



# **CUSTOMS AND EXCISE DEPARTMENT**

*Anti-Money Laundering and Counter-Terrorist*

*Financing Ordinance Chapter 615, Laws of Hong Kong*

## **Guidance Notes**

**of**

**Application for Approval in respect of Person(s)**

**Proposing to become Category B Registrant's Partner(s) /**

**Director(s) / Ultimate Owner(s)**

**Form 4**

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## *Part A - General Information*

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### **1. Introduction**

- 1.1 Under sections 53ZUW, 53ZUX and 53ZUY of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO), Chapter 615, Laws of Hong Kong, a person must not become a partner, a director or an ultimate owner of a Category B registrant unless the Commissioner of Customs and Excise (CCE) has given approval in writing. Any person who, without reasonable excuse, contravenes any of the abovementioned provisions commits an offence and is liable on conviction to a maximum fine of HKD50,000 and imprisonment for 6 months. The CCE may also take disciplinary actions under section 53ZVF(2)(b) of the AMLO for such contravention.
- 1.2 Section 53ZVA of the AMLO provides that if there is any change in the particulars that are provided to the CCE in connection with an application under Part 5C (including the change of a partner, a director or an ultimate owner after approval from the CCE), the registrant must notify the CCE in writing of the change within one month of beginning on the day on which such change occurs. Any registrant, without reasonable excuse, fails to notify the CCE by submitting a completed Form 6B(BR) or Form 6B(H) commits an offence and is liable on conviction to a fine of HKD50,000.
- 1.3 An ultimate owner is defined at section 53ZTZ of the AMLO as follow:
- (a) In relation to an individual (first-mentioned individual) carrying on a precious metals and stones business—
    - (i) means another individual who ultimately owns or controls the precious metals and stones business; or
    - (ii) if the first-mentioned individual is acting on behalf of another person, means the other person;
  - (b) in relation to a partnership, means an individual who—
    - (i) is entitled, directly or indirectly, to more than a 25% share of the capital or profits of the partnership;
    - (ii) controls, directly or indirectly, more than a 25% share of the capital or profits of the partnership;
    - (iii) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights in the partnership; or

- (iv) exercises ultimate control over the management of the partnership; and
- (c) in relation to a corporation, means an individual who—
  - (i) owns or controls, directly or indirectly, including through a trust or bearer share holding, more than 25% of the issued share capital of the corporation;
  - (ii) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights at general meetings of the corporation; or
  - (iii) exercises ultimate control over the management of the corporation.

## **2. Eligibility Criteria**

- 2.1 A Category B registrant applying for written approval of the CCE in respect of Persons Proposing to become Category B Registrant's Partner(s) / Director(s) / Ultimate Owner(s) must submit a completed "Application for Approval in respect of Persons Proposing to become Category B Registrant's Partner(s) / Director(s) / Ultimate Owner(s)" (Form 4) and pay the fee specified in Schedule 3K of the AMLO.
- 2.2 The CCE may grant an approval under section 53ZUW(2), 53ZUX(2) and 53ZUY(2) of the AMLO only if the person in relation to whom the application is made is a fit and proper person to carry on / associated with a precious metals and stones business.
- 2.3 In determining whether a person is a fit and proper person under section 53ZUW(2), 53ZUX(2) and 53ZUY(2) of the AMLO, the CCE must, in addition to any other matter that the CCE considers relevant, have regard to the matters specified in section 53ZUN of the AMLO. For details of the "Fit and Proper Test", please refer to the Appendix I and the "Guide on Criteria for Determining Fitness and Propriety".

## **3. Application**

### **3.1 Application Form**

- 3.1.1 The application form can be obtained from the Dealers in Precious Metals and Stones Supervision Bureau (DPSB) of the Customs and Excise Department (C&ED) or downloaded at <https://www.drs.customs.gov.hk>.
- 3.1.2 Type of Application Forms and Appendices:
  - i. Form 4 - Application for Approval in respect of Persons Proposing to become Category B Registrant's Partner(s) / Director(s) / Ultimate Owner(s);

- ii. Form 3A - Fit and Proper Person Declaration Form for sole proprietor / partner / director / ultimate owner / licensed hawkers;
- iii. Form 3B - Fit and Proper Person Declaration Form for corporate partner / director;
- iv. Appendix I - Authorization (for retrieving personal information from the Hong Kong Police Force); and
- v. Appendix II - Authorization (for retrieving personal information from the Official Receiver).

3.1.3 The applicant is required to submit Form 4 and Form 3A together with Appendices I & II for the partner, director or ultimate owner, if any, who is an individual. Where there is any partner or director which is a corporation, an applicant is also required to submit Form 3B for such corporate partner or director. For details of how to complete Forms 3A and 3B, please refer to the relevant Guidance Notes.

### 3.2 **Application means**

An applicant may submit an electronic application with all required supporting documents through a registration system at <https://www.drs.customs.gov.hk>. An applicant can also submit the application in person or by post. If the applicant submits Form 4 through the registration system, the original Form 3A and respective Appendices I & II and Form 3B shall be submitted in person or by mail separately.

### 3.3 **Important notes**

- i. Applicants are reminded to ensure that any application is submitted together with all required supporting documents. If the applicant fails to produce the documents within a specified period, the application may be considered invalid and may not be processed by the C&ED.
- ii. If there is any change on the information contained in the application after its submission, the applicant should submit a written request to the CCE promptly. Likewise, if an applicant wishes to withdraw the application, the applicant shall submit a written request to the CCE. Applicants are reminded that any amendments shall form an integral part of their applications. The supplementary information must be submitted together with copies of relevant supporting documents to the CCE.

#### **4. Processing of Application**

- 4.1** Upon receipt of an application and the relevant documents, the C&ED may also request the applicant to provide additional information to process the application where necessary. If the applicant fails to produce the documents within a specified period, the application is considered invalid and will not be processed by the C&ED.
- 4.2** The applicant will receive a demand note for the payment of fees regarding the application. An application without full payment will be rejected. The fees are non-refundable irrespective whether the application is successful or not.
- 4.3** The accuracy of the information provided will be checked through various means which include but not limited to the information held by the C&ED, other government departments and law enforcement agencies.
- 4.4** The processing time may vary depending on various factors including the time taken in collecting the requisite documents from the applicant and the time required in obtaining records from other authorities to perform a fit and proper person test.

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## *Part B - Notes on How to Complete the Application Form*

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Please fill in the form in block letters and black ink according to the instructions stated in the declaration form and the Guidance Notes. Illegible handwritten form may be rejected by the CCE.

**1. Part I - General Information of the Applicant**

Please provide the information of the applicant including the applicant's Dealer in Precious Metals and Stones (DPMS) registration number, company name and business registration number.

**2. Part II - Particulars of the Proposed Individual to become Category B Registrant's Partner / Director / Ultimate Owner**

2.1 For an individual proposed to become the registrant's partner / director / ultimate owner, please complete 3A as well as Appendices I and II.

2.2 If there are more than one individual proposed to become the registrant's partner(s) / director(s) / ultimate owner(s), please make a photocopy of the relevant page and fill in the information as an additional sheet for each proposed individual. Applicant must list out all the proposed individual(s) to become the registrant's partner(s) / director(s) / ultimate owner(s), and pay the fee stipulated in Schedule 3K of the AMLO for fit and proper test for each of them.

2.3 The proposed individual shall state his or her consent to become the registrant's partner / director / ultimate owner subject to the approval to be granted by the CCE in respect of the application. He or she should sign the "Consent to act as a partner / director / ultimate owner of the Registrant" in the application form.

**3. Part III - Particulars of the Proposed Corporation to become Registrant's Partner / Director**

3.1 For a corporation proposed to become the registrant's partner / director, please complete Form 3B.

3.2 If there are more than one corporation proposed to become the registrant's partner or director, please make a photocopy of the page and fill in the information as an additional sheet for each proposed corporation. Applicant must list out all the

proposed corporation(s) to become the registrant's partner(s) / director(s), and pay the fee stipulated in Schedule 3K of the AMLO for fit and proper test for each of them.

- 3.3 The proposed corporation shall state its consent to become the registrant's partner / director subject to the approval to be granted by the CCE in respect of the application. The "Consent to act as a partner / director" must be signed by an authorized person acting on behalf of the corporation. The respective authorization letter is required to be submitted together with the application form.



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### *Part C - Personal Information Collection Statement*

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#### **1. Purpose of Collection**

- 1.1 Personal data provided to CCE pursuant to the requirements of the AMLO will be used by CCE for one or more of the following purposes:
- i. to process applications for approval to become a partner / a director / an ultimate owner of a Precious Metals and Stones (PMS) registrant under the AMLO;
  - ii. to administer the AMLO;
  - iii. to enforce relevant provisions of the AMLO (including relevant conditions of PMS registrant); and
  - iv. to disclose to the public the material facts of cases in which CCE exercised disciplinary powers under the AMLO.
- 1.2 Provision of the required personal data to CCE is obligatory for compliance with the AMLO. The Dealers in Precious Metals and Stones Supervision Bureau will not be able to process the relevant applications if the required personal data are not provided.

#### **2. Classes of Transferees**

The personal data you provide in the application form as well as any updates of them may be disclosed to other Government departments / bureaux or organizations for the purposes mentioned above; or any third parties under section 76D of the AMLO; or where such disclosure is authorized or required by law.

#### **3. Access to Personal Data**

You have the right of access to and correction of your personal data as provided for in the Personal Data (Privacy) Ordinance (PDPO). Your right of access includes the right to obtain a copy of your personal data provided in this form. In accordance with the provisions of the PDPO, we have the right to charge a reasonable fee for the processing of any data access request.

#### **4. Enquiries to Personal Data**

Enquiries concerning the personal data collected by the application form, including the request for access to and correction of personal data, should be addressed to Departmental Secretary, Office of Departmental Administration Customs and Excise Department, 31/F, Customs Headquarters Building, 222 Java Road, North Point, Hong Kong.

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### *Part D - General Enquiry & Reminder*

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1. Applicants may visit the website at <https://www.drs.customs.gov.hk> for more information relating to the application. For enquiries, the applicant may write to [dpms\\_enquiry@customs.gov.hk](mailto:dpms_enquiry@customs.gov.hk) or call the following enquiry hotlines during normal office hours:

Enquiry Hotlines: 3580 1483 (Chinese) / 3580 1484 (English)

2. This set of Guidance Notes is not a legal document. It only serves as a guide in completing the *Form 4 Application for Approval in respect of Person(s) Proposing to become Category B Registrant's Partner(s) / Director(s) / Ultimate Owner(s)*. In case of doubt on any legal issues, please refer to the AMLO or seek assistance from your legal advisor as necessary.

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## *Appendix I - “Fit and Proper Test”*

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### **“Fit and Proper Test”**

[Section 53ZUN of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, Chapter 615 (AMLO)]

In determining whether a person is a fit and proper person, the Commissioner of Customs and Excise (CCE) must, in addition to any other matter that he considers relevant, have regard to the following:

- (a) whether the person has been convicted of —
  - (i) an offence under section 5(5), (6), (7) or (8), 10(1), (3), (5), (6), (7) or (8), 13(1), (3), (5), (6), (7) or (8), 17(9), 20(1), 61(2) or 66(3) of the AMLO;
  - (ii) an offence under section 14 of the United Nations (Anti-Terrorism Measures) Ordinance, Chapter 575;
  - (iii) an offence under section 25(1), 25A(5) or (7) of, or any offence specified in Schedule 1 to the Drug Trafficking (Recovery of Proceeds) Ordinance, Chapter 405; or
  - (iv) an offence under section 25(1), 25A(5) or (7) of, or any offence specified in Schedule 1 or 2 to the Organized and Serious Crimes Ordinance, Chapter 455;
- (b) whether the person has a conviction in a place outside Hong Kong —
  - (i) for an offence in respect of an act that would have constituted an offence specified in section 53ZUN (a) of the AMLO had it been done in Hong Kong;
  - (ii) for an offence relating to money laundering or terrorist financing; or
  - (iii) for an offence for which it was necessary to find that the person had acted fraudulently, corruptly or dishonestly;
- (c) whether the person has persistently failed to comply with any requirement imposed under the AMLO or any regulation made by the CCE under section 53ZVS of the AMLO;
- (d) if the person is an individual, whether he or she is an undischarged bankrupt or is the subject of any bankruptcy proceedings under the Bankruptcy Ordinance (Cap. 6);
- (e) if the person is a corporation, where it is in liquidation or is the subject of a winding up order, or there is a receiver appointed in relation to it.

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*Appendix II - Sample Letter of Authorization (Corporation)*

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(Company Name / Logo / Letterhead)

To : Commissioner of Customs and Excise

**Letter of Authorization**

The Board of Directors of [the name of corporation] authorizes [name of the person], holder of \* Hong Kong Identity Card/ [Passport issuing place] Passport No.: [Hong Kong Identity Card /Passport no. of the person], in the capacity as one of our directors, to act for and on behalf of the Company, in signing and submitting documents to or attending interview(s) with the Customs & Excise Department in relation to the Dealer in Precious Metals and Stones Registration of [the name of the registrant].

Name : \_\_\_\_\_  
( *Name of the authorized signatory* )

Position : \_\_\_\_\_

Signature : \_\_\_\_\_

Company Chop : \_\_\_\_\_

Date : \_\_\_\_\_