



Frequently Asked Questions

Trust Companies

Q1 Our company has already been registered with the Companies Registry (“the Registry”) under the Trustee Ordinance (Cap. 29), do we need to apply for a TCSP licence?

Answer: Yes, your company is required to apply for a TCSP licence from the Registrar to carry on a trust or company service business in Hong Kong.

Q2 I am employed by a TCSP to provide trust or company service to its clients in Hong Kong. Do I need to apply for a TCSP licence for myself?

Answer: No, you are not required to apply for a TCSP licence. Your employer, unless exempted, should obtain a TCSP licence from the Registrar for carrying on its trust or company service business.

Q3 If a company being a member of a corporate group provides trust services to other members of the group, is the company required to apply for a TCSP licence?

Answer: If the company by way of business provides trust services to other members of the group, it is required to apply for a TCSP licence. Whether the company’s provision of the trust services is by way of business will depend on the facts and circumstances of each individual case.

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

Q4 Is a trustee of private trusts or bare trusts required to apply for a TCSP licence?

Answer: If the trustee provides trust services in Hong Kong by way of business to other persons, the trustee is required to obtain a TCSP licence.

Q5 Is a company required to apply for a TCSP licence in the following scenarios:

- (a) the sole purpose of the company is to act as a trustee of a private family trust with or without fees; or**
- (b) the company only acts as a custodian trustee which holds the trust assets on behalf of another person?**

Answer: If the company, by way of business, provides in Hong Kong a trust or company service to other persons, the company is required to apply for a TCSP licence.

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.

Therefore, if a company acts as the trustee for a trust, charges for the service, publicizes the service and carries on the activity continuously, it is clear that the company is carrying on a business and needs to obtain a licence. On the contrary, a licence is unlikely to be required if a person accepts a one-off appointment by a friend or relative to act as a trustee of a trust in a personal capacity and with no commercial gain.

Q6 We are a trustee of a collective investment scheme in the form of a trust (“the Trust”) who is responsible for safekeeping of fund assets and not for dealing with the investors whether for selling or marketing of units or otherwise. The fund manager is responsible for managing the fund, including the marketing and selling of the fund to the investors (whether by itself or through its appointed distributors), and gives relevant instructions to us in relation to the fund assets in accordance with the provisions of the trust deed. In such a case, in respect of whom should we apply customer due diligence (“CDD”) measures as a trustee?

Answer: Scenario 1

In the case as set out in the question, the trustee should carry out CDD on the customer that is the Trust itself, to which the trustee provides its services. The trustee may apply simplified customer due diligence (“SDD”) to the Trust if the trustee is able to ascertain that there is an institution responsible for carrying out CDD on all investors of the Trust and such institution falls within any of the categories of institution set out in section 4(3)(d) of Part 2 of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, Cap. 615 (“AMLO”), i.e. either it is:-

- (a) a financial institution; or
- (b) an institution that:-
 - (i) is incorporated or established in Hong Kong or an equivalent jurisdiction;
 - (ii) has measures in place to ensure compliance with requirements similar to those imposed under Schedule 2 to the AMLO; and
 - (iii) is supervised for compliance with those requirements.

Scenario 2

Where:-

- (a) the fund manager is a financial institution (as defined in section 1 of Part 2 of Schedule 1 to the AMLO);
- (b) the underlying investors have no control over the management of the Trust’s assets; and
- (c) the fund manager has conducted CDD on the Trust pursuant to the provisions of the AMLO,

the trustee may conduct CDD on the customer that is acting as the fund manager of the Trust. As the fund manager is a financial institution, the trustee may apply SDD to the fund manager pursuant to section 4(3)(a) of Part 2 of Schedule 2 to the AMLO.