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## Requirement of Transfer Pricing Documentation for Hong Kong Companies Proposed in the Consultation Paper by The Hong Kong SAR Government

The Hong Kong SAR (“HKSAR”) Government issued a Consultation Paper (the “Consultation Paper”) on 26 October 2016 for implementing Organisation for Economic Co-operation and Development (“OECD”)’s action plan to counter Base Erosion and Profit Shifting (“BEPS”) of enterprises. Among the proposed measures, the measures on transfer pricing documentation would have greater impacts on Hong Kong companies. The HKSAR Government plans to introduce the relevant amendment bill(s) into the Legislative Council by mid-2017.

As proposed by the Consultation Paper, all enterprises which carry on trades or businesses in Hong Kong and engage in transactions with associated enterprises are required to prepare the master and local files, except for enterprises which can meet the safe-harbor rule below:

Safe-harbor rule – enterprises which satisfy any two of the following three conditions are not required to prepare the master and local files: 1) total

annual revenue not more than HK\$100 million; 2) total assets not more than HK\$100 million; and 3) no more than 100 employees.

In addition, if multinational enterprises (“MNEs”) with annual consolidated group revenue equal to or exceeding EUR750 million (or HK\$6.8 billion), they are required to file Country-by-Country (“CbC”) report.

The below is OECD’s three-tier approach for preparing transfer pricing documentation and CbC report:

First tier – Master file: this mainly provides a high-level overview of the group of enterprises, transfer pricing policies and the group’s financial and tax positions;

Second tier – Local file: this mainly provides detailed transaction, transfer pricing and financial information of an enterprise, including the comparability analysis, functional and risk analysis, transfer pricing analysis and conclusion;

## 香港政府發出諮詢文件對香港公司提出轉讓定價文件要求

香港政府於2016年10月26日就如何落實經濟合作與發展組織（「經合組織」或「OECD」）有關打擊企業進行「侵蝕稅基及轉移利潤」（「BEPS」）的行動，發佈了一份諮詢文件（「諮詢文件」），提出了一系列措施，其中，對香港公司影響較大為轉讓定價文件的措施。香港政府準備將在2017年中將相關的修訂條例草案提交立法會，通過後將即執行。

根據諮詢文件，所有在香港經營並與關聯公司有交易的企業，除了下述符合安全港的企業外，均須擬備主體檔案及本地檔案。諮詢文件中建議的安全港規定如下：

符合以下三項條件其中兩項的企業，不須擬備主體檔案及本地檔案：

- 1) 年度總收入不多於1億港元；
- 2) 總資產不多於1億港元；以及
- 3) 不多於100名員工。

此外，如果跨國集團每年總收入達7.5億歐元（或68億港元）或以上，就必須提交國別報告。

以下是經合組織對有關轉讓定價文件及國別報告的要求：

第一層 — 主體檔案：主要提供企業所屬集團的宏觀資料、轉讓定價政策以及集團的財務及稅務情況；

Transfer pricing services of Crowe Horwath Tax Services (HK) Limited  
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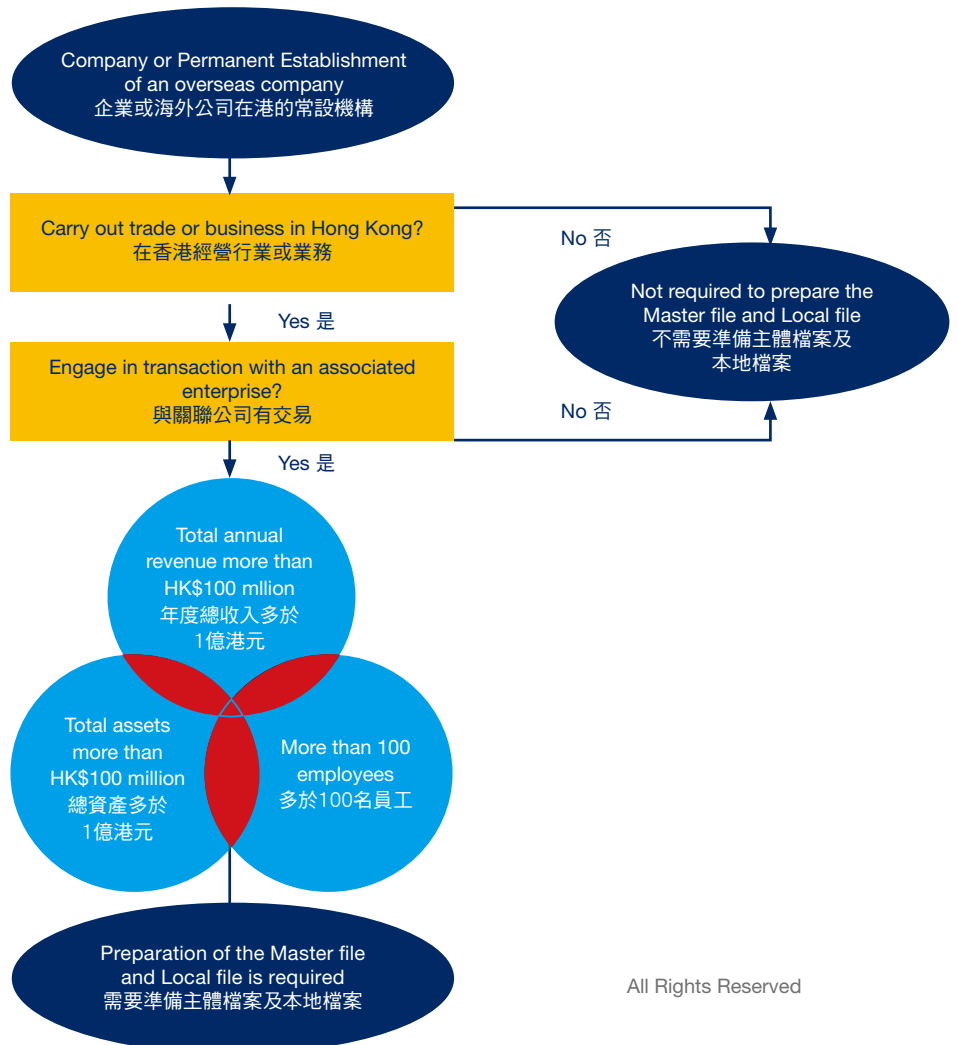
Third tier – CbC report: this sets out the amounts of revenue, profits/loss and tax paid as well as certain indicators of economic activities for each jurisdiction in which an MNE group operates.

In accordance with the requirements for transfer pricing documentation set out in the Consultation Paper, we have developed the following risk assessment flowchart. If an enterprise has undergone the following flowchart and falls into the red zone, it indicates that the possibility of the enterprise being subject to the mandatory requirement to prepare the transfer pricing master file and local file is high. In this case, please contact our transfer pricing team of Crowe Horwath Tax Services (HK) Limited as soon as possible.

第二層 — 本地檔案：主要提供企業的詳細交易、轉讓定價及財務資料，包括企業的可比性、功能和風險分析，轉讓定價分析及結論；

第三層 — 國別報告：列明跨國企業集團於每個有經營業務的稅務管轄區的收入、利潤／虧損和繳稅金額，以及特定的經濟活動指標等。

按照諮詢文件提出的轉讓定價文件要求，我們編制了以下風險檢查流程圖，如果一間公司走過以下流程圖後，落入了紅色區域，那麼，表示該間公司需要編制轉讓定價主體檔案及本地檔案的可能性很高，在此情況下，可盡快與我們國富浩華稅務(香港)有限公司的轉讓定價小組聯繫。



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