



Regulation of Trust or Company Service Providers

Ms Margaret Chan
Senior Solicitor
Companies Registry
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Introduction

- The Financial Action Task Force (“FATF”).
- Hong Kong has been a member of the FATF since 1991.
- Recommendations 22, 28 and 35 - designated non-financial businesses and professions (“DNFBPs”).
- DNFBPs includes legal professionals, accounting professionals, estate agents and trust or company service providers (“TCSPs”).
(AMLO section 1 of Part 2 of Schedule 1)

《 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 (“AMLO”) 》 (2)

- To prescribe statutory CDD and record-keeping requirements to DNFBPs when these professionals engage in specified transactions. (AMLO section 5A and section 1 of Part 1 of Schedule 1)



Accounting Professionals



《 Professional Accountants Ordinance 》 (Chapter 50)

Hong Kong Institute
of Certified Public Accountants

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 (“AMLO”) 》 (3)

- The new licensing regime for TCSPs
 - (i) to apply for a licence from the Registrar of Companies (“the Registrar”);
 - (ii) to satisfy a “fit-and-proper” test; and
 - (iii) to comply with the relevant requirements of the AMLO.
(AMLO sections 5A, 53F, 53G and 53H)
- A register of all TCSP licensees
 - open for public inspection
 - free of charge
(AMLO section 53D)



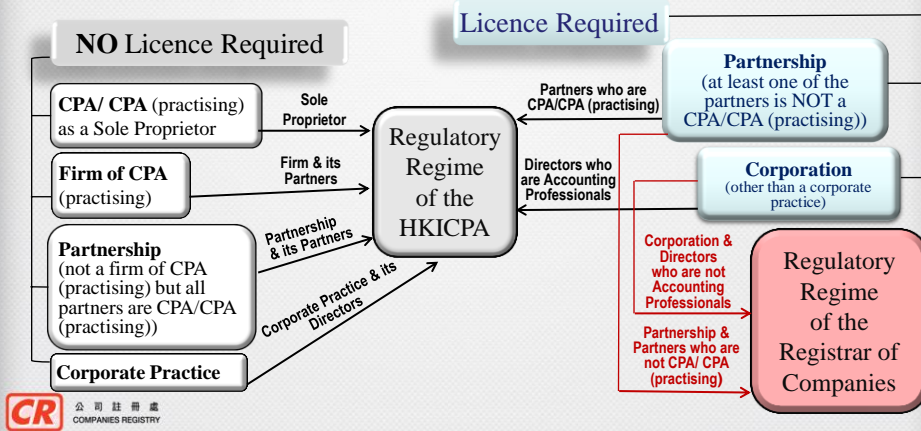
Licensing Regime for TCSPs

- 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) a CPA or a CPA (practising), as defined by section 2(1) of the Professional Accountants Ordinance, Cap. 50 (“the PAO”);
 - (b) a corporate practice as defined by section 2(1) of the PAO; or
 - (c) a firm of CPA (practising) registered under Part IV of the PAO.
 - a legal professional
(AMLO section 53B)



Licensing Regime and Accounting Professional

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



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“Fit and Proper” Test (1)

- A statutory requirement (AMLO section 53H)
- Who are subject to the “fit and proper” tests
 - unless exempted
 - the applicant
 - a TCSP licensee’s directors / partners / ultimate owners (AMLO section 53A)
- A test for an application
 - a TCSP licence
 - a renewal of a TCSP licence
 - an approval for a person to become an ultimate owner, a partner or a director of a TCSP licensee (AMLO sections 53H, 53K, 53S, 53T and 53U)



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“Fit and Proper” Test (2)

- Criteria used to determine whether a person is fit and proper to carry on, or be associated with, a TCSP business
 - any matter that the Registrar considers relevant
 - 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 section 53I)



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.
 - A TCSP licensee is subject to the same “fit and proper” test.
 - Cessation of validity of a TCSP licence when certain events happen.
- (AMLO sections 53K, 53O and 53P)



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 sections 53Q and 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)
 - the licensee intends to cease to carry on the trust or company service business.
(AMLO section 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 (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.
(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.



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THANK YOU!

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



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