



Monetary Authority of Singapore

**TRUST COMPANIES ACT
(CHAPTER 336)**

FREQUENTLY ASKED QUESTIONS

Disclaimer: The FAQs are meant to provide guidance to the industry on MAS' policy and administration of the TCA regime. They do not constitute legal advice. MAS expects industry participants to retain their independent legal counsel to advise them on how their business operations should be conducted in order to satisfy the legal/regulatory requirements and to advise them on all applicable laws of Singapore.

TRUST COMPANIES ACT (CAP. 336) ("TCA")

TRUST COMPANIES REGULATIONS 2005 ("TCR")

FREQUENTLY ASKED QUESTIONS

General Questions

1 What is the impetus to enacting the TCA?

Dovetailing the robust growth experienced by the private banking and wealth management industries, the strong growth in the Singapore trust services industry has prompted the need to ensure high standards of probity, professionalism and business conduct by trust service providers to strengthen Singapore's status as an international financial centre. The new TCA framework seeks to achieve this by ensuring, among other things, that only fit and proper persons are allowed to operate in the trust services industry and that trust service providers observe rigorous anti-money laundering requirements.

2 What types of trust business activities are regulated under the TCA?

The TCA aims to regulate financial institutions that provide trust services for investment and wealth management purposes, such as succession planning. Trust business activities regulated under the TCA are as follows:

- (a) providing services with respect to the creation of an express trust;
- (b) acting as trustee in relation to an express trust;
- (c) arranging for any person to act as trustee in respect of an express trust; and
- (d) providing trust administration services in relation to an express trust.

Advisors on wills, executors and administrators of the estates of deceased persons, bare trustees, and managers and trustees of business trusts are excluded from the ambit of the TCA, as the trusts involved are not actively used for investment and wealth planning purposes.

3 *What is the difference between the TCA and the Trustees Act (Cap. 337)?*

The TCA is the legislative and regulatory framework for companies that are in the business of providing trust business services in Singapore, whether the trusts are established under Singapore law or other law. The framework sets out, among others, licensing requirements for persons conducting trust business in Singapore, fit and proper requirements for managers, directors and significant shareholders of trust companies, obligations with respect to the prevention of money laundering and countering the financing of terrorism and financial requirements for trust companies. The TCA is administered by MAS.

The Trustees Act (Cap. 337) is the trust law in Singapore that provides the basic legislative framework for trustees of trusts established under Singapore law. The Trustees Act provides, among others, safeguards to ensure that trustees adhere to certain minimum standards when they exercise their trustee powers, and defines a duty of care for trustees when carrying out specified duties or acts. The Trustees Act is administered by the Ministry of Law.

A trust company regulated by MAS under the TCA would also have to comply with the Trustees Act if it is acting as trustee of a trust established under Singapore law.

[Updated 2 January 2009]

4 *Who is exempt from holding a trust business licence?*

Persons exempt from holding a trust business licence include:

- (a) Banks and merchant banks regulated by MAS;
- (b) Holders of a capital markets services licence, or persons who are exempt from holding a capital markets services licence for providing fund management or custodial services for securities under the Securities and Futures Act (Cap. 289);
- (c) Lawyers and accountants;
- (d) Private trust companies;
- (e) Overseas persons;
- (f) Persons engaging in trust business in connection with the issuance of debentures;
- (g) Trustees of collective investment schemes approved under the Securities and Futures Act (Cap. 289); and
- (h) Persons carrying out introducing activities.

For a complete list of persons exempt under the TCA and the scope of exemption, please refer to section 15 of the TCA and regulation 4 of the Trust Companies (Exemption) Regulations 2005, read together with the Trust Companies (Exemption) (Amendment) Regulations 2006.

5 *What would constitute “procedural and non-discretionary” trust administration services?*

Please refer to the Guidelines on Scope of Regulation [Guideline No: TCA-G04] for guidance on what constitutes “procedural and non-discretionary” trust administration services. Other than falling under the scope of trust creation and/or trust arrangement, form-filling could be considered as a procedural and non-discretionary trust administration service.

6 *Under section 3 of the TCA, no person is allowed to carry on trust business in or from within Singapore unless that person is a licensed trust company. What does the term “carrying on business” mean?*

The term “carrying on business” is not defined in the TCA. Typically, MAS would regard any activity which is conducted with system, repetition and continuity as carrying on a business.

7 *What is MAS’ approach to regulation and supervision of trust companies?*

MAS’ objective in its regulation and supervision of trust companies is to ensure safe, sound, and fair dealing financial intermediaries. MAS will supervise trust companies by conducting off-site reviews, on-site inspections and company visits. For on-site inspections, MAS could either conduct a full-scope inspection or a thematic inspection on the trust company. A full-scope inspection will cover a company's compliance with the entire trust companies legislation, while a thematic inspection will cover only a specific area.

Application and Licensing Process

8 *What are the procedures for applying a trust business licence under the TCA and what are the admission criteria for the grant of the licence?*

For information on application procedures, please refer to the Licensing Guide and the Guidelines on Licence Application and Payment of Fees [Guideline No: TCA-G01].

In reviewing an application for a trust business licence, MAS will consider, inter alia, the following factors:

- (a) physical presence and management expertise of the applicant in Singapore;
- (b) financial soundness of the applicant and its parent company;
- (c) ability to meet the minimum financial requirements and professional indemnity insurance requirements prescribed under the TCR;
- (d) adequacy of internal compliance systems and processes of the applicant; and
- (e) competence and integrity of the applicant.

For more information on the criteria for the grant of a trust business licence, please refer to the Guidelines on Criteria for the Grant of a Trust Business Licence [Guideline No: TCA-G02].

9 *What is the amount of application and licence fees under the TCA?*

The application fee payable to MAS in respect of an application for a trust business licence is \$1,000. The licence fee payable to MAS by a licensed trust company for a period of one year is \$4,000. For more details, please refer to the Guidelines on Licence Application and Payment of Fees [Guideline No: TCA-G01].

10 *How long does MAS take to review an application and what are the procedures after approval is obtained?*

MAS' service standard is to process an application within eight weeks. Where further clarifications are required, MAS may take longer than eight weeks to process the application. MAS will issue an offer letter to the applicant when its application is approved. The applicant is required to fulfill the conditions in the offer letter before a trust business licence is issued.

Licensing and Reporting Requirements

11 *What continuing financial requirements would a licensed trust company be subject to?*

A licensed trust company incorporated in Singapore must at all times maintain a net asset value of not less than:

- (a) one-quarter of its relevant annual expenditure of the financial year immediately preceding the current financial year; or
- (b) three-quarters of the minimum paid-up capital of \$250,000, whichever is the higher amount.

A licensed trust company incorporated outside Singapore must at all times maintain qualifying assets in the branch in Singapore, of not less than:

- (a) one-quarter of its relevant annual expenditure of the financial year immediately preceding the current financial year; or

- (b) the minimum qualifying assets of \$250,000, whichever is the higher amount.

Please refer to regulation 12 of the TCR for more details.

12 Are licensed trust companies required to have in force a professional indemnity insurance policy?

A licensed trust company must at all times maintain a professional indemnity insurance (“PII”) policy that:

- (a) covers all liabilities arising out of negligent discharge of the duties of the licensed trust company; and
- (b) is commensurate with the levels of risk of the licensed trust company’s business.

Please refer to regulation 14 of the TCR for more details.

MAS is likely to consider that the PII is adequate if:

- (a) the annual PII cover is at least -
 - (i) \$1 million; or
 - (ii) 2.5 times the turnover (previous year's turnover or, for new businesses, estimated turnover for the first year) of the trust business;whichever is the higher; and
- (b) the excess is -
 - (i) not more than \$10,000, where the annual PII cover is \$1 million; or
 - (ii) not more than 3% of the turnover of the trust business, in any other cases.

Please refer to paragraphs 13 – 15 of the Guidelines on Criteria for the Grant of a Trust Business Licence [Guideline No: TCA-G02] for more details.

The above Guidelines would also apply to a licensed trust company that is covered under a group PII policy. Where the excess under the group PII policy exceeds the maximum applicable excess in the Guidelines (“Excess Difference”), the responsible parent of the licensed trust company is required to provide a letter of undertaking to MAS that the parent will pay, on first demand made in writing by MAS, the Excess Difference, in event that the licensed trust company does not pay the Excess Difference.

In all cases, the licensed trust company is required to confirm that it is in compliance with regulation 14 of the TCR.

13 *Are there any regulatory requirements for licensed trust companies that outsource its activities?*

Licensed trust companies must at all times comply with, inter alia, the confidentiality provisions under section 49 of the TCA. They should also refer to the Outsourcing Guidelines for guidance as far as possible.

14 *Under what circumstances will the licensed trust company's licence lapse?*

Where MAS has not revoked a licence under section 10(2)(b) of the TCA, the licence will lapse where:

- (a) the licensed trust company has not commenced trust business within 6 months from the date of the grant of the licence; or
- (b) the licensed trust company -
 - (i) has ceased to carry on its trust business;
 - (ii) has not resumed any trust business for a continuous period of 14 days from the date of cessation of its trust business; and
 - (iii) has not notified MAS of such cessation of its trust business at any time during the period of 14 days from the date of the cessation.

Please refer to section 10 of the TCA and regulation 6 of the TCR for more details.

15 *What are some of the reporting requirements for licensed trust companies?*

Licensed trust companies are required to lodge the following documents with MAS on an annual basis:

- (a) a true and fair profit and loss account and a balance sheet made up to the last day of its financial year, within 5 months after the end of the financial year; these documents must be lodged together with an auditor's report in **Form 7**;
- (b) a statement in **Form 5**, showing the maintenance of the licensed trust company's net asset value or qualifying assets, within 14 days from the grant of its licence and thereafter, within 5 months from the end of each of its financial year; and
- (c) a statement in **Form 6**, regarding information on the licensed trust company's headcount, sources of revenue and assets under trusteeship in respect of each calendar year, within 60 days from the end of each calendar year; this form is to be lodged with the Financial Centre Development Department (Asset Management Division) of MAS.

Please refer to section 30 of the TCA and regulation 19 of the TCR for more details.

Where there are changes to the particulars of licensed trust companies, MAS must be notified by way of **Form 2**. Please refer to section 9 of the TCA and regulation 5 of the TCR for more details.

16 ***What are the reporting requirements for exempt persons under the TCA?***

Banks, merchant banks and lawyers doing full trust business are required to notify MAS of their commencement of trust business, changes in particulars and cessation of trust business by way of **Forms 8, 9 and 10** respectively. In addition, lawyers doing full trust business are required to lodge **Form 6** with the Financial Centre Development Department (Asset Management Division) of MAS, within 60 days from the end of each calendar year. Please refer to regulations 4(1)(b)(iv), 5(3) and 5(4) of the Trust Companies (Exemption) Regulations 2005 for more details.