

Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>By deleting subclauses (2) and (3) and substituting—</p> <p>“(2) Subject to subsection (3), this Ordinance comes into operation on 1 April 2023.</p> <p>(3) The following provisions come into operation on 1 June 2023—</p> <p>(a) section 4 (in so far as it relates to the new sections 53ZRD, 53ZRE and 53ZTX);</p> <p>(b) section 5 (in so far as it relates to the new Schedule 3G);</p> <p>(c) section 6;</p> <p>(d) section 27(2) (in so far as it relates to the new paragraph (f) of the definition of <i>specified authority</i>);</p> <p>(e) section 33(2), (3) and (4);</p> <p>(f) section 33(5) (in so far as it relates to paragraph (b) of the new definition of <i>pre-existing customer</i>);</p> <p>(g) section 33(8), (10), (11), (12), (13), (15), (15A), (15B), (15C), (16), (17), (18), (19), (20), (22), (23) and (24).”.</p>
3	<p>In the Chinese text, by deleting “經營貴金屬及寶石業務” and substituting “從事貴金屬及寶石交易”.</p>
4	<p>In the proposed section 53ZR, in the definition of <i>specified manner</i>, by adding “or 53ZSZ or section 15 of Schedule 3G” after “section 53ZSY”.</p>
4	<p>In the proposed section 53ZRA(3)(b), in the Chinese text, by deleting “的特徵”.</p>
4	<p>In the proposed section 53ZRB, in the heading, by deleting “<i>regulated function</i>” and substituting “providing VA service and performing regulated function”.</p>

4 In the proposed section 53ZRB(1), in the definition of *regulated function*, in paragraph (a), by deleting “(6)” and substituting “(7)”.

4 In the proposed section 53ZRB(7)(a), by adding “the performance of function Y by” before “the subsection (6) person”.

4 By deleting the proposed section 53ZRB(8)(a) and substituting—
“(a) whether function Y is performed or not;”.

4 In the proposed section 53ZRI(2), in the Chinese text, by adding “的文件” after “核證”.

4 In the proposed section 53ZRK(6), by deleting “and (5)” and substituting “, (5) and (8)”.

4 In the proposed Part 5B, by adding—

“Division 5A—Client Assets

53ZRSA. Client assets held by licensed providers and their associated entities

- (1) Client assets of a licensed provider are not liable to be taken in execution against the licensed provider or an associated entity of the licensed provider under an order or process of a court.
- (2) Subsection (1) is not to be construed as taking away or affecting a lawful claim or lien that any person has in respect of client assets of a licensed provider (whether received or held by the licensed provider or an associated entity of the licensed provider).
- (3) However, the existence of any claim or lien referred to in subsection (2) does not relieve a licensed provider or an associated entity of a licensed provider of the duty to comply with the requirements of any code or guideline published under any provision of this Ordinance that apply to it.”.

4 In the proposed section 53ZSH(3)(d), by deleting “of the subject provider or its associated entities”.

- 4 In the proposed section 53ZSJ(1)(a), in the English text, by adding “the” before “Commission requires”.
- 4 In the proposed Part 5B, in Division 8, in Subdivision 1, in the heading, by deleting “**Powers**” and substituting “**Powers etc.**”.
- 4 In the proposed section 53ZST, in the heading, by adding “**or powers under section 53ZSP**” after “**powers**”.
- 4 In the proposed section 53ZST(1), by deleting “53ZSP(2)(a), (b) or (c) or (9)” and substituting “53ZSP(1) or (9) (except for a power under section 53ZSP(1) exercisable in a situation specified in section 53ZSP(2)(d))”.
- 4 In the proposed section 53ZST(3), by deleting “53ZSO or 53ZSP” and substituting “53ZSO(3) or 53ZSP(1) or (9)”.
- 4 In the proposed section 53ZSU, in the heading, by adding “**or powers under section 53ZSP**” after “**powers**”.
- 4 In the proposed section 53ZSU(1), by deleting “this Subdivision” and substituting “section 53ZSO or 53ZSP”.
- 4 In the proposed section 53ZSU(2), by deleting “disciplinary power” and substituting “power under section 53ZSO or 53ZSP”.
- 4 In the proposed section 53ZSU(3)(a), by deleting “disciplinary power under sections 53ZSO and 53ZSP” and substituting “power under section 53ZSO or 53ZSP”.
- 4 By deleting the proposed section 53ZTB(1) and substituting—
 “(1) In this section—
 (a) a reference to the Commission deciding to exercise a Subdivision 2 power is a reference to—
 (i) the Commission imposing a prohibition or requirement under section 53ZSY, 53ZSZ or 53ZT;
 (ii) the Commission withdrawing a prohibition or requirement under section 53ZTA; or

(iii) the Commission substituting another prohibition or requirement for, or varying, a prohibition or requirement under section 53ZTA; and

(b) a reference to the Commission deciding not to exercise a Subdivision 2 power is to be construed accordingly.”.

4 In the proposed section 53ZTE(1)(a), by deleting “company” and substituting “corporation”.

4 In the proposed section 53ZTI, by adding—

“(2A) Subsections (1) and (2) do not apply to a private reprimand under section 53ZSO(3)(a).”.

4 In the proposed section 53ZTJ(1), in the Chinese text, by deleting “提供指引” and substituting “提供導引”.

4 In the proposed section 53ZTN(1)(a), in the English text, by deleting “any”.

4 In the proposed section 53ZTV(5), in the Chinese text, in the definition of 有聯繫者, in paragraph (i), by deleting “控制” and substituting “支配”.

4 In the proposed Part 5C, in the Chinese text, in the heading, by deleting “經營貴金屬及寶石業務” and substituting “從事貴金屬及寶石交易”.

4 In the proposed section 53ZTY, in the definition of *dealing in precious metals and stones*, by deleting “經營貴金屬及寶石業務” and substituting “從事貴金屬及寶石交易”.

4 In the proposed section 53ZTY, by deleting the definition of *precious product* and substituting—

“*precious product* (貴重產品) means any jewellery or watch made up of, containing or having attached to it, any precious metal or precious stone, or both;”.

4 In the proposed section 53ZTY, in the Chinese text, in the definition of 非香港貴金屬及寶石交易商, by deleting “經營貴金屬及寶石業務的人” and substituting “從事貴金屬及寶石交易的人”.

- 4 In the proposed section 53ZTY, in the Chinese text, in the definition of *貴金屬及寶石業務*, by deleting “經營貴金屬及寶石” and substituting “從事貴金屬及寶石交易的”.
- 4 In the proposed section 53ZTY, by adding in alphabetical order—
“*specified transaction* (指明交易) means a transaction that—
- (a) is a transaction carried out by a person, while carrying on a precious metals and stones business, in respect of which transaction a payment or payments, of at least the amount specified in Schedule 3HA in total, is or are made or received in any way or combination of ways (other than in cash) in Hong Kong, whether the transaction is executed—
 - (i) in a single operation; or
 - (ii) in several operations that are linked or appear to be linked; and
 - (b) is not a specified cash transaction;”.
- 4 In the proposed section 53ZTZ, in the Chinese text, in the heading, by deleting “經營貴金屬及寶石業務” and substituting “從事貴金屬及寶石交易”.
- 4 In the proposed section 53ZTZ(1) and (2), in the Chinese text, by deleting “經營貴金屬及寶石業務” and substituting “從事貴金屬及寶石交易”.
- 4 In the proposed section 53ZU(2), by adding “1,” before “7”.
- 4 In the proposed Part 5C, in Division 2, in the heading, by deleting “**or**” and substituting “**and**”.
- 4 In the proposed section 53ZUD, in the heading, by deleting “**on precious metals and stones business**” and substituting “**out certain transaction**”.
- 4 In the proposed section 53ZUD(1), by deleting “on a precious metals and stones business” and substituting “out a specified transaction”.
- 4 In the proposed section 53ZUD(2), by deleting “, by way of business,”.
- 4 In the proposed section 53ZUD(3)(b), by deleting “on a precious metals and stones business” and substituting “out a specified transaction”.

- 4 In the proposed section 53ZUD(4)(b), by deleting “, by way of business,”.
- 4 In the proposed section 53ZUE(1), by adding “that includes the carrying out of specified transactions but excludes the carrying out of specified cash transactions” after “business”.
- 4 In the proposed section 53ZUE(3)(b)(ii) and (5)(b), by deleting “January” and substituting “April”.
- 4 By deleting the proposed section 53ZUJ(a) and substituting—
 “(a) if the registrant notifies the Commissioner that the registrant has the intention referred to in section 53ZVA(1)(a) or (b)—on the intended date of cessation (as defined by section 53ZVA(2)) as notified;”.
- 4 (a) By renumbering the proposed section 53ZUM as section 53ZUM(2).
(b) By adding before the proposed section 53ZUM(2)—
 “(1) In a reference in this Ordinance to a fit and proper person to carry on a precious metals and stones business or a fit and proper person to be associated with such a business, the business concerned is a precious metals and stones business that includes the carrying out of specified transactions and specified cash transactions.”.
- 4 In the proposed section 53ZUN(1), by adding “that includes the carrying out of specified transactions and specified cash transactions” after “business”.
- 4 By deleting the proposed section 53ZUS(a) and substituting—
 “(a) if the registrant notifies the Commissioner that the registrant has the intention referred to in section 53ZVA(1A)(a) or (b)—on the intended date of cessation (as defined by section 53ZVA(2)) as notified;”.
- 4 In the proposed section 53ZVA, in the heading, by adding “**etc.**” after “**business**”.
- 4 By deleting the proposed section 53ZVA(1) and substituting—

“(1) A person who is a Category A registrant must notify the Commissioner, in writing, if the person intends—

(a) to cease to carry on the person’s precious metals and stones business; or

(b) to cease to carry out specified transactions while carrying on the person’s precious metals and stones business.”.

4 In the proposed section 53ZVA, by adding—

“(1A) A person who is a Category B registrant must notify the Commissioner, in writing, if the person intends—

(a) to cease to carry on the person’s precious metals and stones business; or

(b) to cease to carry out specified transactions and specified cash transactions while carrying on the person’s precious metals and stones business.”.

4 In the proposed section 53ZVA(2), in the Chinese text, by adding “或停止進行交易的” before “生效”.

4 By deleting the proposed section 53ZVA(3)(a) and substituting—

“(a) the person’s intention as referred to in subsection (1)(a) or (b) or (1A)(a) or (b); and”.

4 In the proposed section 53ZVA(5), by deleting “registrant who, without reasonable excuse, contravenes subsection (1)” and substituting “person who, without reasonable excuse, contravenes subsection (1) or (1A)”.

4 In the proposed section 53ZVA(7), by deleting “registrant” and substituting “person”.

4 In the proposed section 53ZVE(2)(a)(i), in the Chinese text, by deleting “不”.

4 By deleting the proposed section 53ZVI(4).

4 In the proposed section 53ZVP, in the heading, by deleting “, **3I and**” and substituting “**to**”.

- 4 In the proposed section 53ZVP(1), by deleting “Schedule 3H” and substituting “Schedules 3H and 3HA”.
- 4 In the proposed section 53ZW(1) and (2), by deleting “January” and substituting “April”.
- 4 By deleting the proposed section 53ZW(3)(b) and substituting—
“(b) if the person has notified the Commissioner that the person has the intention referred to in section 53ZVA(1A)(a) or (b)—the intended date of cessation (as defined by section 53ZVA(2)), as notified, begins;”.
- 4 By deleting the proposed section 53ZW(4)(d) and substituting—
“(d) if the person has notified the Commissioner that the person has the intention referred to in section 53ZVA(1A)(a) or (b)—the intended date of cessation (as defined by section 53ZVA(2)), as notified, begins;”.
- 4 In the proposed section 53ZW(8), in the definition of *transitional period*, by deleting “January” and substituting “April”.
- 5 In the proposed Schedule 3F, in the Chinese text, in section 3, by adding “條” after “53ZSB(1)(a)”.
- 5 In the proposed Schedule 3G, by deleting “[s.” and substituting “[ss. 53ZR &”.
- 5 In the proposed Schedule 3G, in section 1(2), in the definitions of *first 9 months* and *first 12 months*, by deleting “March” and substituting “June”.
- 5 In the proposed Schedule 3G, in section 2(1)(a), by deleting “March” and substituting “June”.
- 5 In the proposed Schedule 3G, in section 2, by adding—
“(3) In subsections (1) and (2), a reference to a corporation does not include one to which a closing-down period under section 11(1), (3) or (4) of this Schedule applies.”.
- 5 In the proposed Schedule 3G, in section 3(1)(a) and (b)(ii), by deleting “March” and substituting “June”.

- 5 In the proposed Schedule 3G, by deleting section 4(1) and substituting—
- “(1) If, under section 3 of this Schedule, this section applies to a corporation that made an application referred to in subsection (1)(b)(i) of that section, the corporation is deemed, for the period specified in subsection (2), to be licensed under section 53ZRK to provide the VA service to which the application relates.”.
- 5 In the proposed Schedule 3G, by deleting section 6(1) and substituting—
- “(1) If, under section 5 of this Schedule, this section applies to an individual who made applications referred to in subsection (1)(a)(i) and (ii) of that section, the individual is deemed for the period specified in subsection (2)—
- (a) to be licensed as a licensed representative under section 53ZRL to provide the VA service on behalf of the corporation to which the applications relate; and
- (b) to be accredited to the corporation.”.
- 5 In the proposed Schedule 3G, in section 7(1)(a)(iv) and (c), by deleting “March” and substituting “June”.
- 5 In the proposed Schedule 3G, by deleting section 8(1) and substituting—
- “(1) If, under section 7 of this Schedule, this section applies to an individual who made applications referred to in subsection (1)(a)(i), (ii) and (iii) of that section, the individual is deemed for the period specified in subsection (2)—
- (a) to be licensed as a licensed representative under section 53ZRL to provide the VA service on behalf of the corporation to which the applications relate;
- (b) to be accredited to the corporation; and
- (c) to be approved as a responsible officer of the corporation.”.
- 5 In the proposed Schedule 3G, in section 9(2), by deleting “4(4)” and substituting “4(3) and (4)”.
- 5 In the proposed Schedule 3G, in section 12(2)(a)(ii), by adding “and” after the semicolon.

5 In the proposed Schedule 3G, in section 12(3), by deleting everything after “section 53ZRD(3)” and substituting—

“if—

(a) the act is done during the closing-down period applicable to the closing-down period corporation; and

(b) the act is done solely for the purpose of closing down the business, of the closing-down period corporation, that is connected with that VA service.”.

5 In the proposed Schedule 3G, in section 13(2)(a), by deleting “2(2) or”.

5 By adding—

“Schedule 3HA

[ss. 53ZTY & 53ZVP]

Amount Specified for Definition of *specified transaction*

\$120,000 or an equivalent amount in another currency”.

6 By adding before subclause (1)—

“(1A) Section 5(11), definition of *specified provision*, after “3(1),”—

Add

“(1A), (1B),”.”.

7 In the proposed section 5A(5B), by deleting “is a specified cash transaction if” and substituting “means a specified cash transaction where”.

18 In the proposed section 13D, in the heading, by deleting “**and costs and expenses**”.

18 By deleting the proposed section 13D(4).

18

In the proposed section 13E, by adding—

“(3) If—

- (a) the Commission receives from a regulator of a jurisdiction outside Hong Kong an amount paid in respect of any of the costs and expenses incurred in providing assistance under section 13B or 13C; and
- (b) all or any of the costs and expenses have been paid out of moneys provided by the Legislative Council,

the Commission must pay to the Financial Secretary the amount received to the extent that the costs and expenses have already been paid out of moneys provided by the Legislative Council.”.

27

(a) By renumbering the clause as clause 27(3).

(b) By adding—

“(1) Section 54, definition of *specified authority*, paragraph (d)—

Repeal

“; and”

Substitute a semicolon.

(2) Section 54, definition of *specified authority*, after paragraph (e)—

Add

“(f) in relation to a specified decision falling within paragraph (f) of the definition of *specified decision*, means the Securities and Futures Commission; and

(g) in relation to a specified decision falling within paragraph (g) of the definition of *specified decision*, means the Commissioner;”.

(c) In subclause (3), in the proposed paragraph (f)(xiv), by adding “(section 53ZSP(2)(d) excepted)” after “53ZSP”.

(d) In subclause (3), in the proposed paragraph (f)(xv), by deleting “or to withdraw,” and substituting “or to”.

(e) In subclause (3), in the proposed paragraph (f)(xv), by deleting the semicolon and substituting “; or”.

33(5)

In the proposed definition of *pre-existing customer*—

- (a) in paragraph (b), by deleting “March” and substituting “June”;
- (b) in paragraph (d), by deleting “January” and substituting “April”.

33 By deleting subclause (15) and substituting—

“(15) Schedule 2, section 3(1)—

Repeal paragraph (c).”.

33 By adding—

“(15A) Schedule 2, after section 3(1)—

Add

“(1A) Subject to section 4 of this Schedule and despite subsection (1)(b), a financial institution must carry out customer due diligence measures in relation to a customer before carrying out for the customer an occasional transaction that is—

- (a) a wire transfer involving an amount equal to or above \$8,000 or an equivalent amount in any other currency; or
- (b) a virtual asset transfer involving virtual assets that amount to no less than \$8,000,

whether the transaction is carried out in a single operation or in several operations that appear to the financial institution to be linked.

(1B) Subject to section 4 of this Schedule and despite subsection (1)(b), a licensed VAS provider must carry out customer due diligence measures in relation to a customer before carrying out for the customer an occasional transaction that—

- (a) involves an amount equal to or above \$8,000 or an equivalent amount in any other currency; and
- (b) is not a wire transfer or a virtual asset transfer,

whether the transaction is carried out in a single operation or in several operations that appear to the licensed VAS provider to be linked.”.

(15B) Schedule 2, section 3(4)—

Repeal

“(1)”

Substitute

“(1), (1A), (1B)”.

(15C) Schedule 2, section 4(1), (2), (4) and (6)—

Repeal

“3(1)(a), (b) and (c)”

Substitute

“3(1)(a) and (b), (1A) and (1B)”.

33

By adding—

“(20A) Schedule 2, Chinese text, section 12(11), definition of 匯款人, paragraph (b)—

Repeal

“人 ;”

Substitute

“人 。””.

33(24)

In the proposed section 20(3A), by deleting “3(1)(b), (c) and (ca)” and substituting “3(1)(b), (1A) and (1B)”.