GUIDANCE NOTE

REPORTING OBLIGATIONS FOR DEALERS IN PRECIOUS METALS AND STONES ON SUSPICIONS OF MONEY LAUNDERING OR TERRORIST FINANCING

1 INTRODUCTION

1.1 It is important to protect Kuwait against both money laundering, terrorist financing, and proliferation financing, because such types of crime can undermine the economic stability and security of the country, given that these crimes are supportive of organised crime and terrorism, and they weaken the integrity of the Kuwaiti financial system and other important businesses and professions. Dealers in Precious Metals and Stones (DPMS) play an important role in protecting Kuwait against these kind of crimes.

1.2 **Dealers in Precious Metals and Stones (DPMS) covered by the legislation on money laundering and terrorist financing**

1.3 Article 1 of law no. 106 of 2013 on Anti-Money Laundering and Combatting the Financing of Terrorism sets out that "Sole-proprietors and commercial companies dealing in gold, precious stones and precious metals when engaging in any cash transaction as determined by the Executive Regulation of this Law" are covered by the law. In the following these professions are simply referred to as "dealers in precious metals and stones" or "DPMS".

1.4 **What is money laundering?**

1.5 Money laundering is the process of disguising the origins of illegally obtained money to make it appear as though it comes from legitimate sources. Money laundering is thus always associated with an under-lying proceed-generating crime, the so-called predicate crime. Money laundering schemes can be very simple or highly sophisticated. Examples of simple money laundering operations are breaking up large amounts of cash into smaller sums and depositing into a bank account, transporting cash across borders, or buying high value goods such as artworks or precious metals and stones. A more sophisticated money laundering operation might involve a complex layer of financial transactions, such as converting cash into monetary instruments or using offshore shell companies to disguise the origin of the proceeds.

1.6 **What is terrorist financing?**

1.7 Terrorist financing is the process of directly or indirectly raising/collecting, moving, or using funds to support terrorist activities, individual terrorists, or terrorist organisations. These funds can be used for various purposes, including planning attacks, recruiting members, spreading propaganda, acquiring weapons, and establishing networks or safe havens. The funds or assets used for terrorism can come from both legal and illegal sources, making it challenging to detect.

1.8 **What are the main differences between money laundering and terrorist financing?**

1.9 The Customer Due Diligence (CDD) requirements that so-called obliged entities, including dealers in precious metals and stones, will have to comply with, are very much the same for money laundering and terrorist financing, since the financial system and other relevant businesses and professions (such as DPMS) can be misued by both money launderers and terrorist financiers. However, conceptually there are differences between the two types of serious crimes, some of which are shown in the table right below:

	Money Laundering	**Terrorist Financing**
Motivation	Financial gain and/or financing of new crimes.	Funding of terrorist activities, for example for political or ideological reasons.
Source of funds	Always an underlying predicate crime to generate the proceeds.	The funding can be through both legal and illegal sources.
Amounts involved	Often involves large sums of money.	Generally, smaller amounts are needed for the terrorist activities, so transactions are often smaller and thereby hard to detect.
Methods of concealment	Both simple and complex money laundering schemes exist, but professional money launderers often use complex transactions, shell companies, offshore accounts, and investments to make funds appear legitimate.	Often uses simpler and harder-to-detect methods, like small wire transfers, cash smuggling, crowdfunding, or "front" organisations such as charities.

2 MONEY LAUNDERING AND TERRORIST FINANCING RISKS ASSOCIATED WITH PRECIOUS METALS AND STONES

2.1 The Financial Action Task Force (the FATF) is the most important global standard setter in relation to anti-money laundering and combatting the financing of terrorism. The FATF has issued different policy documents in relation to the money laundering and terrorist financing risk related to DPMS, including a July 2015 report on "Money laundering / terrorist financing risks and vulnerabilities associated with gold". This report provides a series of case studies and red flag indicators to raise awareness of the key vulnerabilities of gold and the gold market.

2.2 The money laundering and terrorist financing risks of the precious metals and stones market are also addressed in the June 2022 money laundering and terrorist financing National Risk Assessment of Kuwait and in the AML/CFT Mutual Evaluation Report (MER) of Kuwait adopted October 2024 by the FATF.

2.3 **The June 2022 National Risk Assessment of Kuwait**

Kuwait in June 2022 adopted a National Risk Assessment (NRA) on money laundering and terrorist financing, which also addresses dealers in precious metals and stones. It is noted that gold, precious metals, and gemstones are very popular in the State of Kuwait. Since the ancient history of Kuwait, there is still a great demand by many people to acquire them for the purpose of adornment and other purposes. The trade in gold, precious metals, and gemstones is considered one of the most important types of trade in the State of Kuwait. Because of its high value, it constitutes a safe haven for savings and investment. The gold and precious metals sector is considered one of the sectors that attract money laundering in its three stages (deposit/replacement, camouflage, and merger), which money launderers can exploit to carry out their illegal activities in order to achieve their goal, due to the high value, light weight and small size (gemstones), ease of transportation and frequent circulation, as it is easy to sell gemstones, precious metals and gold jewellery in the State of Kuwait. At the time of the NRA there were 2,361 companies in the precious metals and stones industry being supervised by the AML/CFT Department of the Ministry of Commerce and Industry (MOCI).

2.4 As for the specific risk associated with the precious metals and stones sector the NRA states the following:

"The level of money laundering risks to which the gold, precious metals and gemstones sector is exposed in the State of Kuwait is medium (M). The level of risk is a result of the level of threat to which the sector is exposed is Medium Low (ML) and sector vulnerabilities assessed as Medium High (MH)"

"The threat level facing the gold, precious metals and gemstones sector, which is assessed as Medium Low (ML), arises from: There are (4) investigations and trials in money laundering cases involving this sector and (2) convictions. The sector's vulnerabilities, which were assessed at a medium-high level (MH), result from: Lack of human resources and electronic systems in place for the employees of the supervisory authority during the period subject to evaluation, lack of enforcement of some administrative and criminal penalties, failure of compliance controllers to fully perform their role, lack of reporting of suspicious transactions, and lack of sufficient information related to knowing the real beneficiary. It was found that among the risks that this sector is exposed to is the small size of the product, and the ease of its handling and transporting it between countries. The process of assessing money laundering and terrorist financing risks at the national level took into account the type of products."

2.5 **The October 2024 Mutual Evaluation Report (MER) of Kuwait**

2.6 The MER does in fact not write very much about the dealers in precious metals and stones. It is stated that MOCI is not going to issue a business license if a dealer has been convicted of certain crimes, but the list of crimes is not very long or comprehensive. There is no information about any Suspicious Transaction Reports (STRs) being submitted by DPMS.

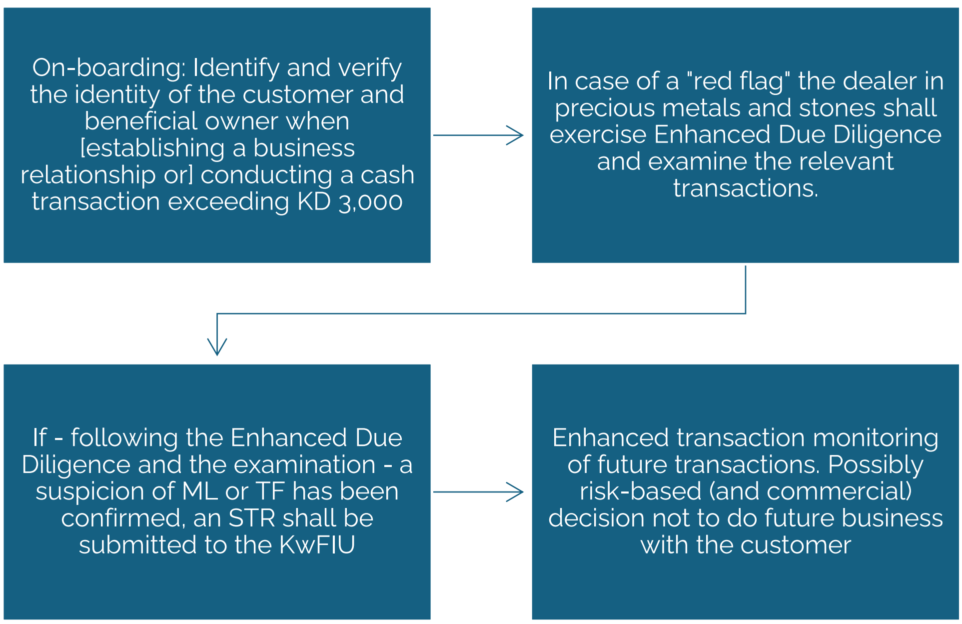
3 HIGH-LEVEL CUSTOMER DUE DILIGENCE (CDD) REQUIREMENTS FOR DEALERS IN PRECIOUS METALS OR STONES OF RELEVANCE TO THE REPORTING OBLIGATION

3.1 Relevant legal basis

3.2 International organisations such as the FATF have defined standards on how countries are supposed to fight money laundering and terrorist financing. There are several different provisions, many of them of relevance to the reporting obligation. Kuwait have implemented these standards into national policies, co-operation practices between the relevant authorities, and legislation. In Kuwait the most important single piece of legislation is law no. 106 of 2013. This law is supported by Ministerial Resolution no. 37 of 2013 - Executive Regulation for Law 106 of 2013.

3.3 High-level CDD requirements of direct relevance to the reporting obligation

3.4 The high-level Customer Due Diligence (CDD) requirements for dealers in precious metals and stones of direct relevance to the reporting obligation can be illustrated by the following process diagram:



3.5 According to article 1 of law no. 106 of 2013, a "business relationship" is expected to have an element of duration. In reality, such an element of duration is probably rarely seen in the precious metals and stones sector that for the most consists of single transaction. Furthermore, article 1 refers specifically to "transactions" when defining dealers in precious metals and stones as a "designated non-financial business and profession" i.e., a non-financial business/profession comprised by law no. 106 of 2013 (which is why the words "establishing a business relationship or" is in square brackets in the first box above).

3.6 The threshold of KD 3,000 is defined in the Ministerial Resolution no. 37 of 2013. That the CDD requirements (and thereby also reporting obligations) apply for dealers in precious metals and stones only for cash transactions follows directly from article 1 of law no. 106 of 2013.

3.7 Article 16 of the Ministerial Resolution defines a time limit of 2 days for reporting to the KwFIU after a suspicion (or reasonable grounds to suspect) has materialised.

3.8 More information about the CDD requirements for dealers in precious metals and stones in Kuwait can be found in [reference to CDD Guidance Note]

3.9 "Red flags" specifically for dealers in precious metals and stones will be detailed further below under section 4 of this Guidance Note, and the reporting obligation, including the concepts of an STR and the FIU, will be detailed further under section 5.

4 RED FLAGS FOR MONEY LAUNDERING OR TERRORIST FINANCING IN THE PRECIOUS METALS AND STONES SECTOR

4.1 As mentioned above in the process diagram a so-called "red flag" requires the dealer in precious metals or stones to conduct Enhanced Due Diligence and examine the transaction (or attempted transaction) in question. A "red flag" is a warning sign or indicator that suggests a transaction may be suspicious and could be linked to money laundering, terrorist financing, fraud, or other financial crimes. Red flags do not automatically mean that a crime has been committed, but they signal the need for further diligence and examination.

4.2 Key characteristics of a red flag are mentioned in article 5 oflLaw 106 of 2013:

(i) Complex unusual large transactions

(ii) Unusual patterns of transactions for which there are no clear economic or visible lawful purposes or objectives

4.3 The transactions in question can be transactions deviating from normal business or customer behaviour, <u>or</u> transactions not matching the customer's known profile, financial history or industry standards, <u>or</u> transactions to which the customer cannot provide a clear or logical explanation, <u>or</u> transactions involving high-risk jurisdictions.

4.4 A red flag will depend on the sector or profession in question. Even within a specific sector or profession (in this case dealers in precious metals and stones in Kuwait) the red flags will depend on the legislative, financial, commercial and product framework.

4.5 For dealers in precious metals or stones in Kuwait the following types of money laundering and terrorist financing red flags can be relevant, again depending on the activities conducted by the individual dealer:

(i) Customer related red flags

(ii) Transaction related red flags

(iii) Jurisdictional red flags

(iv) Business or trade related red flags

(v) Terrorist financing specific red flags

4.6 **Customer related red flags**

4.7 <u>Suspicious identification practices</u>

- Customer refuses to provide, delays, or provides incomplete or inconsistent identification documents
- Customer provides forged, expired, or altered documents.
- Customer uses multiple identities, companies, or third parties for the transaction.
- Customer tries avoiding face-to-face interaction or insists on conducting transactions via a third party.
- Customer appears to be acting on behalf of another person but is vague about the purpose of the purchase.

4.8 <u>Unusual or evasive conduct</u>

- Customer avoids answering questions about the source of funds or the purpose of the transaction
- Customer is overly nervous, defensive, or in a hurry when questioned about the transaction
- Customer declines offers of insurance, certification, or official documentation, preferring to remain anonymous
- Frequently changes the type, size, or form of assets they wish to buy or sell without a logical reason

4.9 **Transaction related red flags**

4.10 Unusual payment methods

- Large cash payments or requests to split payments into multiple smaller amounts
- Payments made by third parties, unrelated businesses, or foreign entities with no clear connection to the customer
- Transactions involving high-value assets without any clear business or personal reason
- Customer requests a payment refund to a different person, business, or bank account than the original payment source.

4.11 Unusual purchase patterns

- Purchases of large quantities of precious metals or stones that are inconsistent with the customer’s profile
- Customer frequently buys and sells assets quickly, sometimes at a loss, with no logical explanation
- The purchase exceeds the declared financial capability of the customer (e.g., a low-income individual buying expensive gold or diamonds)
- Transactions involve unusual or non-market prices, either significantly overvalued or undervalued
- Customer buys in bulk but requests delivery in multiple small shipments to different addresses or jurisdictions.

4.12 Structuring techniques

- Frequent small transactions over a short period, without a reasonable explanation
- Transactions structured through multiple intermediaries or businesses to obscure the origin of funds
- Customer buys assets in one form (e.g., gold bars) and requests to convert them into a different form (e.g., jewelry) shortly after.

4.13 **Jurisdictional red flags**

- Transactions involving countries known for money laundering risks, weak AML/CFT regulations etc, including countries listed by the FATF as having strategic AML/CFT deficiencies
- Customer requests shipment to a country with no apparent connection to the transaction
- Business transactions with counterparties located in conflict zones or jurisdictions linked to terrorist financing
- Transactions with persons or entities from sanctioned countries or individuals appearing on watchlists.

4.14 **Business or trade related red flags**

4.15 <u>Business profile concerns</u>

- Customer claims to be in the precious metals/stones business but lacks basic industry knowledge
- Customer uses a shell company, trust, or an entity with no clear business activities
- Customer is a newly established company with no prior history in the industry but still wants to carry out significant transactions
- Frequent changes in company structure, ownership, or bank accounts without a clear reason
- The business has no online presence, office location, or staff despite handling large transactions.

4.16 <u>Trade based money laundering indicators</u>

- The declared value of goods is inconsistent with market prices
- Mismatches between invoices and shipping documents (e.g., false weights, values, or descriptions)
- Goods are shipped to or from multiple intermediaries, making it hard to trace the final buyer
- Rapid and repeated transactions involving unusual trade routes.

4.17 **Terrorist financing specific red flags**

- Customer or business is linked to known terrorist organizations or non-profits operating in conflict zones
- Customer appears to be acting on behalf of a charity or humanitarian organization but is vague about the use of funds
- Gold, diamonds, or other valuables are frequently moved to conflict zones or regions with a history of terrorist activity
- Customer refuses to provide details on the end-use of the assets or insists on transactions without documentation.

5 EXAMINATION AND REPORTING OF SUSPICIOUS TRANSACTIONS

5.1 As mentioned above under section 3, it follows from article 5 of law no. 106 of 2013, that a transaction needs to be further examined if it is complex and unusually large or if there is a pattern of transactions for which there are no clear economic or visible lawful purpose or objective. The red flags are used to determine whether such an examination is needed.

5.2 An examination according to article 5 is usually conducted by the risk function of the business entity or the compliance function, i.e., operational staff with insights into money laundering and terrorist financing risks. If this function assesses the transaction to be suspicious this assessment is usually escalated up the formal hierarchy of the DPMS and the formal decision to submit a report to KwFIU is usually taken by persons higher up the formal hierarchy. In some reporting entities, there is a designated committee established for this purpose, however, due to their usual size, this is probably not the case with DPMS, where the decision normally would be taken by the Director or owner.

5.3 The legislation does not define a maximum timeline for the examination, just like there is no timeline defined for the escalation and formal decision-making by the hierarchy of the DPMS. However, these processes obviously need to be concluded as quickly as possible.

5.4 **Suspicious transaction reporting**

5.5 When the dealer in precious metals or stones has taken the formal decision that a transaction shall be deemed suspicious, a Suspicious Transaction Report (an "STR") shall be sent to the KwFIU, which is the national Financial Intelligence Unit ("FIU") of Kuwait. Dealers in precious metals or stones shall report "without delay" suspicious transactions or attempted transactions.

5.6 The term "without delay" gives very little time available, and in any case the STR needs to be submitted to KwFIU no later than 2 working days after the suspicion (or reasonable grounds to suspect) has materialised (se article 16 of the Ministerial Resolution no. 37 of 2013).

5.7 It follows explicitly from both article 12 of law no. 106 of 2013 and article 15 of Ministerial Resolution no. 37 of 2013, that a suspicion has to be reported "regardless of its value". In that context the threshold of KD 3,000 that follows from article 6 of the Ministerial Resolution should be born in mind, meaning that in reality an STR might be required even where the dealer in precious metals or stones has not (yet) exercised CDD against the customer.

5.8 An STR is not a police complaint or a police report, and the STR cannot be used by law enforcement or prosecution as evidence of criminality. An STR is a piece of intelligence that the KwFIU can use in its' work.

5.9 An STR shall usually detail the following:

(i) The customer in question, i.e., name, address, ID, occupation etc.

(ii) The transaction in question, i.e., amount, currency, date, method, involved parties, purpose etc.

(iii) All information related to the examination leading to the reporting, including analysis

(iv) The reason for suspicion, i.e., explanation of the "red flags" (this part of the STR is called the narrative).

(v) Supporting documentation (if applicable), e.g. transaction transscripts, copies of CDD documents etc..

5.10 It is important to note, that it is illegal to inform a customer about an STR being submitted to the KwFIU (so-called tipping off).

5.11 **Role of the KwFIU**

5.12 The legal basis for the KwFIU is article 16 of Law 106 of 2013, whereafter a unit called the "Kuwait Financial Intelligence Unit" shall be established. The KwFIU is an independent legal person and serve as the agency responsible for receiving, requesting, analysing, and disseminating information concerning suspected proceeds of crime or funds related, linked to or to be used for money laundering or terrorism financing. The KwFIU is not a law enforcement body but rather an administrative authority.

5.13 STRs submitted to KwFIU need to be communicated via a digital platform called GoAML, that all reporting entities in Kuwait are obliged to use.

5.14 The KwFIU conducts strategic analysis of important topics related to money laundering and terrorist financing. The KwFIU also conducts operational analysis of the STRs received from dealers in precious metals and stones and other professions comprised by Law 106 of 2013, not least the financial sector. When the operational analysis made by the KwFIU confirms the suspicion of money laundering or terrorist financing, it follows from law no. 106 of 2013 that a dissemination report has to be sent to the Public Prosecutor's Office (PPO). Often the PPO would then decide that the Money Laundering Unit or the Terrorist Financing Unit of the Ministry of Interior (MOI) should carry out the preliminary investigation, including collection of evidence, whereafter the PPO will decide whether to prosecute or not.

5.15 The KwFIU is also responsible for identifying high-risk countries and prescribe the measures to be applied in relation to such countries.

5.16 The KwFIU is authorised to obtain from any person subject to the reporting obligation in law no. 106 of 2013 any additional information it deems necessary to carry out its functions.

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