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### Genuine startups and entrepreneurs being turned away by HK banks



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Hong Kong has strongly built a reputation as a world class business center: not only is it one of the largest financial center in the world, but it is also the jurisdiction where most foreign investments going to mainland China originate from, as well where most mainland Chinese investments going to the rest of the world are structured.

In this context where Hong Kong has built a strong reputation as a business friendly territory, a surprising problem potentially causing havoc to its economy has arisen: banks are refusing to open bank accounts to both local startup companies as well as to genuine foreign investors, thus preventing genuine international business to be carried out in and via the territory which is the gateway to mainland China.

Such refusals have been so important in numbers that the Hong Kong Monetary Authority (“HKMA”) itself has decided to step in to prevent Hong Kong’s economy and its strong reputation being hurt, and to strike a balance between, on the one hand, the fight against money laundering and, on the other hand, the right for genuine businesses to open bank accounts in town to simply carry out their business plans.

With the legitimate objective to ensure Hong Kong remains a successful international financial center, the Anti Money Laundering and Counter Terrorist Financing Ordinance (“AML Ordinance”) was enacted in 2012. Under the AML Ordinance, institutions have to improve their due diligence process as they have an obligation amongst other things to identify their customers, to verify their identity before establishing a business relationship or before carrying out for a customer any occasional transaction superior to a specific amount, and to repeat this process whenever they suspect that a customer or a customer’s account is involved in money laundering or terrorist financing. Authorised financial institutions have a legal duty to continuously monitor their business relationship with all customers.

As a direct consequence of the heavy workload generated by the obligation to comply with the AML Ordinance, banks in Hong Kong recruited massively thousands of staff to reinforce considerably compliance departments. The implementation of new practices by banks in Hong Kong to ensure compliance with the AML Ordinance has been very strict, and it can be easily said that Hong Kong’s fight against money laundering has been very successful.

However the business community, including twenty nine chambers of commerce established in the territory, have raised earlier this year a justified concern: banks in Hong Kong have been applying compliance guidelines more strict than what is required under the AML Ordinance, leading to genuine businesses being unable to open bank accounts in the city.

The Hong Kong Monetary Authority (“HKMA”) reacted strongly to such concern by issuing on 8 September 2016 a Circular (the



“Circular”) setting forth guiding principles to be followed by banks which should “adopt a risk-based approach (RBA) and refrain from adopting practices that would result in financial exclusion, particularly in respect of the need for bona fide businesses to have access to basic banking services”.

Mr. Norman Chan, the chief executive of the Hong Kong Monetary Authority has made official the necessity for banks to stop implementing a “one-size-fits-all” approach, considering this approach inappropriate and pointing out that a zero failure regime would not exist. The behavior of banks according to the AML Ordinance has to be proportionate and must not result on an undue burden on the customer.

Three following specific guiding principles were set forth in the Circular:

- **Transparency:** banks should clearly set out information and documents requirements needed for customer due diligence. Basic information should be downloadable by customer.
- **Reasonableness:** all due diligence process and documentation requirements should be relevant and pragmatic with respect to customer’s background and circumstances. Requirements should not be similar when facing a multinational company, a startup or a foreign investor.
- **Efficiency:** HKMA encourages all retail banks to have appropriate arrangements in place to facilitate customer’s initiation of the account opening process.

Unfortunately, banks have not followed yet in practice HKMA’s guidelines and continue to damage Hong Kong’s reputation by denying genuine entrepreneurs access to bank accounts. It is difficult to assess the impact this unresolved problem may have in the local economy, but it is now worrying local qualified staff in search of business opportunities.