



Hong Kong

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FSTB CONCLUDES CONSULTATION ON REGISTRATION REGIME FOR DEALERS IN PRECIOUS METALS AND STONES

On 21 May 2021, Hong Kong's Financial Services and Treasury Bureau (the **FSTB**) published its Consultation Conclusions on legislative proposals to enhance anti-money laundering and counter-terrorist financing (**AML/CTF**) regulations in Hong Kong¹ (**Consultation Conclusions**) in respect of Hong Kong dealers in precious metals and stones (**DPMS**). These Consultation Conclusions are made in response to the FSTB's consultation paper² issued on 3 November 2020 proposing a new registration regime for DPMS in Hong Kong. For a detailed discussion of the consultation paper, please see our newsletter FSTB Consults on Proposed Registration Regime for Dealers in Precious Metals and Stones.³

Following the imposition of AML/CTF obligations on financial institutions and certain designated non-financial businesses and professions (**DNFBPs**) under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (**AMLO**) in 2018, the Financial Action Task Force (**FATF**) has recommended imposing a range of AML/CTF obligations to improve the regulation of the DPMS sector, which also falls within the category of DNFBPs. The FSTB proposes to follow the FATF recommendations through the introduction of a new two-tier registration regime for DPMS under the AMLO. It is proposed that any natural or legal person who wishes to carry on the business of DPMS regulated activities in Hong Kong would be required to register under either

Category A or Category B with the Commissioner for Customs and Excise (**CC&E**), who will act as registrar (the **Registrar**) in maintaining a register of dealers of precious metals and stones. Under the proposed regime, subject registrants engaging in cash transactions at or above HK\$120,000 will fall under Category B and will need to comply with the AML/CTF obligations stipulated in Schedule 2 to the AMLO.

The Consultation Conclusions also outline the FSTB's responses to its proposals to introduce a licensing regime for Hong Kong virtual asset exchanges, which is covered in our newsletter FSTB Concludes Consultation on Licensing Regime for Hong Kong Virtual Asset Exchanges.⁴

FSTB Proposals relating to the DPMS Registration Regime in Hong Kong

a. Scope of Carrying On DPMS Regulated Activity in Hong Kong

DPMS Regulated Activity Defined

The FSTB proposes that registration as a DPMS under the AMLO will be required before any natural or legal person may, by way of business, conduct one or more of the following regulated activities:

1 https://www.fstb.gov.hk/fsb/en/publication/consult/doc/consult_conclu_amlo_e.pdf

2 https://www.fstb.gov.hk/fsb/en/publication/consult/doc/consult_amlo_e.pdf

3 <https://www.charltonslaw.com/fstb-consults-on-proposed-registration-regime-for-dealers-in-precious-metals-and-stones-registered-activity-in-hong-kong/>

4 <https://www.charltonslaw.com/fstb-concludes-consultation-on-licensing-regime-for-hong-kong-virtual-asset-exchanges/>

- i) Trading in, importing or exporting precious metals, precious stones or precious products;
- ii) Manufacturing, refining, or carrying out any value-adding work on precious metals, precious stones or precious products;
- iii) Issuing, redeeming, or trading in precious-asset-backed instruments; or
- iv) Acting as an intermediary for (i), (ii) or (iii) above.

Some respondents raised concerns as to whether businesses other than the DPMS trade (e.g. manufacturers of medical devices or industrial equipment) which may engage the use of precious metals and precious stones in their product designs, whether for functional or ornamental purposes, will be regulated under the proposed regime. The FSTB responded that it does not intend to regulate businesses which only encounter or deal with precious metals or precious stones in an incidental manner. Only businesses which ordinarily engage in the regulated activities will be required to be registered as DPMS.

Precious Metals, Precious Stones, Precious Products and Precious-asset-backed Instruments Defined

It is proposed that precious metals, stones, products and asset-backed instruments would be defined as follows:

- i) “precious metals” to cover gold, silver, platinum or any other metals in the platinum group (i.e. iridium, osmium, palladium, rhodium or ruthenium) in a manufactured or unmanufactured state;
- ii) “precious stones” to cover diamond, sapphire, ruby, emerald, jade, or pearl;
- iii) “precious products” to cover any jewellery, watch, apparel, accessory, ornament or other finished product made up of, containing or having attached to it, any precious metals or precious stones or both, and at least 50% of its value is attributable to the precious metals or precious stones or both (**50% value threshold**); and
- iv) “precious-asset-backed instruments” to cover any certificate or instrument backed by one or more precious metals, precious stones or precious products that entitles the holder to such assets, but excluding securities, futures contracts, collective investment schemes or authorised structured

products regulated under the Securities and Futures Ordinance.

The FSTB clarified in the Consultation Conclusions that the 50% value threshold for determining whether elements of precious metals or precious stones would cause an article to be deemed a “precious product” will be considered with reference to the retail price of the article. This will be reflected in the legislation.

b. Requirements under Hong Kong’s Two-tier DPMS Registration Regime

In accordance with the FATF requirement, the FSTB proposes that DPMS engaging in large cash transactions (i.e. making or receiving, in respect of any transaction involving a regulated activity, a payment or payments in cash of at least HK\$120,000 in total, whether executed as a single operation or in multiple operations which appear to be linked) be subject to the enhanced AML/CTF obligations which apply to other DNFBDs. It therefore proposes a two-tier registration regime. The threshold of HK\$120,000 is set with reference to the threshold stipulated by the FATF (i.e. USD/EUR 15,000) for defining large cash transactions warranting more rigorous scrutiny.

Category A Registration

Category A registration is required for DPMS who do not intend to and will not engage in any cash transactions at or above HK\$120,000. To fulfil registration requirements, applicants should present the following:

- i) A valid business registration certificate;
- ii) Addresses of all premises in Hong Kong pertaining to the place of business; and
- iii) A declaration that the registration is obtained for a lawful purpose.

Category A registrants are not subject to the AML/CTF requirements stipulated in the AMLO or any registration conditions other than the requirement to notify the Registrar of any subsequent changes in particulars. A Category A registration will remain valid for as long as the registrant continues to stay in business, subject to the payment of an annual fee.

Category B Registration

Category B registration is required for DPMS if they intend to or may engage in any cash transactions at or above HK\$120,000.

Category B registrants will be subject to a fit-and-proper test similar to that applicable to other DNFBS regulated under the AMLO. Category B registrants will also be required to observe the AML/CTF obligations under Schedule 2 of the AMLO.

A Category B registration will be valid for three years and renewable upon expiry where fit-and-proper requirements are met.

Migration between the two categories of registration is permissible upon application, provided that the applicable registration criteria are met.

Some respondents were of the view that a single-tier registration regime subjecting all DPMS to the same set of regulatory requirements would suffice. However, the FSTB considered that this would add to the compliance burden of the trade. Other respondents opined that a differential regime should be adopted which allows Category A registrants to engage in large cash transactions subject to certain safeguards. The FSTB responded that this would complicate the regime and not be conducive to the maintenance of a level playing field for all registrants.

c. Exemptions from Hong Kong's DPMS Registration Regime

Financial Institutions

The FSTB proposes to exempt financial institutions which are already regulated under the AMLO for AML/CTF purposes (such as banks, licensed corporations, insurance institutions, money service operators, and stored value facilities) from the DPMS registration requirement where they conduct the regulated activities of DPMS as an ancillary to their principal business.

In light of submissions that pawnbrokers licensed under the Pawnbrokers Ordinance (Cap. 166) should also be exempted, the FSTB amended its original proposal by expressly exempting licensed pawnbrokers from the DPMS registration regime so as to avoid a regulatory overlap.

Non-domestic dealers in Precious Metals and Stones

Dealers from other jurisdictions who occasionally visit Hong Kong will also be exempted if the person:

- i) Does not ordinarily reside in Hong Kong (in the case of a natural person) or (in the case of a legal person) is incorporated outside Hong Kong and not registered under

the Companies Ordinance as a non-Hong Kong company;

- ii) Does not have a permanent place of business in Hong Kong; and
- iii) Does not carry out a regulated activity in Hong Kong for more than a total of 60 calendar days in any given year. The FSTB had originally proposed a 90-day exemption period but shortened it to 60 days in response to market feedback.

Dealers from other jurisdictions will however be required to file a cash transaction report with the Registrar when engaging in cash transactions at or above HK\$120,000 in Hong Kong within one day of completion of the transaction, and in any event before their departure from Hong Kong.

A non-domestic dealer who fails to observe the requirement of filing cash transaction report will commit an offence and will be liable to a fine at level 5 (HK\$50,000) and imprisonment for three months.

d. Registrar's Powers in Respect of Dealers in Precious Metals and Stones

For Category B registrants, the CC&E will be empowered to enforce registration requirements and supervise the AML/CTF conduct of Category B registrants under the AMLO. This includes powers to enter the business premises of a registrant to conduct a routine inspection, to investigate instances of non-compliance and to impose administrative sanctions for non-compliance where Category B registrants are in breach of the AML/CTF requirements under Schedule 2 to the AMLO.

In respect of Category A registrants, the CC&E will be empowered to enter the registrant's place of business and request production of records or documents to ensure they do not engage in specified cash transactions.

e. Sanctions for Breach of Hong Kong's DPMS Regime

Under the new DPMS registration regime, there will be administrative and criminal sanctions for regulated activities carried out without valid registration and non-compliance with the regulatory requirements. The administrative sanctions will include reprimands, remedial orders and pecuniary penalties.

The proposed sanctions are summarised below:

Conduct/Offence	Proposed Sanctions
<p>Conducting by way of business one or more of the regulated activities without a valid Category A or B registration;</p> <p>Engaging in a specified cash transaction whilst carrying out any regulated activity without a Category B registration; or</p> <p>Purporting to be a registered DPMS when the person does not have a valid Category A or Category B registration.</p>	<p>Fine at level 6 (HK\$100,000) and six months' imprisonment</p>
<p>A person makes a statement that is false, deceptive or misleading in a material particular in connection with a registration</p>	<p>Fine at level 5 (HK\$50,000) and six months' imprisonment</p>
<p>In the case of a Category B registrant – contravenes the AML/CTF requirements in the AMLO</p>	<p>Subject to disciplinary proceedings and a range of administrative sanctions (including reprimand, remedial order and pecuniary penalty not exceeding HK\$500,000)</p>

f. 180-Day Transitional Period

It is proposed that once the new registration regime takes effect, DPMS in operation immediately before commencement of the regime will be allowed 180 days to apply for registration. During the transitional period, DPMS carrying on a business of regulated activities will be deemed to have been registered for the purpose until such time when the application is granted.

g. Statutory Appeal

The FSTB proposes that the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal, established under the AMLO, be empowered to hear appeals against future decisions made by the Registrar in implementing the registration and supervisory regime for DPMS.

Implementation of the Consultation Conclusions

The Hong Kong Government will now prepare an amendment bill based on the Consultation Conclusions which it aims to introduce into the Legislative Council in the 2021-22 legislative session.

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Hong Kong Office

Dominion Centre

12th Floor

43-59 Queen's Road East

Hong Kong

Tel: + (852) 2905 7888

Fax: + (852) 2854 9596

www.charltonslaw.com