Individuals Tax), Unit 4 (Field Audit and Investigation) or Headquarters Unit (Property Tax) of the IRD considers that certain information relates to the carrying out of the provisions of the relevant DTCs or the administration or enforcement of the IRO and has used all available local means to obtain the information but in vain, he/she may lodge an EOI request to Hong Kong's treaty partners. Every Unit requesting officer has to follow the guidelines prescribed in the Departmental Circular No. 4/2018 when lodging an outgoing EOI request. In particular, he/she is required to go through a checklist provided in the Departmental Circular No. 4/2018 and prepare a "Particulars of Request for Information" (template is available in the annex to the Circular) when drafting an outgoing EOI request.

432. The Unit requesting officer should draft the EOI request setting out all the relevant facts and the information sought. The draft request will be reviewed, vetted and approved by Senior Assessor, Unit Liaison Officer (in the rank of Chief Assessor) and Assistant Commissioner of the relevant Unit to ensure that the outgoing requests are complete and meet the foreseeable relevance requirement before passing to the TT Section by hand under confidential cover.

433. While all outgoing EOI requests are initiated by Unit requesting officers, the TT Section is responsible for co-ordinating the lodging of outgoing EOI requests with Hong Kong's treaty partners. Officers in the TT Section will check the details of the draft request to ensure that it meets the specific requirements of the relevant EOI agreement, if any, the information requested is permitted under the relevant EOI agreement and the requests contain all essential information to be provided to the requested jurisdiction. In particular, where it is found that further information or clarification on the draft request is required, the case officer in the TT Section will liaise with the Unit requesting officer to amend the draft request by way of a confidential memo through the Unit Assistant Commissioner and the Unit Liaison Officer by hand under confidential cover. Thereafter, he/she will submit the request to DCIR(T) through Senior Assessor (Tax Treaty) and Chief Assessor (Tax Treaty) for approval. All approved outgoing EOI requests have to be signed by the Hong Kong competent authority, i.e. CIR or his authorised representative, namely DCIR(T) or DCIR(O). In general, the outgoing requests will be sent by post to the competent authority of the requested jurisdiction.

434. During the current review period, Hong Kong sent four EOI requests (two cases each in the 1st and 2nd year of the review period) and did not receive any requests for clarification from the requested jurisdictions.

C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI

435. As noted in the 2013 Report, there are no laws or regulatory practices in Hong Kong that impose restrictive conditions on exchange of information. The legislation has not changed since last review.

Annex 1: List of in-text recommendations

Issues may have arisen that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. However, in order to ensure that the Global Forum does not lose sight of these "in text" recommendations, they should be listed in an annex to the EOIR report for ease of reference.

- **Element A.1:** Hong Kong is recommended to ensure that legal as well as beneficial ownership information is available in respect of nominees that are holding less than 25% stake and are not acting by way of business.
- **Element A.1**: Hong Kong is recommended to design and implement adequate supervisory programmes to ensure that all Hong Kong resident non-professional trustees that do not have a bank account nor engage an AML obliged service provider maintain information that identifies the beneficial owners of the trusts in all cases.
- **Element A.1**: However, given the possibility for provision of corporate services (directorship, assisting in setting-up and managing a company, etc.) not by way of business but on a voluntary or uncompensated basis, Hong Kong is recommended to monitor that provision of company services in such cases does not affect the availability of ownership information and its effective exchange in practice.
- **Element A.1:** Hong Kong may monitor the reliance on self-certification of ownership structure and ownership details of intermediate layers, such that FIs or DNFBPs are always in possession of accurate beneficial ownership information.
- **Element A.2:** A legal gap exists in respect of companies that are dissolved or which get an exemption from the Commissioner of Inland Revenue for not preserving accounting records under the Inland

Revenue Ordinance or which are allowed under the Companies Ordinance not to give a true and fair view of the financial position of the company in annual financial statements. Hong Kong is recommended to address this legal gap to ensure the availability and retention of reliable accounting records in respect of all relevant legal entities.

- **Element A.2**: Hong Kong is recommended to design and implement adequate supervision of trusts with nexus to Hong Kong to ensure the availability of reliable accounting records of trusts that are managed by non-professional trustees.
- **Element A.3**: Hong Kong recently updated the AML guidance (4.3.10) (with effect from 1 November 2018) which ensures that (a) corporate trustees are also subject to identification and verification requirements similar to a customer that is a legal person, where applicable; (b) in the case of offshore investment vehicles owned by high net worth individuals (i.e. the ultimate beneficial owners), self-declarations in writing from the ultimate beneficial owners or the contractual parties cannot be accepted, when the investment vehicles are incorporated in a jurisdiction where company searches or certificates of incumbency (or equivalent) are not available. Hong Kong is recommended to monitor the effective implementation of these recent changes to guidance.
- **Element A.3**: Hong Kong is recommended to ensure that accurate beneficial ownership information is kept up to date for all account holders in all cases.
- **Element B.1**: It is recommended that the competent authority exercises its access powers to ensure that most updated and accurate beneficial ownership information is provided to the requesting partners in any cases where the beneficial ownership information collected is suspected of not being up to date.
- **Element B.2**: Given the small portion of EOI cases involving amendment requests, it is considered that the notification and review mechanisms in Hong Kong did not unduly prevent or delay effective exchange of information in the review period but should be further monitored.
- **Element C.2**: Hong Kong should continue to conclude EOI agreements with any new relevant partner who would so require.

Annex 2: List of all exchange of information mechanisms

Bilateral international agreements for the exchange of information

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
1.	Austria	Double Tax Convention (DTC)	25-May-10	01-Jan-11
		DTC 2nd Protocol	25-Jun-12	03-Jul-13
2.	Belarus	DTC	16-Jan-17	30-Nov-17
3.	Belgium	DTC	10-Dec-03	07-Oct-04
4.	Brunei	DTC	20-Mar-10	19-Dec-10
5.	Canada	DTC	11-Nov-12	29-10-2013
6.	People's Republic of China	DTC	21-Aug-06	08-Dec-06
		DTC – 2nd Protocol	30-Jan-08	11-Jun-08
		DTC – 3rd Protocol	27-May-10	20-Dec-10
		DTC – 4th Protocol	01-Apr-15	29-Dec-15
7.	Czech Republic	DTC	06-Jun-11	24-Jan-12
8.	Denmark	TIEA	22-Aug-14	04-Dec-15
9.	Faroe Islands	TIEA	22-Aug-14	04-Dec-15
10.	Finland	DTC	24 May 18	30-Dec-18
11.	France	DTC	21-Oct-10	01-Dec-11
12.	Guernsey	DTC	22-Apr-13	05-Dec-13
13.	Greenland	TIEA	22-Aug-14	17-Feb-16
14.	Hungary	DTC	12-May-10	23-Feb-11
15.	Iceland	TIEA	22-Aug-14	04-Dec-15
16.	India	DTC	19-Mar-18	30-Nov-18
17.	Indonesia	DTC	23-Mar-10	28-Mar-12
18.	Ireland	DTC	22-Jun-10	10-Feb-11

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
19.	Italy	DTC	14-Jan-13	10-Aug-15
20.	Japan	DTC	09-Nov-10	14-Aug-11
		Exchange of Notes	10-Dec-14	06-Jul-15
21.	Jersey	DTC	22-Feb-12	03-Jul-13
22.	Korea	DTC	08-Jul-14	27-Sep-16
23.	Kuwait	DTC	13-May-10	24-Jul-13
24.	Latvia	DTC	13-Apr-16	24-Nov-17
25.	Liechtenstein	DTC	12-Aug-10	08-Jul-11
26.	Luxembourg	DTC	02-Nov-07	20-Jan-09
		DTC Protocol	11-Nov-10	17-Aug-11
27.	Malaysia	DTC	25-Apr-12	28-Dec-12
28.	Malta	DTC	08-Nov-11	18-Jul-12
29.	Mexico	DTC	18-Jun-12	07-Mar-13
30.	Netherlands	DTC	22-Mar-10	24-Oct-11
31.	New Zealand	DTC	01-Dec-10	09-Nov-11
		DTC – 2nd Protocol	15 Jun 2017	9 Aug 2018
32.	Norway	TIEA	22-Aug-14	04-Dec-15
33.	Pakistan	DTC	17-Feb-17	24-Nov-17
34.	Portugal	DTC	22-Mar-11	03-Jun-12
35.	Qatar	DTC	13-May-13	05-Dec-13
36.	Romania	DTC	18-Nov-15	21-Nov-16
37.	Russia	DTC	18-Jan-16	29-Jul-16
38.	Saudi Arabia	DTC	24-Aug-17	01-Sep-18
39.	Spain	DTC	01-Apr-11	13-Apr-12
40.	South Africa	DTC	16-Oct-14	20-Oct-15
41.	Sweden	TIEA	22-Aug-14	16-Jan-16
42.	Switzerland	Updated DTC	04-Oct-11	15-Oct-12
43.	Thailand	DTC	07-Sep-05	07-Dec-05
44.	United Arab Emirates	DTC	11-Dec-14	10-Dec-15
45.	United Kingdom	DTC	21-Jun-10	20-Dec-10
46.	United States	TIEA	25-Mar-14	20-Jun-14
47.	Viet Nam	DTC	16-Dec-08	12-Aug-09
		2nd Protocol	13-Jan-14	08-Jan-15

Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the amended Multilateral Convention)[14] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The amended Multilateral Convention was opened for signature on 1 June 2011.

The territorial application of the Multilateral Convention was extended to Hong Kong by China on 29 May 2018. The Multilateral Convention entered into force in Hong Kong on 1 September 2018. Hong Kong can exchange information with all other Parties to the Multilateral Convention, except China and the other jurisdiction benefiting from a territorial extension from China, i.e. Macau (China).

As of 21 December 2018, the Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,[15] Czech Republic, Denmark, Estonia, Faroe Islands (extension by

14. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention (the Multilateral Convention) which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

15. Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Kuwait Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Peru, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Antigua and Barbuda (entry into force on 1 February 2019), Armenia, Brunei Darussalam, Burkina Faso, Dominican Republic, Ecuador, El Salvador, Former Yugoslav Republic of Macedonia, Gabon, Jamaica (entry into force on 1 March 2019), Kenya, Liberia, Morocco, Paraguay, Philippines, Qatar (entry into force on 1 January 2019) and United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference, conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 21 December 2018, Hong Kong's EOIR practice in respect of EOI requests made and received during the three year period from 1 October 2014 to 30 September 2017, Hong Kong's responses to the EOIR questionnaire and the follow-up questions, information supplied by partner jurisdictions, as well as information provided by Hong Kong's authorities during the on-site visit that took place from 25-27 June 2018 in Hong Kong.

List of laws, regulations and other materials received

Basic law

www.basiclaw.gov.hk/en/index/

Hong Kong law

https://www.elegislation.gov.hk/

Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615)

Banking Ordinance (Cap. 155)

Business Registration Ordinance (Cap. 310)

Companies Ordinance (Cap. 622)

Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

Conveyancing and Property Ordinance (Cap. 219)

Crimes Ordinance (Cap. 200)

Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance (Cap.629)

Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)

Estate Agents Ordinance (Cap. 511)

Financial Reporting Council Ordinance (Cap. 588)

Inland Revenue Ordinance (Cap. 112)

Inland Revenue (Disclosure of Information) Rules (Cap. 112BI)

Insurance Ordinance (Cap. 41)

Legal Practitioners Ordinance (Cap. 159)

Limited Partnerships Ordinance (Cap. 37)

Mandatory Provident Fund Schemes Ordinance (Cap. 485)

Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A)

Money Lenders Ordinance (Cap. 163)

Occupational Retirement Schemes Ordinance (Cap. 426)

Official Secrets Ordinance (Cap. 521)

Organised and Serious Crimes Ordinance (Cap. 455)

Partnership Ordinance (Cap. 38)

Personal Data (Privacy) Ordinance (Cap. 486)

Professional Accountants Ordinance (Cap. 50)

Registered Trustees Incorporation Ordinance (Cap. 306)

Securities and Futures Ordinance (Cap. 571)

Securities and Futures (Accounts and Audit) Rules (Cap. 571P)

Securities and Futures (Keeping of Records) Rules (Cap. 571O)

Trustee Ordinance (Cap. 29)

United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)

United Nations Sanctions Ordinance (Cap. 537)

Hong Kong Monetary Authority's guidelines

www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/guidelines/

Securities and Futures Commission's guidelines

www.sfc.hk/web/EN/rules-and-standards/codes-and-guidelines/guidelines/

The Hong Kong Law Society's practice direction

www.hklawsoc.org.hk/pub_e/professionalguide/volume2/default.asp?cap=24.17

The Hong Kong Institute of Certified Public Accountants

a. Advisory legal bulletin

www.hkicpa.org.hk/en/standards-and-regulations/aml/

b. Codes of ethics

http://app1.hkicpa.org.hk/ebook/HKSA_Members_Handbook_Master/volumeI/COErevised.pdf

Authorities interviewed during on-site visit

- Commissioner of Inland Revenue (competent authority), Deputy Commissioners and representatives, Hong Kong's Inland Revenue Department
- Representatives, Financial Services and the Treasury Bureau
- Representatives, Business Registration Office
- Representatives, Companies Registry
- Representative, Department of Justice
- Representatives, Securities and Futures Commission
- Representatives, The Hong Kong Monetary Authority
- Representatives, The Law Society of Hong Kong
- Representatives, The Hong Kong Institute of Certified Public Accountants

- Representatives, The Hong Kong Trustees' Association
- Representatives, The Hong Kong Bankers Association
- Representative, The Hong Kong Institute of Chartered Secretaries

Current and previous reviews

This report is the third review of Hong Kong conducted by the Global Forum. Hong Kong previously underwent a review of its legal and regulatory framework (Phase 1) originally in 2011 and a review of the implementation of that framework in practice (Phase 2) in 2013.

The Phase 1 and Phase 2 reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 and the Methodology used in the first round of reviews.

Summary of reviews

Review	Assessment team	Period under Review	Legal Framework as of	Date of adoption by Global Forum
Round 1 Phase 1	Ms Aislinn Walwyn of the Australian Taxation Office; Ms Tímea Borók of the Hungarian Division of International Taxation; and Mr Stewart Brant from the Global Forum Secretariat.	not applicable	August 2011	October 2011
Round 1 Phase 2	Ms Aislinn Walwyn of the Australian Taxation Office; Ms Tímea Borók of the Hungarian Division of International Taxation; and Ms Renata Teixeira from the Global Forum Secretariat.	1 July 2009 to 30 June 2012	August 2013	November 2013
Round 2	Ms Merete Hansen Helle (Denmark); Mr Bertelsen Bent (Denmark); Mr Cleve Lisecki (USA); Mr Bhaskar Eranki from the Global Forum Secretariat	1 October 2014 to 30 September 2017	21 December 2018	15 March 2019

Annex 4: Hong Kong's response to the review report[16]

Hong Kong wishes to express its sincere gratitude to the assessment team for the thorough and hard work undertaken throughout the Peer Review exercise. Hong Kong is also much grateful for the insightful comments and valuable inputs provided by the members of the Peer Review Group.

Positive Outcome of the Peer Review

Hong Kong is pleased that the second round of the Peer Review has duly recognised its continued commitment to meeting the international standards on tax transparency, and welcomes the overall rating of Largely Compliant. The review concludes that the legal and regulatory framework to ensure the availability of identity and ownership information, accounting records and banking information is largely in place in Hong Kong. Enforcement provisions are also in place to ensure compliance with the relevant obligations to maintain information. The review reaffirms that Hong Kong's competent authority (i.e. the Inland Revenue Department) has broad powers to access information for responding to requests for information from treaty partners, and recognises the measures taken by Hong Kong to enhance its resources to facilitate effective exchange of information (EOI). Peers were generally satisfied with the timeliness and content of the responses received, and considered Hong Kong an efficient and co-operative partner.

Timely Follow-up on Necessary Enhancements

As an international financial centre, Hong Kong has all along been supportive of the international efforts to enhance tax transparency and combat tax evasion. Since the first round of the Peer Review, Hong Kong has made significant progress in enhancing its EOI regime and pursuing the recommendations made in the review reports.

16. This Annex presents the Jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

Specifically, Hong Kong has introduced a new requirement under the Companies Ordinance that every company incorporated in Hong Kong has to obtain and maintain up-to-date beneficial ownership information by keeping a significant controllers register. Hong Kong has also amended the Anti-Money Laundering and Counter-Terrorist Financing Ordinance to introduce a licensing regime for trust or company service providers (TCSPs) and extend the statutory customer due diligence and record-keeping requirements to cover designated non-financial businesses and professions, namely lawyers, accountants, estate agents and TCSPs. All these have come into operation since March 2018, and served to further enhance the transparency of beneficial ownership in Hong Kong.

As regards tax information exchange network, the application of the Convention on Mutual Administrative Assistance in Tax Matters (the Convention) was extended by the People's Republic of China to the Hong Kong Special Administrative Region in May 2018. The Convention entered into force in Hong Kong in September 2018, enabling it to exchange tax information with all participating jurisdictions. Further, since the completion of the first round of the Peer Review in 2013, Hong Kong has signed 18 new Double Taxation Agreements and Tax Information Exchange Agreements, all of which are now in force. Hong Kong's EOI network has greatly expanded, with a substantial increase of EOI partners from 29 to 128.

Continued Support for International Tax Co-operation

Hong Kong attaches great importance to enhancing transparency and combating tax evasion. The commitment is not limited to EOI on request. To meet the commitment to conduct the first automatic exchange of financial account information with all interested and appropriate partners in September 2018, Hong Kong has, over the past few years, put in place the necessary legislative framework and IT infrastructure. The first exchange took place in September 2018 as planned. In addition, Hong Kong has signed the Multilateral Competent Authority Agreement to implement the Country-by-Country reporting.

To cope with the increasing number of EOI requests and to provide quality response to EOI partners in a timely manner, the staff establishment of the Tax Treaty Section of the Inland Revenue Department has substantially expanded. The number of full-time staff in the Tax Treaty Section increased from 12 in 2013 to 26 in 2017 and to 40 in 2018, and will further increase to 48 in 2019 (representing an increase by three times since 2013). This reflects Hong Kong's staunch commitment to facilitating effective EOI. In the years ahead, Hong Kong will continue its efforts to comply with the evolving international standard on EOI.

Hong Kong attaches great importance to the Peer Review, and will examine the findings of the review report and do its best to address the recommendations made.

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ISBN 978-92-64-91154-3 – 2019

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request HONG KONG (CHINA) 2019 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 150 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

This report contains the 2019 Peer Review Report on the Exchange of Information on Request of Hong Kong (China).

Consult this publication on line at ***https://doi.org/10.1787/34f9b9a8-en***.

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