香港海關
Customs and Excise Department

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Circular

Anti-Money Laundering and Counter-Financing of Terrorism Systems with Risk-based Approach
(For Category B Registrant)

Anti-Money Laundering and Counter-Financing of Terrorism ("AML/CFT") Systems

Pursuant to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) ("AMLO"), a Category B Registrant ("CBR") must take all reasonable measures[1] to ensure that proper safeguards exist to mitigate money laundering and terrorist financing ("ML/TF") risks, and shall conduct Customer Due Diligence ("CDD") measures and record-keeping[2] when carrying out any cash transaction(s) with total value at or above HKD120,000 in Hong Kong. In this regard, the Customs and Excise Department published the Guideline on AML/CFT (For Category B Registrants Dealing in Precious Metals and Stones) ("*Guideline on AML/CFT*")[3] which provides practical guidance to assist CBRs in devising their own effective and comprehensive AML/CFT Systems (i.e. policies, procedures and controls) in the relevant operational areas.

Risk-based Approach

The Financial Action Task Force ("FATF") provides in its recommendations[4] that, among others, the risk-based approach ("RBA") is an effective way to combat ML/TF, and it is vital to the effective implementation of an AML/CFT regime. An RBA to AML/CFT means that the regulated entities, e.g. CBRs, are expected to identify, assess and understand the ML/TF risks to which they are exposed and take AML/CFT measures to be commensurate with those risks in order to manage and mitigate them effectively. Therefore, CBRs should adopt RBA in the design and implementation of their AML/CFT Systems with a view to complying with the statutory requirements under the AMLO, as well as addressing the recommendations set by the FATF.

Institutional ML/TF Risk Assessment

The institutional ML/TF risk assessment ("IRA") forms the basis of the RBA, and CBRs should take appropriate steps to identify, assess and understand their ML/TF risks in relation to:

(a) the profile of its customers;

(b) the countries or jurisdictions its customers are from or in;

(c) the countries or jurisdictions where the CBR has operations; and

(d) the products, services, transactions and delivery channels of the CBR.

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[1] According to section 23 of schedule 2 to AMLO.
[2] According to section 5A(1) and (5A) of AMLO.
[3] Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Category B Registrants Dealing in Precious Metals and Stones) at https://www.drs.customs.gov.hk/download/drsguideline/AML_CFT_Guideline_en.pdf .
[4] The FATF sets 40 recommendations which are universally recognised as the international standards for anti-money laundering and countering the financing of terrorism. Hong Kong has been a member jurisdiction of the FATF since 1991, and it is obligated to comply with the FATF standards and recommendations.

ML/TF risks of different aspects may be measured using various risk factors, and CBRs may refer to paragraph 2.4 of the *Guideline on AML/CFT* for the scope of risk factors in respect of the IRA.

It is expected that CBRs should finalise the IRA to determine the operation mechanism as well as the level of execution for the key measures of their own AML/CFT Systems, covering CDD, ongoing monitoring, suspicious transaction reporting, targeted financial sanctions screening, record-keeping and staff training.

Customer Risk Assessment

In addition, CBRs should particularly assess the ML/TF risks associated with a customer or a proposed business relationship, i.e. customer risk assessment ("CRA"), so as to determine the risk level of individual customers or business relationships, as well as the extent of AML/CFT measures, e.g. CDD or other enhanced measures, to be applied. CBRs should design their CRA framework based on the results of relevant risk items in the IRA, and in general, the CRA framework should cover the customer risk factors; country risk factors; and product, service, transaction or delivery channel risk factors.

For instance, a CBR must apply enhanced customer due diligence[5] measures in relation to a customer or a business relationship that presents a high risk of ML/TF. When conducting the CRA, CBRs may consider the following examples of high-risk customers or business relationships.

Examples of high-risk customers or business relationships
The customer or counterparty who: ■ does not have reasonable expertise and experience in the precious metals and stones ("PMS") sector, or does not have a place of business or equipment or finances necessary and appropriate for normal operation, or does not seem to know usual financial terms and conditions. ■ proposes a transaction that is not consistent with their usual profile. For example, the customer claimed to be a student but purchases PMS with a large amount of cash or a large amount of funds through bank transfer; and the customer engaged in pearl trading business purchases a large amount of bullion for no apparent reason. ■ proposes an unusual or unconscionable transaction, such as in terms of quantity, quality or potential profit. For example, purchase of PMS through multiple transactions over a short time period; selling PMS at a rate significantly lower than its typical sale value; and dramatically increase of purchase of PMS (e.g. gold bullion) for no apparent reason. ■ proposes a transaction without providing the specific documentation related to the PMS. For example, no Kimberley Process Certificate attached to the shipment of rough diamonds; and no customs import or export declaration forms for the shipment of PMS.

[5] Please refer to paragraph 4.9.6 of the *Guideline on AML/CFT* for the possible enhanced customer due diligence measures.

Examples of high-risk customers or business relationships

- involves third parties in transactions, either as payers or recipients of payment or product, without apparent business purpose.
- makes frequent changes in bank accounts for transactions, especially among banks in other countries.
- seeks anonymity by conducting ordinary business through accountants, lawyers, or other intermediaries, so that the identity of the customer is not known.
- uses the means of payment (e.g. cryptocurrency, negotiable bearer instruments, etc), which is not a common manner for the transactions in the PMS sector.
- uses non-bank financial institutions to settle payment without apparent legitimate business purpose.
- transports PMS through or to a country or territory that is designated as "high risk for money laundering or terrorist financing activities" for no apparent economic reason.
- appears to be related to a high-risk country or territory or entity that is associated with money laundering or terrorist financing activities or a person that has been a designated person or entity under the United Nations Security Council Resolutions.
- is a politically exposed person as defined in the AMLO.

Note to CBRs

Please be reminded that the examples provided therein are not exhaustive but reflect the most commonly identified risk categories in the relevant operational areas. As the potential ML/TF risks involved may vary among individual dealers, when formulating the AML/CFT Systems, CBRs should make their own determination on the risk items concerned and their levels, as well as the appropriate follow-up measures, depending upon their respective circumstances.

It is also recommended that CBRs may refer to the FATF publication, namely the RBA Guidance for Dealers in Precious Metals and Stones[6], which provides the basic principles and framework for dealers in precious metals and stones ("DPMS") to adopt the RBA in designing and implementing the AML/CFT Systems, covering the risk categories identified in the industry.

[6] Website at: https://www.fatfgafi.org/content/dam/fatfgafi/guidance/RBA%20for%20Dealers%20in%20Precious%20Metal%20and%20Stones.pdf.coredownload.inline.pdf

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Additional Information

The Joint Financial Intelligence Unit ("JFIU") of the Hong Kong Police Force is designated to administer the Suspicious Transaction Reporting Regime[7] in Hong Kong for processing the data and information received in accordance with the relevant statutory requirements[8].

Through analysis of the cases and financial intelligence of law enforcement agencies, the JFIU has published the Strategic Analysis Report on Dealers in Precious Metals and Stones *("Analysis Report")*[9], which aims at identifying the ML/TF trends of the DPMS sector in Hong Kong, and specifically provides the case typologies and red flag indicators related to the ML/TF activities in the sector.

As such, CBRs are also encouraged to refer to the relevant case typologies and red flag indicators in the *Analysis Report*, when adopting the RBA to develop their own effective AML/CFT Systems.

For more details about RBA and AML/CFT Systems, CBRs may refer to Chapter 2 and 3 of the *Guideline on AML/CFT*.

Should you have any queries, please contact us at 5972 6086.

Dealers in Precious Metals and Stones Supervision Bureau
Customs and Excise Department

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[7] Please refer to the JFIU website at https://www.jfiu.gov.hk/en/, and Chapter 7 of the *Guideline on AML/CFT* at https://www.drs.customs.gov.hk/download/drsguideline/AML_CFT_Guideline_en.pdf

[8] Sections 25A(1) of the Drug Trafficking (Recovery of Proceeds) Ordinance, Cap. 405 and the Organized and Serious Crimes Ordinance, Cap. 455, as well as Section 12(1) of the United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575 that provide the statutory requirements for filing suspicious transaction report with the JFIU.

[9] Website at https://www.jfiu.gov.hk/info/doc/SAR_ON_DPMS.pdf