

Annex A

Summary of Key Feedback from Public Consultation on the Anti-Money Laundering and Countering the Financing of Terrorism Regulatory Regime for Precious Stones and Metals Dealers

S/N	Feedback	Response
Scope of the Regime - Dealers		
1.	The definition should clarify if individual dealers, suppliers, sellers of luxury bags, craftsmen, providers of trading platform services to other precious stones and metals dealers (PSMDs), and manufacturers of grown diamonds would be covered under the regulatory regime.	<p>A PSMD is any person, individual or entity, who in the course of the person's business manufactures, sells, offers for sale, imports for sale or possesses for sale, any precious stone, metal, or product. This includes auctioneers and providers of trading platform services for other PSMDs.</p> <p>Precious stones, metals and products (PSMs) are defined as:</p> <ol style="list-style-type: none"> a. Precious stones include diamonds, sapphires, rubies, emeralds, jade (including nephrite and jadeite), and pearls; b. Precious metals include gold, silver, platinum, iridium, osmium, palladium, rhodium, ruthenium, or an alloy with at least 2% of weight in any of the aforementioned metals; and c. Precious products include any finished product (other than any industrial tool or medical device) that derives 50% or more of its value from any precious stone or precious metal contained in or attached to that product. <p>Therefore, individual dealers, suppliers of PSMs, dealers of precious products as defined (including luxury products), craftsmen dealing in PSMs, and manufacturers of grown diamonds, will be included under the regime.</p>
2.	To provide a definition for 'customer', which should include clients purchasing from PSMDs, and private individuals and suppliers or traders selling PSMs to PSMDs.	The Ministry of Law (MinLaw) will take this into consideration.
3.	Activities such as commodities trading, which do not involve the physical delivery of PSMs, should not be covered under the regime.	The purpose of the regime is to mitigate money laundering and terrorism financing (ML/TF) risks related to transactions involving PSMs, regardless of whether it involves the physical delivery of PSMs. MinLaw will consider the feedback, and clarify which activities are covered under the regime.

Annex A

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4.	Pawnbrokers, which also sell new jewellery, should be covered under the regime.	Under the pawnbrokers' licence conditions, pawnbrokers are required to ensure that their pawnbroking business and new or secondhand jewellery business are conducted by separate legal entities. The legal entity conducting the new or secondhand jewellery business will be covered under the proposed regime.
5.	MinLaw should clarify if financial institutions (FIs) will be covered under the proposed regime.	FIs in Singapore are regulated by the Monetary Authority of Singapore (MAS) for AML/CFT. FIs may also perform activities that would fall within the definition of a PSMD, and consequently, fall within the scope of the proposed regime. There could be duplicative requirements imposed on FIs for transactions involving precious stones and metals. We have taken relevant feedback from FIs into consideration. All MAS-regulated FIs will be exempted from all requirements in the proposed AML/CFT regulatory regime for PSMDs, except for the requirement to file cash transaction reports.
6.	The definition should clarify if licensed trust companies which are responsible for assets including PSMs, are covered under the regime.	
7.	The definition of foreign dealers should clarify if a company with a Representative Office in Singapore is considered a foreign dealer.	<p>The Representative Office (RO) scheme administered by Enterprise Singapore only allows ROs to conduct market research and feasibility studies on the viability of setting up a permanent entity in Singapore. It does not allow ROs to engage in any direct or indirect trade and/or business/commercial activities in Singapore, nor does it exempt the RO from any law in Singapore. Therefore, ROs cannot engage in the manufacturing or sale of PSMs in Singapore or render such services on behalf of their parent organisations. More details on the Terms and Conditions of the RO scheme can be found at https://roms.enterprisesg.gov.sg.</p> <p>Foreign entities dealing in PSMs on a permanent basis in Singapore must register their business with the Accounting & Corporate Regulatory Authority (ACRA), and would be subject to the proposed AML/CFT regulatory regime for PSMDs, including registration.</p>
8.	The exemption of foreigners from registration would not be fair to local PSMDs, as other jurisdictions may not impose AML/CFT regulations on PSMDs.	<p>Foreign PSMDs which are not registered as businesses in Singapore, but conduct business on a temporary basis, e.g. during a trade fair, will be required to comply with the following AML/CFT requirements:</p> <ol style="list-style-type: none"> a. Perform customer due diligence (CDD) for relevant transactions; b. Keep records of CDD transactions and documents; c. File suspicious transaction reports (STRs), where appropriate, as long as the trade or business is conducted physically in Singapore; and d. File cash transaction reports (CTRs) for cash transactions exceeding S\$20,000.

Annex A

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9.	The definition should clarify if ancillary services such as secured logistics, testing, packaging, and the long-term storage of precious stones and metals would be covered under the regime.	Ancillary services including secured logistics, testing, packing and long-term storage of precious stones and metals will not be covered under the current proposed regime.
10.	The AML/CFT requirements should only be imposed on PSMDs transacting with foreigners who pose higher ML/TF risks.	All PSMDs are required to conduct an internal risk assessment and develop appropriate internal policies, procedures and controls (IPPC) to address the ML/TF risks identified in their assessment. As such, PSMDs with frequent or significant transactions with foreign customers should include this factor in their risk assessment and consider suitable measures to address this risk.
Scope of the Regime - Products		
11.	To clarify if other stones and metals such as amethyst, aluminium, zinc, copper, and gold or silver concentrates that may be found in copper products, would be covered under the regime.	<p>The proposed regime will cover dealers of precious stones, precious metals and precious products, which are defined under the existing Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, Cap 65 A (CDSA):</p> <ol style="list-style-type: none"> a. Precious stones include diamonds, sapphires, rubies, emeralds, jade (including nephrite and jadeite), and pearls; b. Precious metals include gold, silver, platinum, iridium, osmium, palladium, rhodium, ruthenium, or an alloy with at least 2% of weight in any of the aforementioned metals; and c. Precious products include any finished product (other than any industrial tool or medical device) that derives 50% or more of its value from any precious stone or precious metal contained in or attached to that product. <p>MinLaw is not proposing any change to the definition above. Hence, all products (including amethyst, aluminium, zinc, and copper) not covered in the definition provided, will not be regulated under the regime.</p>
12.	To clarify if gold certificates, savings account, tokens, and similar assets are covered under the regime.	Subject to exemptions provided under the regime, such “assets” will be covered under the regime if the product being sold is a physical PSM which the customer may lay claim to.
Registration		
13.	PSMDs should be informed of when registration commences and the process for registration. PSMDs should be granted a transition period to comply with the new requirements under the regime.	Registration is expected to commence in the second quarter of 2019 and applications are to be submitted online. More details on the documents required for the submission and the application process will be provided at a later date. MinLaw will ensure that PSMDs are given sufficient time to comply with the requirements of the regime.

Annex A

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14.	MinLaw should clarify if PSMDs need to be registered to operate.	If they fall within the scope of the proposed regime, PSMDs will need to be registered to operate their business. MinLaw will ensure that this is clearly communicated to PSMDs.
15.	MinLaw should issue PSMDs with documentation as proof of registration.	MinLaw will issue a proof of registration to all successfully registered PSMDs.
16.	The requirement for foreign branches to register with MinLaw should be made clear.	Foreign branches of Singapore-registered PSMDs will not be required to register with MinLaw under the proposed regime. Should these foreign branches conduct business in Singapore on a temporary basis, e.g. during a trade fair, they will be required to comply with the following AML/CFT requirements: <ul style="list-style-type: none"> a. Perform CDD for relevant transactions; b. Keep records of CDD transactions and documents; c. File STRs, as long as the trade or business is conducted physically in Singapore; and d. File CTRs for cash transactions exceeding S\$20,000.
17.	Registration fees should be determined by the number of outlets a PSMD owns.	MinLaw will take this feedback into consideration.
AML/CFT Requirements - General		
18.	The requirements should be simplified further to ensure that employees understand the purpose of the requirements.	MinLaw will take this feedback into consideration when developing the detailed requirements and guidance materials for PSMDs.
19.	Clarification is needed on the specific AML/CFT requirements which apply to smaller entities.	MinLaw has adopted a preventive and risk-based approach in developing the proposed regime. The proposed requirements are calibrated to mitigate the ML/TF risks faced by the sector and seeks to level up the AML/CFT standards and trust within the sector. Hence, the proposed requirements are not differentiated by the size of the PSMD, but by the size and type of transactions performed by the PSMD. In particular, as cash is deemed to pose higher ML/TF risks due to the anonymity it presents, the following transaction-based requirements would apply if entities conduct cash transactions exceeding S\$20,000: <ul style="list-style-type: none"> a. To file CTRs; b. To perform CDD; and c. To keep CDD and relevant transaction records.

Annex A

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20.	Entities within a larger business group which are not registered as a foreign branch or majority-owned subsidiary of the Singapore PSMD should not be subject to requirements under the regime.	MinLaw will take the feedback into consideration and issue further guidance on what requirements, if any, foreign branches and majority-owned subsidiaries will be subjected to, under the regime.
21.	MinLaw should clarify if a subsidiary owned by a PSMD, which does not have majority stakes, will be subject to the regulatory regime.	
22.	The requirement for PSMDs to impose the same set of AML/CFT obligations on foreign branches is unfair as there might not be any AML/CFT requirements on PSMDs in the host countries. Customers of the foreign branch might not understand or agree to the CDD process.	
23.	PSMDs have no reason to reject transactions if the customer has not been convicted of a crime.	PSMDs should assess if they should proceed with transactions if there is suspicion of ML/TF. Such suspicions could be triggered by adverse news, where could include news of investigations into ML, associated predicate offences, and TF and related sanctions.
24.	PSMDs will not be able to comply with the customer due diligence requirement as the collection of customer information would be an offence under the Personal Data Protection Act.	In general, the Data Protection Provisions in the PDPA do not prohibit the collection, use or disclosure of personal data (including NRIC number), as long as it is in compliance with the PDPA, including where required for compliance under other written laws, such as the proposed AML/CFT regulatory regime. Among other requirements, the PDPA's Data Protection Provisions require organisations to obtain consent to collect, use or disclose the individual's personal data (unless it is required or authorised under the PDPA or any other written law), and to ensure that reasonable security arrangements are in place to protect personal data in their possession or under their control. Other than for purpose of compliance with the relevant AML/CFT requirements, the personal data obtained cannot be used or disclosed for other purposes (e.g. marketing), without the consent of the individual. Where appropriate, MinLaw will issue guidance on how personal data should be obtained, handled and stored.

Annex A

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25.	A notice should be issued to inform the public that the collection of personal information is allowed under the PDPA for the purpose of compliance with the AML/CFT regime.	MinLaw will develop plans to inform the public of the new regime, so as to facilitate PSMDs' compliance with the transaction-based requirements.
26.	Minlaw should run a publicity campaign to educate consumers about the new regime. The campaign should also be targeted at tourists, as they are unlikely to be familiar with Singapore's AML/CFT requirements.	
27.	Guidance is needed on how to identify suspicious behaviour.	<p>Some red flag indicators which should raise suspicion include transactions that are not consistent with the profile of the customer, e.g. the transaction appears to be beyond the means of the customer based on his/her known occupation or income; large or frequent transactions that are in a foreign currency; numerous transactions by one customer over a short period of time, etc. More examples of red flag indicators can be found online at: https://www.police.gov.sg/~media/spf/files/cad/stro/website/industry%20layout/precious-stones-and-metals-dealer-indicators.PDF.</p> <p>MinLaw will provide further guidance on how PSMDs may identify suspicious behaviour.</p>
28.	PSMDs would not have good reasons to reject customers, especially if the customer has not been convicted of ML/TF offences. PSMDs are also not in the position to question or detain their customers for suspicious activities.	<p>PSMDs will need to perform a risk assessment and determine whether to proceed with a suspicious transaction, where there is adverse news* on the customer. Regardless, a suspicious transaction report should be filed to ensure that the authorities are notified. While PSMDs are expected to comply with the regime, they are not allowed to detain their customers. Questions asked should be specific to the purpose of performing customer due diligence.</p> <p><i>*Adverse news could include news of investigations into ML, associated predicate offences, and TF and related sanctions.</i></p>
29.	MinLaw should conduct seminars for industry player to explain the definitions and requirements of the new regulations.	MinLaw will be organising seminars and other outreach sessions for PSMDs to provide key information on the new regime

Annex A

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AML/CFT Requirements – Transaction-based requirements		
30.	There should be clarity and guidance on when to perform customer due diligence (CDD), e.g. whether to perform CDD on all new customers and on customers who sell secondhand PSMs to PSMDs.	<p>As stated in the consultation paper, CDD measures have to be performed by PSMDs when:</p> <ol style="list-style-type: none"> a. Conducting cash transactions exceeding S\$20,000; b. There is suspicion of ML/TF; or c. There are doubts about the veracity or adequacy of previously obtained customer identification data. <p>The transactions by PSMDs refer to:</p> <ol style="list-style-type: none"> a. The sale of PSMs to all customers, be it individuals or entities; and b. The purchase of secondhand PSMs from members of public.
31.	Guidance on how to perform CDD, including details on the types of documents PSMDs should obtain, should be provided.	<p>MinLaw will issue guidance to assist PSMDs in their compliance with the AML/CFT requirements. PSMDs should note that the identifying information required for CDD and record keeping, includes the customer's full name, date of birth, address, contact number, nationality, occupation, identification number, etc., as stipulated in clause 2 of the Corruption, Drug Trafficking and Other Serious Crimes (Cash Transaction Reports) Regulations 2014.</p> <p>PSMDs are expected to verify the customer's identity using reliable and independent source documents, data, or information. Examples include original copies of government-issued identity documents with photo. The rigour of the verification process should commensurate with the customer's risk profile. For instance, if the customer is unable to provide the original copy of his/her identity document, PSMDs should take appropriate precautions to ensure that the document(s) presented by the customer is reliable.</p>
32.	MinLaw should elaborate on the rationale for requiring PSMDs to perform enhanced customer due diligence (EDD) on politically exposed persons (PEPs) and persons who are identified to pose a higher ML/TF risk.	<p>MinLaw adopts a risk-based approach in the proposed AML/CFT regime for the PSMDs. For persons who have been identified to pose a higher level of ML/TF risk, enhanced measures, which involves a more thorough background check on the customer, are required to mitigate the higher risks identified. This approach is consistent with that in other sectors in Singapore, including pawnbrokers, corporate service providers, estate agents, etc.</p>

Annex A

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33.	Guidance is needed on when EDD should be performed, and on how PSMDs should identify such instances, e.g. the use of external databases to identify politically exposed persons.	<p>PSMDs must perform EDD for customers identified to pose a higher ML/TF risk, such as politically exposed persons (PEPs). Such customers are usually identified through the CDD process.</p> <p>MinLaw will issue guidance which will include details on how to identify PEPs and other higher risk persons.</p>
34.	There should be guidance on how to perform EDD, including the extent to which a PSMD needs to find out about a customer's source of wealth.	<p>In general, the EDD process entails enquiring about the customer's source of funds, and seeking senior management approval to proceed with the transaction.</p> <p>Obtaining information on a customer's source of wealth will enable the PSMD to assess the legitimacy of the funds used to purchase the PSM. The rigour of the process to obtain information on the customer's source of wealth should be commensurate with the customer's risk profile. For instance, if there are reasonable doubts on the information provided by customers, PSMDs should try to obtain independent sources of information to verify the customer's source of wealth. MinLaw will issue guidance, which will include details on how to perform EDD.</p>
35.	The CDD process is onerous for employees. MinLaw should consider solutions to streamline the process, e.g. develop a centralised screening platform to facilitate the CDD process.	<p>The proposed requirements have been calibrated to mitigate the ML/TF risks presented by the sector.</p> <p>MinLaw will organise AML/CFT seminars and outreach sessions. These are expected to commence in 2019, and will raise the level of AML/CFT awareness among PSMDs. The sessions will also help PSMDs and their employees understand the rationale and requirements of the new regime. Further information on these seminars will be released in due course. PSMDs are encouraged to send its employees to these seminars.</p> <p>MinLaw will continue to work closely with the industry to facilitate and streamline the CDD process.</p>
36.	MinLaw should specify the penalties for not meeting the relevant AML/CFT requirements.	<p>Failure to comply with the requirements under the proposed regime will result in administrative or criminal penalties (e.g. financial penalties, cancellation or suspension of registration, etc.), which will be meted out depending on the nature and severity of the contravention or offence committed. Information on the penalties will be provided when ready.</p>

Annex A

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AML/CFT Requirements – Entity-based requirements		
37.	Guidance should be provided to PSMDs on the requirement to conduct a risk assessment and introduce internal policies, procedures and controls (IPPC).	MinLaw will issue guidance on the broad ML/TF risk factors which PSMDs should consider for the purpose of the risk assessment. Examples of these factors include customers' profile (e.g. occupation, nationality, politically exposed persons, etc.), transaction modes (e.g. cash or non-cash), etc. PSMDs may take into consideration the guidance provided by MinLaw, and develop a suitable risk assessment.
38.	The entity-based requirements should only apply to the larger companies, e.g. PSMDs with an annual turnover or number of employees above a certain threshold.	<p>Entity-based requirements are important as the process enables PSMDs to identify ML/TF risks faced by their businesses and find ways to address these risks. As ML/TF risks are faced by all PSMDs regardless of size, all registered PSMDs will be subject to the entity-based requirements.</p> <p>Nonetheless, scale and scope of the risk assessment should be commensurate with the nature and complexity of the PSMD's business. The nature and extent of the AML/CFT controls put in place by the entities should be appropriate, taking into account the ML/TF risk and the size of the business. In general, the risk assessment required of smaller entities can be expected to be simpler and more straightforward, as compared to larger or more complex entities, which offer a wider range of services and products.</p>
39.	The requirement to screen employees as part of the IPPC appears to discriminate against ex-convicts.	The objective of requiring PSMDs to put in place employee screening procedures as part of its IPPC is to ensure that the PSMD hires fit and proper persons as employees. This does not mean that PSMDs are prohibited from hiring persons with criminal records. On top of screening, PSMDs should consider obtaining information (through declarations or background checks with past employers) in order to make a full assessment whether the employee is fit and proper.
40.	There should be clarity and guidance on how PSMDs should fulfil the requirement to have an independent audit function as part of its IPPC.	PSMDs can either make use of its internal audit functions (if available) or engage independent external auditors to conduct the audit.
41.	The requirement to have an independent audit function would impose unjust administrative and financial burden on the PSMDs.	MinLaw will take into consideration the financial and administrative burden on PSMDs when determining the frequency and requirements of the independent audit. Detailed information on the audit requirements will be issued when ready.

Annex A

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42.	It is unclear how an independent audit function helps to mitigate ML/TF risks.	Having an independent audit function ensures that procedures adopted by PSMDs are as prescribed by their IPPC, and that their employees are familiar with the procedures stipulated in the IPPC.
Enforcement		
43.	MinLaw should ensure that foreign PSMDs comply with the requirements under the regime. For example, Customs, ICA and trade fair organisers should be tasked with ensuring compliance and proper reporting by foreign PSMDs.	MinLaw will work with the relevant government agencies and stakeholders to: <ol style="list-style-type: none"> a. Ensure that PSMDs, including foreign PSMDs that operate in Singapore on a temporary basis, are informed of and comply with the AML/CFT requirements of the regime; and b. Detect and investigate instances of non-compliance, and take regulatory action where appropriate.
44.	MinLaw should enforce regulations against PSMDs operating online.	
45.	Enforcing the regime against individual dealers would be challenging as their business activities may go undetected.	
Outreach		
46.	Public communications and the guidance materials should take into account the target audience, which includes employees with limited ML/TF awareness. The training materials should be tailored to cater for their needs, and where possible, should be made available in other official languages.	MinLaw will conduct AML/CFT seminars/outreach sessions and issue AML/CFT guidance materials to help PSMDs comply with the AML/CFT requirements, as appropriate.

Annex A

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Compliance cost		
47.	The compliance burden is greater for smaller PSMDs with few employees, as each employee is likely to have multiple responsibilities.	MinLaw is aware of industry concerns regarding compliance costs. A risk-based approach to mitigate the ML/TF risks will be adopted to regulate and supervise the PSMD sector. This means that PSMDs which pose a higher risk of ML/TF will be subject to more supervision. As the AML/CFT supervisor for PSMDs, MinLaw will assess the ML/TF risks of the PSMD sector, and target efforts and resources to where the risks are the highest.
48.	The compliance costs will be significant for SMEs and start-ups and this may adversely affect the competitiveness of such companies, stifling innovation and competition within the sector.	Where appropriate, the processes in the proposed regime will also be streamlined, to keep compliance costs to a minimum. For example, a web portal used for other registration and licensing applications in Singapore, will be used to register PSMDs. This will help to streamline the registration process and minimise the time taken to register. The suspicious transaction reporting and cash transaction reporting forms have also been digitised to help businesses fulfil their AML/CFT obligations, while minimising the impact on the efficiency and speed of businesses' frontline customer service. MinLaw will conduct AML/CFT seminars/outreach sessions and issue AML/CFT guidance materials to help PSMDs comply with the AML/CFT requirements. We will also monitor the domestic and international standards and best practices, and respond accordingly. The above will help to keep the cost of compliance reasonable.
49.	Funding should be provided to encourage small PSMDs, which may not have computers or IT systems to perform some of the requirements under the regime, to adopt new technology solutions to enhance their business processes.	The Productivity Solutions Grant (PSG) supports companies in the adoption of IT solutions and equipment to enhance business processes. Companies that meet the criteria of PSG can be supported in their adoption of pre-scoped technologies to help them better meet the proposed AML/CFT requirements. More details on the PSG can be found at https://www.smeportal.sg/content/tech-depot/en/psg.html .
Others		
50.	It is unclear how the S\$20,000 threshold was determined.	The threshold of SGD 20,000 is in line with the cash transaction threshold of USD/EUR 15,000 set by the Financial Action Task Force in relation to PSMDs.
51.	PSMDs should be required to check for provenance and legal ownership when they purchase high value precious stones and metals.	As part of their risk assessment and IPPC, PSMDs should adopt a risk-based approach in deciding whether or not and to what extent should they check for the provenance and/or legal ownership of PSMs procured. PSMDs should note that all other existing regulations will continue to apply.

Annex A

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52.	With enhanced requirements for companies accepting cash payments exceeding \$20,000, some PSMDs may not be able to accept such cash payments which will in turn worsen consumer protection, limit consumer choice and decrease competition.	<p>Cash is deemed to pose higher ML/TF risks due to the anonymity it presents. Therefore, applicable transaction-based requirements for entities conducting cash transactions above S\$20,000, include:</p> <ol style="list-style-type: none"> a. To file CTRs; b. To perform CDD; and c. To keep CDD and transaction records. <p>PSMDs are encouraged to accept other electronic modes of payment for larger transactions, to mitigate the ML/TF risks.</p>
53.	The pricing and trading of ornamental items which include PSMs should be regulated for consumer protection purposes.	The regime is designed specifically to address the issue of money laundering and terrorism financing within the PSMD sector. Issues pertaining to consumer protection in the PSMD sector come under the ambit of the Consumer Protection (Fair Trading) Act and will continue to be handled by relevant agencies such as the Competition and Consumer Commission of Singapore (CCCS).
54.	The responsibility for preventing ML/TF should rest with government agencies, instead of PSMDs.	<p>The AML/CFT regulatory regime for PSMDs is preventive in nature and seeks to deter criminals from using the sector to conduct ML/TF activities. MinLaw has adopted a risk-based approach towards regulating the sector for AML/CFT purposes and the proposed requirements are in line with international standards set by the Financial Action Task Force, and with other non-financial sectors in Singapore, e.g. pawnbrokers.</p> <p>The regime will ultimately benefit the PSMD sector as it levels up the AML/CFT standards and trust within the sector, thereby enhancing the reputation of the sector. More broadly, the regime will help to mitigate ML/TF risks for PSMDs, improving Singapore's safety and security, and ensuring that Singapore remains a trusted global trading and financial hub. Harnessing these benefits will require the PSMD sector's active involvement and partnership with the government.</p> <p>We recognise that the requirements of the regime would be new to most PSMDs; we will provide outreach and guidance where appropriate, to help PSMDs to comply with the proposed regime.</p>

Annex A

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55.	The list of registered PSMDs should be made public as the PSMD sector is deemed to be an industry with high ML/TF risk. With a public register, it will enable insurance companies and banks to better assess the risk posed by PSMDs and perform the necessary due diligence on them.	MinLaw will take this feedback into consideration.