



# **CUSTOMS AND EXCISE DEPARTMENT**

## **Registration Regime for Dealers in Precious Metals and Stones**

### **Guide on Criteria for Determining Fitness and Propriety (Category B Registration)**

**April 2023**

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## **Chapter 1 - Introduction**

- 1.1 Sections 53ZUO and 53ZUQ, in Part 5C, of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, Chapter 615 (“AMLO”) provides that the Commissioner of Customs and Excise (“CCE”) may grant a Category B registration to an applicant or renewal of a Category B registration, only if the CCE is satisfied that the individual/each partner/each director/ultimate owner is a fit and proper person to carry on a precious metals and stones (“PMS”) business/to be associated with a PMS business.
- 1.2 Sections 53ZUW, 53ZUX and 53ZUY, in Part 5C, of the AMLO, provides that the CCE may give approval to an applicant becoming a partner/director/ultimate owner of a Category B registrant, only if the CCE is satisfied that the applicant is a fit and proper person to carry on a PMS business/to be associated with a PMS business.
- 1.3 Section 53ZUN, in Part 5C, of the AMLO, details the matters the CCE must have regard to in determining whether an applicant is a fit and proper person. In addition to the matters the CCE must have regard to, the CCE may take into account any other matter the CCE considers relevant.
- 1.4 Section 53ZUU, in Part 5C, of the AMLO provides that the CCE may suspend or cancel a Category B registration where the CCE is of the opinion that any of the individual/partner/director/ultimate owner in relation to the Category B registration is no longer a fit and proper person to carry on a PMS business/to be associated with a PMS business.

## **Chapter 2 - Application of this Guide**

2.1 The Guide applies to every applicant for a Category B registration, renewal of a Category B registration and becoming a partner/director/ultimate owner of a Category B registrant under sections 53ZUO, 53ZUQ, 53ZUW, 53ZUX and 53ZUY, in Part 5C, of the AMLO, as well as Category B registrants that the CCE must satisfy and continue to satisfy after the grant of Category B registration that they are fit and proper persons to be so registered. It follows that failure of any Category B registrant to meet the fit and proper criteria may reflect adversely on the fit and proper person status and would be a ground for suspension or cancellation of the Category B registration by virtue of section 53ZUU, in Part 5C, of the AMLO. For the purpose of this Guide, unless otherwise specified, a reference to the “person” herein may mean an applicant for a Category B registration, renewal of a Category B registration and becoming a partner/director/ultimate owner of a Category B registrant, as well as a Category B registrant that includes an individual and a corporation as the case may be.

## **Chapter 3 - Criteria for Determining Fitness and Propriety**

3.1 Under section 53ZUN(2), the CCE must, in addition to any other matter that the CCE considers relevant, have regard to the following matters in determining whether a person is a fit and proper person for the purposes of sections 53ZUO, 53ZUQ, 53ZUU, 53ZUW, 53ZUX and 53ZUY, in Part 5C, of the AMLO:

- (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 (Cap. 575);

- (iii) an offence under section 25(1) or 25A(5) or (7) of, or an offence specified in Schedule 1 to, the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405); or
  - (iv) an offence under section 25(1) or 25A(5) or (7) of, or an offence specified in Schedule 1 or 2 to, the Organized and Serious Crimes Ordinance (Cap. 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 paragraph (a) 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 failed to comply with a requirement imposed under the AMLO or a regulation made 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); and
- (e) if the person is a corporation, whether it is in liquidation or is the subject of a winding up order, or there is a receiver appointed in relation to it.

3.2 Following para. 3.1, the CCE also takes into account the following matters which are examples regarded as any other matter that the CCE considers relevant and will be considered in the context of all the facts and circumstances of each individual case:

- (a) Whether the person has been convicted of a criminal offence which is not listed in section 53ZUN, in Part 5C, of the AMLO, but which has a significant and negative bearing on his/her honesty, integrity and reliability;
- (b) Whether the person has failed to comply with any conditions imposed by the CCE on the registration;
- (c) Whether the person has any record of non-compliance with the AMLO or relevant regulation, which resulted in the taking of administrative

action, prosecution, issue of written warning or has been disciplined by the CCE for the non-compliance;

- (d) Whether the person is in compliance with guidelines promulgated for Category B registrants in the regulatory regime, such as the Registration Guide and the Anti-Money Laundering and Counter-Financing of Terrorism (“AML/CFT”) Guideline issued for Category B registrants dealing in PMS business;
- (e) Whether the person has the ability to carry on the PMS business competently, honestly and fairly and, in a manner which is not detrimental, or likely to be detrimental, to the interests of the customers or members of the public. Examples are the contravention of any law for consumer protection, or the Category B registrant has been the subject of any complaint made reasonably and in good faith relating to the Category B registrant’s conduct of carrying on the PMS business;
- (f) Whether the person has been the subject of any proceedings of a criminal or disciplinary nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings under any law in any jurisdiction;
- (g) Whether the person has genuine intention and readiness to carry on the PMS business engaging in specified cash transactions as indicated in the registration application. For example, a Category B registrant has not carried out specified cash transactions for a prolonged period after the grant of registration without any good cause;
- (h) Whether the person has established effective AML/CFT systems to ensure compliance with all applicable requirements under the regulatory regime. An example is the person must appoint a Compliance Officer of a sufficient level of seniority and authority to oversee the establishment and maintenance of the company’s AML/CFT systems;
- (i) Whether the person is equipped with the skills, knowledge, experience and professionalism necessary to perform the PMS business’s functions efficiently and effectively. In making such as assessment, the person

is generally expected to be able to display an understanding of the statutory and regulatory requirements that are applicable to the PMS business;

- (j) Whether the person has been untruthful or provided false or misleading information or omitted material information to the CCE or been uncooperative with the C&ED in the performance of a function under the AMLO;
- (k) Whether the person is the subject of unresolved criminal charges in Hong Kong or elsewhere;
- (l) Whether the person has been censured, disciplined or publicly criticized by any regulatory authority or professional body in Hong Kong or elsewhere;
- (m) Whether the person has been refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law in Hong Kong or elsewhere;
- (n) Whether the person has been disqualified by a court of competent jurisdiction from being a director;
- (o) Whether the person has financial integrity to ensure that the person has adequate financial resources for the nature and scale of its operations, and the financial position or solvency of the person would not undermine the interest of the customers and the members of the public. Examples are the person has failed to satisfy any judgment debt under a court order or made any compromise or arrangement with his creditors; and
- (p) The state of affairs of any other business which the person carries on, proposes to carry on or has any business relationship. Examples are the other business which exposes the person to the potential risk of money laundering or affects adversely the person's financial integrity.

- 3.3 This Guide provides guidance in general and is not intended to be exhaustive or comprehensive. Without limiting the generality of section 53ZUN(2), in Part 5C, of the AMLO as set out in paragraph 3.1, the examples set out in paragraph 3.2 above are likely to give rise to concerns about the fitness and propriety of a person to be registered as a Category B registrant, who has been registered as a Category B registrant or become a partner/director/ultimate owner of a Category B registrant. Failure to comply with individual element of any other matter that the CCE considers relevant may not result in the CCE not being satisfied that a person is fit and proper. In assessing the fitness and propriety of a person, each case will be considered on its own merits, taking into account all relevant factors including, but not limited to, the criteria set out in the AMLO and paragraphs 3.1 and 3.2 above.
- 3.4 For avoidance of doubt, this Guide is advisory in nature. An applicant for a Category B registration, renewal of a Category B registration, becoming a partner/director/ultimate owner of a Category B registrant, as well as a Category B registrant should seek legal advice where necessary if he/she has concerns about the AMLO and the application of its provisions to him/her.

## **Chapter 4 - Review of this Guide**

- 4.1 This Guide will be kept under review and may be updated from time to time as considered appropriate.

**April 2023**

**Commissioner of Customs and Excise**