

立法會
Legislative Council

LC Paper No. CB(1)855/2022

Ref.: CB1/BC/5/22

**Report of the Bills Committee on Anti-Money Laundering and
Counter-Terrorist Financing (Amendment) Bill 2022**

Purpose

This paper reports on the deliberations of the Bills Committee on Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022 (“the Bills Committee”).

Background

2. The Financial Action Task Force (“FATF”) is an inter-governmental body established in 1989 that sets international standards on combating money laundering and terrorist financing (“ML/TF”). Hong Kong has been a member of FATF since 1991. Member jurisdictions take turns to evaluate the anti-money laundering and counter-terrorist financing (“AML/CTF”) regime of each other, and assess the extent to which it is in observance of the relevant FATF recommendations both in terms of technical compliance and effectiveness of implementation.

3. The Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (“AMLO”) was enacted in 2011 and came into full operation in April 2012. Under AMLO, financial institutions (“FIs”) ¹ are required to implement the customer due diligence (“CDD”) and record-keeping requirements which are the main strands of the AML/CTF regulatory regime championed by FATF. The relevant CDD and record keeping requirements are set out in

¹ According to Part 2 of Schedule 1 to AMLO, “financial institution” refers to (a) authorized institutions under the Banking Ordinance (Cap. 155); (b) licensed corporations under the Securities and Futures Ordinance (Cap. 571); (c) authorized insurers, appointed insurance agents, and authorized insurance brokers under the Insurance Ordinance (Cap. 41); (d) licensed money service operators (i.e. money changers and remittance agents); (e) the Postmaster General; or (f) a stored value facilities licensee.

Schedule 2 to AMLO. Under the CDD measures, FIs are required to identify and verify the identity of customers and keep the relevant customer records for certain periods of time. Non-compliance with the requirements may render FIs liable to supervisory and criminal sanctions. AMLO was amended in 2018 to extend the coverage of the AML/CTF regulation under the Ordinance to four designated non-financial businesses and professions (“DNFBPs”) (i.e. solicitors, accountants, real estate agents, and trust or company service providers).²

4. The Mutual Evaluation Report on Hong Kong, published by FATF in September 2019, set out FATF’s recommendations for Hong Kong to improve its AML/CTF regime including putting in place appropriate AML/CTF obligations for dealers in precious metals and stones (“PMS”). Separately, the rapid development of virtual asset (“VA”) trading activities in recent years have posed ML/TF risks. To address such risks, FATF required in early 2019 its members to regulate virtual asset service providers (“VASPs”) and subject them to the same range of AML/CTF obligations as applicable to FIs and DNFBPs.

5. In the light of FATF’s recommendations on the regulation of PMS dealers and the latest standards for VASPs, the Administration launched in November 2020 a three-month public consultation on the legislative proposals to amend AMLO to enhance Hong Kong’s AML/CTF regulatory regime. The Administration published the consultation conclusions in May 2021. According to the Administration, the respondents generally agreed with the overall direction and principles as well as the broad framework of the legislative proposals. As regards regulation of VASPs, the Administration has proposed establishing a licensing regime requiring any person seeking to operate a VA exchange in Hong Kong to apply for a licence. Licensed VASPs will be subject to the AML/CTF requirements stipulated under AMLO as well as other regulatory requirements for investor protection. In relation to regulation of PMS dealers, the Administration has proposed introducing a registration regime and subjecting registrants engaging in cash transactions at or above HK\$120,000 to the statutory AML/CTF obligations stipulated in Schedule 2 to AMLO.

² In FATF’s parlance, DNFBPs cover casinos, dealers in precious metals and stones, real estate agents, lawyers, accountants, and trust or company service providers (“TCSPs”). As there are no casinos in Hong Kong, the relevant FATF recommendations are only applicable to the other five sectors in the Hong Kong context. In view of Hong Kong’s prevailing circumstances, the Administration’s then legislative proposals covered solicitors, accountants, real estate agents and TCSPs only. Statutory CDD and record-keeping requirements are applicable to DNFBPs when they engage in specified transactions. Specified transactions include real estate transactions; management of client money, securities or other assets; management of bank, savings or securities accounts; company formation and management; and buying and selling of business entities.

The Bill

6. The Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022 (“the Bill”) was published in the Gazette on 24 June 2022 and received its First Reading at the Legislative Council (“LegCo”) meeting of 6 July 2022.

7. The Bill seeks to:

- (a) amend AMLO to establish a licensing regime for VASPs (new Part 5B and new Schedules 3B to 3G) and a registration regime for PMS dealers (new Part 5C and new Schedules 3H to 3J);
- (b) apply the CDD and record-keeping requirements under Schedule 2 to AMLO to VASPs and PMS dealers when they conduct certain transactions (the proposed new section 5A(5A)); and
- (c) make related and miscellaneous amendments (e.g. clauses 24, 26, 27, 29 and 34).

8. Details of the main provisions of the Bill are set out in **Appendix 1**. The Bill, if passed, will come into operation on 1 January 2023, except the provisions relating to the offence of carrying on a business of providing VA service (i.e. the proposed sections 53ZRD to 53ZRG) and the provisions concerning the transitional arrangements for the licensing requirements of VASPs (i.e. the proposed section 53ZTX and Schedule 3G), which will come into operation on 1 March 2023 (see paragraph 41 below for the Administration’s proposed amendments to the provisions relating to the commencement of the Bill).

The Bills Committee

9. At the House Committee meeting on 8 July 2022, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix 2**. Under the chairmanship of Hon CHAN Chun-ying, the Bills Committee has held three meetings with the Administration and the Securities and Futures Commission (“SFC”) to study the Bill. The Bills Committee has also invited written submissions from the public. A list of organizations which have given views to the Bills Committee is in **Appendix 3**.

Deliberations of the Bills Committee

10. Members of the Bills Committee in general support the Bill. The main subjects deliberated by the Bills Committee are set out below:

Licensing regime for virtual asset service providers

- (a) Definitions of “VA” and “VA service” (paragraphs 11-17);
- (b) Development of the virtual asset market in Hong Kong (paragraphs 18-22);
- (c) Licensing criteria for virtual asset service providers (paragraphs 23-25);
- (d) Proposed requirement of providing services to professional investors only (paragraphs 26-27);

Registration regime for the precious metals and stones dealers

- (e) Two-tier registration regime (paragraphs 28-34);
- (f) Definitions of “precious metal”, “precious stone” and “precious product” (paragraphs 35-36); and

Miscellaneous amendments

- (g) Miscellaneous amendments (paragraphs 37-40).

Licensing regime for virtual asset service providers

Definitions of “VA” and “VA service”

11. “VA” under the Bill generally means a cryptographically secured digital representation of value that: is expressed as a unit of account or a store of economic value; can be transferred, stored or traded electronically; either (i) is used for the purposes of payment for goods or services, discharge of a debt and/or investment, etc., or (ii) provides rights, eligibility or access to vote on the affairs in connection with any cryptographically secured digital representation of value, e.g. cryptocurrencies and other asset classes in the virtual world (the proposed new section 53ZRA(1)). However, certain digital representations of value, including “limited purpose digital token”, will be excluded from the definition of “VA” (the proposed new section 53ZRA(2)).³ The definition of “limited purpose digital token” includes any digital representation of value that is similar to a customer loyalty or reward point or an in-game asset, and is not intended by

³ Other excluded digital representations of value include those issued by central banks or by governments, or those constituting securities or futures, or any float or SVF deposit of stored value facilities which are already or will be regulated under various ordinances.

its issuer to be convertible into money or another medium of exchange accepted by the public (the proposed new section 53ZR). Under the proposed licensing regime for VASPs, any person seeking to carry on a business of providing a VA service will be required to obtain a VASP licence from SFC (the proposed new section 53ZRD). Under the proposed new Schedule 3B, “VA service” is defined to mean operating a VA exchange, that is to say, providing services through means of electronic facilities whereby the service users will result in a binding transaction of buying or purchasing VA (such as offering to sell or purchase by such services any VA in exchange for any money or any VA) and in providing such services, client money or client VA will come into direct or indirect possession of the service provider.

12. The Bills Committee notes that “non-fungible tokens” (commonly known as “NFTs”) in general are unique cryptographic tokens that exist on a blockchain which cannot be replicated, and some NFTs are not “intended by [their] issuer to be convertible into money or another medium of exchange accepted by the public”. As such, these kinds of NFTs may fall within the proposed meaning of “limited purpose digital token” and would be excluded from the ambit of the Bill. Notwithstanding this, some NFTs may be a kind of VA if they are capable of being bought, sold, or auctioned on trading platforms, and they are a cryptographically secured digital representation of value that is a “store of economic value” (i.e. they can be used to save and allocate capital), that they can be “transferred, stored or traded electronically”, and are “used, or intended to be used, as a medium of exchange accepted by the public”. The Administration has been requested to clarify whether NFTs are covered by the definition of “VA”. Given the rapid development of the concept and scope of “VA” in the market, the Bills Committee is concerned how the definition of “VA” under the Bill can cater for the latest development of the VA market.

13. Regarding the definition of “VA”, the Administration has explained that reference has been made to the FATF parlance where VA is defined as “*a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes*”. On whether NFTs are covered by the definition of “VA”, it has been observed by SFC that tokens which call themselves NFTs in the market may have different terms and features. In most cases, where an NFT merely represents a genuine digital representation of a collectible, it will unlikely fall within the definition of “VA” as set out in the proposed section 53ZRA(l) as it will unlikely be a unit of account or a store of economic value (paragraph (a)(i) of the proposed definition), a medium of exchange accepted by the public (paragraph (a)(ii)(A) of the proposed definition), or a digital representation of value that provides holders with rights, eligibility or access to vote (paragraph (a)(ii)(B) of the proposed definition). It is important to consider the nature and functions of the NFTs in practice rather than the marketing terminology used. Where the characteristics of a specific NFT go beyond the boundary of a collectible, for instance, containing fungible elements

or allowing holders to vote on its arrangement, it may meet the description in paragraphs (a)(ii)(A) or (a)(ii)(B) of the proposed definition. If it also meets the descriptions in paragraphs (a)(i), (iii) and (iv) of the proposed definition, the NFT is very likely to be qualified as a “VA”. On the other hand, an NFT will fall within the ambit of the Securities and Futures Ordinance (Cap. 571) (“SFO”) if it evolves into some form of collective investment schemes. The SFC will consider issuing guidance regarding the regulatory treatment for specific tokens where it is found necessary to do so after reviewing the relevant provisions in AMLO and SFO. The industry is also familiar with this approach. For example, SFC has recently issued a statement in relation to the regulatory treatment of NFTs.

14. The Administration has further explained that if a specific NFT falls within the definition of “VA”, a person’s activity in relation to such NFT will require a licence only if such activity falls within the definition of “VA service”. The definition of “VA service” (the proposed new Schedule 3B) seeks to capture automated trading services provided by centralised VA exchanges. If the trading of NFTs occurs between persons on a peer-to-peer basis (e.g. those bought and sold on OpenSea), the persons would not be deemed as operating an exchange and their activities would not fall within the scope of “VA service”. As such, persons buying and selling NFTs without operating an exchange are not caught by the licensing requirement under the Bill.

15. As to how the revised definition of “VA” can cater for the fast-evolving nature of the VA market, the Administration has pointed out that the Bill has empowered SFC to prescribe characteristics that constitute the definition of a VA (the proposed new section 53ZRA(3)), and the Secretary for Financial Services and the Treasury (“SFST”) to determine, either generally or in a particular case, whether any digital representation of value is to be regarded as a VA under AMLO (the proposed new section 53ZRA(4)). SFC and SFST may exercise the aforesaid powers by notice published in the Gazette, and such notices would be subsidiary legislation subject to the negative vetting procedure of LegCo.

16. As the proposed regulatory regime for VASPs only covers the carrying on of a business of operating a VA exchange, the Bills Committee has enquired about the reasons for not regulating other forms of VA business such as over-the-counter VA trading, peer-to-peer VA trading, stand-alone VA payment or custodian system.

17. The Administration has explained that a VA exchange is the most prevalent and developed VA business seen in Hong Kong. The presence of VA activities conducted outside VA exchanges⁴ in Hong Kong is scanty and

⁴ For peer-to-peer VA trading, no regulation is recommended by FATF.

negligible compared with those conducted within VA exchanges, and their fund movements are traceable for AML/CTF purposes where they interface with FIs. Like any other legal and natural persons in Hong Kong, persons carrying on such business are also subject to the obligations of reporting suspicious transactions and implementing targeted financial sanctions promulgated by the United Nations Security Council. The Administration undertakes to keep in view the development in the VA market, the situation in Hong Kong and the implementation of the regulatory regime, and consider the need for regulating other forms of VA business. The proposed regulatory regime has already provided enough flexibility where SFST is empowered to, by notice published in the Gazette, expand the scope of “VA service” by amending the proposed Schedule 3B (the proposed new section 53ZTL(1)) when necessary to cover other forms of VA activities in the future. Such notices would be subsidiary legislation subject to the negative vetting procedure of LegCo.

Development of the virtual asset market in Hong Kong

18. The Bills Committee has pointed out that while VA activities involve higher risks, there are many novel investment products in such activities which can bring about enormous business opportunities for the financial services industry in Hong Kong. Some members of the Bills Committee are concerned about how the proposed regulatory regime can strike a balance between regulation and the development of the VA market, in particular how Hong Kong can maintain its competitiveness under the proposed regime as other jurisdictions in general only adopt a light touch on regulating VA activities or even simply require VASPs to get registered, while a more stringent regime is proposed in Hong Kong by means of licensing so as to regulate VASPs from the perspective investor protection, in addition to AML. There are also concerns about how the proposed regime in Hong Kong can prevent overseas VA exchanges which are not licensed by SFC from marketing their services to Hong Kong investors. Members have also enquired about the measures to be taken by the Administration and SFC to promote the development of the VA market in Hong Kong.

19. On the international trend in VA regulation, the Administration has advised that Hong Kong has been leading the way globally in implementing a regulatory regime for VASPs. While many overseas jurisdictions which have some sort of regulatory regimes in place only adopt a light touch on regulating the VA industry at present, a number of major jurisdictions including the European Union (“EU”) and the United States have recently begun exploring more rigorous regulatory regimes similar to that proposed in the Bill. For instance, in line with Hong Kong’s regulatory principle, the European Commission has developed the Regulation of Markets in Crypto-assets (i.e. MiCA) proposal for the regulation of crypto-assets/VAs and their service providers under which a uniform licensing regime is implemented across all EU member states so as to regulate VASPs from the perspective of investor protection. On the other hand, the United States

Securities and Exchange Commission has classified certain VAs as securities, and, in line with Hong Kong's regulatory approach, has plans to strengthen regulation of VA exchanges to enhance investor protection. As international organizations have been actively promoting a regulatory regime for VASPs, the establishment of such a regime in Hong Kong will serve as a basis for future international cooperation in regulation.

20. As regards promoting the development of the VA market in Hong Kong, the Administration has reiterated that the primary objective of the Bill is to combat ML/TF relating to VAs and protect investors, so as to provide a clear regulatory framework. Nevertheless, the Administration has been mindful of the need to maintain a balance between regulation of VA activities and healthy development of the market. The Administration has been cooperating with regulators, such as the Hong Kong Monetary Authority ("HKMA") and SFC, to actively promote the development of the financial sector in general including financial technology and financial innovation. For instance, HKMA is studying various aspects of VA including the regulation of stablecoins and development of Central Bank Digital Currency in Hong Kong. SFC and HKMA issued in January 2022 a joint circular to intermediaries interested in VA-related activities detailing the regulatory requirements. The circular has been well received by the banking and securities industries for providing useful guidelines on the provision of VA services. SFC is highly supportive of the VA industry. Recently the Financial Services and the Treasury Bureau and SFC have been actively communicating with the industry on security token offerings ("STOs"), including SFC's regulatory principles for STOs and the latest regulatory direction in this area. The industry is welcomed to join discussion on the proposals. Besides, it is believed that the establishment of a regulatory regime for VASPs will provide regulatory clarity to VASPs and further pave the way for the healthy and orderly development of the VA sector in Hong Kong.

21. On the question of how to regulate overseas VA exchanges, the Administration has pointed out that there are provisions in the Bill prohibiting the provision of VA services in Hong Kong (including the active marketing of VA services by overseas VA exchanges to the Hong Kong public) without a valid VASP licence, and contravention of such provisions will result in penalties (the proposed new section 53ZRD(5)). There are similar provisions in SFO prohibiting the active marketing of securities or futures activities to the Hong Kong public by an overseas company without a licence in Hong Kong. Based on these provisions, SFC has been keeping a close watch on non-SFC authorized collective investment schemes which are marketed in Hong Kong by overseas online investment platforms, and will take actions against the offenders. For example, SFC successfully took regulatory actions against unauthorized initial coin offerings from 2017 to 2018. SFC will take similar enforcement actions against unlicensed overseas VASPs actively marketing their services in Hong Kong.

22. SFC has added that the term “actively marketing” is a concept applied in the existing securities regulatory framework under SFO (section 115 of SFO) since SFO first came into operation in 2003. Reference may be made to the SFC’s frequently asked questions (“FAQs”) on “actively markets” under section 115 of SFO as it is likely that the term “actively marketing” under the Bill will be interpreted in a manner similar to that under SFO.⁵ On the offence regarding prohibited advertisements, the offence in the proposed new section 53ZRE mirrors section 109 of SFO. The scope of section 109 is intended to cover issuance or possession of advertisement irrespective of whether it is targeted at the Hong Kong public (or professional investors only). The objective of the proposed new section 53ZRE and of section 109 of SFO is to protect all types of investors from being the subject of promotions for the services of unlicensed corporations. In addition, to specifically address concerns relating to fraud, two criminal offences are proposed in the Bill which are specific to fraud involving VAs. First, it is an offence if a person, directly or indirectly, in a transaction involving any VAs: (a) employs any device, scheme or artifice with intent to defraud or deceive; or (b) engages in any act, practice or course of business that is fraudulent or deceptive, or would operate as a fraud or deception (the proposed new section 53ZRF). Furthermore, it is also an offence for a person to make any fraudulent misrepresentation or reckless misrepresentation for the purpose of inducing another person to enter into, or offer to enter into, an agreement to acquire, dispose of, subscribe for or underwrite any VAs (the proposed new section 53ZRG). These provisions will be applicable to any person regardless of whether that person is providing a VA service (i.e. operating a VA exchange), and hence will also be applicable to overseas VA exchanges without a licence from SFC.

Licensing criteria for virtual asset service providers

23. Under the proposed licensing regime for VASPs, SFC would only grant a VASP licence to a locally incorporated company with a permanent place of business in Hong Kong or a non-Hong Kong company but registered in Hong Kong (the proposed new section 53ZRK). Each VASP applicant is required to have at least two responsible officers who are to assume general responsibility of overseeing the operation of the licensed VASP, and any person who may carry out regulated functions on behalf of the applicant in relation to the carrying on of a business of providing a VA service must apply to be a licensed representative. SFC would only consider granting a VASP licence if SFC is satisfied that the applicant, its responsible officers and licensed representatives

⁵ This may include, for example, those who frequently call on Hong Kong investors and market their services; running a mass media programme targeting the investing public in Hong Kong; and internet activities that target Hong Kong investors.

are fit and proper persons. The licensed VASP itself as well as its responsible officers and licensed representatives are to abide by robust regulatory requirements. In the case of the licensed VASP, the requirements are to cover a wide range of matters including, among other things, that the licensed VASP should have adequate financial resources, knowledge, experience, risk management policies and procedures, proper keeping of client assets, VA listing and trading policies, proper financial reporting and disclosure, as well as mechanisms to prevent market manipulative and abusive activities and conflicts of interest.

24. The Bills Committee has examined the factors SFC would consider in determining whether a VASP licence applicant as well as its responsible officers and licensed representatives are fit and proper persons, and has enquired how SFC informs the applicant of the details.

25. The Administration has responded that the factors SFC would consider in determining whether a VASP as well as its responsible officers and licensed representatives are fit and proper persons are already set out in detail in the Bill (the proposed new section 53ZRJ). Such factors include their financial status or solvency; their educational or other qualifications, or experience, and reputation, character, reliability and financial integrity; whether they have been convicted of an offence under AMLO or other similar offences. SFC will publish guidelines under the proposed new section 53ZTJ to specify, among others, matters SFC will take into consideration in determining whether a person satisfies the fit and proper test in order to be licensed or to remain licensed, and to be a responsible officer or licensed representative. The standards to be set out in these guidelines are expected to be generally aligned with those set out in the “Fit and Proper Guidelines” published by SFC under section 399 of SFO.

Proposed requirement of providing services to professional investors only

26. The Bills Committee notes that the VA sector has expressed concern about the proposed requirement of providing services to professional investors only (“the PI requirement”) at the initial stage as it will hinder the business of VASPs and the future development of the VA sector, and will not be conducive to attracting quality service providers as well as relevant talents and professionals to Hong Kong. As non-PIs in Hong Kong will be excluded from the services of licensed VASPs, they may be driven to use the services of overseas VA exchanges or platforms, thus exposing them to additional risks in VA investment. The Bills Committee has enquired about the rationale for imposing the PI requirement at the initial stage. Some members have suggested that SFC should require licensed VASPs to perform suitability tests on their customers to see what knowledge and experience they have in investing VAs so as to ascertain their suitability for the service, and have stressed the need for the Administration and SFC to enhance investor education, instead of excluding non-PIs from the service

across the board. It is also suggested that SFC may require licensed exchanges to conduct more stringent product due diligence when approving the listing of certain VAs, so that non-PIs may have access to such products to a certain extent.

27. In relation to the PI requirement, the Administration has advised that diverse views have been received during the public consultation and some of them consider that non-PI participation in the trading activities of VA exchanges should be allowed. Given the tech-savvy and highly speculative nature of the VA industry compared to the traditional financial services industry, it is important to assess carefully the risks involved in investment, and therefore imposing the PI requirement as licensing conditions at the initial stage is considered a prudent approach. Upon passage of the Bill by the LegCo, SFC would conduct consultation on the detailed regulatory requirements of the new VASP regime, and taking into account the feedback from the industry and the public as well as the perspectives of investor protection and market development, SFC will consider during the consultation whether it is possible to allow non-PIs to conduct transactions within licensed VA exchanges provided that additional investor protection measures are in place.⁶ The Administration and SFC will also launch more investor education and publicity campaigns to enhance investors' understanding and awareness of the risks associated with VA investment.

Registration regime for in precious metals and stones dealers

Two-tier registration regime

28. The Bill proposes to establish a registration regime for PMS dealers. Any person seeking to carry on a PMS business in Hong Kong would be required to register with the Commissioner of Customs and Excise ("the Commissioner") (the proposed new section 53ZUD(1)). Under the proposed new section 53ZTZ, "dealing in precious metals and stones" would include, among others, the following activities by way of business: trading in, importing, exporting, manufacturing, refining or carrying out any value-adding work on precious metals, precious stones or precious products; or issuing, redeeming or trading in precious-asset backed instruments; and acting as an intermediary in respect of such activities. The definitions of "precious metal", "precious stone" and "precious product" are set out in the proposed new section 53ZTY. "Precious product" includes any jewellery, watch, apparel, accessory, ornament or other finished product that is containing any precious metal and/or precious stone, and at least 50% of the transaction price of which is attributable to the precious metal or precious stone, or both ("the 50% value threshold"). The Bill introduces a

⁶ The PI requirement will be imposed on VASPs as licensing conditions (the proposed new section 53ZRK(4)), such that flexibility is allowed for SFC to make changes when any adjustment is necessary without the need to amend the Ordinance.

two-tier registration regime for PMS dealers under which any person seeking to carry on a PMS business in respect of which a transaction payment in cash of at least HK\$120,000 or above in Hong Kong (“specified cash transaction”) would be required to register with the Commissioner as “Category B registrant” (the proposed new section 53ZUD(2)), and the Commissioner may grant such registration if he is satisfied, among others, that the applicant is a fit and proper person (the proposed new section 53ZUN). A PMS dealer who does not intend to and will not engage in specified cash transaction in the course of the business would be required to register as “Category A registrant” (the proposed new section 53ZUE). The Commissioner must maintain a register which will be made available for inspection by members of the public on the information about the two categories of registrants (the proposed new section 53ZUB). Under the proposed new section 53ZU, certain entities would be exempt from the registration requirements. Those entities include FIs that are already regulated under AMLO and whose PMS business is ancillary to their principal business (such as banks), pawnbrokers which are already subject to the regulation of the Pawnbrokers Ordinance (Cap. 166), and non-Hong Kong PMS dealers (i.e. an individual who does not ordinarily reside in Hong Kong, or a legal person that is incorporated or established outside Hong Kong and is not a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622), and does not have a place of business in Hong Kong, and the total number of days on which the person’s PMS business is carried on in Hong Kong does not exceed 60 days in a calendar year).

29. The Bills Committee recognizes the concern of the PMS industry that the proposed registration regime will increase the operating costs of the dealers. While some members find it justified for the Government to require PMS dealers who would carry out specified cash transactions to register as Category B registrants, they query the need for Category A registrants under the proposed regime. As dealers carrying out transactions at an amount below the specified cash transaction threshold are mostly small and medium-sized enterprises, requiring such dealers to register as Category A registrants will create compliance burden. The Bills Committee has enquired about the justifications for introducing the two-tier registration regime, and whether similar registration regimes are found in other member jurisdictions of FATF. Some members have also asked the Administration to consider introducing only Category B registrants so as to alleviate the compliance burden on the PMS industry and reduce the cost of the Customs and Excise Department (“C&ED”) in administering the two-tier registration regime and supervising the two categories of registrants.

30. In response, the Administration has pointed out that given the FATF requirement for PMS dealers engaging in large cash transactions be subject to more rigorous AML/CTF scrutiny, there is a need for the Government to distinguish persons who would engage in large cash transactions from those who would not for application of risk-based regulation. In addition, C&ED may, in

compliance with the FATF requirement, maintain a comprehensive understanding of the ML/TF risk of the PMS sector and the latest overall sectoral landscape. The proposed two-tier registration regime is consistent with FATF's requirement of imposing risk-based regulation while striking a balance between the need for regulation and the need for minimizing compliance cost. Regarding the threshold for specified cash transaction, in light of the FATF requirement that PMS dealers which engage in cash transactions exceeding USD/EUR 15,000 (around HK\$120,000) should be subject to the same AML/CTF obligations as are other DNFBPs, the Government sets the threshold at HK\$120,000 accordingly.

31. Regarding the regulatory measures of other jurisdictions for PMS dealers, the Administration has advised that other jurisdictions have adopted different regulatory measures based on their individual circumstances. For instance, Italy prohibits PMS dealers from conducting cash transactions at or above EUR 10,000. Singapore requires all PMS dealers to be registered (irrespective of the transaction amount) and fulfil relatively stringent registration requirements (e.g. fulfilling the "fit-and-proper" standard). The UK regulates "high value dealers", irrespective of whether their products are PMS, and regardless of the PMS level or proportion of the products. Any cash transaction at or above GBP 10,000 is regarded as a "high value product" transaction, and the relevant dealer is required to be registered.

32. The Administration has explained that Category A registration is simple and straightforward. Applicants will only need to submit a copy of a valid business registration certificate⁷, address of the place of business in Hong Kong and correspondence address, and a declaration that their PMS business is carried on for a lawful purpose. Category A registrants are not subject to the AML/CTF requirements stipulated in Schedule 2 to the AMLO. The registration of a Category A registrant, so long as it continues to operate, will remain valid upon payment of an annual registration fee. As to Category B registrants, applicants must satisfy the fit and proper test, just like the existing criteria applicable to other DNFBPs regulated under the AMLO. Category B registrants are required to observe the AML/CTF requirements under Schedule 2 to AMLO. A Category B registration will be valid for three years with a registration fee of HK\$1,970, and renewable upon expiry with a renewal fee of HK\$1,060.

33. Regarding registration fee, the Administration has pointed out that fees will be charged from Category A and Category B registrants on a cost-recovery basis. In light of the current economic conditions and business environment in Hong Kong, it is proposed that for PMS dealers who have been operating before

⁷ For hawkers licensed under the Hawker Regulation (Cap. 132AI) who are exempted from business registration, they may register on the strength of their hawker licence.

commencement of the registration regime, the registration and related fees will be waived for first registration where the application is made within the 9-month transitional period.⁸ The Commissioner is also empowered under the Bill to waive the payment of the fee payable by any person or class of persons where appropriate (the proposed new section 53ZVQ). To administer the registration regime and supervise the registrants, C&ED will create 72 permanent non-directorate civil service posts, involving a full-year recurrent expenditure of HK\$40.8 million. In addition, a team of 19 Post-retirement Service Contract staff will be engaged for seven months to cope with the influx of applications during the transitional period, the total staff cost of which will be HK\$7 million. A new computer system for processing applications and enforcement work, involving an estimated non-recurrent expenditure of HK\$15.9 million, will also be put in place. The recurrent cost of the system is estimated at HK\$6.3 million per annum and will be absorbed by C&ED from within its existing resources. As Category A registration arrangement is simple and straightforward, involving relatively limited resources, the vast majority of resources (e.g. manpower and computer system) will be used for handling Category B registration. C&ED will carry out routine inspections on Category A and Category B registrants on a risk-based regulatory approach.

34. Having regard to the concern of the Bills Committee and the industry about Category A registration, the Administration agrees to make adjustment by proposing amendments to provide that only PMS dealers carrying out non-cash transactions at HK\$120,000 or above will need to be registered as Category A registrants. PMS dealers carrying out cash or non-cash transactions below HK\$120,000 will not be required to register. The purpose is to alleviate the burden on small and medium-sized businesses that only conduct small-amount transactions. The Bills Committee welcomes the amendments proposed by the Administration.

Definitions of “precious metal”, “precious stone” and “precious product”

35. The Bills Committee has expressed concern about the scope of the definition of “precious product” and the “50% value threshold” therein. Members are particularly concerned about the inadvertent breach of the law by dealers who may not be aware of the PMS content of the products they sell and hence unaware of the need to register with the Commissioner. Besides, for some small businesses not specializing in dealing in PMS such as stationery shops and optical shops, the products they sell may also fall within the definition of “precious product”.

⁸ Including the registration fees for Category A registrants (covering one year) and for Category B registrants (covering the period of the registration which is three years or another period specified by the Commissioner), plus the relevant fees for conducting the fit and proper tests for Category B registrants.

36. Having regard to the views of the Bills Committee and the industry, the Administration has agreed to adopt the suggestion of the industry and introduce amendments in respect of the definition of “precious product” under the proposed section 53ZTY by removing the requirement that at least 50% of the transaction price of a “precious product” is attributable to precious metal and/or precious stone. This responds to the industry’s concern over the operational difficulties brought by the “50% value threshold”. In light of the above amendments and considering that “apparel”, “accessory”, “ornament” and “other finished product”, etc. should generally contain or have attached to them a relatively small amount of precious metal and/or precious stone, hence involving a relatively low level of ML/TF risks, the Administration will propose another amendment to remove the reference to “apparel”, “accessory”, “ornament” and “other finished product” from the definition of “precious product”. It follows that the provision “does not include any finished product that forms part of any medical device or industrial equipment” will also be removed from the definition. In other words, the definition of “precious product” will not cover the items mentioned above, so as to further alleviate the compliance burden on the industry. The Bills Committee welcomes the amendments introduced by the Administration.

Miscellaneous amendments

37. The Bill proposes to make various miscellaneous amendments, including amending the definition of “politically exposed person” (“PEP”), adding a definition of “former politically exposed person” (“former PEP”), and amending the CDD requirement for former PEP. The Bills Committee has enquired about the purpose of amending the definition of PEP, and upon the amendment, what changes will be brought to CDD conducted by FIs on those who are defined as “former PEPs”.

38. The Administration has explained that a PEP is currently defined under Schedule 2 to AMLO to mean, among others, an individual who is or has been entrusted with a prominent public function in a place outside the People’s Republic of China (paragraph (a) of the definition of PEP under section 1 of Schedule 2). The FATF Standards require FIs and DNFBPs to conduct enhanced CDD on foreign PEPs as well as their family members and close associates due to the higher ML/TF risks they entail. As such, a PEP who is or has been entrusted with a prominent public function in a place outside the People’s Republic of China is required under existing section 10 of Schedule 2 to AMLO to undergo enhanced CDD. To implement the FATF’s recommendation, the Bill proposes to amend the definition of PEP from one in a place outside the People’s Republic of China to one in a place outside Hong Kong. To allow more flexibility in the treatment of former PEPs who are no longer entrusted with a prominent public function, in accordance with the relevant FATF Guidance, the Bill also proposes to amend section 10 of Schedule 2 to AMLO to enable the

adoption of risk-based approach in conducting enhanced CDD for former PEPs (i.e. enhanced CDD may not be required for former PEPs with lower risks).

39. Members of the Bills Committee generally agree that more flexibility should be allowed for FIs in handling CDD in respect of former PEPs. Some members have enquired how FIs determine whether a former PEP is no longer entrusted with a prominent public function, and how regulators assist FIs to take a risk-based approach in conducting CDD.

40. In response, the Administration has pointed out that factors for FIs to consider in determining whether a former PEP is no longer entrusted with a prominent public function may include the amount of influence still wielded and the office still held, as well as the linkage between the office previously held and the current position held, by the person. To assist FIs, HKMA will work with the Hong Kong Association of Banks on the following three pieces of guidance in relation to PEP: (a) to update the HKMA's Guidelines on Anti-Money Laundering and Counter-Financing of Terrorism to reflect the changes in AMLO; (b) to update the relevant FAQs in relation to AML/CTF; and (c) to develop a new guidance paper on PEP, with the help of an external consultant, to provide a holistic guidance on all types of PEPs taking into account international practices.

Amendments to the Bill

41. Apart from the amendments mentioned in paragraphs 34 and 36 above, the Administration will make some other amendments to the Bill which mainly include:

(a) Amendment of the commencement of the Bill -

The commencement of the Bill mentioned in paragraph 8 above is to be postponed to 1 April 2023, while the commencement of the provisions in relation to the restrictions on carrying on a business of providing VA service, the provisions regarding the transitional arrangements for the licensing requirements of VASPs, as well as the provisions concerning PEPs, former PEPs and "beneficial owners in relation to trusts", etc. is to be postponed to 1 June 2023. Such postponements seek to allow the Administration and SFC more time to work out the implementation details of the new regulatory regime, including consultation by SFC with the market and the public on the regulatory requirements for VASPs. VASPs and the PMS sector will also be given more time to make preparation. The amendments of the provisions concerning PEPs, former PEPs and "beneficial owners in relation to trusts", etc. are made in response to the written submissions of the banking industry;

- (b) Amendment of the provisions in respect of directors of Category B registrants under the proposed section 53ZVI(4) -

The reference to “director (董事) does not include a person who is an accounting professional or a legal professional” is to be removed, in response to the Bills Committee’s concern about excluding persons of such background from the provisions; and

- (c) Other textual, technical or consequential amendments.

42. Members of the Bills Committee have noted and have not raised queries on the draft amendments. The Legal Adviser to the Bills Committee has advised that no difficulties have been identified in the legal and drafting aspects of the draft amendments. The Bills Committee will not propose any amendments to the Bill.

Resumption of Second Reading debate on the Bill

43. The Bills Committee has no objection to the resumption of the Second Reading debate on the Bill at the Legislative Council meeting of 7 December 2022.

Consultation with the House Committee

44. The Bills Committee reported its deliberations to the House Committee on 25 November 2022.

Council Business Division 1 and Public Complaints Office

Legislative Council Secretariat

29 November 2022

Main provisions of the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022

The main provisions of the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022 (“the Bill”) are set out below:

1. Part 1 sets out preliminary provisions such as the short title and provides for the commencement of the Bill;
2. Part 2 contains amendments to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (“AMLO”) and comprises:
 - (a) Division 1, in which clauses 4 and 5 establish the two new regulatory regimes for virtual asset service providers (“VASPs”) and dealers in precious metals and stones (“PMS”) by adding new Parts 5B and 5C and Schedules 3B to 3J; and
 - (b) Division 2 (comprising clauses 6 to 34) which deals with customer due diligence (“CDD”) requirements and other miscellaneous matters;
3. New Part 5B and Schedules 3B to 3G provide for the licensing regime for VASPs where:
 - (a) new sections 53ZR to 53ZRC (read with new Schedule 3B) define terms including virtual asset (“VA”), VA service, regulated function, associated entity;
 - (b) sections 53ZRD to 53ZRG impose the requirement for a licence to carry on a business of providing a VA service and other restrictions on activities involving VA;
 - (c) sections 53ZRH to 53ZRS provide for the grant of a licence to a corporation to provide a VA service (licensed provider), the grant of a licence to a licensed provider’s representative, the fit and proper test, and the grant of approval (including for a person to be a licensed provider’s responsible officer), while Schedule 3C sets out the fees payable for the applications;
 - (d) sections 53ZRT to 53ZRX (read with Schedules 3D and 3E) set out obligations of licensed providers, their associated entities

and licensed representatives regarding notifications, annual fees and annual returns;

- (e) sections 53ZRY to 53ZSM (read with Schedule 3F) set out audit requirements applicable to a licensed provider and any of its associated entities;
 - (f) sections 53ZSN to 53ZTG provide for the Securities and Futures Commission (“SFC”)’s powers to discipline a licensed person, to revoke or suspend a licence in specified circumstances, and to intervene in the business of a licensed provider or any of its associated entities;
 - (g) section 53ZTX adds a new Schedule 3G to the principal Ordinance to provide for transitional arrangements;
4. New Part 5C and Schedules 3H to 3J provide for the registration regime for PMS dealers where -
- (a) section 53ZTY sets out the definitions of terms, including precious metal, precious stone, dealing in PMS, PMS business, Category A registrant, Category B registrant, registrant, branch, and non-Hong Kong PMS dealer;
 - (b) section 53ZTY also defines specified cash transaction to mean, in essence, a transaction carried out by a person, while carrying on a PMS business, where a payment or payments in cash, of at least the amount specified in Schedule 3H (i.e. HK\$120,000) in total, is or are made or received in Hong Kong in respect of the transaction;
 - (c) section 53ZUD makes it an offence if a person carries on a PMS business without registration or if a person (other than a Category B registrant) carries out, by way of business, a specified cash transaction in Hong Kong;
 - (d) sections 53ZUE to 53ZUY provide for registration of a person as a Category A registrant or Category B registrant; the fit and proper test applicable to registration as a Category B registrant; approval for becoming a director, partner or ultimate owner of a Category B registrant;
 - (e) sections 53ZUZ to 53ZVB specify obligations of registrants regarding the display of certificates and giving notifications;

- (f) sections 53ZVC to 53ZVI provide for the Commissioner of Customs and Excise (“the Commissioner”)’s powers to take disciplinary actions;
 - (g) section 53ZVJ requires a non-Hong Kong PMS dealer carrying out a specified cash transaction to give to the Commissioner, within the specified time, a report containing the information specified in Schedule 3I in respect of the transaction;
 - (h) sections 53ZVK to 53ZW provide for enforcement, transitional arrangements and other miscellaneous matters;
5. Division 2 of Part 2 contains amendments for applying the CDD and record-keeping requirements (i.e. anti-money laundering and counter-terrorist financing (“AML/CTF”) requirements) and other provisions in AMLO to licensed persons under Part 5B and registrants under Part 5C-
- (a) in Schedule 1 to AMLO, the definition of financial institution is amended to cover a licensed VASP and the definition of designated non-financial businesses and professions is amended to cover a Category B registrant;
 - (b) a new section 13A is added to Schedule 2 to AMLO to provide for a financial institution’s obligation to obtain and pass on information in relation to a transfer of VAs that amount to no less than the specified amount (i.e. HK\$8,000);
 - (c) under section 5A of AMLO, as amended by clause 7, the AML/CTF requirements only apply to a Category B registrant when, by way of business, the registrant carries out, in Hong Kong with a customer, a specified cash transaction; for a specified cash transaction carried out exclusively between two Category B registrants, the AML/CTF requirements do not apply to the paying registrant;
 - (d) clauses 8 to 17 extend to licensed VASPs and their associated entities and PMS registrants the provisions on the powers to conduct routine inspections and to investigate into suspected non-compliance with AMLO;
 - (e) clause 18 adds sections 13A to 13E to provide for assistance to a regulator of a jurisdiction outside Hong Kong, with reference

to provisions providing for similar assistance under the Securities and Futures Ordinance (Cap. 571) (“SFO”);

- (f) to provide for confidentiality requirements applicable across different Parts of AMLO, clauses 24, 26 and 29 repeal existing provisions in AMLO and, instead, add new Part 6A (i.e. sections 76A to 76G);
 - (g) clause 27 amends section 54 to extend the review mechanism under AMLO to the decisions made by SFC and the Commissioner under new Parts 5B and 5C;
6. Clauses 22 and 33(4), (8), (16), (18) and (19) amend the existing provisions of section 29 of, and Schedule 2 to AMLO to implement proposals on increased penalty for unlicensed money service operation, politically exposed person, CDD requirements for non-face-to-face situations, and definition of beneficial owner for trusts; and
7. Similar to the provisions referred to in paragraph 5(f) above, a related amendment is made by clause 34 to permit disclosure of information obtained in performing functions under SFO to certain persons who enforce AMLO.

(Source: Legislative Council Brief (File Ref.: B&M/4/1/41C) (issued by the Financial Services and the Treasury Bureau on 22 June 2022))

**Bills Committee on Anti-Money Laundering and
Counter-Terrorist Financing (Amendment) Bill 2022**

Membership list

Chairman Hon CHAN Chun-ying, JP

Deputy Chairman Hon Robert LEE Wai-wang

Members Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai, JP
Hon YUNG Hoi-yan, JP
Hon Duncan CHIU
Hon Rock CHEN Chung-nin, SBS, JP
Hon Judy CHAN Kapui, MH
Hon Joephy CHAN Wing-yan
Ir Hon Gary ZHANG Xinyu
Hon Benson LUK Hon-man
Hon Edmund WONG Chun-sek
Hon TANG Ka-piu, BBS, JP
Hon LAI Tung-kwok, GBS, IDSM, JP
Dr Hon TAN Yueheng, JP

(Total: 15 members)

Clerk Ms Connie SZETO

Legal Adviser Mr Mark LAM

**Bills Committee on Anti-Money Laundering and
Counter-Terrorist Financing (Amendment) Bill 2022**

**List of organizations which have submitted views to
the Bills Committee**

1. QReg Advisory Limited
2. OSL and BC Technology Group
3. The Hong Kong Association of Banks