Revised Precious Metals Control Act: New registration and licensing requirements for purchasers of old precious metals

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Key takeaways

When the revised Anti-Money Laundering Act (AMLA) comes into force on 1 January 2023, new licensing or registration requirements will be introduced in the area of the Precious Metals Control Act (PMCA) and the Precious Metals Control Ordinance (PMCO).

- **New licensing and registration requirements are introduced for certain purchases of melt material. The licensing requirements will be specified in the revised PMCO.**
- **Certain adjustments to the PMCO have been made as a result of the already existing licensing requirement for trade assayers regarding trading in banking precious metals.**
- **The newly included obligations as well as the associated supervisory duties are subject to fees and levies. The Ordinance on the Fees for Precious Metal Control (PMC-FeeO) will be amended accordingly.**

Introduction

On 19 March 2021, the Swiss Parliament approved the revision of the Anti-Money Laundering Act (AMLA). This includes an improvement of Switzerland's regulations for combating money laundering and terrorist financing. A total of five enactments were amended, which will take effect on 1 January 2023. Read our previous legal update on the amendments to AMLA.

In this legal update we provide an overview of the new licensing and registration requirements for purchasers of melt material under the revised PMCA and PMCO. In addition, the licensing requirement already introduced for trading in banking precious metals is addressed. In particular, the related licensing requirements, fees and supervisory levies will be explained

below.

Licensing and registration requirements for purchasers of melt material

General information

To minimise the risk of handling stolen goods, among other things, a new Art. 31a PMCA is introduced, which provides for a licensing and registration requirement for the commercial purchase of melt material. Melt material (old precious metals) is defined as:

(a.) waste products from the processing of precious metals or alloys thereof which are usable for reclaiming precious metal;

(b.) material containing precious metal which is usable for reclaiming precious metal.

Anyone who commercially purchases such melt material will in future be required to have a corresponding permit or registration and must ascertain and document the origin of the goods. The commercial nature of the business will be determined by a value of goods of CHF 50,000 or more for the purchase of melt material per calendar year. The purpose of this threshold is to exempt small businesses, such as goldsmiths, whose purchase of old jewelry represents at most a minor money laundering risk, from the licensing or registration requirements.

Permit and registration application

If the purchaser of melt material is entered in the commercial register, it is necessary under the amended provisions to be registered with the Central Office for Precious Metals Control (Central Office). Registered in the commercial register are, for example, stock corporations, sole proprietorships with an annual turnover of CHF 100,000 or more, and branches of foreign and Swiss companies. Those without an entry in the commercial register, such as individuals or foreign companies, require a permit from the Central Office for the commercial purchase of melt material. This provides the Central Office with an overview of the persons acting as purchasers.

The licensing requirements are specified in the revised PMCO. The applicant must provide written evidence of the proper conduct of business, for example by way of excerpts from criminal records and a description of the business activity as well as the financial situation in the form of audited annual financial statements or, if necessary, accounting records. The documents to be submitted by individuals and foreign companies are listed separately in the revised PMCO.

New obligations for holders of a purchase permit or registered purchasers

Anyone who holds a purchase permit or is registered must observe certain due diligence and documentation obligations under the new provisions in order to ensure the legal origin of purchased precious metal items. In order to comply with the due diligence and documentation obligations, commercial purchasers of melt material must, in particular, identify the seller, clarify the legal origin of the goods and report suspicious transactions. To enable purchasers to rely on their existing control systems, the revised PMCO does not provide for a special form of documentation. For example, proof of identity of the seller can be recorded photographically.

Purchasers, however, may also store the individual dossiers electronically, which means that no physical dossier must be kept.

Licensing requirement for trade assayers regarding trading in banking precious metals

An additional licensing requirement for trade assayers who trade in banking precious metals commercially themselves or through a group company was introduced in Art. 42bis PMCA and has been in force since January 2020. Trade assayers are persons who check the fineness of melt products intended for resale and apply a hallmark as proof. The licensing requirement for trade assayers has resulted in certain adjustments to the PMCO.

Issuance of the licence for trading in banking precious metals

The licence for trading in banking precious metals must be applied for in writing to the Central Office. Each company of a group company must itself have an additional licence in order to be able to trade in banking precious metals on a commercial basis. The application for a licence must be accompanied, among other things, by a description of the business activity, the financial situation in the form of audited financial statements and information on pending or completed proceedings if they may have an influence on the good reputation. Finally, the licences granted are published by the Central Office in the Swiss Official Gazette of Commerce. The Central Office also keeps a public register of the licences granted.

Change of facts

In the event of a change of facts on which the granting of a permit is based, the permit holders are obliged to report these changed facts without delay. Additional written authorisation from the Central Office must be obtained if the change of facts is of material importance. This is the case if the conditions for granting the permit have to be reassessed.

Withdrawal of licence for trading in banking precious metals

As soon as the requirements for the licence are no longer met, the Central Office is required to revoke the licence ex officio. The Central Office must inform the licence holder in writing of the initiation of the revocation proceedings and grant a reasonable period of time for the submission of a written consultation. Following the consultation, the Central Office shall initiate the necessary investigative measures and, upon completion thereof, shall take the decision on the withdrawal of the licence.

Fees and supervisory levies stated in the PMC-FeeO

The new purchase licence, the licence requirement for trading in banking precious metals and the supervision are subject to fees and levies. These costs are set out in the Ordinance on the Fees for Precious Metals Control (PMC-FeeO). Registration for purchasers, on the other hand, is to be free of charge.

The PMC-FeeO provides for the levying of fees relating to the granting of licences for the purchase of precious metals and trading in banking precious metals. In the course of the revision, additional costs are incurred in the area of supervision of the purchasers of precious

metals and the trade assayers trading in banking precious metals, which are to be borne by the supervised persons in the economic sector themselves. A new supervision levy will be charged for costs in these two supervision areas that are not covered by fees.

The supervisory levy for purchasers of melt material, regardless of whether the purchasers are entered in the commercial register or not, is CHF 2,000 for four years. The basic levy for trading in banking precious metals is expected to be set at a flat rate of CHF 5,000.

Next steps

The revised AMLA, including amendments to the law and ordinances, is scheduled to enter into force on 1 January 2023. As soon as the revised enactments, namely the PMCA and the PMCO, are in force, registration and licensing with the Central Office for commercial purchasers of melt material must be examined. For holders of a licence for trading in banking precious metals, the new provisions of the PMCO must be observed.

Our team has many years of experience providing legal advice in the area of the Precious Metals Control Act and will be pleased to provide you with further information.

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