



Hong Kong Registration Regime for Dealers in Precious Metals and Stones to Take Effect on 1 January 2023

A new registration regime for dealers in precious metals and stones (**DPMS**) will come into effect on 1 January 2023 under proposed amendments to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (the **AMLO**) which were introduced to Hong Kong's Legislative Council on 6 July 2022.¹ The proposed amendments are set out in the [Anti-Money Laundering and Counter-Terrorist Financing \(Amendment\) Bill 2022 \(Amendment Bill\)](#) which will also introduce a new licensing regime for virtual asset exchanges, which is covered in our newsletter [Hong Kong Licensing Regime for Virtual Asset Exchanges to Take Effect on 1 March 2023](#).

The legislative amendments are aimed at implementing the FATF requirements that DPMS are subject to the same anti-money laundering and counter-terrorist financing (**AML/CTF**) obligations as designated non-financial businesses and professions (**DNFBPs**) and to a statutory regulatory regime. The introduction of the amendments follows the Financial Services and the Treasury Bureau's (the **FSTB**) public consultation which concluded in May 2021.

The FSTB has issued a [Legislative Council brief](#) summarising the proposed registration regime. The Amendment Bill sets out certain key provisions of the new registration regime.

DPMS Registration Requirements

Any person carrying on a business of dealing in precious metals and stones (**PMS**) in Hong Kong will need to be registered under either Category A or Category B with the Commissioner of Customs and Excise (**CC&E**). It will be an offence to carry on a PMS business in Hong Kong, or to claim or hold oneself out as being authorised or do so or a DPMS registrant, without registration. Under the new two-tier registration regime, DPMS engaging in cash transactions at or above HK\$120,000 will be required to be registered as Category B registrants and will need to meet a fit and proper test, the AML/CTF obligations set out in Schedule 2 to the AMLO, general statutory obligations (e.g. certificate display and notification requirements) and registration conditions imposed by the CC&E. Category A registrants will only be able to engage in cash transactions with customers of less than HK\$120,000. They will not be subject to the AML/CTF requirements applicable to Category B registrants but will be subject to general statutory obligations and registration conditions.

Dealing in PMS

Dealing in PMS will be defined as carrying on the business of any of the following activities:

- (a) trading in (i.e. selling, offering for sale, purchasing, offering to purchase or possessing for sale), importing or exporting precious metals, precious stones or precious products;

- (b) manufacturing, refining or carrying out any value-adding work (e.g. cutting and polishing) on precious metals, precious stones or precious products;
- (c) issuing, redeeming or trading in precious-asset-backed instruments; or
- (d) acting as an intermediary in respect of any of the activities in paragraph (a), (b) or (c).

Logistics service providers will not fall within the definition of DPMS only because the person imports or exports precious metals, precious stones or precious products in the ordinary course of its business.

Precious metal, precious stone, precious product and precious-asset-backed instruments definitions

Precious metal will include gold, silver, platinum, iridium, osmium, palladium, rhodium or ruthenium, in a manufactured or unmanufactured state.

Precious stone will include diamond, sapphire, ruby, emerald, jade or pearl.

Precious product will be defined as any jewellery, watch, apparel, accessory, ornament or other finished product made up of, containing or having attached to it, any precious metal or precious stone, or both where at least 50% of its transaction price is attributable to the precious metal or precious stone, or both (50% transaction price threshold). The definition does not cover any finished product that forms part of any medical device or industrial equipment.

Precious-asset-backed instruments will be defined as a certificate or an instrument which is backed by one or more precious metals, precious stones or precious products. The definition does not cover virtual assets which will be regulated under the proposed Amendment Bill and financial assets already regulated under the Securities and Futures Ordinance (Cap. 571) (**SFO**) such as securities, futures contracts, interests in collective investment schemes, structured products and over-the-counter derivative products.

General registration requirements

The CC&E will take into consideration in registering an applicant as a registrant whether the applicant, who intends to use domestic premises as business premises (for conducting face-to-face transactions, administering the registrant's affairs or business, processing transactions or storing documents, data or records), has secured the written consent of every occupant of the premises for any authorised person to enter the premises for routine inspection.

In granting its approval, the CC&E will enter the registrant's name in the register and specify its registration category, issue a certificate of registration and issue a branch certificate for each branch (which is used for conducting face-to-face transactions but not principal place of business) of the registrant (if any).

An applicant for registration, renewal or approval will be required to pay a fee to the CC&E. Registration fees and the fees for conducting fit and proper tests will be waived for first registration made before 30 September 2023. The CC&E will be empowered to waive fees with respect to any person or class of person.

Category A registration

Category A applicants will be required to provide the following documents:

- (a) a copy of a valid business registration certificate;
- (b) a declaration stating that:
 - (i) the applicant will carry on the proposed PMS business for a lawful purpose; or
 - (ii) the applicant carries on and will continue to carry on the PMS business for a lawful purpose (for existing DPMS operating in Hong Kong immediately before 1 January 2023 which submit their registration application to the CC&E on or before 30 September 2023); and
- (c) the address of each business premise in Hong Kong and correspondence address.

In registering an applicant as a Category A registrant, the CC&E will take into account whether the applicant will carry on the proposed PMS business for a lawful purpose or whether the applicant carries on and will continue to carry on the PMS business for a lawful purpose (for existing DPMS operating in Hong Kong immediately before 1 January 2023 which submit their registration application to the CC&E on or before 30 September 2023).

Category A registration granted by the CC&E will be open-ended – i.e. it will continue unless revoked by the CC&E (for example because of misconduct, change of registration category or the DPMS ceasing operations).

Category B registration

Applicants for Category B registration or renewal will be required to provide the following documents:

- (a) a copy of a valid business registration certificate; and
- (b) the address of each business premise in Hong Kong and correspondence address.

An applicant for a Category B registration, its individuals, partners, directors and ultimate owners will be required to satisfy a fit and proper test. "Ultimate owner" is defined to include any individual who is entitled to more than a 25% share of the capital or profits of the partnership; controls more than a 25% share of the capital or profits of the partnership; is entitled to exercise or control the exercise of more than 25% of the voting rights in the partnership; or exercises ultimate control over the management of the partnership (in the case of a partnership); or owns or controls, including through a trust or bearer share holding, more than 25% of the issued share capital of the corporation; is entitled to exercise or control the exercise of more than 25% of the voting rights at general meetings of the corporation; or exercises ultimate control over the management of the corporation (in the case of a corporation).

The factors which the CC&E will take into consideration in determining whether a person is fit and proper include: the person's financial status or solvency, conviction in Hong Kong or elsewhere for any money laundering or terrorist financing offence or other offence involving fraudulent, corrupt or dishonest conduct; and failure to comply with regulatory requirements or other obligations of DPMS registrants.

Category B registration granted by the CC&E will be subject to periodic review – i.e. it will have effect for three years unless extended by the CC&E. Category B registration will also cease to have effect upon discovery of misconduct, change of registration category or the DPMS ceasing operation. The extension period will be three years beginning on the date of renewal. Category B registrants will have to submit their renewal application to the CC&E at least 60 days before the expiry of the registration. Applicants for Category B registration and renewal, their individuals, partners, directors and ultimate owners will be required to satisfy the fit and proper test and secure the written consent of every occupant of any domestic premises (which are used as business premises) for authorised persons to enter the premises for routine inspection.

Provided that a Category B registrant submits its renewal application to the CC&E at least 60 days before the expiry of the registration, the registrant will be able to continue to operate after the expiry of the registration if its renewal application is still pending until the earlier of: (i) the CC&E's grant or refusal to renew a registration; and (ii) withdrawal of the renewal application.

Licensed hawkler registration

A hawkler who wishes to carry on a PMS business will be exempted from business registration, provided that it is licensed under the Hawker Regulation (Cap. 132AI). For registrants who are licensed hawklers, business premises will mean the location of the fixed pitch from which the person may hawk or the areas in which the person may hawk.

Transitional Arrangements for Existing DPMS

Existing DPMS operating in Hong Kong immediately before 1 January 2023 with a valid business registration certificate will be able to continue to operate without a DPMS registration for up to 9 months (i.e. 30 September 2023) under a deemed Category B registration. If they want to continue operation after 30 September 2023, they will have to apply to the CC&E for a DPMS registration. Provided that an existing DPMS submits its registration application to the CC&E on or before 30 September 2023, the dealer will be able to continue to operate after 30 September 2023 under the deemed Category B registration if its registration application is still pending until the earlier of: (i) the CC&E's grant or refusal to grant a registration; and (ii) withdrawal of the registration application.

Obligations of DPMS Registrants

Registrants will have to comply with a set of requirements which the CC&E will impose as registration conditions. Under the revised AMLO, a registrant will have to display its certificate of registration in a conspicuous place at its principal place of business and at each of its branches (if any) or through other means if the PMS business is carried on on a website through the Internet or by other electronic means. A registrant who does not display the certificate of registration in the particular way specified by the revised AMLO, without reasonable excuse, will commit an offence for which the maximum penalty is a fine of HK\$50,000.

The CC&E will need to be notified of various matters including:

- any change in any information provided by the registrant; and
- an intention to cease business as a DPMS.

A person who fails to comply with the notification requirements will commit an offence for which the maximum penalty is a fine of HK\$50,000.

Category A registrants

A Category A registrant will be required to pay an annual fee to the CC&E on or before each anniversary of the date of the effective date of its registration. Category A registrants who fail to comply with the requirements for registrants will be subject to disciplinary sanctions, other than a pecuniary penalty.

Category B registrants

Category B registrants carrying out a specified cash transaction (i.e. a cash transaction of at least HK\$120,000 or its foreign currency equivalent) in Hong Kong with a non-Category B registered person will be subject to the AML and CTF requirements of the AMLO, including the customer due diligence and record-keeping requirements set out in Schedule 2 of the AMLO. A Category B registrant who fails to comply with the AML/CTF requirements will be subject to disciplinary proceedings and disciplinary sanctions, including reprimand, remedial order, a maximum fine of HK\$500,000, and registration suspension or cancellation. If a specified cash transaction is carried out between two Category B registrants, the AML/CTF requirements do not apply to the paying registrant.

Any person who proposes to become an ultimate owner, partner or director of a Category B registrant must be approved in writing by the CC&E. The CC&E will need to be satisfied that the ultimate owner, partner or director is fit and proper. Any person who becomes the ultimate owner, partner or director of a Category B registrant without the CC&E's approval, without reasonable excuse, will commit an offence for which the maximum penalty is a fine of HK\$50,000 and six months' imprisonment.

Exemptions from Hong Kong's DPMS Registration Regime

The DPMS registration requirements will not apply to the Government, banks, licensed pawnbrokers, and SFC-licensed corporations carrying on a PMS business that is ancillary to any regulated activity for which the corporation is licensed. Authorised insurers, licensed insurance broker companies, licensed individual insurance agents, licensed insurance agencies, licensed stored value facilities, system operators and settlement institutions of a designated retail payment system will also be exempted provided that their PMS business is ancillary to their principal business. There will be no exemption for other DNFBPs supervised under the AMLO, which are currently required to comply with the AML requirements in Schedule 2 to the AMLO only when they engage in specified transactions with respect to their respective sectors, which do not include carrying on a PMS business.

The amended AMLO will empower the Secretary for Financial Services and the Treasury to prescribe a class or description of exempted persons by way of regulation.

Overseas DPMS (e.g. foreign dealers coming to Hong Kong for trade fairs or dealing with Hong Kong DPMS and other customers) will be exempted if:

- (a) the person
 - (i) either
 - (A) is not ordinarily resident in Hong Kong (in the case of an individual); or
 - (B) is an overseas company without registration under the Hong Kong Companies Ordinance (Cap. 622) (in the case of a legal person); and
 - (ii) does not have a place of business in Hong Kong; and
- (b) the person does not carry on PMS business in Hong Kong for a total of more than 60 calendar days in any given year.

Overseas DPMS will not be subject to CC&E registration requirements and AML/CTF requirements that apply to Category B registrants.

Overseas DPMS will be required to file a cash transaction report with the CC&E when engaging in a specified cash transaction in Hong Kong before the earlier of: (i) one day after the transaction; or (ii) the earliest time when a specified individual (i.e. an individual dealer located in Hong Kong or an individual representative of the dealer)

leaves Hong Kong. The report should include:

- (a) basic dealer information;
- (b) travel information of each specified individual in relation to the transaction;
- (c) transaction information; and
- (d) basic customer information.

An overseas DPMS who fails to file a cash transaction report in the manner and within the time specified will commit an offence for which the maximum penalty is a fine of HK\$50,000 and three months' imprisonment.

DPMS Register

The CC&E will be responsible for maintaining a register of DPMS. The register will have to specify the registrant's name, registration category, principal business address, and each branch address (if any). The register will have to be made accessible to members of the public so that they are able to ascertain whether they are dealing with a Category A or Category B registrant. The register will be available for public inspection free of charge during normal office hours. The CC&E will be able to withhold the principal business or branch address in the public register if satisfied that there is reasonable cause to do so.

Sanctions for Non-compliance or Misconduct

The amended AMLO will include various offences punishable by fines and/or imprisonment, including the following:

Carrying on PMS business without registration

It will be an offence to carry on a PMS business in Hong Kong, or to claim or hold oneself out as a registered DPMS or as a person authorised to carry on a PMS business in Hong Kong, without being registered as a Category A or Category B DPMS. It will also be an offence to carry out a specified cash transaction in Hong Kong by way of business, or to claim or hold oneself out as a Category B registrant or as a person who is authorised to carry out the business of a specified cash transaction in Hong Kong, without a Category B registration.

The offence will carry maximum penalties of a HK\$100,000 fine, six months' imprisonment and registration disqualification.

Providing false or misleading information

A person will commit an offence, if in a DPMS application made to the CC&E, a DPMS notification given to the CC&E or any other document provided to the CC&E for the purpose of the DPMS application or notification, the person: (i) makes a false or misleading statement in a material particular and knows that, or is reckless as to whether, the statement is false or misleading in a material particular; or (ii) omits a material particular which makes the statement false or misleading and knows that, or is reckless as to whether, the material particular is omitted from the statement. The offence will carry maximum penalties of a HK\$50,000 fine and six months' imprisonment.

CC&E Powers in Respect of DPMS Registrants

The CC&E will have broad supervisory powers to enforce the AML/CTF and other regulatory requirements under the revised AMLO. It will be able to enter the business premises of DPMS registrants to conduct routine inspections, investigate non-compliance, request production of documents and records and impose disciplinary sanctions. Possible sanctions include a reprimand, an order for remedial action, a fine (only for Category B registrants) and suspension or revocation of a person's registration. The CC&E may cancel or suspend a DPMS registration if: (a) the Category A registrant is convicted in Hong Kong for the offence of carrying out a specified cash transaction in Hong Kong by way of business, or claiming or holding oneself out as a registrant or an authorised person, without Category B registration; (b) fails to comply with CC&E regulations or registration conditions (including fit and proper tests); (c) fails to pay the annual fee on or before the due date; (d) fails to comply with an order for remedial action; (e) no longer holds a valid business registration certificate; (f) has carried on, is carrying on, or will carry on the business for an unlawful purpose; and (g) fails to secure each occupant's consent for the use of domestic premises as business premises for its PMS business.

A Category B registrant who fails to comply with an order for remedial action may be required to pay a daily fine of up to HK\$10,000 for each day that the offence continues.

[1] [HKSAR Government Press Release of 24 June 2022](#)

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