

Regulation of Trust or Company Service Providers in Hong Kong

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Registrar of Companies
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Introduction

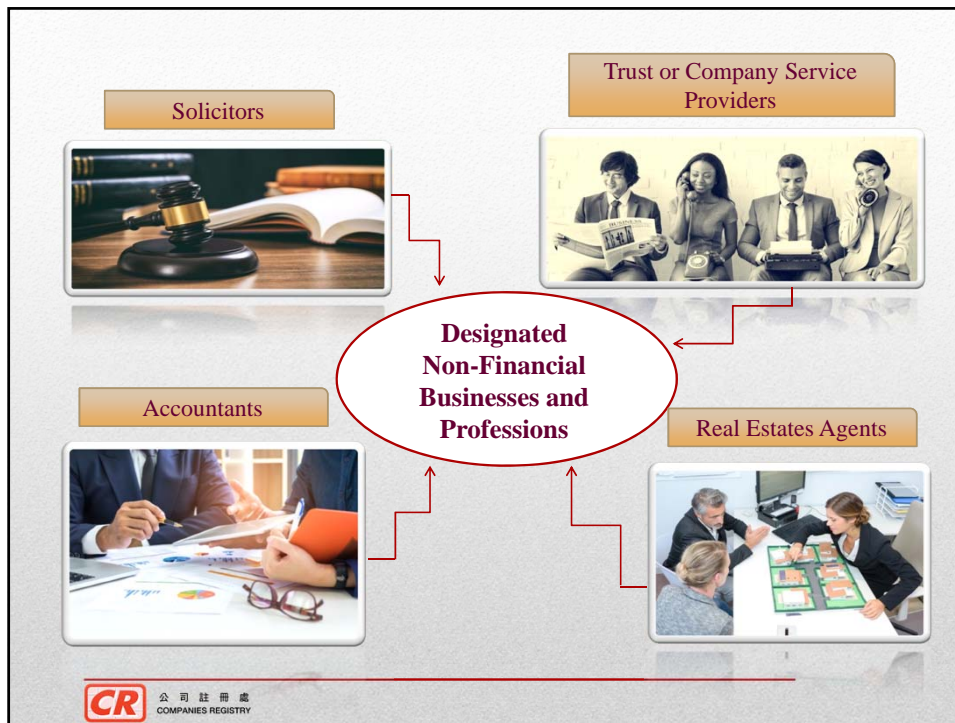
- The Financial Action Task Force (“**FATF**”), which is an inter-governmental body established in 1989, sets international standards on combating money laundering and terrorist-financing.
- Hong Kong has been a member of the FATF since 1991.
- The FATF has made 40 Recommendations.

The FATF Recommendations (1)

- Recommendations 22, 28 and 35 are relevant to designated non-financial businesses and professions (“DNFBPs”).

Recommendation 22

- DNFBPs should be subject to customer due diligence (“CDD”) and record-keeping requirements when they engage in specified transactions.



The FATF Recommendations (2)

Recommendation 28

- DNFBPs should be subject to effective systems for monitoring and ensuring compliance with anti-money laundering and countering the financing of terrorism (“AML/CTF”) requirements.

Recommendation 35

- There should be a range of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, to deal with any non-compliance with AML/CTF requirements by DNFBPs.

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 (1)

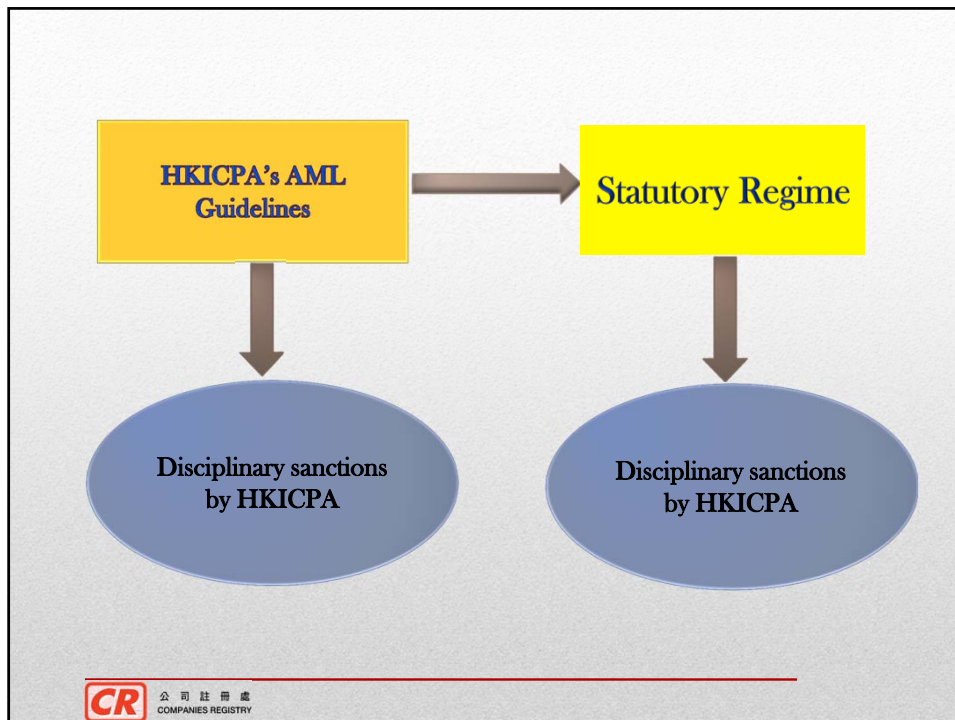
- To fulfill the FATF requirements, the Government introduced the above Bill into the Legislative Council on 28 June 2017 to :-
 - prescribe statutory CDD and record-keeping requirements to solicitors, accountants, estate agents, and trust or company service providers (“TCSPs”) when these professionals engage in specified transactions.



HKICPA’s Guidelines on Anti-Money Laundering and Counter-Terrorist Financing for Professional Accountants

- HKICPA has drawn up draft AML / CTF guidelines, which will form part of the Code of Ethics for Professional Accountants, and non-compliance with them may result in disciplinary proceedings against the members and / or CPA practices concerned.
- Under the Bill, there is no criminal penalty for the statutory CDD and record-keeping requirements, and breaches by accountants will continue to be subject to the disciplinary regime of HKICPA.





Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 (2)

- introduce a licensing regime for TCSPs to require them to apply for a licence from the Registrar of Companies (“Registrar”) and satisfy a “fit-and-proper” test before they can provide trust or company services as a business in Hong Kong.
- The Registrar will keep a register of all TCSP licensees, which will be open for public inspection.

Proposed Licensing Regime for TCSPs

➤ The proposed licensing regime does not apply to :-

- the Government;
- an authorized institution;
- a licensed corporation that operates a TCSP business that is ancillary to the corporation's principal business;
- an accounting professional;
- a legal professional.

The proposed licensing regime and the accounting professional (1)

➤ A certified public accountant (“accountant”) is exempted from the proposed licensing regime (including the fit and proper test) when carrying on a TCSP business in the following situations :-

- as a sole proprietor;
- in a corporate practice or a firm of certified public accountants (practising) as defined in the Professional Accountants Ordinance (“PAO”);

The proposed licensing regime and the accounting professional (2)

- in the form of a partnership where all partners are accountants.
- The accountants in the above situations are subject to the regulatory regime of HKICPA in all aspects and in accordance with the provisions of the AMLO and PAO as amended, including the requirements relating to CDD and record-keeping as set out in the AMLO.



The proposed licensing regime and the accounting professional (3)

- A partnership, in which at least one partner is not an accountant, is required to obtain licence from the Registrar for carrying on TCSP business. The partnership as the business entity is subject to the regulatory regime of the Registrar, but the Registrar will not conduct fit and proper test on the partners who are accountants. The partnership (and all partners) has to comply with the CDD and record-keeping requirements as set out in the AMLO.

The proposed licensing regime and the accounting professional (4)

- A corporation (other than a corporate practice) is required to obtain licence from the Registrar for carrying on the TCSP business. The corporation itself is subject to the regulatory regime of the Registrar, but the Registrar will not conduct fit and proper test on the directors who are accountants. The corporation has to comply with the CDD and record-keeping requirements as set out in the AMLO.



**FIT AND PROPER
TEST**



“Fit and Proper” Test (1)

- Applicants, and their directors / partners / ultimate owners (where applicable), will be subject to a “fit and proper” test.
- In determining whether a person is fit and proper to carry on, or be associated with, a TCSP business, the Registrar will have regard to any matter that the Registrar considers relevant.

“Fit and Proper” Test (2)

- Matters to be taken into account include :-
 - whether the person has any criminal conviction, in particular, those relating to money laundering or terrorist financing or involving fraud or dishonesty;
 - whether the person is an undischarged bankrupt / in liquidation or receivership.



Renewal of licence



- A licence, once granted, will last for 3 years.
- A licensee may apply to the Registrar for a renewal of the licence.
- Applicants for renewal of a licence will be subject to the same “fit and proper” test applicable to an application for a new licence.

Revocation or suspension of licence

- The Registrar may revoke a licence or suspend a licence for a specified period if the Registrar considers that an individual licensee, any partner, director or ultimate owner of a licensee is no longer a fit and proper person to carry on, or be associated with, a trust or company service business.



Registrar's approval

- Any person proposing to become a partner, director or an ultimate owner of a licensee is required to obtain the Registrar's prior approval.
- The application for the approval is to be made by the licensee.
- The Registrar will apply the same "fit and proper" test.

Licensee's duty to give notifications

➤ A licensee has the duty to notify the Registrar if :-

- there is any change in the particulars previously provided in connection with the licensee's application for the grant or renewal of a licence;
- the licensee intends to cease to carry on the trust or company service business.



Power of Inspection and Discipline

- Site inspections will be carried out to ensure compliance with the CDD and record-keeping requirements.
- Licensees will be subject to disciplinary sanctions to be imposed by the Registrar as follows :-
 - public reprimand;
 - remedial order to remedy the contravention;
 - payment of a pecuniary penalty not exceeding \$500,000.



Transitional Arrangements (1)

- When the licensing requirement comes into effect, a person is deemed to have been granted a licence if the person is at the time :-
 - carrying on a TCSP business; and
 - holding a valid business registration certificate.
- There will be a transitional period of 120 days.

Transitional Arrangements (2)

- A deemed licence will cease to have effect in certain events, such as :-
 - no application for a licence is made within the transitional period, and the transitional period ends;
 - an application for a licence is made within the transitional period and the licence is granted or not granted;
 - the deemed licensee ceases to hold a valid BR certificate;
 - the deemed licensee ceases to carry on the TCSP business.

Regulations & Guidelines



- The Registrar has commenced consultation on the following draft guidelines :-
- Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Trust or Company Service Providers;
 - Guideline on Licensing of Trust or Company Service Providers;
 - Guideline for Imposition of Pecuniary Penalty.

Thank You

Companies Registry
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