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**2022 VIRTUAL ASSET (CRYPTO)
SERVICE PROVIDERS &
DEALERS IN PRECIOUS METALS
& STONES: HONG KONG'S NEW
REGULATORY REGIMES**

WEBINAR

Proposed Amendments to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO)

- Establishment of two new regulatory regimes in Hong Kong:
 - Licensing regime for virtual asset service providers (VASPs); and
 - Registration regime for dealers in precious metals and stones (DPMS).
- AMLO amendments effective from 1 January 2023 excluding certain provisions relating to the VASP licensing regime, which are expected to come into effect on 1 March 2023



Who will require a VASP Licence?

- any person carrying on a business of “providing a virtual asset service” (VA service) in Hong Kong, or holding themselves out as doing so, will need to be granted a VASP licence by the SFC
- “providing a virtual asset service” means operating a virtual asset exchange under the current proposed legislation



This is defined as providing services through means of electronic facilities:

(a) whereby:

(i) offers to sell or purchase virtual assets are regularly made or accepted in a way that forms or results in a binding transaction; or

(ii) persons are regularly introduced, or identified to others so that they can negotiate or conclude (or have a reasonable expectation of negotiating or concluding) sales or purchases of virtual assets; and

(b) where client money or client virtual assets comes into the direct or indirect possession of the person providing the service.

Operating a Virtual Assets exchange

What is the definition of “Virtual Assets”?

The AMLO amendments broadly define a “virtual asset” as a cryptographically secured digital representation of value that:

(i) is expressed as a unit of account or a store of economic value;

(ii) either:

(a) is used, or intended to be used, as a medium of exchange accepted by the public for payment for goods or services, for the discharge of a debt and/or for investment; or

(b) provides rights, eligibility or access to vote on the management, administration or governance of the affairs in connection with, or to vote on any change of the terms of any arrangement applicable to, any cryptographically secured digital representation of value; and

(iii) can be transferred, stored or traded electronically.





✓ Virtual Asset

- Bitcoin
- Altcoin
- Stablecoin

✗ Virtual Asset

- Digital representations of fiat currencies
 - Central bank digital currencies
 - Financial assets already regulated under the SFO
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What about NFTs?

The background features a complex 3D architectural scene with various geometric shapes like cubes and pyramids. A prominent red vertical line is on the left, and another is on the right. The overall color palette is dark blue with white text.

Eligibility for VASP Licensing

1. Fit and Proper Test

- Applicant
- Responsible Officers
- Licensed Representatives
- Directors
- Ultimate owners

Factors that may be considered by the SFC:

- Financial status or solvency
- Educational or other qualifications and experience
- Evidence of competence, honesty and financial integrity
- Any conviction history in Hong Kong or elsewhere for any money laundering or terrorist financing offence or an offence involving dishonest conduct
- Failure to comply with any other regulatory requirements applicable to licensed VASPs



2. Company Registered in Hong Kong

A VASP licensee must either be a:

- (i) Hong Kong incorporated company; or
- (ii) company incorporated overseas but registered in Hong Kong under the Companies Ordinance



3. Appointment of Responsible Officers and Licensed Representatives

- VASP licensee must appoint at least 2 Responsible Officers
- At least 1 responsible officer must be an executive director of the VASP
- If the VASP has more than 1 executive director, they must all be appointed as responsible officers
- At least 1 responsible officer must be ordinarily resident in Hong Kong
- At least 1 responsible officer must be available at all times to supervise the business of the VA service





4. Approval of Premises

- VASP licensee must obtain SFC approval for premises to be used for record-keeping as required under AMLO
- Premises must be non-domestic and suitable for such purpose
- SFC power to enter VASP business premises to conduct routine inspections

Open-ended Licence

- VASP licence will remain valid until revoked or suspended by the SFC

Possible reasons for revocation or suspension:

- Discovery of misconduct
- No longer fit and proper
- Cessation of business operations

Obligations of Licensed VASPs

1. Compliance with **AML/CTF** Requirements

- Conducting customer due diligence on customers prior to undertaking a business relationship
- Identifying whether a customer is a politically exposed person or high-risk customer for enhanced due diligence purposes
- Conducting ongoing monitoring
- Maintaining certain AML and CTF records for prescribed time periods




2. Licensing Conditions

- Requirements on the adequacy of the VASP's financial resources
- Requirements on knowledge and experience, risk management policies and procedures
- Requirements on management of client assets, virtual asset listing and trading policies
- Requirements on proper financial reporting and disclosure
- Requirements on mechanisms to prevent market manipulation and abusive activities
- Requirements on avoidance of conflicts of interest





3. Restriction to Professional Investors

- Licensed VASPs will only be allowed to provide services to “professional investors” as defined under the SFO
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4. Approval of ultimate owner

- Any person who proposes to become an ultimate owner of a licensed VASP must be approved in writing by the SFC
- A person who becomes the ultimate owner of a VASP without the SFC's approval and without reasonable excuse, will commit an offence for which the maximum penalty is a fine of HK\$1 million, two years' imprisonment and a further fine of HK\$5,000 for every day that the offence continues.



5. Filing of annual returns and fees

- Submission of an annual return and payment of an annual fee to the SFC within one month of each anniversary of the date of the grant of the VASP licence



6. Auditor appointment and preparation of audited accounts

- Appointment of an auditor within 1 month of the grant of the VASP licence
- Filing of audited financial statements with the SFC within 4 months of the end of the relevant financial year



7. Notification requirements

SFC notification is required where there is a:

- Change in any information provided to the SFC
- Intention to cease business
- Change of address
- Change of directors
- Responsible officer / licensed representative / auditor ceasing to act

Transitional Arrangements for Existing VA Exchanges

- Operators of VA exchanges carrying on business in Hong Kong before 1 March 2023 may continue to operate without a VASP licence until 29 February 2024
- An application for a VASP licence must be made to the SFC on or before 30 November 2023 for VA exchanges that want to continue operation in Hong Kong after 29 February 2024

If a VA exchange is refused a VASP licence by the SFC, it will be given 3 months to close down its business in Hong Kong.

Hong Kong VASP regime

- The currently proposed VASP licensing regime in Hong Kong represents a narrower approach than that required by FATF
- FATF's definition of VASPs also covers entities which transfer virtual assets, entities providing safekeeping and/or administrative services for virtual assets (which would include certain types of custodians and wallet providers) or instruments enabling control over virtual assets, and entities providing financial services related to the offer or sale of virtual assets
- However, the Hong Kong VASP regime will have added elements of investor protection which are not required by FATF





SFC Powers in respect of Licensed Virtual Asset Exchanges

- broad supervisory powers to enforce AML/CTF and other regulatory requirements under AMLO
- intervention powers to impose restrictions and prohibitions on the operations of a licensed VASP and its associated entities in certain circumstances

Offences under the AMLO for Non-compliance or Misconduct

1. Carrying on a business of providing a VA service without a VASP licence

- Maximum penalties of a HK\$5 million fine and seven years' imprisonment and a daily fine of HK\$100,000 for each day that the offence continues

2. Fraudulently or recklessly inducing others to invest in virtual assets

- Maximum penalties of a HK\$1 million fine and seven years' imprisonment

3. VA transaction involving fraudulent or deceptive devices

- Maximum penalties of a HK\$10 million fine and 10 years' imprisonment

4. Issuing advertisements relating to an unlicensed person's provision of a VA service

- Maximum penalties of a HK\$50,000 fine and six months' imprisonment


5. Makes a false or misleading representation in connection with a VASP licensing application


- Maximum penalties of a HK\$1 million fine and six months' imprisonment





Review of SFC's decisions

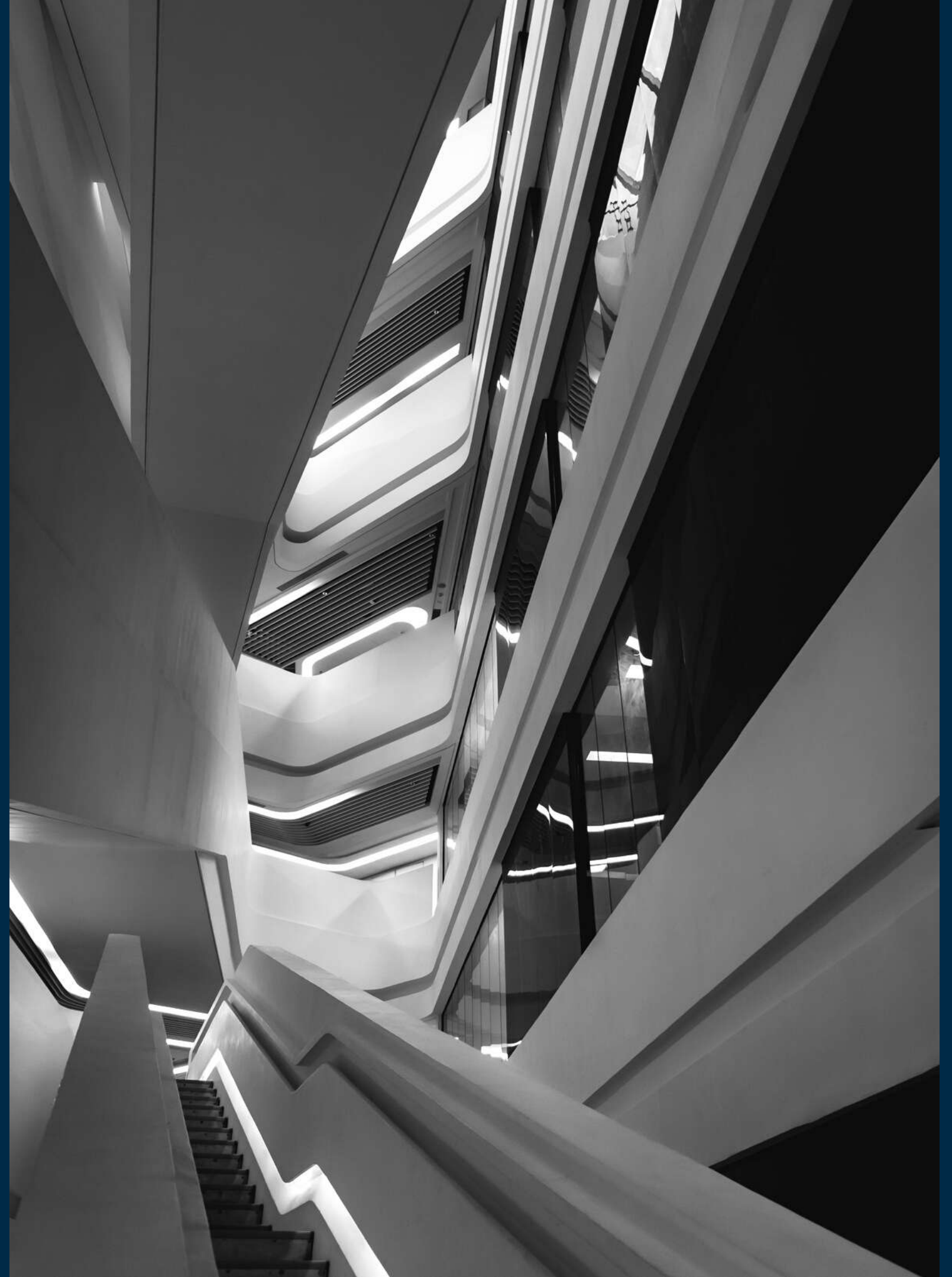
- SFC decisions will be subject to the established review mechanism of the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal
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An aerial photograph of a busy port at dusk, featuring a large cable-stayed bridge and a COSCO SHIPPING ship. The scene is overlaid with a dark blue filter and a white text box. Two vertical red lines are positioned on the left and right sides of the page.

Hong Kong Registration Regime for Dealers in Precious Metals and Stones

Who will require a DPMS Licence?

- 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)



Definition of “dealing in precious metals and stones” (PMS)

Dealing in PMS is defined to mean carrying on any of the following activities by way of business:

- (a) trading in (defined to mean 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) above.



Definition of precious metal, precious stone, precious product and precious-asset-backed instruments

- Precious metals:
 - gold, silver, platinum, iridium, osmium, palladium, rhodium or ruthenium, in a manufactured or unmanufactured state
- Precious stones:
 - diamond, sapphire, ruby, emerald, jade or pearl
- Precious product:
 - 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; and at least 50% of its transaction price is attributable to the precious metal or precious stone or both
- Precious-asset-backed instruments:
 - a certificate or an instrument which is backed by one or more precious metals, precious stones or precious products

DPMS Registration Requirements


Two-tier registration regime

- Category A
 - DPMS who seeks to engage in cash transactions of less than HK\$120,000
- Category B
 - DPMS who seeks to engage in cash transactions of HK\$120,000 or more





Category A Registrants

- Can only enter into cash transactions of less than HK\$120,000
 - Will not be subject to the AML and CTF requirements
 - Will only be subject to registration conditions imposed by the CC&E and general statutory obligations
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Category A Registration Requirements

Supporting documents for registration:

- (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.



Category B Registrants

- Can enter into cash transactions of HK\$120,000 or more
- Will be subject to the AML and CTF requirements
- Will be subject to registration conditions imposed by the CC&E and general statutory obligations



Category B Registration Requirements

Supporting documents for registration:

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



A Category B applicant, as well as its individuals, partners, directors and ultimate owners will be subject to a fit and proper test.

Factors considered by the CC&E include:

- Financial status or solvency
- Conviction history in Hong Kong or elsewhere for any money laundering or terrorist financing offence or other offence involving fraudulent, corrupt or dishonest conduct
- Failure to comply with regulatory requirements or other obligations of DPMS registrants

Fit and Proper Test



Licensed Hawker Registration

- A hawker who wishes to carry on a PMS business will be exempted from business registration, provided that it is licensed under the Hawker Regulation
- For such licensed hawkers, business premises refer to the location of the fixed pitch from which the person may hawk or the areas in which the person may hawk

Business Premises

- Where an applicant intends to use domestic premises as business premises, written consent of every occupant of the premises for any authorized person to enter the premises for routine inspection must be obtained



Transitional Arrangements for Existing DPMS

- Existing DPMS operating in Hong Kong before 1 January 2023 can continue to operate until 30 September 2023
- To continue operation after 30 September 2023, an application must be made to the CC&E for DPMS registration on or before 30 September 2023



Obligations of DPMS Registrants under the Revised AMLO

- Compliance with all licensing conditions imposed by CC&E
- Display of certificate of registration at its principal place of business and at each of its branches (if any)
- Notification to CC&E in writing of various matters including:
 - any change in any information provided to the CC&E; and
 - an intention to cease business as a DPMS.



Validity of Registration

Category A

- Valid for as long as the registrant continues to stay in business, subject to the payment of an annual fee to the CC&E

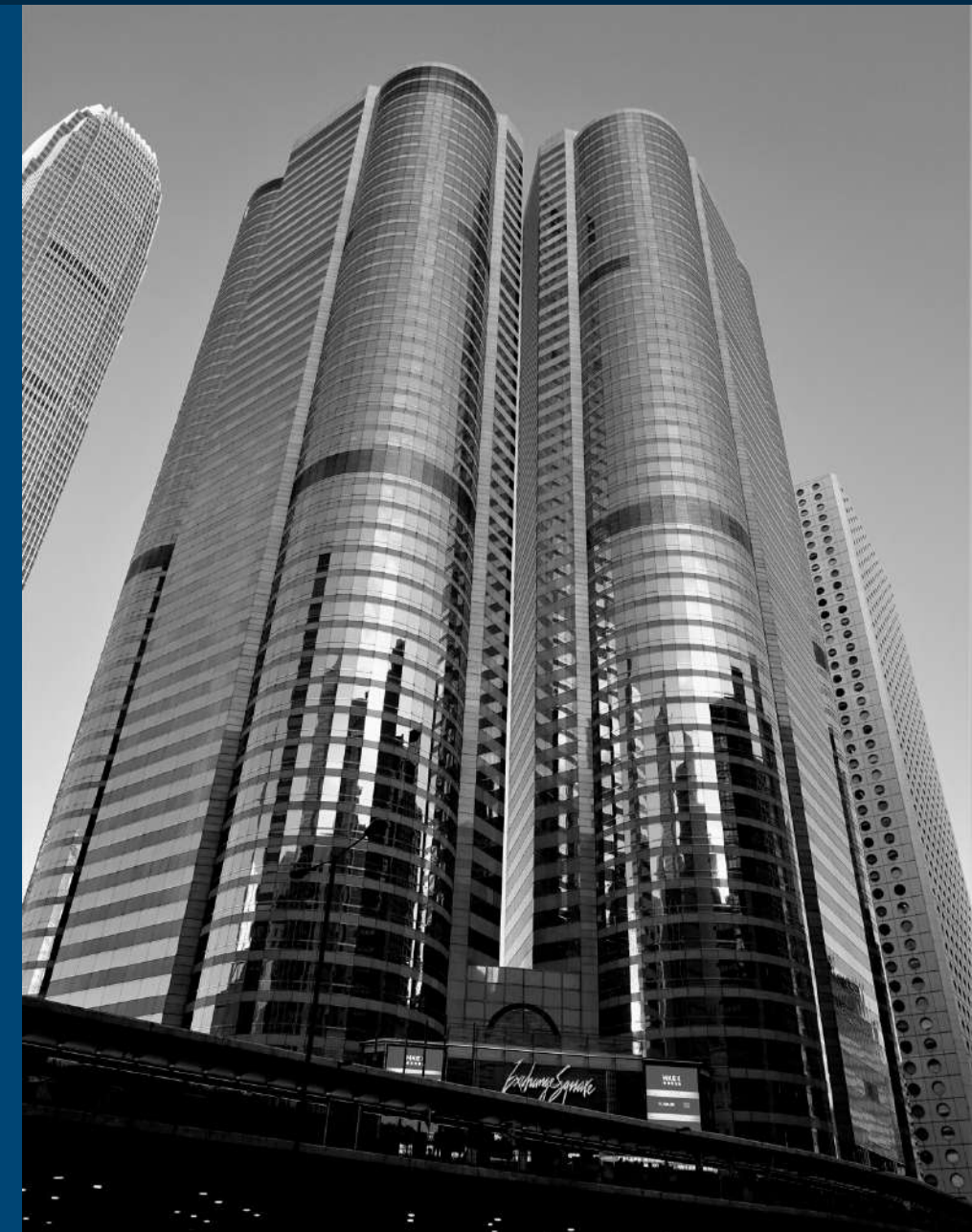
Category B

- Valid for 3 years, after which it will be subject to periodic review and extension by the CC&E
- Renewal applications should be submitted to the CC&E at least 60 days before the expiry of the registration
- Renewal applications will still be required to satisfy the fit and proper test



Possible reasons for cancellation or suspension of registration:

- Discovery of misconduct
- Change of registration category
- No longer fit and proper
- Cessation of business operations



Failure to comply with AML/CTF Requirements:

- Reprimand
- Remedial order
- Maximum fine of HK\$500,000
- Registration suspension or cancellation





Approval of Ultimate Owner, Partner or Director

- CC&E prior approval must be obtained for each proposed ultimate owner, partner or director of a Category B registrant
- Failure to do so may lead to a maximum fine of HK\$50,000 and six months' imprisonment

Entities exempted from Hong Kong's DPMS Registration Regime

- Government
- Banks
- Licensed pawnbrokers
- 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 carrying on a PMS business that is ancillary to their principal business

Overseas DPMS

Overseas DPMS will also be exempted from CC&E registration requirements 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 (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.



Cash Transaction Report

- Required to be filed with the CC&E by overseas DPMS when they engage in a cash transaction at or above HK\$120,000 in Hong Kong
- Timing:
 - Within one day upon completion of the transaction, and in any event before departure from Hong Kong
- Contents:
 - basic dealer information
 - travel information of each specified individual in relation to the transaction
 - transaction information
 - basic customer information
- Penalty for failure to file:
 - maximum fine of HK\$50,000 and three months' imprisonment



DPMS Register

- Registrant's name, registration category, principal business address and each branch address (if any) will be entered into the register maintained by the CC&E
- Register will be accessible to members of the public
- For first registration made before 30 September 2023, registration fees and the fees for conducting fit and proper tests will be waived




CC&E Powers in respect of DPMS Registrants

- broad supervisory powers to enforce AML/CTF and other regulatory requirements under AMLO
- impose sanctions such as a reprimand, an order for remedial action, a fine (only for Category B registrants) and suspension or revocation of a person's registration
- cancellation/suspension of registration under the following circumstances:
 - where a Category A registrant carries out a specified cash transaction in Hong Kong without Category B registration;
 - failure to comply with CC&E regulations or registration conditions (including fit and proper tests);
 - failure to pay annual fees;
 - failure to comply with an order for remedial action;
 - failure to hold a valid business registration certificate;
 - carrying on the business for an unlawful purpose; and
 - failure to secure each occupant's consent for the use of domestic premises as business premises for its PMS business.



Review of **CC&E** **decisions**

- CC&E decisions will be subject to the established review mechanism of the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal
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Offences under the Hong Kong Registration Regime for DPMS

1. Carrying on PMS business without registration

- Maximum penalties of a HK\$100,000 fine, six months' imprisonment and registration disqualification

2. Providing false or misleading information

- Maximum penalties of a HK\$50,000 fine and six months' imprisonment

Miscellaneous Amendments to the AMLO

- amending the definition of “politically exposed person”
- aligning the definition of “beneficial owner” in relation to trusts under the AMLO with that of “controlling person” under the Inland Revenue Ordinance
- allowing the engagement of digital identification systems to assist the conduct of customer due diligence in certain situations
- imposing a penalty of a fine of HK\$1 million and imprisonment for two years for unlicensed money service operation
- consolidating provisions under individual parts of AMLO regarding confidentiality of information into a unified provision
- including a prohibition on a person subject to inspection, investigation or disciplinary action from disclosing such confidential information

