

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.





The FATF Recommendations (1)

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.



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/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.

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

- To prescribe statutory CDD and record-keeping requirements to DNFBPs when these professionals engage in specified transactions (AMLO section 5A).

Legal Professionals	Accounting Professionals	Estate Agents	Trust or Company Service Providers
			
 《 Legal Practitioners Ordinance 》 (Chapter 159)	 《 Professional Accountants Ordinance 》 (Chapter 50)	《 Estate Agents Ordinance 》 (Chapter 511) 	 《 Anti-Money Laundering and Counter-Terrorist Financing Ordinance 》 (Chapter 615) 
 The Law Society of Hong Kong	 Hong Kong Institute of Certified Public Accountants	 Estate Agents Authority	 Companies Registry



《 Anti-Money Laundering and Counter-Terrorist Financing Ordinance 》 (3)

- 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 (“the 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 (1)



- Applicants, and their directors / partners / ultimate owners (AMLO section 53A), 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)

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

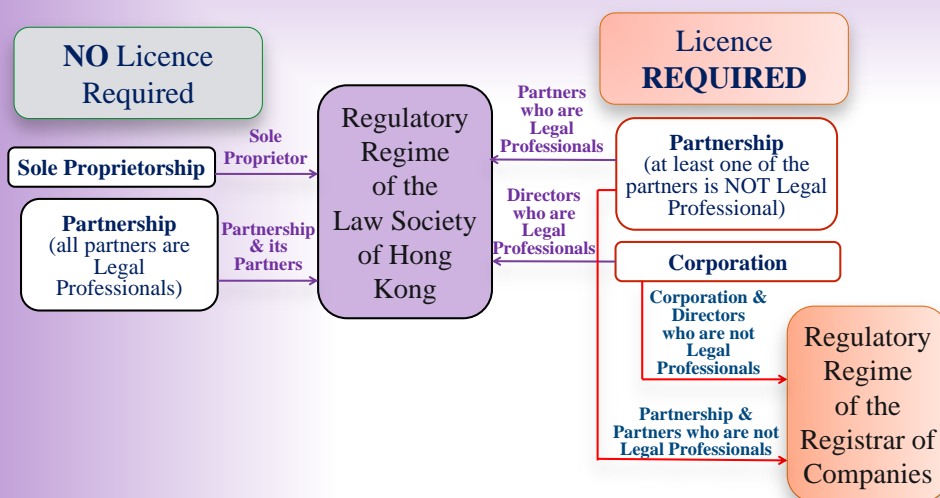
The TCSP licensing requirement (including the fit and proper test) does not apply to:

- 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)



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.
- 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.

(AMLO section 53W)

**CHANGE OF
DETAILS**

- The licensee intends to cease to carry on the trust or company service business.

(AMLO section 53X)

**BUSINESS
CLOSED**



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)

INSTRUCTIONS
REGULATIONS
TRAINING
GUIDELINES
POLICIES
REQUIREMENTS



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 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.



Registry for Trust and Company Service Providers

<https://www.tesp.cr.gov.hk>



公司註冊處
Companies Registry