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Tricor operating companies that provide core services in China & Hong Kong:

Tricor Services Limited

Tricor Investor Services Limited

Tricor Consultancy (Beijing) Limited

**Global Provider of
Integrated Business, Corporate & Investor Services**



Licensing Requirement for Trust or Company Service Providers

With effect from 1 March 2018 (the “Commencement Date”), Trust or Company Service Providers (“TCSPs”) are required to apply for a licence from the Registrar of Companies (the “Registrar”) to carry on a trust or company service business, and to comply with statutory customer due diligence (“CDD”) and record-keeping requirements.

The relevant legislation is contained in the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance 2018, which amends the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap 615) (the “AMLO”). The AMLO, as amended, extends CDD and record-keeping requirements to designated non-financial businesses and professions (which include solicitors, professional accountants, real estate agents and TCSPs) when they engage in certain businesses and transactions, such as trust or company service business, and requires TCSPs to be licensed for this purpose.

Tricor Group companies are deemed to be TCSP licensees as from 1 March 2018, and are required to apply CDD and record-keeping requirements to new and existing clients.

Tricor offers services to TCSPs that require licensing.

This *TechNews* highlights key requirements of the licensing regime and the practice implications.

Licensing Requirement for Trust or Company Service Providers Under the AMLO, effective 1 March 2018

Scope of Trust or Company Service Business

Trust or company service business includes the following:

- Forming corporations or other legal persons
- Acting, or arranging for another person to act, as a director, named secretary, partner or similar position in relation to other legal persons
- Providing a registered office, business address, correspondence or administrative address for a corporation or any other legal person
- Acting, or arranging for another person to act, as a trustee of an express trust or similar legal arrangement
- Acting, or arranging for another person to act, as a nominee shareholder for a person other than a listed entity

TCSP Licensing Regime

Conditions for Licensing

Unless expressly exempted, any person (including a sole proprietor, a partnership or a corporation, whether or not established / incorporated in Hong Kong) wishing to carry on a trust or company service business in Hong Kong is required to apply for a licence.

Granting of a licence is subject to the applicant and its ultimate owners / partners / directors meeting fit-and-proper criteria and any condition set by the Registrar.

Prior approval from the Registrar is required for a person to become a licensee's ultimate owner / partner / director. Where changes occur, notification has to be given to the Registrar.

Exemptions from Licensing

The following are exempted from TCSP licensing requirement:

- The Government
- An authorized institution, i.e. a bank, a restricted licence bank, or a deposit-taking company
- A licensed corporation¹ that operates a trust or company service business in Hong Kong that is ancillary to the corporation's principal business
- An accounting professional
- A legal professional
- A person of a class or description prescribed by the Secretary for Financial Services and the Treasury by regulation

A private trust company acting as trustee for only one trust, with or without fee, by way of business OR a company providing trust or company services to its group companies, with or without fee, by way of business is required to apply for a TCSP licence, without exemption.

¹ According to section 1 of Part 2 of Schedule 1 to the AMLO, "licensed corporation" has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance, Cap. 571 ("SFO"), i.e. a corporation which is granted a licence under section 116 or 117 of the SFO. Under s116, this means a corporation licensed for carrying on regulated activities.

Transitional Arrangements

A person who immediately before the Commencement Date was carrying on a trust or company service business and held a valid business registration certificate shall be deemed to have been granted a TCSP licence with effect from the Commencement Date.

Such deemed licensee must apply for a licence within 120 days from the Commencement Date.

Validity Period of Licence

A licence, once granted or renewed, is valid for 3 years, beginning on the date on which the licence is granted or renewed, or for a shorter period if the Registrar considers it appropriate.

Consequences of Non-compliance

A person carrying on a trust or company service business without a licence commits an offence, and is liable on conviction to a fine of \$100,000 and imprisonment for 6 months.

Administration of TCSP Licensing

The Registrar has the authority to grant, renew, refuse, suspend or revoke a licence; or impose or vary the conditions on a licence.

The Companies Registry ("CR") maintains a register of TCSP licensees containing the name of every licensee and their business address.

CR staff have the authority to carry out inspection for the purpose of ascertaining whether a TCSP licensee is complying or has complied with the licensing and statutory CDD and record-keeping requirements.


Key Obligations of TCSP Licensees

Prior to licence application

- Develop and implement policies, procedures and controls in respect of AML / CTF based on a risk assessment
- Ensure senior management oversight
- Appoint compliance officer and money laundering reporting officer
- Conduct staff training

Ongoing compliance

- Perform CDD
- Monitor business relationships with customers continuously
- Report suspicious transactions
- Maintain records of CDD and specified transactions
- Renew licence at least 60 days before expiry, as applicable
- Notify changes in particulars previously provided in connection with the licensee's application / renewal of licence
- Notify intended date of cessation if the licensee intends to cease carrying on the TCSP business



Statutory CDD and Record-keeping Requirements

A TCSP licensee has to perform CDD on customers, using a risk-based approach. The process includes identification of the customer, the beneficial owner (s) and other related parties, verification of identities and obtaining information on the nature of the business relationship. The licensee also has to meet record-keeping requirements. Records in relation to each relevant transaction and each customer have to be kept for a period of at least 5 years after the completion

of transaction and the end of the business relationship with the customer, respectively.

A TCSP licensee that is incorporated in Hong Kong and have overseas branches / subsidiaries carrying on the same business outside Hong Kong should put in place a group AML / CTF policy to ensure that these branches / subsidiaries comply with the CDD and record-keeping requirements similar to those imposed under the AMLO, to the extent permitted by the law of that place.

Where a TCSP licensee is unable to complete CDD requirements on a customer, the licensee would have to refrain from carrying out transactions or suspend / terminate the business relationship with the customer. **Tricor is required to apply these measures to its new and existing clients where applicable.**

Disciplinary Powers of the Registrar

If a TCSP licensee contravenes a CDD or record-keeping requirement, a condition of the licence, or a regulation made by the Registrar, or if a TCSP licensee fails to obtain the required approval for a person to become its ultimate owner / partner / director, or fails to notify the Registrar of changes in particulars or intended cessation of business, the Registrar may exercise one or more disciplinary powers:

- Publicly reprimand the licensee
- Order the licensee to remedy the contravention
- Order the licensee to pay a pecuniary penalty not exceeding \$500,000 plus HK\$10,000 per day while the failure to comply continues.

Practice Implications for Tricor Clients

For New Clients

(accepted on or after 1 March 2018)

Tricor is required to apply CDD measures on a new client **before** establishing a business relationship. There is, however, a provision under the AMLO to allow Tricor to verify the identities of a client and its beneficial owner(s) **after** establishing the business relationship, if it is necessary **not** to interrupt the normal conduct of the client's business and the AML / CTF risks can be effectively managed by Tricor.

For Existing Clients

Upon certain **triggering events**, Tricor is required to apply CDD measures on existing clients. Examples of such include the following:

- Change in the beneficial ownership or 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
- Where a significant transaction is considered to be either unusual or inconsistent with Tricor's knowledge of the client's business / risk profile / source of funds
- Where the CDD information and related documents on a client are considered to be insufficient, as assessed against Tricor's CDD policies and procedures in compliance with the AMLO.



How Tricor Can Help

TCSP Licensing Services

If you are a TCSP providing trust or company services to group companies, private trusts or third party clients by way of business, Tricor can provide you with the following services:

- Handle the application and renewal of a TCSP licence
- Assist in the establishment of policies, procedures and controls to comply with CDD and record-keeping requirements, and related staff training

Other Services

As a TCSP licensee, Tricor can also provide you with other services:

- Act as your **designated representative** if you are a Hong Kong-incorporated entity to provide assistance to a CR officer or any other law enforcement officer relating to your Significant Controllers Register, required as from 1 March 2018
- Certify copy documents for you and your related parties as a suitable certifier for the purpose of satisfying the CDD requirements under the AMLO

For enquiries and further assistance, please contact a Tricor executive, email info@hk.tricorglobal.com, or fill in a Service Enquiry Form by clicking the link below.

[Service Enquiry Form](#)



This *TechNews* is not exhaustive and contains only a summary of the new requirements under the AMLO relating to TCSP licensing. Please refer to the full text of the AMLO and the publications and information available on the website of the Registry for Trust and Company Service Providers of the Companies Registry (www.tcsp.cr.gov.hk) for full information.

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Tricor Group (Tricor) is a global provider of integrated Business, Corporate and Investor Services. As a business enabler, Tricor provides outsourced expertise that allows clients to concentrate on what they do best – Building Business.

Tricor's mission is to be the Business Enabler of Choice

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