

**立法會**  
***Legislative Council***

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**Paper for the House Committee Meeting  
on 8 July 2022**

**Legal Service Division Report on  
Anti-Money Laundering and Counter-Terrorist  
Financing (Amendment) Bill 2022**

**I. SUMMARY**

**The Bill**

The Bill seeks to amend the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) to:

- (a) establish a licensing regime for virtual asset service providers (“VASPs”) and a registration regime for precious metals and stones (“PMS”) dealers;
- (b) apply the customer due diligence and record-keeping requirements under Schedule 2 to Cap. 615 to VASPs and PMS dealers when they conduct certain transactions; and
- (c) make related and miscellaneous amendments.

**Public Consultation**

The Administration conducted a public consultation from November 2020 to January 2021 to gauge the views from the public and the relevant financial sectors on the proposed legislative amendments. A majority of the respondents indicated agreement with the overall direction and principles, as well as the broad framework of the legislative proposals.

**Consultation with  
LegCo Panel**

The Panel on Financial Affairs was consulted on the legislative proposal on 7 February 2022 and members supported the introduction of the Bill into the Legislative Council.

**Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to establish a new regulatory regime for VASPs and PMS dealers, Members may consider forming a Bills Committee to study the Bill in detail.

## **II. REPORT**

The date of First Reading of the Bill is 6 July 2022. Members may refer to the Legislative Council (“LegCo”) Brief (File Ref.: B&M/4/1/41C) issued by the Financial Services and the Treasury Bureau on 22 June 2022 for further details.

### **Object of the Bill**

2. The Bill seeks to amend the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) to:

- (a) establish a licensing regime for virtual asset service providers (“VASPs”) and a registration regime for precious metals and stones (“PMS”) dealers;
- (b) apply the customer due diligence and record-keeping requirements under Schedule 2 to Cap. 615 (“AML/CTF requirements”) to VASPs and PMS dealers when they conduct certain transactions; and
- (c) make related and miscellaneous amendments.

### **Background**

3. As a member of Financial Action Task Force (“FATF”), Hong Kong is expected to comply with the standards set out by FATF for combating money laundering and terrorist financing (“FATF Standards”). Failure to comply with FATF Standards run the risk of being placed on the FATF’s blacklist for possible countermeasures.

4. The Bill is introduced to implement FATF recommendations on regulation of PMS dealers and the latest revision to FATF Standards on regulation of VASPs by amending Cap. 615.

### **Key Provisions of the Bill**

#### Licensing regime for VASPs

5. The Bill seeks to add a new Part 5B and new Schedules 3B to 3G to Cap. 615 to establish a licensing regime for VASPs. The main features of the proposed licensing regime are summarized below:

- (a) any person seeking to carry on a business of providing a virtual asset (“VA”) service would be required to obtain a VASP licence from the Securities and Futures Commission (“SFC”) (the proposed new section 53ZRD(1));

- (b) “VA” under the Bill generally refers to a digital representation of value that can be transferred, stored or traded electronically and can be used for payment or investment purposes, e.g. cryptocurrencies and other asset classes in the virtual world (the proposed new section 53ZRA(1)), but certain digital representations of value would be excluded from the definition of “VA”;<sup>1</sup> and
  - (c) under the proposed new Schedule 3B, a “VA Service” is defined to mean operating a VA exchange to provide through means of electronic facilities such services as offering to sell or purchase any VA in exchange for any money or any VA and in providing such services, client money or client VA would come into direct or indirect possession of the service provider.
6. Under the proposed new section 53ZRK of Cap. 615, SFC would only grant a VASP licence to the applicant if:
- (a) the applicant is a locally incorporated company with a permanent place of business in Hong Kong or a non-Hong Kong company but registered in Hong Kong under the Companies Ordinance (Cap. 622); and
  - (b) SFC is satisfied that (among others):
    - (i) the applicant is a fit and proper person to be licensed for the VA service, having regard to, among other matters, the financial status or solvency of the person, and whether the person has been convicted of certain specified offences (the proposed new section 53ZRJ); and
    - (ii) not less than two persons are applying to be responsible officers of the applicant to supervise the business of the VA service and each person is a fit and proper person.

### Registration of PMS dealers

7. The Bill seeks to add a new Part 5C and new Schedules 3H to 3J to Cap. 615 to establish a registration system for PMS dealers. The main features of the proposed registration system are set out below:

- (a) any person seeking to carry on a PMS business in Hong Kong would be required to register with the Commissioner of Customs and Excise (“Commissioner”) (the proposed new section 53ZUD(1)). Under the proposed new section 53ZTZ of Cap. 615, “dealing in precious metals and stones” would include trading in and manufacturing precious metals and stones, and acting as an intermediary in respect of such activities;

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<sup>1</sup> The excluded digital representations of value include those issued by central banks, and those constituting securities or futures or SVF deposits of stored value facilities which are already regulated under existing Ordinances (the proposed new section 53ZRA(2)).

- (b) 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); and
- (c) a PMS dealer who does not intend to and will not engage in specified cash transaction would be required to register as “Category A registrant” (the proposed new section 53ZUE).

8. Under the proposed new section 53ZU, certain entities would be exempt from the registration requirements. Those entities include financial institutions that are already regulated under Cap. 615 (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. a person who does not ordinarily reside in Hong Kong and carries out PMS business in Hong Kong for no more than a total of 60 days in a calendar year).

#### Application of the AML/CTF requirements to licensed VASPs and Category B registrants

9. It is proposed under the Bill that the AML/CTF requirements (e.g. identifying the customer and verifying the customer’s identity, keeping records of transaction) would apply to (a) licensed VASPs which carry out a transfer of VAs involving VA that amount to not less than \$8,000 (the proposed new section 13A of Schedule 2 to Cap. 615); and (b) Category B registrants who carry out specified cash transaction (except it is carried out exclusively between two Category B registrants) (the proposed new section 5A(5A) of Cap. 615).

#### Powers of SFC and the Commissioner

##### *SFC’s disciplinary powers*

10. Under the Bill, SFC would be empowered to impose disciplinary sanctions on licensed VASPs and responsible officers of licensed VASPs. The proposed sanctions include suspension or revocation of licences, imposition of pecuniary penalty if the licensed VASP or person concerned contravenes any condition of licence or provision of Cap. 615 (the proposed new section 53ZSO).

##### *Commissioner’s disciplinary powers*

11. The Commissioner would be empowered to impose disciplinary sanctions on PMS registrants. The proposed sanctions include ordering the registrants to remedial action, and ordering Category B registrants to pay a pecuniary penalty (the proposed new sections 53ZVD and 53ZVE).

12. Other proposed enforcement powers include SFC's intervention powers e.g. prohibiting a licensed VASP and its associated entities from entering into any further transactions (the proposed new sections 53ZSW to 53ZTD), power to enter business premises for routine inspection by SFC and the Commissioner (section 9 of Cap. 615 (as amended by clause 11 of the Bill)), and power to appoint investigators by SFC and the Commissioner to inquire into matters such as whether there is misconduct or contravention on the part of a VASP regulated person or a PMS registrant (section 11 of Cap. 615 (as amended by clause 14 of the Bill)).

#### Criminal sanctions

13. In relation to the provision of VA service, a person who contravenes the VASP licensing requirements proposed in the Bill would commit an offence and be liable on conviction on indictment, to a fine of \$5,000,000 and to imprisonment for seven years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues, or on summary conviction to a fine of \$500,000 and to imprisonment for two years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues (the proposed new section 53ZRD(5)).

14. The Bill also seeks to provide for offences for a person to issue an advertisement in relation to providing a VA service by a person without a VASP licence (the proposed new section 53ZRE), offences involving the use of fraudulent or deceptive devices in VA transactions (the proposed new section 53ZRF) and offences to fraudulently or recklessly induce others to invest in VAs (the proposed new section 53ZRG).

15. In connection with PMS dealings, a person who carries on a PMS business (or claim/hold out to be a registrant) without registration or carries on specified cash transaction (or claim/hold out to be a Category B registrant) without being registered as Category B registrant would commit an offence and be liable on conviction to a fine at level 6 (\$100,000) and to imprisonment of six months (the proposed new section 53ZUD(5)).

#### Miscellaneous amendments

16. The Bill also proposes various miscellaneous amendments such as amending section 54 of Cap. 615 such that the review mechanism under Cap. 615 would apply to certain decisions made by SFC and the Commissioner under the proposed new Parts 5B and 5C respectively (clause 27 of the Bill), and amending Cap. 615 (by, among others, adding a new Part 6A) and the Securities and Futures Ordinance (Cap. 571) to expand the applicability of confidentiality requirements in relation to information obtained under Cap. 615 (e.g. prohibition against persons subject to inspection, investigation or disciplinary action to disclose information) to all relevant authorities under Cap. 615 (clauses 24, 26, 29 and 34 of the Bill).

## **Commencement**

17. If passed, the Bill (except the provisions in relation to the restrictions on carrying on a business of providing VA service (i.e. proposed sections 53ZRD to 53ZRG) and the transitional arrangements for the licensing requirements of VASPs (i.e. proposed section 53ZTX and Schedule 3G) which would come into operation on 1 March 2023) would come into operation on 1 January 2023.

## **Public Consultation**

18. According to paragraph 45 of the LegCo Brief, the Administration conducted a public consultation from November 2020 to January 2021 to gauge the views from the public and the relevant financial sectors on the legislative proposals. A majority of the respondents indicated agreement with the overall direction and principles, as well as the broad framework of the legislative proposals. Respondents also expressed views regarding the precise scope, coverage and parameters of the legislative proposals, by and large reflecting their sectoral interests or industry backgrounds.

## **Consultation with LegCo Panel**

19. As advised by the Clerk to the Panel on Financial Affairs, the Administration briefed the Panel on 7 February 2022 on the proposals to amend Cap. 615 which include introducing a licensing regime for VASPs and a two-tier registration regime for PMS dealers. Members discussed various issues including protection for investors of VAs, scope of the licensing regime for VASPs and the exemptions, and the details of the two-tier registration regime for PMS dealers.

## **Conclusion**

20. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to establish a new regulatory regime for VASPs and PMS dealers, Members may consider forming a Bills Committee to study the Bill in detail.

Prepared by

Mark LAM  
Assistant Legal Adviser  
Legislative Council Secretariat  
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