



Regulation of Trust or Company Service Providers

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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.
- The FATF has made 40 Recommendations.
- Hong Kong has been a member of the FATF since 1991.



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The FATF Recommendations

Recommendations 22, 28 and 35 are relevant to designated non-financial businesses and professions (“DNFBPs”). DNFBPs includes legal professionals, accounting professionals, estate agents and trust or company service providers (“TCSPs”).

Recommendation 22

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

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/CFT) 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 Ordinance (“AMLO”) 》 (1)

- The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 (“the AML Bill”) received its First Reading at the Legislative Council meeting of 28 June 2017.
- The AML Bill was passed on 24 January 2018.
 - To prescribe statutory CDD and record-keeping requirements to DNFBPs when these professionals engage in specified transactions.

Legal Professionals



Legal Practitioners Ordinance (Chapter 159)



The Law Society of Hong Kong

Accounting Professionals



Professional Accountants Ordinance (Chapter 50)



Hong Kong Institute of Certified Public Accountants

Estate Agents



Estate Agents Ordinance (Chapter 511)



Estate Agents Authority

Trust or Company Service Providers



Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615)



Companies Registry

《 Anti-Money Laundering and Counter-Terrorist Financing Ordinance 》 (2)

- The licensing regime for TCSPs will commence operation on 1 March 2018
- 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.
(AMLO sections 53F, 53G and 53H)
- The Registrar will keep a register of all TCSP licensees, which will be open for public inspection.
(AMLO section 53D)



“Fit and Proper” Test



- 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.

Other 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

(AMLO sections 53H and 53I)



Licensing Regime for TCSPs

The TCSP licensing requirement (including the fit and proper test) does not apply to:

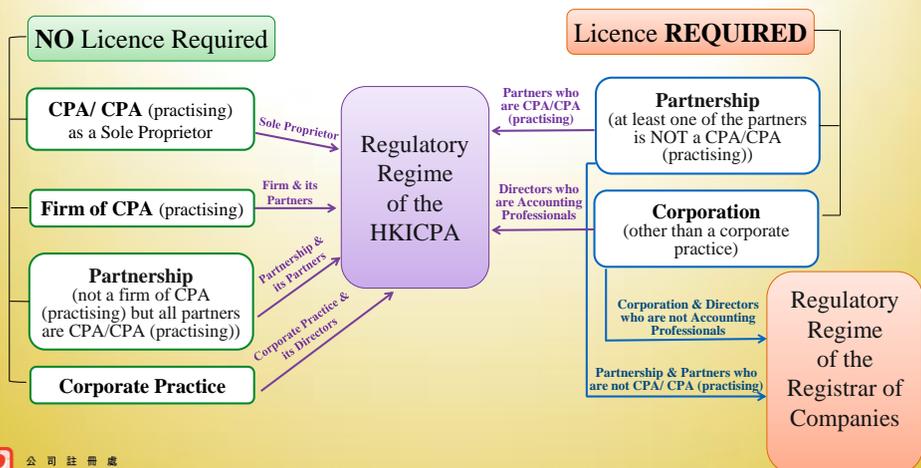
- an authorized institution;
- a licensed corporation that operates a TCSP business that is ancillary to the corporation's principal business;
- an accounting professional;
- a legal professional.

(AMLO section 53B)

EXEMPT

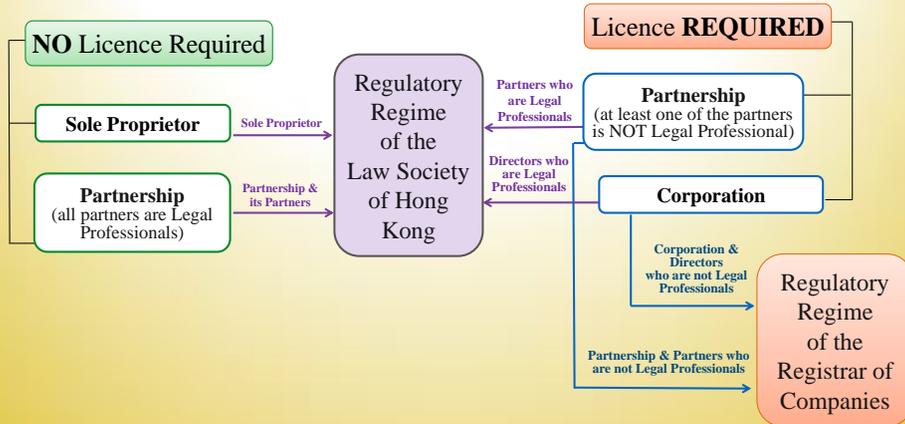
Licensing Regime and Accounting Professional

- Certified Public Accountant and Certified Public Accountant (Practising) are not subject to the "fit and proper" test.



Licensing Regime and Legal Professional

- Legal Professionals are not subject to the “fit and proper” test.



Validity Period and Renewal of Licence

- In usual circumstances, 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.

(AMLO sections 53K and 53O)



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.
(AMLO section 53Q)
- The Registrar must inform the licensee of the revocation or suspension by notice in writing.
- The revocation or suspension of licence takes effect at the time specified in the notice.
(AMLO section 53R)



Registrar's Approval to Become a Partner/ Director/ Ultimate Owner of a TCSP Licensee

- Any person proposing to become a partner, director or an ultimate owner of a licensee is required to obtain the Registrar's prior written approval.
- The application for the approval is to be made by the licensee.
- The Registrar will apply the same "fit and proper" test.
(AMLO sections 53S, 53T & 53U)





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.

(AMLO sections 53W and 53X)



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.

(AMLO section 53Z)





Transitional Arrangements

- 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.
 - A deemed licence will cease to have effect in certain events, such as when:-
 - 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 business registration certificate;
 - the deemed licensee ceases to carry on the TCSP business.
- (AMLO section 53ZQ)

Guidelines and Reference Materials

- The Registrar has published the following guidelines:-
 - Guideline on Licensing of Trust or Company Service Providers;
 - Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Trust or Company Service Providers;
 - Guideline for Imposition of Pecuniary Penalty.
- External circulars, pamphlets, FAQs, etc.



Thank You

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