

PSC Registers – the end of confidentiality of trusts?

Panel Discussion

Panelists

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Persons of Significant Control Register – Why?

FATF Recommendation 24

Transparency and beneficial ownership of legal persons *

Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

HK Companies (Amendment) Bill 2017

Overview

Significant Controllers' Register (SCR)

2018 FATF Mutual
Evaluation scorecard

There would be new Part 12
Division 2A to Companies
Ordinance (Cap 622)

For private HK Companies it
must investigate whether
there are persons with
significant control (PSCs) and
have verified information
contained in its SCR

Persons with Significant Control (PSC)

There is a quantitative 25% test over shareholding, capital and/or profits, and/or voting rights

There is a qualitative test of significant influence or control over companies, trust and firms (not amounting to legal persons)

The Companies Registry (CR) has issued draft CR Guidelines. Section 10.6 focuses on trusts (and firms like partnerships)

CR Guideline - Trusts

If a trust is a PSC, then the SCR should contain details of the trustees

In addition, the persons with significant influence or control over the trust activities should be detailed under the PSC

If this is an individual then the PSC is an individual. If it is a legal entity then it needs to be traced to a registrable person with majority ownership

This is irrespective of whether the additional PSC exercises the significant influence or control or not

Indicia of Significant Influence or Control

Appoint or removal of trustees

Assets and fund distributions

Direct investment decisions

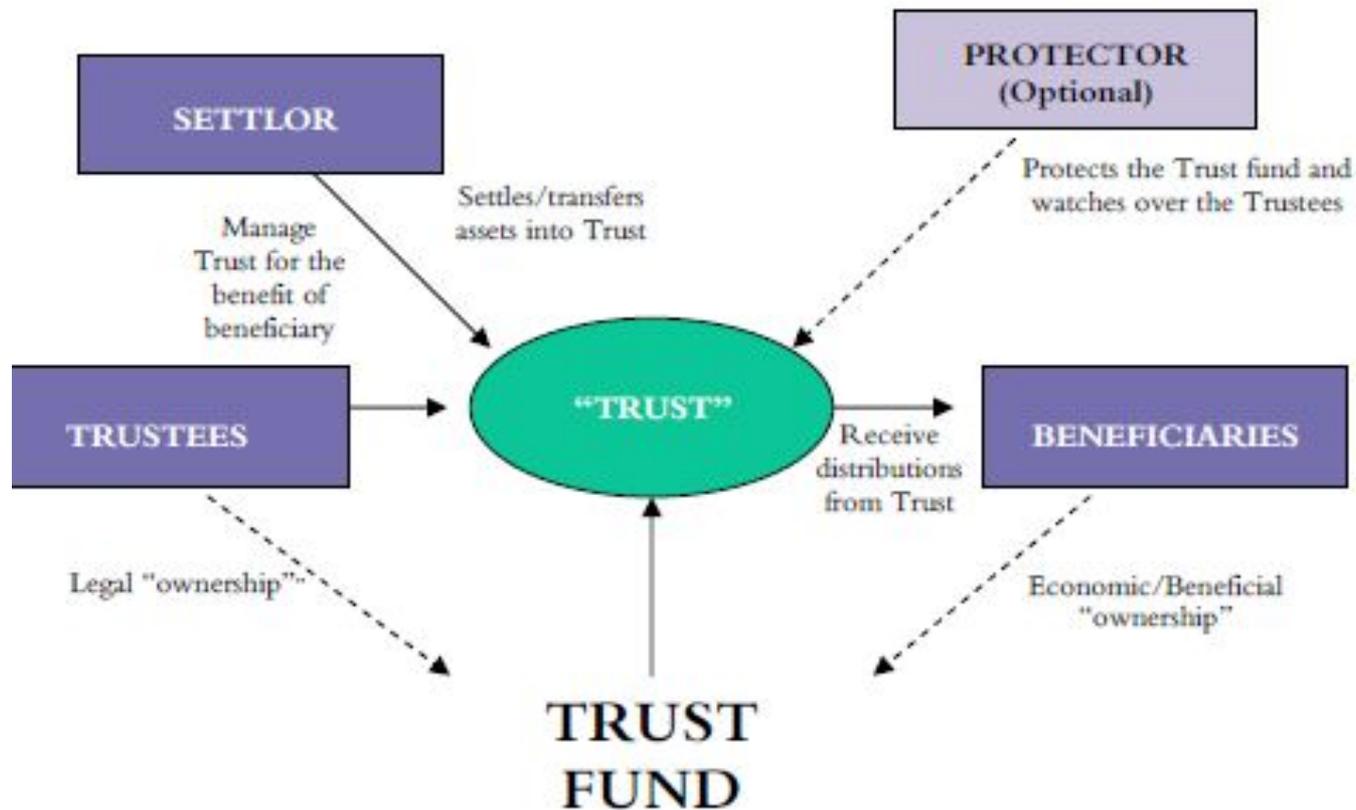
Amend or revoke trust deed

Active settlors

Lawyer, accountant, tax advisors, lenders generally excluded unless to exercise significant influence or control

A Typical Trust Structure

Who could be PSCs?



The International Perspective

What does it mean for trustees?

As indirect shareholder of companies incorporated in Hong Kong, Singapore, UK, Jersey, Cayman, BVI and around the world held under trust structures, how should we be responding?

What about trustee confidentiality?

- Transparency vs Privacy

PSC Registers - as good as it sounds?

- Is it good?
- Is it enough?
- Is it necessary?
- Is it useful information?

Where to from here?

Where to from here?

FATF Recommendation 25

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

Countries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries, that can be obtained or assessed in a timely fashion by competent authorities. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

Thank you

Questions?