



Licensing Regime and AML/CTF Requirements for TCSPs

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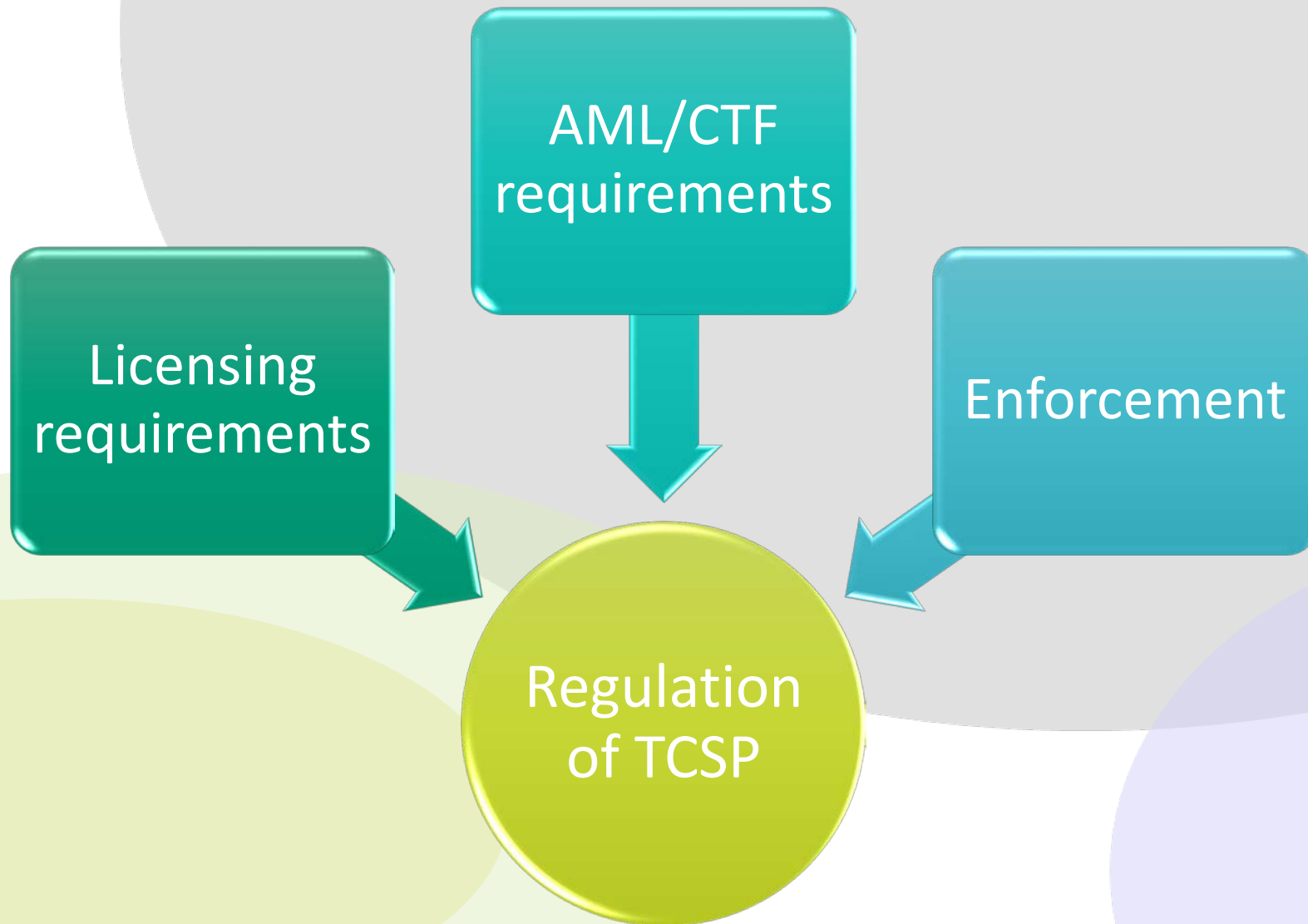
7 July 2020

PART I

Licensing Regime for TCSPs



Regulatory Framework for TCSPs



Requirements for TCSPs (I)

Licensing Requirements

- Anti-Money Laundering and Counter-Terrorist Financing Ordinance, Cap. 615 (“AMLO”), i.e. Part 5A
- Conditions of Trust or Company Service Provider (“TCSP”) licence

AML/CTF Requirements

- AMLO, i.e. section 5A & Schedule 2
- Guideline on Compliance of AML/CTF Requirements for TCSPs (“AML/CTF Guideline”)
- Conditions of TCSP licence
- Other legislation – requirements relating financial sanctions, terrorist financing, proliferation of weapons of mass destruction and reporting of suspicious transactions

Requirements for TCSPs (II)

Licensing Requirements

AML/CTF Requirements

Guideline on Compliance of AML/CTF
Requirements for TCSPs

AMLO (Cap. 615)

Part 5A

S.5A &
Schedule 2

Conditions of Licence

AML/CTF
Requirements
under other
legislation

Licensing Requirements (I)

*Apply for a TCSP licence **BEFORE** carrying on trust or company service business in Hong Kong*

Carry on business **WITHOUT** a licence

i It is an offence under s.53F of the AMLO to carry on a trust or company service without a licence



Fine up to
HK\$100,000



Imprisonment up to
6 months

Licensing Requirements (II)

*I have just applied for a TCSP licence.
Can I carry on trust or company service now?*

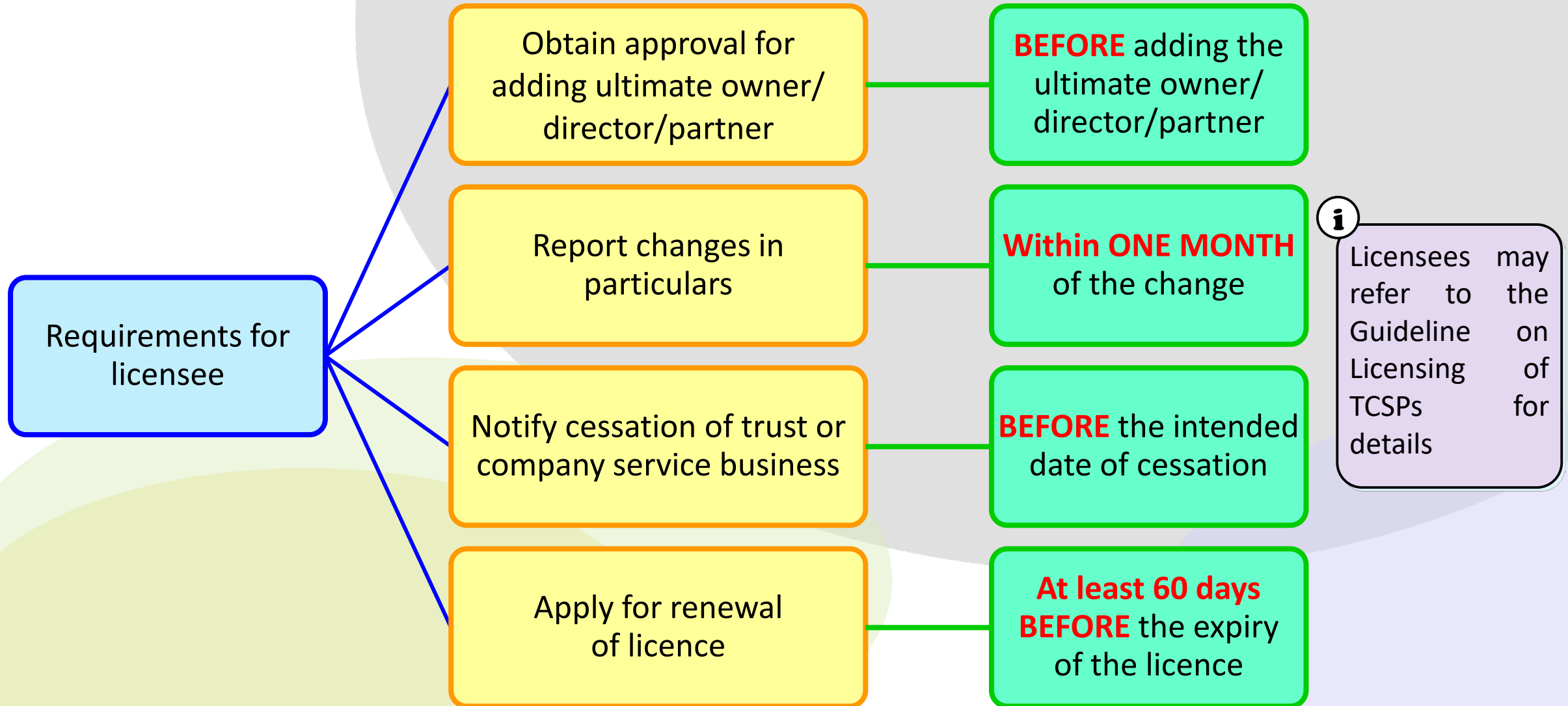


NO.

You can only
carry on trust or
company service
AFTER you are
granted a
TCSP licence.

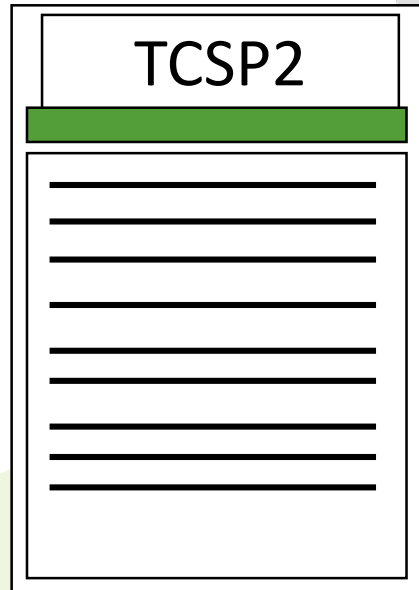


Licensing Requirements (III)



Application for renewal of TCSP licence

Application



TCSP2

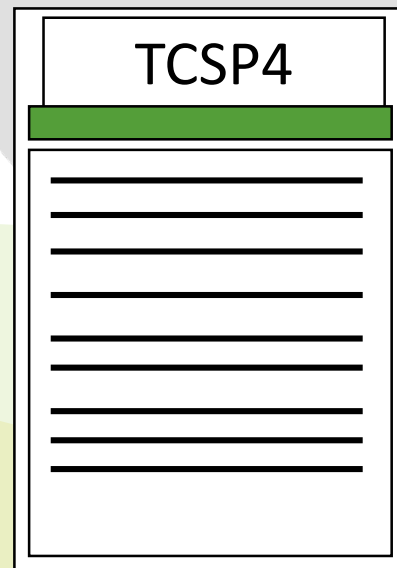
Form TCSP2 is a vertical rectangular form with a green header bar. Below the header, there are ten horizontal lines for text entry.

i Application fee:
HK\$2,910

Form TCSP4 or Form TCSP5 for **EACH** person subject to the fit and proper test

Individual

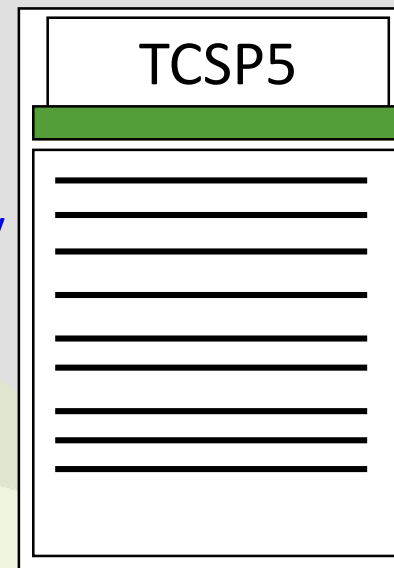
Corporation



TCSP4

Form TCSP4 is a vertical rectangular form with a green header bar. Below the header, there are ten horizontal lines for text entry.

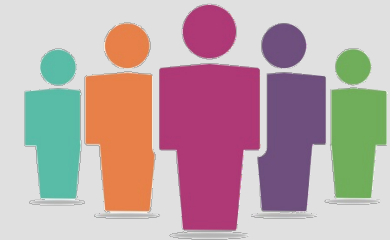
And/
or



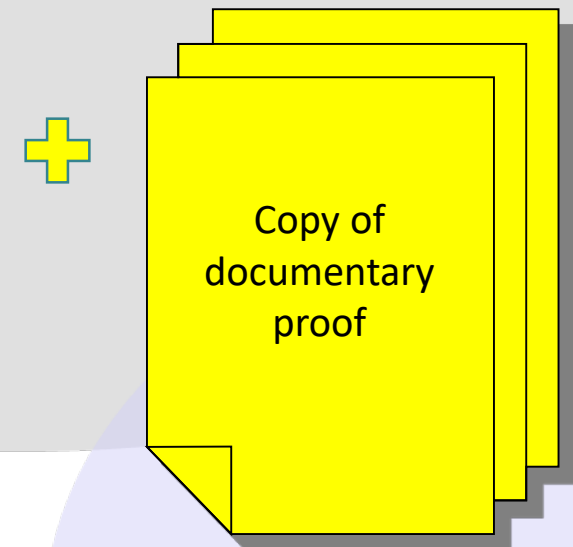
TCSP5

Form TCSP5 is a vertical rectangular form with a green header bar. Below the header, there are ten horizontal lines for text entry.

i Additional fee for **EACH** person: **HK\$975**

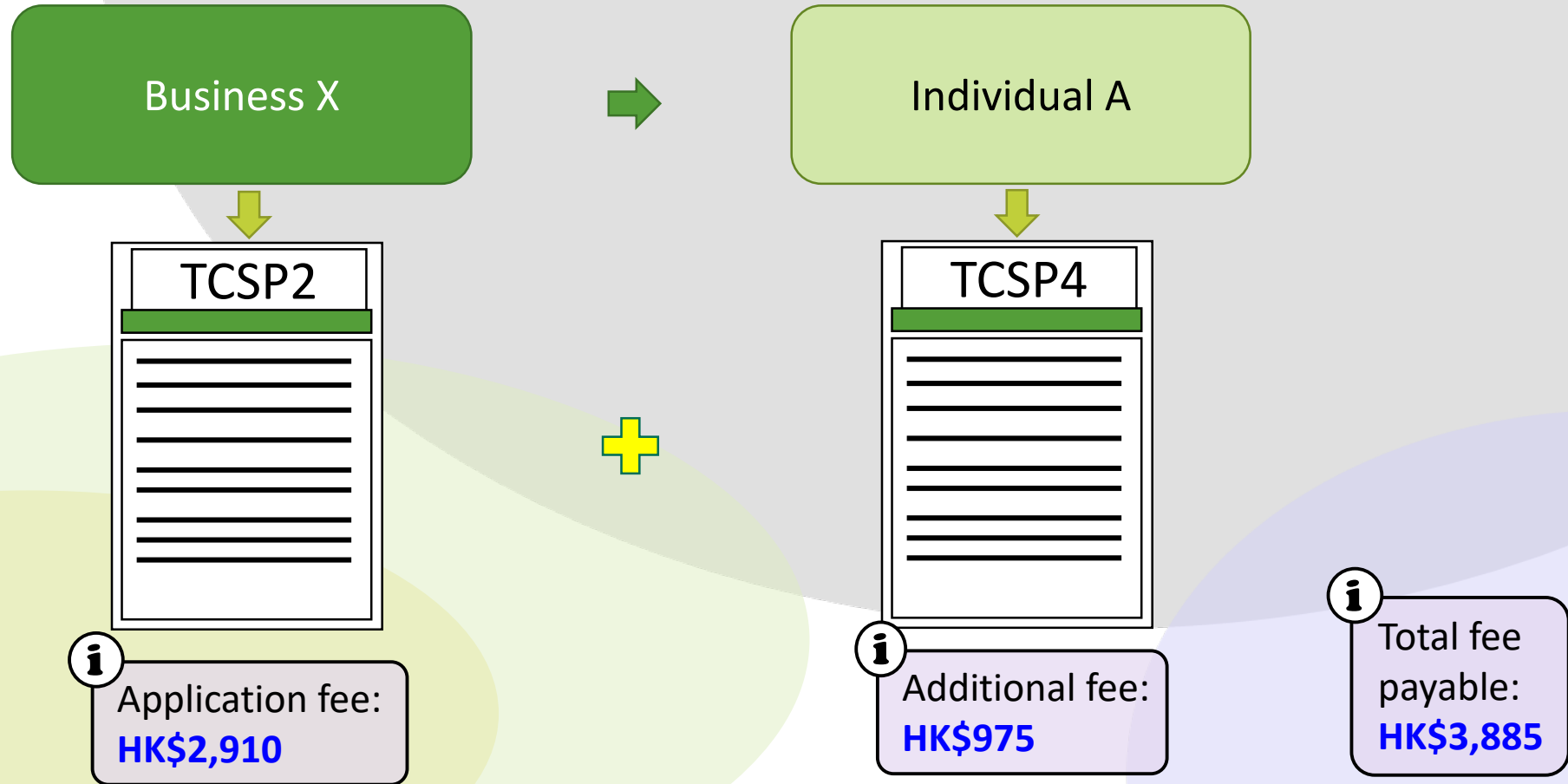


Exempted persons



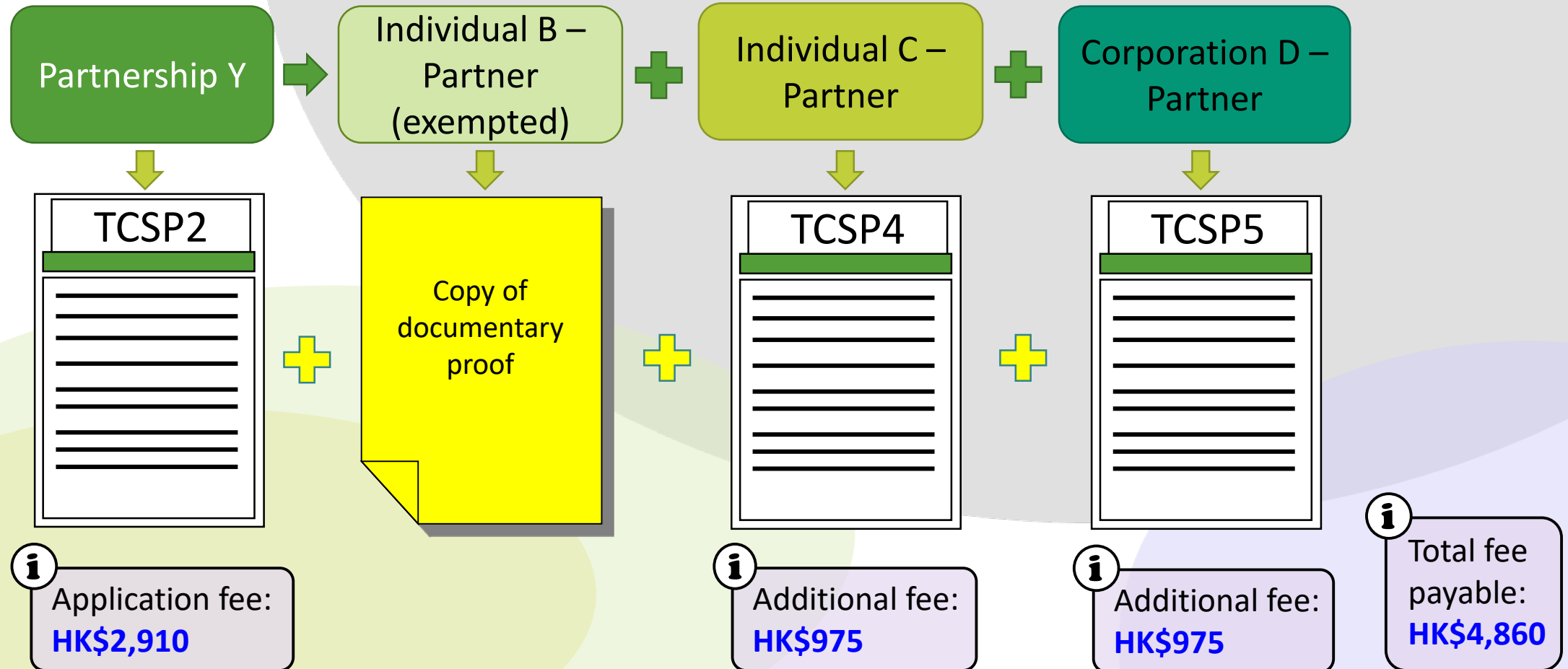
Renewal of TCSP licence – Example 1

Applicant – sole proprietorship Business X operated by Individual A



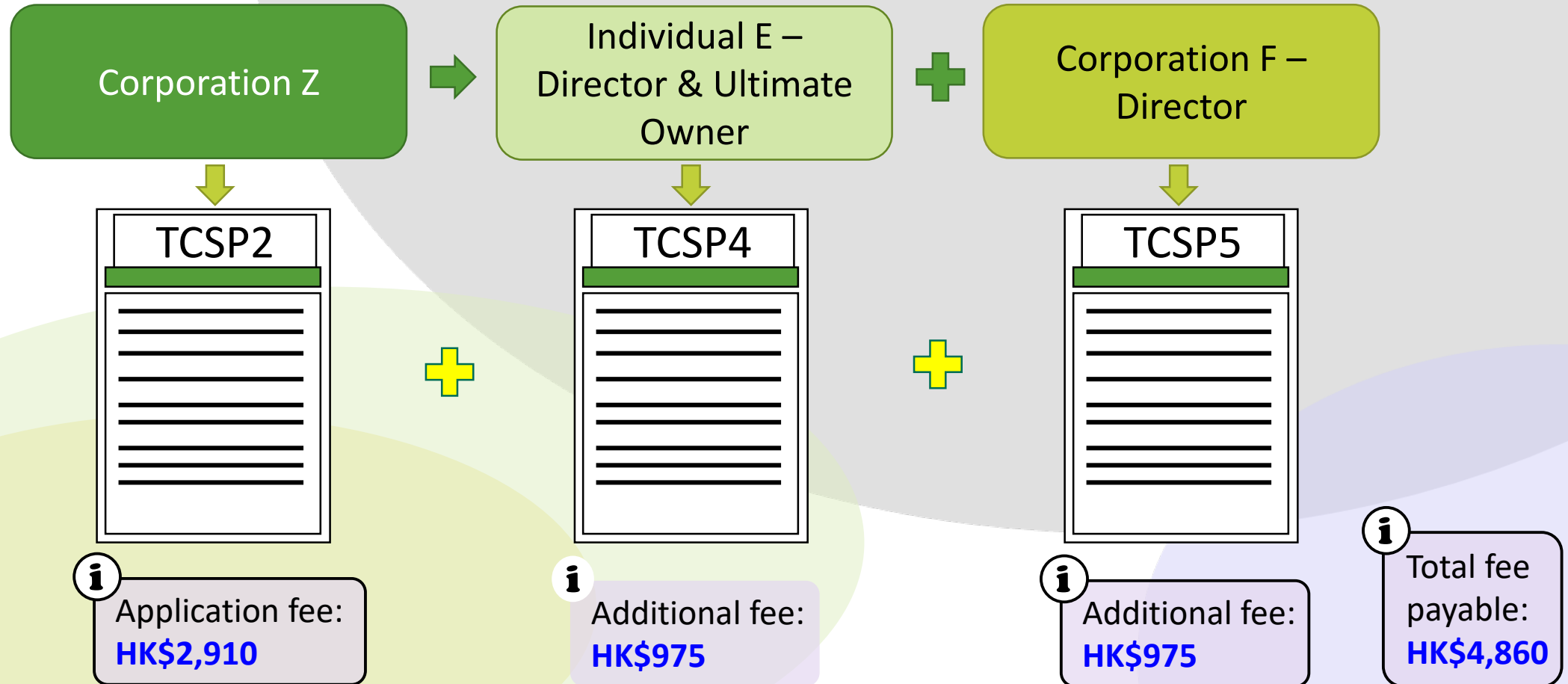
Renewal of TCSP licence – Example 2

Applicant – Partnership Y



Renewal of TCSP licence – Example 3

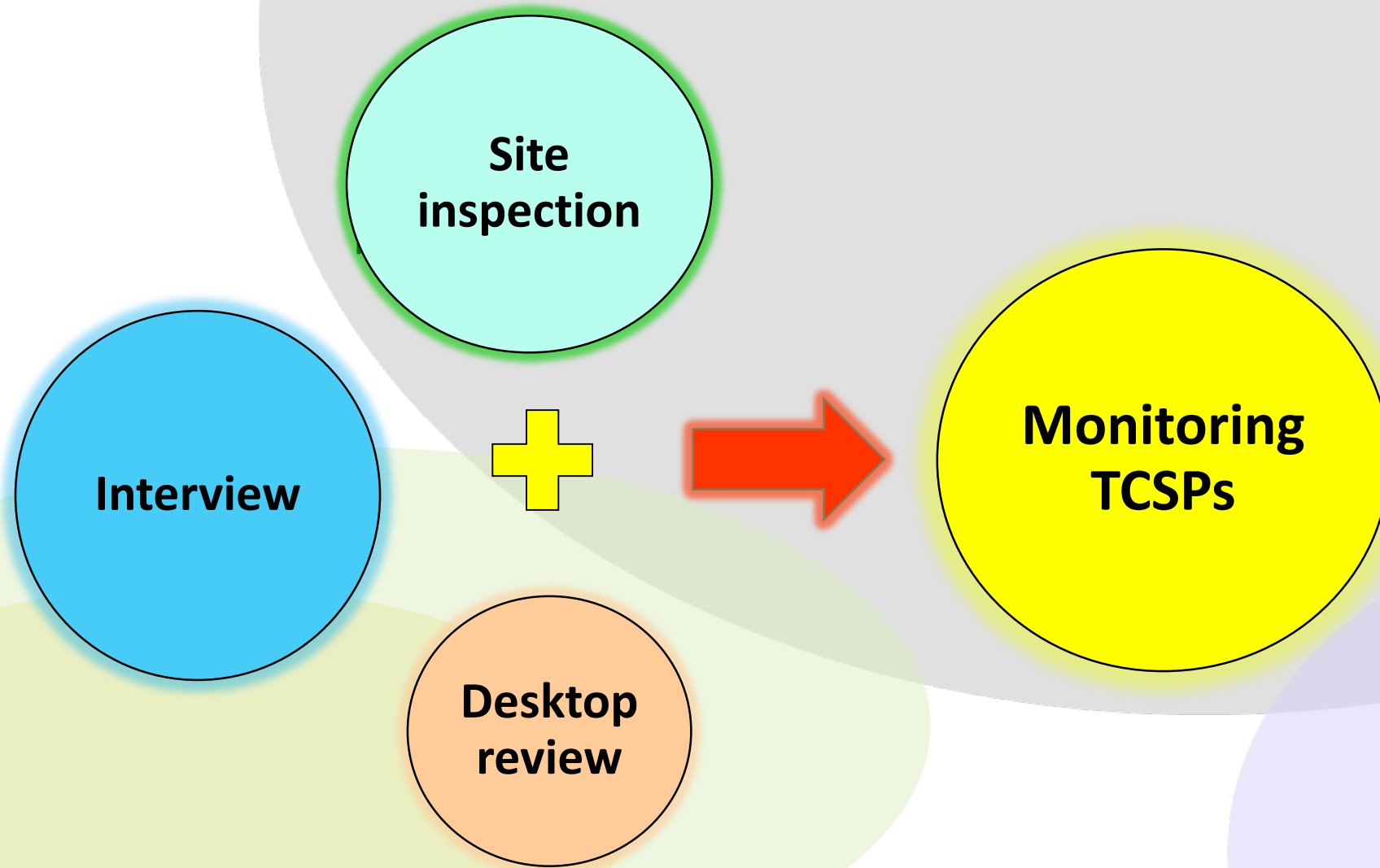
Applicant – Corporation Z



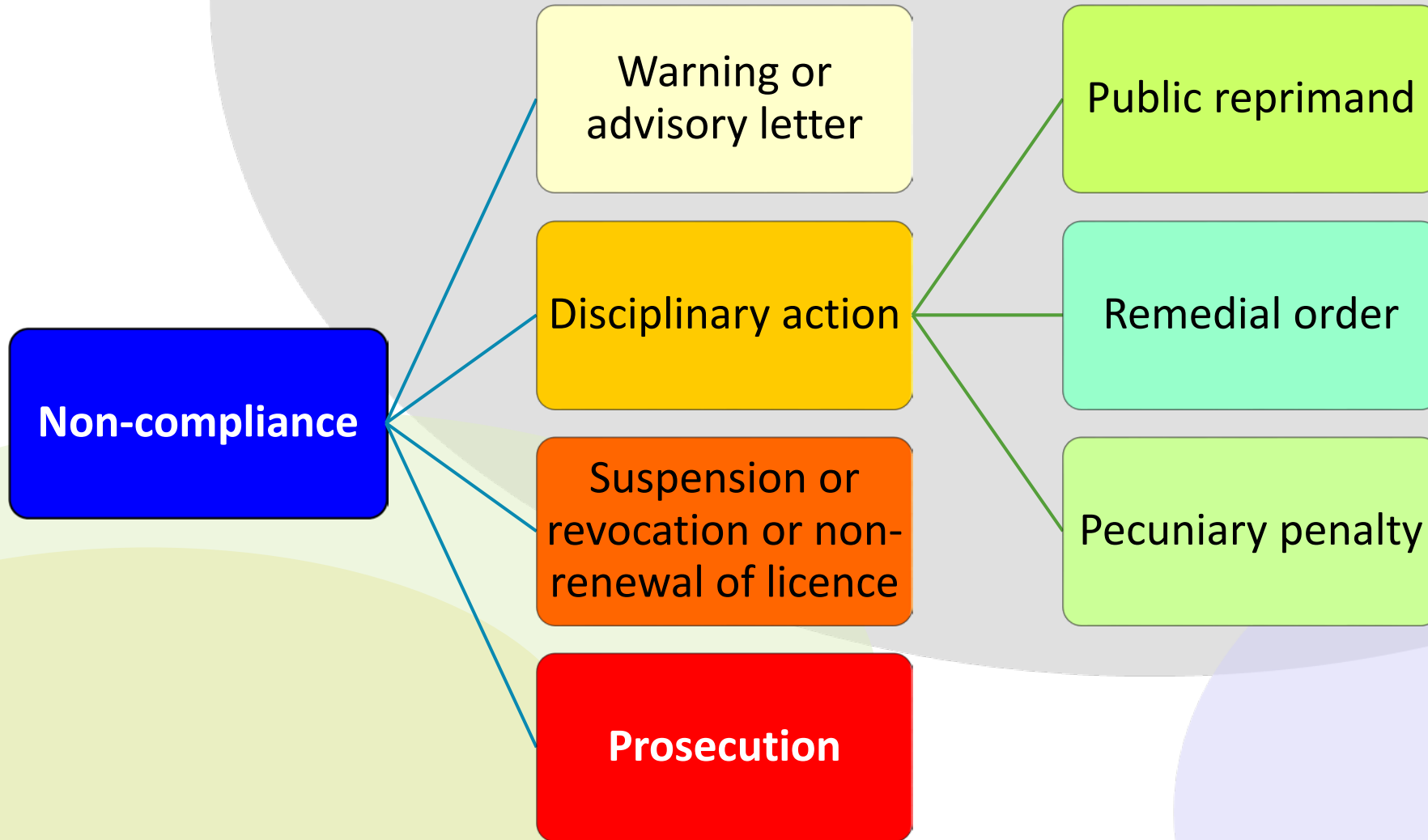
AML/CTF Requirements for TCSPs

Under other legislation	Under the AMLO and the AML/CTF Guideline
<ul style="list-style-type: none">• Complying with the statutory requirements relating to:<ul style="list-style-type: none">• financial sanctions• terrorist financing• proliferation of weapons of mass destruction• Reporting suspicious transactions to the Joint Financial Intelligence Unit	<ul style="list-style-type: none">• Carrying out customer due diligence measures• Keeping records of customers and transactions

Enforcement of the Licensing Regime (I)



Enforcement of the Licensing Regime (II)



Statistics as at 31 May 2020

Licensing

7,934 applications received
7,153 licences granted
652 applications rejected or withdrawn

2,921 site inspections conducted
1,759 interviews conducted

Monitoring

Sanction

730 warning/advisory letters issued
130 offenders prosecuted

PART II


AML/CTF Requirements for TCSPs




What are CDD Measures?




identifying the customer and verifying the customer's identity [s. 2(1)(a), Sch. 2]



identifying the beneficial owner and taking reasonable measures to verify the beneficial owner's identity [s.2(1)(b), Sch. 2]



obtaining information on the purpose and intended nature of the business relationship, if a business relationship is to be established [s.2(1)(c), Sch. 2]



identifying the person purporting to act on behalf of the customer and taking reasonable measures to verify the person's identity and verifying the person's authority to act on behalf of the customer [s.2(1)(d), Sch. 2]

* Appendix A-D of the Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Trust or Company Service Providers ("AML/CTF Guideline").

When to Carry Out CDD

CDD measures must be carried out: [s.3, Sch. 2]

before
establishing a
business
relationship with
the customer

before carrying
out an
occasional
transaction
involving
\$120,000 or
above

when the TCSP
licensee suspects
that the
customer or the
customer's
account is
involved in
ML/TF

when the TCSP
licensee doubts
the veracity or
adequacy of the
information
obtained during
CDD process

If CDD requirements are not complied with, the licensee **MUST NOT** establish a business relationship or carry out an occasional transaction with that customer. If a business relationship has been established, it must be terminated as soon as reasonably practicable. [s.3(4), Sch. 2]

Pre-existing Customers *[s.6, Sch. 2]*

- (1) In relation to a pre-existing customer, a TCSP licensee must carry out the customer due diligence measures when:
 - a transaction takes place with regard to the customer that—
 - (i) is, by virtue of the amount or nature of the transaction, unusual or suspicious; or
 - (ii) is not consistent with the TCSP licensee's knowledge of the customer or the customer's business or risk profile, or with the TCSP licensee's knowledge of the source of the customer's funds; or
 - a material change occurs in the way in which the customer's account is operated;
 - when the TCSP licensee suspects that the customer or the customer's account is involved in money laundering or terrorist financing;
 - when the TCSP licensee doubts the veracity or adequacy of any information previously obtained for the purpose of identifying the customer or for the purpose of verifying the customer's identity.
- (2) If a TCSP licensee is unable to comply with subsection (1), the licensee must terminate the business relationship with the customer as soon as reasonably practicable.

Ongoing Due Diligence Requirement

Continuously monitor the business relationship with customer [s.5, Sch. 2]

Reviewing from time to time documents, data and information relating to the customer obtained for the purpose of complying with Part 2 of Schedule 2 to ensure they are up-to-date and relevant;

Scrutinizing the transactions of the customer to ensure that they are consistent with the licensee's knowledge of the customer and its business, risk profile and source of funds; and

Identifying transactions that are complex, unusually large or of an unusual pattern and have no apparent economic or lawful purpose, and examining the background and purposes of those transactions and setting out its findings in writing.

Enhanced Due Diligence (“EDD”)

High-risk situations for which EDD measures apply include

the customer is not physically present for identification purposes;

the customer or the beneficial owner of the customer is a politically exposed person (“PEP”);

any situation specified by the Registrar of Companies in a notice given to the TCSP licensee and in any situation that by its nature may present a high risk of money laundering or terrorist financing.

- corporate customer having issued bearer shares
- customer from or transaction connected with higher-risk jurisdictions
- Refer to the EDD measures required in sections 9, 10 and 15 of Schedule 2 to the AMLO

Politically Exposed Persons

When TCSP licensees know that a customer or its beneficial owner is a PEP, they should, before establishing a business relationship or continuing an existing business relationship where the customer or the beneficial owner is subsequently found to be a PEP, carry out EDD measures under section 10 of Schedule 2. [s. 10, Sch. 2]

A TCSP licensee must establish and maintain effective procedures for determining whether a customer or a beneficial owner of a customer is a politically exposed person. [s. 19(1), Sch. 2]

Record-Keeping Requirements

Records to be kept [s. 20, Sch. 2]

In relation to a **transaction**

- the original or a copy of the documents, and a record of the data and information should be kept **for at least 5 years after the completion of the transaction.**

In relation to a **customer**

- the original or a copy of the CDD documents, record of the data and information and files relating to the customer's account and business correspondence with the customer and any beneficial owner of the customer should be kept **throughout the continuance of the business relationship with the customer and for a period of at least 5 years after the end of the business relationship.**

Other requirements under the AMLO

- A TCSP licensee must, in respect of each kind of customer, business relationship, product and transaction, establish and maintain effective procedures not inconsistent with this Ordinance for the purpose of carrying out the duties under sections 3, 4, 5, 9, 10 and 15 of Schedule 2. *[s. 19(3), Sch. 2]*
- A TCSP licensee must take all reasonable measures (a) to ensure that proper safeguards exist to prevent a contravention of any requirement under Part 2 or 3 of this Schedule, and (b) to mitigate money laundering and terrorist financing risk. *[s. 23, Sch. 2]*

AML/CTF system

- TCSP licensees must assess the ML/TF risk of their businesses, develop and implement policies, procedures and controls (“AML/CTF systems”).
[para.3.2, AML/CTF Guideline]
- TCSP licensees should establish and implement adequate and appropriate AML/CTF systems taking into account factors including products and services offered, types of customers, geographical locations involved.
[para.3.3, AML/CTF Guideline]
- The senior management of any TCSP licensee should appoint a director or senior manager as a compliance officer and a senior member of the licensee’s staff as the money laundering reporting officer (“MLRO”).
[para.3.4, AML/CTF Guideline]
- Conditions on licence

Financial Sanction and Counter-Terrorist Financing

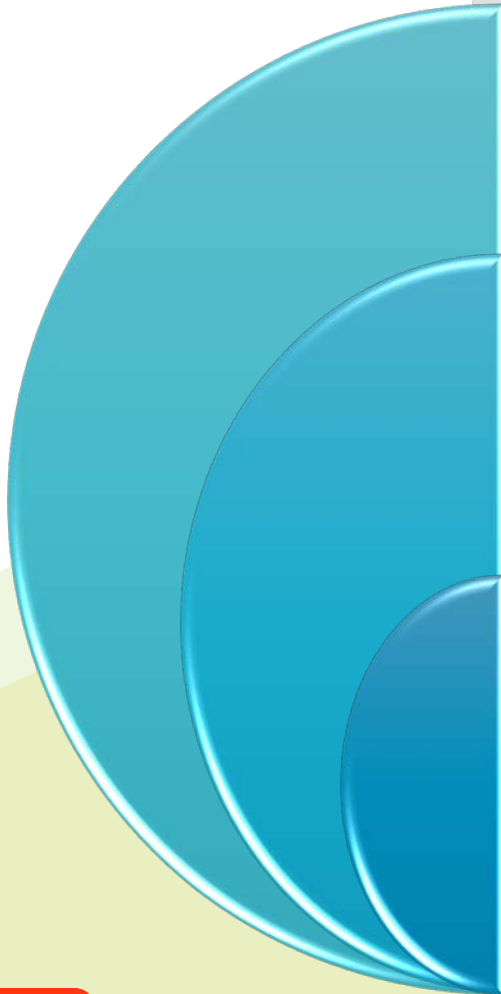
- It is an offence under the **United Nations Sanctions Ordinance, Cap. 537 (“UNSO”)** for any person to make available any funds or other financial assets or economic resources to or for the benefit of relevant persons or relevant entities; or to deal with any funds, other financial assets or economic resources belonging to, owned or controlled by, such persons or entities.
- **The United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575 (“UNATMO”)** criminalizes the provision or collection of property and making any property or financial (or related) services available to terrorists or terrorist associates.
- **TCSF licensees are reminded not to have any business relationship with any relevant person or relevant entity, as defined under the UNSO or any of its subsidiary legislation, which is subject to financial sanctions, or any terrorist or terrorist associate as defined under the UNATMO.**
- Chapter 8 of the AML/CTF Guideline.



Persons and Entities subject to Sanctions and Terrorists or Terrorist Associates

- TCSP licensees should ensure that they should have an appropriate system to conduct name checks against the relevant list(s) for screening purposes and that the list(s) is/are up-to-date.
- Comprehensive ongoing screening of a TCSP licensee's complete customer base is a fundamental internal control to prevent terrorist financing and sanction violations.
- Lists of persons and entities subject to financial sanctions under the UNSO and list of names of persons designated as terrorists or terrorist associates specified under the UNATMO are available at the website of the CR's Trust and Company Service Providers Licensing Regime (www.tcsp.cr.gov.hk).

Counter-Financing of Proliferation of Weapons of Mass Destruction (“PF”)



United Nations Sanctions (Democratic People’s Republic of Korea) Regulation, Cap. 537AE

United Nations Sanctions (Joint Comprehensive Plan of Action—Iran) Regulation, Cap. 537BV

Under section 4 of **the Weapons of Mass Destruction (Control of Provision of Services) Ordinance, Cap. 526**, it is an offence for a person to provide any services where he/she believes or suspects, on reasonable grounds, that those services may be connected to weapon of mass destruction proliferation.

Reporting Suspicious Transactions

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

Organized and
Serious Crimes
Ordinance, Cap. 455

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

- In cases of suspicions of money laundering, TF, PF or sanctions violations, report should be made to **the Joint Financial Intelligence Unit**
- Chapter 7 of the AML/CTF Guideline
 - TCSP licensees must establish and maintain a record of all ML/TF reports made to the MLRO and all STRs made to the JFIU.

The End

