



Frequently Asked Questions

Licensing requirements for trust or company service providers

Q1 Who is required to apply for a trust or company service provider (“TCSP”) licence?

Answer: A person who carries on or wishes to carry on a trust or company service business in Hong Kong is required to apply for a TCSP licence.

Q2 I have been carrying on a trust or company service business for many years and hold a valid business registration certificate. Do I need a TCSP licence to continue carrying on a trust or company service business?

Answer: Yes, you need to obtain a TCSP licence if you want to continue carrying on a trust or company service business.

Section 53ZQ of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, Cap. 615 (“the AMLO”) contains transitional provisions. During the period of 120 days beginning on the date of commencement of the TCSP licensing regime (“transitional period”), you will be deemed to have been granted a licence to carry on a trust or company service business in Hong Kong. However, you should apply for a TCSP licence within the transitional period, otherwise your deemed licence will end on the expiration of the transitional period.

Q3 I have applied for a TCSP licence within the transitional period. When will the deemed licence end?

Answer: If you have applied for a licence within the transitional period, the deemed licence will end when the TCSP licence is granted or when the application is rejected or withdrawn. The deemed licence will also end upon the occurrence of any of the specified termination events.

The specified termination events are as follows:–

- the deemed licensee ceases to carry on its trust or company service business in Hong Kong;
- the deemed licensee ceases to hold a valid business registration certificate;
- if the deemed licensee is an individual carrying on business as a sole proprietor – the death of the individual;
- if the deemed licensee is a partnership – the dissolution of the partnership;
- if the deemed licensee is a corporation – the commencement of the winding up of the corporation.

Q4 Are there any licensing exemptions?

Answer: Yes, the TCSP licensing requirement (including the fit and proper test) does not apply to the following:-

- an authorized institution within the meaning of section 2(1) of the Banking Ordinance, Cap. 155;
- a licensed corporation that operates a trust or company service business in Hong Kong that is ancillary to the corporation's principal business (please refer to section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance, Cap. 571 for the meaning of "licensed corporation");
- an accounting professional; or
- a legal professional.

Q5 Who are subject to the fit and proper test?

Answer: Unless exempted from the fit and proper test (see section 53B of the AMLO), the following persons are subject to the fit and proper test and a Statement as regards Fit and Proper Criteria of the persons (Form TCSP4 for an individual or Form TCSP5 for a corporation) should be delivered together with the respective application form (Form TCSP1, TCSP2 or TCSP3):

- (a) Application for the grant (Form TCSP1) or renewal (Form TCSP2) of a TCSP licence:
 - (i) For an applicant that is an individual carrying on business as a sole proprietor,
 - the individual; and
 - each ultimate owner;
 - (ii) For an applicant that is a partnership,
 - each partner; and
 - each ultimate owner;
 - (iii) For an applicant that is a corporation,
 - each director; and
 - each ultimate owner.
- (b) Application by a TCSP licensee for approval for a person to become an ultimate owner, a partner or a director of the TCSP licensee (Form TCSP3):
 - the person proposed to become an ultimate owner, a partner or a director of the TCSP licensee.

Q6 We are operating a business centre in Hong Kong which provides a registered office or business address and office support services for small businesses. Are we required to apply for a TCSP licence?

Answer: If you, by way of business, provide a registered office, business address, correspondence or administrative address to other businesses, you are required to apply for a TCSP licence.

Q7 How can I know if I am carrying on a trust or company service by way of business?

Answer: According to case law, the question of whether the provision of a service amounts to the carrying on of a business is a question of fact to be answered upon a consideration of all the circumstances. In considering whether a person is providing a trust or company service by way of business, it is relevant to take into account whether the person:

- (a) undertakes one or more of the activities of a TCSP;
- (b) advertises or publicizes his business activity or receives referrals from other companies;
- (c) aims to make a profit when he carries out the activity; and
- (d) carries out the activity with reasonable or recognizable continuity.

Q8 We are a member of a corporate group and we provide company services to other members of the group. Are we required to apply for a TCSP licence?

Answer: As a rule of thumb, the company in question is not required to apply for a TCSP licence if the following conditions are met:-

- (a) you are a member of a group of companies;
- (b) there is no receipt of service fee in respect of the company services provided by you to other members of the group; and
- (c) you provide company services to other members of the group only but not to any other person.

The above serves as an example of when a TCSP licence is not required.

In other situations where a member of a corporate group provides company services solely to other group members, it would not normally be considered to be providing the services by way of business and would not normally be required to apply for a TCSP licence.

You may wish to consult professional advice if you have doubt on the facts of your case.

Q9 Our company does not act as secretary for clients, but we provide registered office, business address and correspondence address for our clients, do we need to apply for a TCSP licence?

Answer: Yes, if your company carries on a trust or company service business in Hong Kong, it is required to apply for a TCSP licence from the Registrar. The definitions of “trust or company service business” and “trust or company service” are set out in section 1 of Part 1 of Schedule 1 to the AMLO and cover the provision of a registered office, business address, correspondence or administrative address for a corporation, partnership or any other legal person or legal arrangement.

Q10 I act as a nominee shareholder holding shares on behalf of my father in a company owned by him. Do I need to apply for a TCSP licence?

Answer: The provision in Hong Kong, by way of business, of the service of acting as a nominee shareholder for a person falls within the definition of “trust or company service” in section 1 of Part 1 of Schedule 1 to the AMLO. In respect of what amounts to the carrying on of a business, you may wish to see the answer to Q7 above. If you just act as a nominee shareholder for your father on a one-off appointment basis and with no commercial gain, you are not required to apply for a TCSP licence.

Q11 I am a landlord and carry on a business of leasing office or business premises to clients. Do I need to apply for a TCSP licence?

Answer: No, you are not required to apply for a TCSP licence. Leasing office or business premises does not fall within the definition of “trust or company service” in section 1 of Part 1 of Schedule 1 to the AMLO.

Q12 My father owns a company which does not provide trust or company service. The company is not a TCSP licensee. I am the company secretary of my father’s company and do not provide company secretarial service to other persons. Do I need to apply for a TCSP license?

Answer: No, you are not required to apply for a TCSP licence to act as a company secretary of your father’s business.

Q13 I prepare annual returns of companies for my clients. Do I need to apply for a TCSP licence?

Answer: If the only service provided by you is to prepare annual returns for your clients, you are not required to apply for a TCSP licence. Preparation of annual returns of companies is not one of the services specified in the definition of “trust or company service” in section 1 of Part 1 of Schedule 1 to the AMLO.

Q14 I am going to become an ultimate owner of a TCSP licensee and I reside outside Hong Kong, do I need to undergo the fit and proper test under the TCSP licensing regime?

Answer: Unless exempted by virtue of section 53B of the AMLO (for example, if you are an accounting professional or a legal professional), you are required to undergo the fit and proper test.

Q15 I am going to become an alternate director of a TCSP licensee, do I need to undergo the fit and proper test under the TCSP licensing regime?

Answer: Unless exempted by virtue of section 53B of the AMLO (for example, if you are an accounting professional or a legal professional), you are required to undergo the fit and proper test.

Q16 I am a TCSP licensee. After I have carried out customer due diligence (“CDD”) measures in relation to a customer before establishing a business relationship with the customer, do I need to continue to update the CDD records of the customer throughout the business relationship with the customer?

Answer: Yes, pursuant to section 5 of Part 2 of Schedule 2 to the AMLO, a TCSP licensee must continuously monitor the business relationship with a customer by:

- (a) reviewing from time to time documents, data and information relating to the customer that have been obtained by the licensee for the purpose of complying with CDD requirements to ensure that they are up-to-date and relevant;
- (b) conducting appropriate scrutiny of transactions carried out for the customer to ensure that they are consistent with the licensee’s knowledge of the customer and the customers’ business, risk profile and source of funds; and
- (c) identifying transactions that are complex, unusually large in amount or of an unusual pattern or that have no apparent economic or lawful purpose, and examining the background and purposes of those transactions and setting out the findings in writing.

You should also note that requirements for ongoing monitoring under section 5 of Part 2 of Schedule 2 to the AMLO also apply to pre-existing customers (i.e. customers with whom the TCSP licensee has established business relationship before 1 March 2018).

Q17 I have been carrying on business as a trust or company service provider with a TCSP licence. If I notice that there is a change of director or shareholder of my customer, do I need to identify and verify the name of the new director or shareholder of the customer?

Answer: Yes, you need to identify and verify the name of the new director or shareholder of the customer. Under section 5 of Part 2 of Schedule 2 to the AMLO, a TCSP licensee is required to continuously monitor the business relationship with a customer by reviewing from time to time documents, data and information relating to the customer that have been obtained by the licensee for the purpose of complying with CDD requirements to ensure that such information is up-to-date and relevant. All customers that present high risk of money laundering and/or terrorist financing should be subject to a minimum of an annual review, or more frequent reviews if deemed necessary by the TCSP licensee, to ensure the CDD information retained remains up-to-date and relevant.

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