

TRUST OR COMPANY SERVICE PROVIDER (TCSP)

Regulation of Trust or Company Service Providers – Part 5A of Anti-Money Laundering and Counter-Terrorist Financing Ordinance, Chapter 615

- new licensing regime for TCSPs effective on 1 March 2018
- the Companies Registry is responsible for the administration of licensing regime of TCSPs, site inspections to be carried out to ensure compliance with the customer due diligence and record-keeping requirements

Licensing of TCSP

- 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 licence
- trust or company services business means the business of provision in Hong Kong by a person of one or more of the following services to other persons (Section 1 Part 1 of Schedule 1):
 - forming corporations or other legal persons
 - acting or arranging for another person to act
 - as a director or secretary of a corporation
 - as a partner of a partnership
 - in a similar position in relation to other legal persons
 - providing a registered office, business address, correspondence or administrative address for a corporation, a partnership or any other legal person or legal arrangement
 - acting or arranging for another person to act
 - as a trustee of an express trust or similar legal arrangement
 - as a nominee shareholder for a person other than a corporation whose securities are listed on a recognized stock market
- by way of business
 - undertakes one or more of the activities of a TCSP
 - advertises or publicizes the business activity or receive referrals from other companies
 - aims to make profit when carrying out the activities
 - carries out the activity with reasonable or recognizable continuity
- no need to apply for a licence for
 - preparing annual returns of companies
 - leasing office or business premises by a landlord
 - providing company services solely to other members of the group without receiving service fee and not to provide services to any other person

- the validity period of a licence granted is 3 years
- a licence ceases to be valid
 - if the licensee is an individual carrying on business as a sole proprietor, on the death of the individual
 - if the licensee is a partnership, on the dissolution of the partnership or
 - if the licensee is a corporation, on the commencement of the winding up of the corporation
- a person who commits an offence of carrying on trust or company service business without a licence is liable on conviction to a fine at level 6 (HK\$100,000) and to imprisonment for 6 months
- if a person is convicted of an offence, the magistrate may order that the person be disqualified from holding a licence for a period
 - beginning on the date of the order and
 - specified in the order

Main duties of a TCSP licensee

- obtaining prior approval from the Registrar of Companies for a person to become the TCSP licensee's ultimate owner, partner or director
- reporting changes in the particulars to the Registrar
- reporting cessation of business to the Registrar
- complying with other ongoing obligations of a TCSP licensee, including the statutory requirements relating to the customer due diligence and record-keeping

Licensing exemptions

- TCSP licensing requirements not apply to:
 - the Government
 - an authorized institution [S2(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 [S1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571)]
 - an accounting professional [Professional Accountants Ordinance (Cap 50)/ Accounting and Financial Reporting Council Ordinance]
 - a legal professional [Legal Practitioners Ordinance (Cap 159)]
 - a person of a class or description prescribed by regulation by the Secretary for Financial Services and the Treasury by regulation

Accounting professional

- a certified public accountant as defined by s2(1) of the Professional Accountants Ordinance (“the PAO”)
- a certified public accountant (practising) as defined by s2(1) of the Accounting and Financial Reporting Council Ordinance (“the AFRCO”)
- a corporate practice as defined by s2(1) of the AFRCO
- a CPA firm as defined by s2(1) of the AFRCO
- a certified public accountant as defined by the PAO/certified public accountant (practicing) as defined by the AFRCO carrying on a trust or company service business in Hong Kong as a sole proprietor is
 - not required to apply for a licence from the Registrar
 - subject to the regulatory regime of the Accounting and Financial Reporting Council (“AFRC”) in all aspects and in accordance with the provisions of the AFRCO and the AMLO and in particular, the requirements relating to customer due diligence and record-keeping set out in the AMLO
- a partnership of accounting professionals in which at least one partner is not a certified public accountant is
 - required to obtain licence from the Registrar for carrying on trust or company service business
 - subject to the regulatory regime from the Registrar
 - the Registrar will not conduct fit and proper test on the partners who are accounting professionals
 - the partnership (and all partners) will have to comply with the requirements relating to customer due diligence and record-keeping set out in the AMLO
- a corporate practice as defined by the AFRCO that carries on a trust or company service business in Hong Kong is
 - not required to apply for a licence from the Registrar
 - the corporate practice and its directors are subject to the regulatory regime of the AFRC in all aspects and in accordance with the provisions of the AFRCO and the AMLO and in particular, the requirements relating to customer due diligence and record-keeping set out in the AMLO
- all corporations (other than a corporate practice as defined by the AFRCO) are
 - required to apply for a licence from the Registrar for carrying on trust or company service business
 - subject to the regulatory regime from the Registrar
 - the Registrar will not conduct fit and proper test on the directors who are accounting professionals
 - the corporation will have to comply with the requirements relating to

customer due diligence and record-keeping set out in the AMLO

Legal professional

- a solicitor as defined by s2(1) of the Legal Practitioners Ordinance (“LPO”)
- a foreign lawyer as defined by s2(1) of the LPO
- a legal professional may carry on a trust or company service business in Hong Kong in the form of a sole proprietorship, partnership or corporation
- legal professionals are subject to the regulatory regime of the Law Society of Hong Kong in all aspects and in accordance with the provisions of the AMLO and LPO

Persons exempted from the fit and proper test

- for the type of persons mentioned in “Licensing exemptions” are not subject to the fit and proper test, they are also not required to obtain the Registrar’s approval to become a TCSP licensee’s ultimate owner/partner/director
- a copy of the document proving that the person belongs to an exempted type of person should be delivered together with the relevant application

Fit and proper test

- a statutory requirement for determining whether a TCSP and every relevant person of the TCSP are fit and proper to carry on or be associated with trust or company services business
- part of the process of the following types of application
 - application for a TCSP licence
 - application for renewal of a TCSP licence
 - application for an approval for a person to become an ultimate owner, a partner or a director of a TCSP licensee
- 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, the company is in liquidation or receivership

Application for and grant of licence

- the Registrar may, on application, grant a licence to carry on trust or company service business to sole proprietor, partnership or a corporation
- fit and proper test
 - sole proprietor – the individual and ultimate owner
 - partnership – each partner and each ultimate owner

- corporation – each director and each ultimate owner
- application must be made in the Form TCSP1 (together with supplementary information sheets Form TCSP1-S1S and TCSP1-S1S2A) and Form TCSP4 and/or Form TCSP5 and be delivered electronically on the website of the CR's Trust and Company Service Providers Licensing Regime (www.tcsp.cr.gov.hk) or in person or by post to the CR office at Unit 1208, 12th Floor, One Kowloon, 1 Wang Yuen Street, Kowloon Bay, Kowloon
- for persons exempted from the fit and proper test, instead of submitting Form TCSP4 or TCSP5, a copy of the document proving that the person belongs to an exempted type of person should be delivered together with the related application form
- application must be accompanied by a copy of a valid business registration certificate and the fee specified in Schedule 3A
- if the Registrar decides not to grant a licence, the Registrar must inform the applicant of the decision by notice in writing which includes a statement of the reasons for the decision and that the applicant may apply to the Review Tribunal for a review of the decision within the period ending 21 days after the notice informing the applicant of the decision has been sent
- a licence is valid for 3 years beginning on the date on which the licence is granted or if the Registrar considers appropriate, a shorter period determined by the Registrar beginning on the date on which the licence is granted

Renewal of licence

- application for renewal of licence must be made at least 60 days before the licence is due to expire, made in the form specified by the Registrar accompanied by a fee
- the Registrar may request for additional information and/or documentary evidence whenever necessary
- the Registrar may inspect the business premises of the licensees or invite relevant persons to attend interviews to obtain further information
- if the application is successful, a licence will be issued, the applicant's name will be included in the register of TCSP licensees
- application for renewal of licence will not be accepted if made in less than 60 days from the expiry of the current licence, the applicant has to make an application for new TCSP licence in order to carry on trust or company service business in Hong Kong

Revocation/suspension of licence

- if the Registrar is no longer satisfied that the licensee, any ultimate owner, partner

or director of the licensee is a fit and proper person for carrying on or, as the case may be, to be associated with a trust or company service business, the Registrar may revoke/suspend a TCSP licence

- the Registrar will inform the licensee of the revocation/suspension by notice in writing and takes effect at the time specified in the notice
- impact of the suspension of licence: the licensee cannot carry on a trust or company service business in Hong Kong for the duration of the suspension specified in the notice
- impact of the revocation of licence: the licence ceases to be valid and the person commits an offence if the person continues to carry on a trust or company service business in Hong Kong

Cessation of business

- notify the Registrar of the intention to cease business and the intended date of cessation
- Form TCSP7 for reporting such intention should be submitted before the intended date of cessation
- the Registrar will cancel the licence with effect from the intended date of cessation

Register of licensees

- the Registrar must maintain a register containing the name of every licensee and business address
- available at www.tcsp.cr.gov.hk for online inspection, free of charge

Ongoing obligations of licensees

- comply with the licensing conditions
 - obtain prior approval from the Registrar for a person to become ultimate owner, partner of a licensed partnership, director of a licensed corporation (a person can be added as ultimate owner, partner or director of a TCSP licensee if the person belongs to the type of person such as CPA, solicitor, without the Registrar's prior approval)
 - within 1 month beginning on the date on which the person becomes an ultimate owner, partner or director of the business, notify the Registrar of such change
 - notification of changes in particulars of licensee, changes in the fit and proper status of persons who have undergone the fit and proper test within 1 month beginning on the date of the change takes place
 - notification of cessation of business must be given to the Registrar before the

- intended date of cessation
- within 1 month beginning on the date of the change of Compliance officer, Money laundering reporting officer or their particulars, notify the Registrar of such change
- comply with the requirements of the AMLO (Part 2, 3 or 4 of Schedule 2) and the guidelines issued by the CR including the customer due diligence and record-keeping requirements
- co-operate with the CR and allow staff of the CR to enter into the business premises to conduct inspections and making copies of records or documents, and making enquiries about any record or document relating to the business carried on, or any transaction carried out, by the TCSP licensee

Business premises

- any premises at which the TCSP licensee carries on business, including a place of business used for the purpose of
 - the administration of the licensee's affairs or business
 - the processing of transactions
 - the storage of documents, data or records

Consequence of not applying for a licence to carry on trust or company service business in Hong Kong

- a person who commits an offence under S53F(1) is liable on conviction to a fine of HK\$100,000 and imprisonment up to 6 months

Consequence of any failure by TCSP licensee to obtain the Registrar's approval before a person becomes a TCSP licensee's ultimate owner/partner/director

- a person who, without reasonable excuse, contravenes the requirement commits an offence and is liable on conviction to a fine of HK\$50,000 and imprisonment for 6 months
- the Registrar may also take disciplinary actions against the TCSP licensee for the contravention

Consequence of any failure by TCSP licensee to notify the Registrar of changes in particulars/the cessation of trust or company service business

- a licensee who, without reasonable excuse, contravenes the requirement commits an offence and is liable on conviction to a fine of HK\$50,000
- the Registrar may also take disciplinary actions against the TCSP licensee

Disciplinary actions may be taken by the Registrar

- publicly reprimand the licensee
- order the licensee to take, by a date specified by the Registrar, any action specified by the Registrar for the purpose of remedying the contravention and
- order the licensee to pay a pecuniary penalty not exceeding HK\$500,000

Examples of situations in which the Registrar may take disciplinary actions

- the TCSP licensee contravenes any customer due diligence and record-keeping requirement
- the TCSP licensee contravenes any of the related regulations made by the Registrar pursuant to the AMLO
- the TCSP licensee contravenes a condition of the TCSP licence
- a person becomes an ultimate owner, a partner or a director of a licensed TCSP without prior approval of the Registrar
- the TCSP licensee fails to notify the Registrar of any change in the particulars previously provided to the Registrar in connection with the licensee's application for the grant or renewal of the licence within 1 month beginning on the date on which the change takes place
- the TCSP licensee fails to notify the Registrar before the intended date of cessation of its intention to cease to carry on trust or company service business in Hong Kong and its intended date of cessation

Imposition of pecuniary penalty

- the Registrar may order a TCSP licensee to pay a pecuniary penalty not exceeding HK\$500,000
- if the TCSP licensee fails to comply with the order to take remedial action, the Registrar may further order the TCSP licensee to pay a daily pecuniary penalty not exceeding HK\$10,000 for each day on which the failure continues
- the Registrar will consider all relevant factors and the particular circumstances of the case
 - nature and seriousness of the contravention
 - conduct and co-operativeness of the TCSP licensee
 - non-compliance records of the TCSP licensee
 - other factors
- if the Registrar decides to impose a pecuniary penalty, a notice in writing will be issued to the TCSP licensee which will state
 - the reasons for the Registrar's decision to impose the pecuniary penalty
 - the amount of the pecuniary penalty

- the period within which the pecuniary penalty is to be paid
- the TCSP licensee shall pay the pecuniary penalty to the Registrar within 30 days or a longer period specified in the notice

Onsite inspections

- staff of the Companies Registry will conduct inspections on the business premises of TCSP licensees to ascertain whether licensees have complied with the AMLO, including the inspection and making of copies of records or documents, and making enquiries about any record or document relating to the business carried on or any transaction carried out by the licensees
- between April 2020 and March 2021, the Companies Registry carried out 420 onsite inspections
 - issued 1 advisory letter
 - issued 213 warning letters for non-compliance
 - issued 605 summonses for breaches of the AMLO
- for the year 2021 to 2022, the Companies Registry carried out 701 onsite inspections
 - issued 616 warning letters for non-compliance
 - issued 309 summonses for breaches of the AMLO
 - imposed disciplinary actions against 12 licensees
- be prepared for increased scrutiny and disciplinary actions by the Companies Registry
- lessons learned
 - effective internal controls in place to handle money laundering/terrorist financing risks
 - relevant documentation to demonstrate to regulators that the necessary CDD is being carried out

List of forms specified for the trust or company service providers licensing regime

Form No.	Title
TCSP 1	Application for a trust or company service provider licence
TCSP 2	Application for renewal of a trust or company service provider licence
TCSP 3	Application for approval to become an ultimate owner / a partner / a director of a TCSP licensee
TCSP 4	Statement as regards Fit and Proper Criteria (individual)
TCSP 5	Statement as regards Fit and Proper Criteria (corporation)
TCSP 6	Notification of changes in particulars
Schedule A	change in particulars of licensee
Schedule B	cessation of being a relevant person of licensee
Schedule C	addition of a relevant person/change in particulars of a relevant person – individual
Schedule D	addition of a relevant person/change in particulars of a relevant person – corporation
Schedule E	change in fit and proper status of licensee/a relevant person
TCSP 7	Notification of cessation of trust or company service business

Schedule 3A – Fees Schedule

Particulars	Fee (HK\$)
Application fee for the grant of a licence and for each person who is subject to fit and proper test	3,440 975
Application fee for the renewal of licence and for each person who is subject to fit and proper test	2,910 975
Application fee for an approval of an applicant to become an ultimate owner/partner/director of a TCSP licensee	1,140/person
Fee for certifying a copy of an entry in or extract from the register	260/copy
Fee for providing a certificate referred to in S53E(1)(b)	385/copy

AMLO COMPLIANCE – TCSP

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

- with the amendment Ordinance 2018 came into effect on 1 March 2018
- extend statutory customer due diligence and record-keeping requirements to designated non-financial businesses and professions
- introduce a licensing regime for TCSPs

Guideline on compliance of AML/CTF requirements for TCSP

- for use by TCSP licensees, their officers and staff
- provide general background on the subjects of money laundering and /or terrorist financing
- provide practical guidance to assist TCSP licensees and their senior management in devising and implementing policies, procedures and controls in relevant operational areas

AML/CTF obligations of TCSP licensees

- TCSP licensees are required to
 - take all reasonable measures to mitigate the risk of money laundering/terrorist financing and
 - ensure that the AML/CTF requirements under the AMLO are complied with
- TCSP licensees must assess the money laundering (“ML”) or terrorist financing (“TF”) risk of their businesses, develop and implement policies, procedures and controls on
 - risk assessment
 - customer due diligence measures
 - ongoing monitoring of customers
 - suspicious transactions reporting
 - record keeping, and
 - staff training

AML/CTF systems

- adequate and appropriate systems (including customer acceptance policies and procedures) taking into account factors including
 - products and services offered
 - types of customers
 - geographical locations

- proper implementation of policies and procedures
 - senior management oversight
 - appointment of compliance officer and money laundering reporting officer
 - compliance and audit function
 - staff screening and training
- documenting risk assessment
 - TCSP licensees should keep records and relevant documents of the risk assessment so that they can demonstrate to the Registrar
 - how the customer’s ML/TF risks are assessed
 - the extent of CDD and ongoing monitoring is appropriate based on that customer’s ML/TF risks

Compliance Officer and Money Laundering Reporting Officer

- the senior management should appoint:
 - a director or senior manager as Compliance Officer (“CO”) who has overall responsibility for the establishment and maintenance of the licensee’s AML/CTF systems
 - a senior member of the licensee’s staff as Money Laundering Reporting Officer (“MLRO”) who is the central reference point for reporting suspicious transactions
- the senior management should, as far as practicable, ensure that they are:
 - independent of all operational and business functions, subject to constraint of size of the licensee’s business
 - normally based in Hong Kong
 - provided with regular contact with, and when required, direct access to senior management
 - fully conversant with the AML/CTF statutory and regulatory requirements on the licensee and the ML/TF risks arising from the licensee’s business
- depending on the scale, operation, nature of business and risk profile of a TCSP licensee, same person may be appointed as its CO and MLRO
- all staff are made aware the identity of CO and MLRO

Responsibilities of Compliance Officer

- act as the focal point within the business of a TCSP licensee for the oversight of all activities relating to the prevention and detection of ML/TF
- provide support and guidance to the senior management to ensure that ML/TF risks are adequately managed
- develop and/or continuously review the TCSP licensee’s AML/CTF systems to

ensure they remain up-to-date and meet current statutory and regulatory requirements

- identify and rectify deficiencies in the AML/CTF systems
- oversee all aspects of the TCSP licensee's AML/CTF systems which include monitoring effectiveness and enhancing the controls and procedures where necessary
- AML/CTF training for staff

Responsibilities of Money Laundering Reporting Officer

- review all internal records of suspicious transactions and exception reports, and in the light of all available information, determine whether or not it is necessary to file a suspicious transaction report ("STR") with the Joint Financial Intelligence Unit ("JFIU")
- maintain all records relating to such internal reviews
- provide guidance to staff on how to avoid "tipping-off" if any STR is filed
- act as the main point of contact with JFIU, law enforcement agencies, and any other competent authorities in relation to ML/TF prevention and detection, investigation or compliance

Risk-based approach

- TCSP licensees are required to identify, assess and take effective action to mitigate their ML/TF risks
- TCSP licensees can apply appropriate control and oversight to new and existing customers by determining
 - the extent of CDD to be performed
 - the level of ongoing monitoring to be applied to the relationship with customers
 - the measures to mitigate any ML/TF risks identified
- in determining the ML/TF risk rating of customers, the following factors may be considered
 - country/geographic risk
 - customer risk
 - product/service risk
 - delivery/distribution channel risk

Country/geographic risk

- customers with residence in or connection with high-risk jurisdictions
 - identified by FATF as jurisdictions with strategic AML/CTF deficiencies

- countries subject to sanctions, embargos
- countries which are vulnerable to corruption
- countries that are believed to have strong links to terrorist activities

Customer risk

- customers conducting their business relationship or transactions in unusual circumstances
 - significant and unexplained geographic distance between the TCSP licensee and the location of the customer
- customers where the structure or nature of the entity or relationship makes it difficult to identify and verify their true owners or controlling interests
 - unexplained use of corporate structures, express trusts, nominee shares, use of bearer shares
 - unexplained delegation of authority through the use of power of attorney, mixed board and/or representative offices
 - unexplained relationship between the customer's beneficial owners and controllers and account signatories
 - the beneficiary of a trust is another trust or corporate vehicle or where the trust deed does not include the names of the settlor, the beneficiaries or the class of beneficiaries
- cash intensive business
 - money services business
 - casinos, betting or other gambling related activities
 - businesses that generate substantial amounts of cash for certain transactions
- charities and other not-for-profit organisations which are not subject to monitoring or supervision (especially those operating on a "cross-border" basis)
- customers that are or connected to PEPs
- customers buying the products/services with no commercial rationale, who requests for undue levels of secrecy, or where it appears that an "audit trail" has been deliberately broken or unnecessarily layered
- high risk customers and PEPs whose origin of wealth cannot be easily verified

Product/service risk

- TCSP licensees should be mindful of the risk associated with their products or services
 - shell companies, companies with ownership through nominee shareholding and control through nominee and corporate directors
 - services where TCSP licensees actually handle the receipt and transmission

of cash proceeds through accounts they actually control in the act of closing a business transaction

- services to conceal beneficial ownership from competent authorities
- situations where it is difficult to identify the beneficiaries of trusts
- commercial, private or real property transactions or services with no apparent legitimate business, economic, tax, family governance or legal reasons
- payments received from unassociated or unknown third parties which is not a typical method of payment
- offers made by customers to pay extraordinary fees for services which would not ordinarily warrant such a premium
- services that inherently have provided more anonymity
- products or services which are able to pool underlying customers or funds

Delivery/distribution channel risk

- the distribution channel for products may alter the risk profile of a customer
 - transactions through online, postal or telephone channels where a non-face-to-face approach is used for establishing business relationship
 - business transactions made through intermediaries as the business relationship between the customer and a TCSP licensee may become indirect

Customer due diligence (“CDD”)

- enable a TCSP licensee to form a reasonable belief that if it knows the true identity of each customer and, with an appropriate degree of confidence, knows the type of business and transactions the customer is likely to undertake
 - identify the customer and verify the customer’s identity using documents, data or information provided by a reliable and independent source
 - identify and take reasonable measures to verify the beneficial owner’s identity
 - identify and verify a person purporting to act on behalf of a customer
 - obtain information on the purpose and intended nature of the business relationship established with TCSP licensee
- TCSP licensees may also need to conduct additional measures (referred to as enhanced customer due diligence (“EDD”)) or alternatively, simplified customer due diligence (“SDD”)

When TCSP licensees applying CDD

- before establishing any business relationship
- before carrying out an occasional transaction that involves an amount equal to or

exceeding the aggregate value of HK\$120,000

- when suspecting the customer or the customer's account is involved in ML/TF
- having doubts in the veracity or adequacy of any information previously obtained for the purpose of identifying the customer or for the purpose of verifying the customer's identity
- TCSP licensees should undertake periodic reviews of records of existing customers and conduct review under circumstances of certain triggering events:
 - change in the beneficial ownership/control of the client entity
 - change in the person purported to act on behalf of the client
 - re-activation of a dormant entity of the client
 - material change in the way in which the client's business is operated
 - in the event of a significant transaction taking place, which transaction is either unusual or inconsistent with the TCSP's knowledge of the client's business/risk profile/source of funds
 - when the TCSP licensee is aware that it lacks sufficient information about the customer concerned
- TCSP licensees may, **exceptionally**, verify the identity of the customer and any beneficial owner after establishing the business relationship, provided that
 - any risk of ML/TF arising from the delayed verification of the customer's or beneficial owner's identity verification can be effectively managed
 - all other necessary CDD information is obtained
 - this is necessary not to interrupt the normal conduct of business with regard to the customer
 - the verification is completed as soon as reasonably practicable and
 - the business relationship will be terminated if verification cannot be completed as soon as reasonably practicable
- in case of failure to complete the identity verification
 - within 60 working days after the establishment of a business relationship with a customer, the TCSP licensee should suspend the business relationship with the customer and refrain from carrying out further transactions
 - within 120 working days after the establishment of a business relationship, the TCSP licensee should terminate the business relationship with the customer
 - the TCSP licensee should assess whether the aforesaid failures provide grounds for knowledge or suspicion of ML/TF and a report to the JFIU is appropriate
 - when terminating a relationship where funds or other assets have been received, the TCSP licensee should return the funds or assets to the source

from which they were received wherever possible

Simplified customer due diligence

- TCSP licensees not required to identify and verify the beneficial owner but still required to conduct ongoing monitoring of the business relationship
- may apply to financial institution, a corporation listed on any stock exchange, investment vehicle, the Government or any public body in Hong Kong, the government of an equivalent jurisdiction (FATF member) or a body in an equivalent jurisdiction that performs functions similar to those of a public body
- examples where SDD measures may be adopted:
 - reliable information on the client is publicly available
 - TCSP licensee is familiar with the client's AML/CTF controls due to previous dealings with the client
 - the client is a listed company subject to regulatory disclosure requirements or a financial institution that is subject to and supervised for compliance with AML/CTF requirements consistent with standards set by the FATF

Enhanced customer due diligence

- apply to high-risk situations
 - customers not physically present for identification purpose
 - politically exposed person ("PEP") (customer or beneficial owner)
 - corporate customer which has issued bearer shares
 - customer from or transaction connected with a jurisdiction that does not adopt or insufficiently adopts FATF recommendations
 - any situation specified by the Registrar in a notice given to the TCSP licensee
- obtain approval from senior management to commence or continue the relationship, as applicable
- take reasonable measures to establish the customer's or the beneficial owner's source of wealth and the source of funds that will be involved in the proposed business relationship
- obtain additional information on the client, the intended nature of the business relationship (e.g. anticipated account activity)
- apply enhanced monitoring to the relationship in accordance with the assessed risk by increasing the number and timing of the controls applied and selecting patterns of transactions that need further examination

Politically exposed person

- the office and position may render a PEP vulnerable to corruption

- the risk increases when the PEP is from a foreign country with a widely-known problems of bribery, corruption and financial irregularity within their government and society
- if an individual is known to be a domestic PEP, the TCSP licensee should perform a risk assessment to determine whether the individual poses a higher risk of ML/TF, if so, the licensee should apply the EDD as required
- TCSP licensees should retain a copy of the assessment for inspection by the Companies Registry and other authorities and should review the assessment whenever concerns as to the activities of the individual arise

Ongoing monitoring the business relationship with a customer

- reviewing from time to time documents, data and information relating to the customer that have been obtained for the purpose of complying CDD requirements to ensure that they are up-to-date and relevant
- 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 customer’s business, risk profile and source of funds
- identifying transactions that are complex, unusually large in amount or of an unusual pattern or that have no apparent economic or legal purpose and which may indicate ML/TF
- high-risk business relationships require more frequent and intensive monitoring
- for monitoring TCSP’s operational activities, various methods can be used including exception reports (large transactions exception report), transaction monitoring systems
- TCSP licensees should be vigilant for changes in the basis of the business relationship with customers over time which include
 - setting up new corporate/trust structure
 - buying new products/services that pose higher risk
 - unusual changes or increase of the activities or turnover of a customer
 - unusual changes in the nature of transactions of a customer

Reporting suspicious transactions

- statutory requirements for reporting suspicious transactions, failure to report the knowledge or suspicion carries a maximum of 3 months’ imprisonment and a fine of HK\$50,000
- TCSP licensees must ensure sufficient guidance is given to staff to enable them to form suspicion or to recognize the signs when ML/TF is taking place
- JFIU promotes the “SAFE” approach

- Screen the account for suspicious indicators
- Ask the customers appropriate questions
- Find out the customer's records
- Evaluate all the above information
- details of the SAFE approach are available at www.jfiu.gov.hk
- TCSP licensees are encouraged to use STR proforma or e-reporting system named Suspicious Transaction Report and Management System to report suspicious transactions
- TCSP licensee's MLRO should act as a central reference point for reporting suspicious transactions
- filing of a report to the JFIU provides the TCSP licensee a statutory defence to the offence of ML/TF provided that
 - the report is made before the licensee undertakes the disclosed acts and the acts or transactions are undertaken with the consent of the JFIU
 - the report is made after the licensee has performed the disclosed acts or transactions and the report is made on the licensee's own initiative and as soon as it is reasonable for the licensee to do so
- no "tipping-off" to the customer
- for full details of reporting methods and advice, see www.jfiu.gov.hk
- no filtering of reports to the MLRO
- all suspicious activities reported to the MLRO must be documented, the report must include the full details of the customer and a full statement on the information giving rise to the suspicion
- MLRO must acknowledge receipt of the report and at the same time, issue a reminder to the reporting staff of the obligation regarding tipping-off
- MLRO should review other connected business relationship, the evaluation process and the conclusion drawn should be documented
- MLRO should keep proper records of the deliberations and actions taken to demonstrate he/she has acted in reasonable manner

Financial sanction and terrorist financing

- lists of persons and entities subject to financial sanction under the United Nations Sanctions Ordinance ("UNSO") Cap 537 are available on the website www.tcsp.cr.gov.hk
- all TCSP licensees
 - should have an appropriate system to conduct name checks against the relevant lists regarding financial sanction and database of names and particulars of terrorist suspects and designated parties for screening purposes

and that the lists are up-to-date

- may make arrangements to access to such a database maintained by a third party service provider

Record keeping

- TCSP licensees must establish and maintain a record of all ML/TF reports made to the MLRO
- TCSP licensees must establish and maintain a record of all STRs made to the JFIU
- TCSP licensees should maintain all relevant records of customers, transactions that are necessary and sufficient to meet the record-keeping requirements under the AMLO
- records should be kept for at least 5 years after the end of the business relationship or after the completion of a transaction regardless of whether the business relationship ends during the period
- the Registrar may, by notice in writing to a TCSP licensee, require it to keep the records relating to a specified transaction or customer for a specified period that is longer than those referred to above, where the records are relevant to an ongoing criminal or other investigation or any other purposes as specified in the notice
- manner of record keeping
 - if the record consists of a document, either the original of the document should be retained or a copy of the document should be kept on microfilm or in the database of a computer
 - if the record consists of data or information, such record should be kept on microfilm or in the database of a computer

Staff training

- important element of an effective system to prevent and detect ML/TF activities
- TCSP licensees should implement a clear and well-articulated policy for ensuring that relevant staff receives adequate AML/CTF training
- staff should be trained in what they need to carry out in their particular roles with respect to AML/CTF
- training methods and assessment should be determined according to the size and complexity of the business and the type and level of ML/TF risk
- frequency of training should be sufficient to maintain the AML/CTF knowledge and competence of staff
- TCSP licensees should maintain staff's training records including the date and type of training received by each staff
- training records of staff should be maintained for a minimum of 3 years and be made

available to the CR on demand

- all staff should be made aware of
 - the TCSP licensee’s statutory obligations and their own personal statutory obligations and the possible consequences for failure to report suspicious transactions under the DTROPO, the OSCO and the UNATMO
 - any other statutory and regulatory obligations that concern the TCSP licensee and themselves under the AMLO, the DTROPO, the OSCO, the UNATMO and the UNSO, and the possible consequences of breaches of these obligations
 - the TCSP licensee’s policies and procedures relating to AML/CTF, including suspicious transaction identification and reporting
 - any new and emerging techniques, methods and trends in ML/TF to the extent that such information is needed by the staff to carry out their respective roles with respect to AML/CTF
- all new staff
 - introduction to the background of ML/TF, importance of AML/CTF to the TCSP licensees
 - the need and obligation to identify and report suspicious transactions to the MLRO, the offence of “tipping-off”
- front-line staff
 - importance of their role in the TCSP licensee’s AML/CTF strategy as being first point of contact with potential money launderers and persons involved in terrorist financing
 - TCSP licensee’s policies and procedures in relation to CDD and record-keeping requirements relevant to their job responsibilities
 - guidance or tips for identifying unusual activities in different circumstances that may give rise to suspicion
 - relevant policies and procedures for reporting unusual activities including line of reporting and circumstances where extra vigilance might be required
- back-office staff
 - appropriate training on customer verification and relevant processing procedures
 - ways to recognize unusual activities including abnormal settlement, payments or delivery instructions
- managerial staff (including internal audit staff, CO)
 - higher level training covering all aspects of Hong Kong’s AML/CTF regime
 - specific training in the AML/CTF requirements applicable to TCSP licensees
 - specific training in relation to their responsibilities for supervising or

managing staff, auditing the systems and performing random checks as well as the reporting of suspicious transactions to the JFIU

- MLRO
 - specific training in relation to the MLRO's responsibilities for assessing suspicious transaction reports submitted to them and reporting of suspicious transactions to the JFIU
- TCSP licensees should monitor the effectiveness of the training
 - testing staff's understanding of the TCSP licensee's policies and procedures to combat ML/TF, their understanding of relevant statutory and regulatory obligations, their ability to identify suspicious transactions
 - monitoring the compliance of staff with the TCSP licensee's AML/CTF systems as well as the quality and quantity of internal reports
 - further training needs may be identified and appropriate action may be taken

Upcomings

- the HKSAR government plans to amend the definition of PEPs in the AMLO
- the PEPs in the Mainland will be included within the definition of foreign PEPs
- TCSPs will need to conduct enhanced CDD on any PEPs as well as their family members and close associates
- PEPs would include senior executives of state-owned enterprises

Schedule to the AMLO	
S1 of Part 1 of Schedule 1	define “money laundering”, “terrorist financing”
Schedule 2	CDD requirements
S1 of Schedule 2	definition of PEP

Appendices of Guideline on compliance of anti-money laundering or counter-terrorist financing requirements for trust or company service providers

Appendix A	Identification and verification of customer who is an individual
Appendix B	Identification and verification of customer which is a corporation
Appendix C	Identification and verification of customer which is a partnership or an unincorporated body
Appendix D	Identification and verification of customer which is a trust

Main pieces of legislation in Hong Kong concerned with AML/CTF

- Anti-Money Laundering and Counter-Terrorist Financing Ordinance (“AMLO”) Cap 615
- Drug Trafficking (Recovery of Proceeds) Ordinance (“DTROPO”) Cap 405
- Organized and Serious Crimes Ordinance (“OSCO”) Cap 455
- United Nations (Anti-Terrorism Measures) Ordinance (“UNATMO”) Cap 575