

To:
Standing Committee of the National People's Congress (Legislative Affairs Commission)

致：
全国人大常委会法制工作委员会

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ASIFMA Response on the Consultation on the Anti-Money Laundering Law of the People's Republic of China Revised Draft
亚洲证券业及金融市场协会("ASIFMA")：关于《中华人民共和国反洗钱法(修订草案)》(征求意见稿)的意见和建议

Dear Sir/Madam,
尊敬的先生/女士，

On behalf of Asia Securities and Financial Markets Association ("ASIFMA")¹, we are reaching out to provide some feedback and questions from our [members](#) on the proposed revisions to the [Anti-Money Laundering Law of the People's Republic of China \("PRC"\)](#) outlined in the consultation draft ("consultation") that was released by the Standing Committee of the National People's Congress ("NPC") on 26 April 2024.

我们仅代表亚洲证券业及金融市场协会 ("ASIFMA")²的会员，就全国人民代表大会常务委员会(以下简称“全国人大常委会”)于 2024 年 4 月 26 日公布的《中华人民共和国反洗钱法(修订草案)》(征求意见稿)³(以下简称“《修订草案》”)提出我们的意见、建议和希望澄清的问题。

Background
背景

The implementation of the Anti-Money Laundering Law ("AML Law") in 2007 has played a vital role in upholding and advancing the effectiveness of the NPC's AML supervision, combating of AML crimes, and deepening of international AML governance and co-operation.

2007 年实施的《中华人民共和国反洗钱法》(以下简称“《反洗钱法》”)在维护和提高反洗钱监管效率、打击反洗钱犯罪、深化国际反洗钱治理与合作等方面发挥了至关重要的作用。

In light of the rapidly changing environment, the NPC has identified some areas of the existing AML law that require updating to fulfil the current AML regulatory needs and obligations. The proposed amendments to the AML law seek to address these problems by revision of the AML legal framework and strengthening of the supervision, adherence, and management of FIs' AML practices.

¹ ASIFMA is an independent, regional trade association with over 160 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, and competitive Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region. More information about ASIFMA can be found at: www.asifma.org.

² ASIFMA 是一个独立的区域性行业协会，会员基础广泛，由银行、资产管理公司、律师事务所和市场基建服务供应商等 160 多家来自买方和卖方市场的领先机构组成。我们与各家会员携手发掘金融行业的共同利益，提升亚洲各大资本市场的深度、广度和流动性。我们致力于促进亚洲资本市场的稳定、创新和竞争力，为区域经济增长提供必要支持。我们针对关键问题群策群力、统一立场，以努力形成共识、寻求解决方案并促成变革。我们的工作包括与监管部门和交易所开展磋商、制定统一的行业标准、发表政策性文件呼吁深化市场发展，并降低在亚太地区经营的成本。ASIFMA 通过全球金融市场协会(GFMA)与美国的证券业与金融市场协会(SIFMA)及欧洲的金融市场协会(AFME)形成联盟，共同提供全球最佳行业实践及标准，为区域发展作贡献。关于 ASIFMA 的详细信息请见：www.asifma.org.

³ <https://aceproject.org/ace-en/topics/vc/introduction/vc30>

鉴于瞬息万变的环境，全国人大常委会认为需要修订现有《反洗钱法》的部分制度以满足当前反洗钱监管的需求和任务。《修订草案》旨在通过调整反洗钱法律框架并加强对金融机构履行反洗钱义务的监督和管理来应对当前的问题。

We are grateful for the opportunity to submit and share ASIFMA's members' views, and are keen to engage with you on this important topic. We believe co-operation between yourselves, the global regulatory authorities, and the financial industry will help promote and enhance an ever more effective, efficient, and robust AML supervision regime, without introducing or exacerbating Financial Institutions' ("FI") operational timeframes and processes.

我们感激有机会提交并分享 ASIFMA 会员的意见和建议，并希望就反洗钱监管这一重要话题进一步探讨我们的意见。我们相信中国和全球监管机构之间的合作以及与金融机构之间的互动，将有助于创造和促进更加有效、高效和强大的反洗钱监管体系，而同时确保不对金融机构展业效率和流程产生不当影响。

We would like to leverage the opportunity to highlight the heightened concerns from ASIFMA members regarding the proposal under Article 47, and explore alternative approaches in achieving the intended objectives, that are also in line with international standards in other jurisdictions as well as the Global Financial Action Task Force's ("FATFs") recommendations.

借此机会，我们希望特别指出 ASIFMA 会员对《修订草案》第 47 条的顾虑。通过借鉴其他司法管辖区执行的全球标准以及反洗钱金融行动特别工作组 ("FATF") 的建议，我们试图探讨实现预期制度目标的替代方案。

Feedback and questions from ASIFMA members **ASIFMA 会员的具体意见、建议和希望澄清的问题**

1. Article 47: Concerns and preferred approach **关于第 47 条的顾虑和替代方案的建议**

1.A) Removal of Article 47 and alignment with FATF recommendations **我们建议删除第 47 条，并与 FATF 建议保持一致**

Members would like to respectfully highlight the critical concerns they have identified regarding the proposed requirements under Article 47 that members deem unimplementable, and not in line with the current FATF recommendations, nor other widely accepted practices in other international jurisdictions. 我们的会员希望指出的关键一点是，第 47 条的要求无法在实践中予以落实，也不符合现阶段的 FATF 建议和其他司法管辖区执行的国际通行标准。

We understand that Article 47 aims to clarify that national sovereign principles must be followed in international cooperation with respect to AML related activities. From the perspective of legislative purposes, as judicial power and administrative law enforcement power are important parts of national power, foreign judicial bodies and law enforcement agencies need to follow the principles of equality to collect data stored in China, and through judicial assistance and administrative law enforcement assistance under the framework of international law.

我们理解第47条旨在明确反洗钱相关活动的国际合作必须遵守国家主权原则。从立法目的来看，司法权力和行政执法权力是国家权力的重要组成部分，外国司法和执法机构应当在国际法框架内、基于对等原则、并通过司法和执法协助从中国收集资料和信息。

With regard to Article 47, we can refer to Article 36 of the Data Security Law. We understand that the legislative purpose is protect China's judicial sovereignty, national security and public interests by establishing the pre-approval mechanism emphasizing judicial rights of such investigation should be administered and led by PRC authorities, in the case of data jurisdiction conflicts where certain jurisdictions may enforce the access to overseas data by virtue of "long-arm" effect of domestic laws.

我们认为可以参考《数据安全法》第36条的规则对《修订草案》第47条进行一定调整。我们理解，《数据安全法》第36条的立法目的是，在数据管辖权冲突的情况下(即某些司法管辖区可能凭借其

域内立法的“长臂管辖”效力收集域外数据), 通过建立由中国当局主导的事先审批机制, 保护中国的司法主权、国家安全和公共利益。

In practice, FIs are under regulatory obligations to provide data to overseas regulators (both home regulators and where the FIs may have significant operations). In some cases, failure to provide such information to foreign regulators as part of mandatory regulatory reporting could breach the requirements that these FIs must meet in order to be permitted to carry on regulated activities in those other markets. Among other things, foreign FIs may be required by overseas regulators to have the ability and resources to measure, monitor and manage risk on a consolidated basis to reduce incidents of financial crime whether in the form of money laundering, insider trading or market manipulation.

在实践中, 金融机构有义务向某些境外监管机构提供数据(包括其母国监管机构和存在重大业务运营联系地的司法辖区的监管机构)。在某些情况下, 未能向相关境外监管机构提供强制性监管报告所要求的信息, 可能导致金融机构违反在当地市场开展受监管活动所必须满足的监管要求, 其中包括, 境外金融机构可能被境外监管机构要求具备整体衡量、监控和管理风险的相应能力和资源, 以减少金融犯罪(如洗钱、内幕交易或市场操纵)。

Members humbly suggest the NPC explore alternative practices that are widely undertaken by other jurisdictions and also recommended under the ‘FATF Methodology for ‘Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems’ (below), and also the ‘FATF recommended standards on information sharing⁴, under recommendation 2 (section 2.3) on ‘National Co-operation and Co-ordination’ (below), highlighting the vital importance of timely international inter-regulatory and law enforcement agency co-operation. In numerous other international jurisdictions, branches/subsidiaries are responsible for the response to any foreign regulatory requests in their respective jurisdictions, by internally reporting to their firm’s headquarters, and then the respective corresponding regulators, Interpol, international Financial Intelligence Units (FIUs) and law enforcement agencies would co-operate and co-ordinate on an international level, without need for FIs to obtain separate regulatory approval from the NPC, nor any other jurisdiction for cross-border investigations, which could cause much delay to the process.

我们的会员敬请建议参考其他司法辖区广泛采用的做法、《FATF 反洗钱/反恐怖融资系统的技术合规性及有效性的评估方法》中的建议(详见下述), 以及《FATF 信息共享标准建议》项下关于“国际合作和协调”的建议 2 之第 2.3 条(详见下述), 重点强调及时的国际监管和执法机构间合作的重要性。许多其他国际司法辖区规定, 当境外监管机构要求提供文件资料时, 应当由分支机构/子公司负责响应并向其公司总部报告, 相应的监管机构、国际刑警组织、国际金融情报机构(“FIUs”)和执法机构再通过国际合作和协调获取文件资料, 而无需由相关金融机构从全国人大或其他司法辖区的主管机关获得额外的监管批准。这类额外监管批准可能拖延跨境调查流程。

‘FATF recommended standards on information sharing’ & ‘FATF Methodology for ‘Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems’

《FATF 信息共享标准建议》与《FATF 反洗钱/反恐怖融资系统的技术合规性及有效性的评估方法》⁵

“Recommendation 2: National Co-operation and Co-ordination

2.3 Mechanisms should be in place to enable policy makers, the Financial Intelligence Unit (FIU), law enforcement authorities, supervisors, and other relevant competent authorities to co-operate, and where appropriate, co-ordinate and exchange information domestically with each other concerning the development and implementation of AML/CFT policies and activities. Such mechanisms should apply at both policymaking and operational levels.”

“建议 2: 国际合作与协调

⁴ FATF recommended standards on information sharing and also methodology for ‘Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems’ <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/Consolidated-FATF-Standards-information-sharing.pdf.coredownload.inline.pdf>

⁵ 详见 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/Consolidated-FATF-Standards-information-sharing.pdf.coredownload.inline.pdf>

2.3 应当制定机制使政策制定者、金融情报机构(“FIUs”)、执法机构、监管机构和其他相关主管机关能够就制定反洗钱/反恐怖融资政策和开展相关活动进行合作、适当协调和信息交流。这种机制应在政策制定和操作层面均适用。”

1.B) Article 47: Alternative approach in case the Article is maintained

若必须保留第 47 条，则建议替代方案如下

Members also would like to respectfully highlight that, if there conclusively are no viable alternate solutions in achieving the NPC’s same objectives, and it is absolutely necessary that the proposed revisions to Article 47 be implemented as is, with the current drafted regime and approach, members would then have a number of clarifications and questions they would like to request the NPC address in advance, prior to the release and implementation of the final updated AML laws, as follows:

若确无替代方案来实现与第 47 条相同的立法目标，而必须实施当前第 47 条拟议机制，我们的会员希望全国人大常委会在正式发布和实施经修订的《反洗钱法》之前能够澄清以下问题：

- **Timeframe** – the timeframe mentioned for reporting and approvals is unclear in the proposed amendments and members would appreciate further guidance and clarification.
明确报告和批准流程：《修订草案》第 47 条规定的报告和批准所需流程和时间尚不明确，我们希望得到进一步的指导和阐明。
- **Principle of reciprocity** – clarification on the term ‘reciprocity’ as well as guidelines on the manner in which the application of the principle of reciprocity is needed, as it would be difficult for FIs to determine if a case was applicable for reciprocity, unless a list of the countries and organisations were published for FIs’ reference. Alternatively, having a Government to Government (G2G) or a MOU arrangement in place where the engagement/request goes through the competent authority of those countries.
澄清对等原则：我们希望明确“对等原则”的含义，并提供如何适用“对等原则”的指导方针。这是因为除非公布供金融机构参考的外国国家和组织清单，否则金融机构难以在具体事项发生时确认是否符合“对等原则”。或者，我们建议设立政府间合作(“G2G”)或谅解备忘录安排，相关要求可以通过相关国家合格的主管机关处理。
- **Narrowing to data related to money laundering:** If Article 47 needs to be retained, we recommend for following changes with the reference to Data Security Law and the narrowing to data related to money laundering and other relevant criminal activities, which is aligned with General Provisions of AML Law. We propose the following drafting changes to reflect this:
仅适用于与洗钱有关的数据：如需保留《修订草案》第47条，我们建议参考《数据安全法》对该条文作出如下修改，将其适用范围限定在与洗钱和其他相关犯罪活动有关的数据，这将与《修订草案》的总则保持一致。具体而言，我们建议对本条款进行如下修改：
 - *Article 47: Where a foreign judicial body or law enforcement body directly requests a domestic financial institution to submit customers' identity materials and transaction information **related to money laundering and other relevant criminal activities**, detains, freezes or transfers domestic funds or assets or takes any other action without following the principle of reciprocity or reaching agreement with China, the financial institution shall not comply without authorization, and shall promptly report to the relevant financial regulatory authority under the State Council.
第四十七条外国司法或执法机构未按照对等原则，也未与我国协商一致，直接要求境内金融机构提交与洗钱和其他相关犯罪活动有关的客户身份资料、交易信息，扣押、冻结、划转境内资金、资产，或者作出其他行动的，金融机构不得擅自遵从，并应当及时向国务院有关金融管理部门报告。*
 - *In addition to the provisions of the preceding paragraph, where a foreign judicial body or law enforcement body requires a domestic financial institution to provide summary compliance information and business information **related to money laundering and other relevant criminal activities** based on the needs for compliance supervision, the domestic financial institution may provide such information or cooperate, and maintain relevant*

records, thus to report to the relevant financial regulatory authority under the State Council and the relevant organs of the state.

除前款规定外，外国司法或执法机构基于合规监管的需要，要求境内金融机构提供与洗钱和其他相关犯罪活动有关的概要性合规信息、经营信息等信息的，境内金融机构可以提供或者予以配合，并留存相关记录，将留存的记录向国务院有关金融管理部门和国家有关机关报告。

- *Where the materials and information prescribed in the two preceding paragraphs involve important data or personal information, the relevant provisions on data security management and personal information protection of the State shall also be complied with.*

前两款规定的资料、信息涉及重要数据和个人信息的，还应当符合国家数据安全、个人信息保护有关规定。

2. Exceptions to Article 47 – Scenarios that should be deemed out of scope **明确第 47 条的例外情形**

Members would like to raise the inclusion of the following scenarios that should be deemed out of scope of the proposed amendments to Article 47, for clients who are co-customers of a Chinese entity/branch, and also a foreign entity/branch:

针对中国实体/分支机构和外国实体/分支机构的共同客户，我们的会员希望将以下情形排除在第 47 条的适用范围内：

1. When a foreign regulator merely asks if a client is a customer of their China entity/branch, then no approval should be required, as no detailed information of the client would be shared with the foreign regulator.

如果外国监管机构仅询问某客户是否是某一中国实体/分支机构的客户，而不涉及要求提交客户信息，则无需根据第 47 条取得批准。

2. The applicability of Article 47 should also be excluded when an FI has group wide policies for information sharing. This rationale is widely undertaken by other international jurisdictions and also recommended in the ‘FATF Methodology for ‘Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems’, and also the ‘FATF recommended standards on information sharing⁶, under recommendation 18: Internal Controls and Foreign Branches and Subsidiaries (below).

如果金融机构为遵循集团范围内统一的信息共享政策，则第 47 条不应适用。这一例外情形被全球其他司法管辖区广泛采用，并且符合《FATF 反洗钱/反恐怖融资系统的技术合规性及有效性的评估方法》中的建议，以及《FATF 信息共享标准建议》中关于“内部控制、外国分支机构和附属机构”的建议 18（详见下述）。

“Recommendation 18: Internal Controls and Foreign Branches and Subsidiaries

18.2 Financial groups should be required to implement group-wide programs against ML/TF, which should be applicable, and appropriate to, all branches and majority-owned subsidiaries of the financial group.”

“建议 18：内部控制、外国分支机构和附属机构

18.2 金融集团应当确保其境外分支机构和控股附属机构实施金融集团反洗钱与反恐怖融资机制安排。”

Also, this exception is additionally supported by the NPC’s proposed amendments to the AML laws’ under Article 35 (below) that highlight, if any FI had branches/subsidiaries in other jurisdictions, there would be headquarters and group level requirements, hence information sharing in these cases would be out of scope and deemed not applicable under Article 47.

⁶ FATF recommended standards on information sharing and also methodology for ‘Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems’ <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/Consolidated-FATF-Standards-information-sharing.pdf.coredownload.inline.pdf>

这一例外情形也呼应了《修订草案》第 35 条的规定(详见下述)。第 35 条要求如果金融机构设有境外分支机构或控股其他金融机构的,应当在集团层面建立统一的反洗钱制度和集团内部反洗钱信息共享机制。因此,为落实第 35 条规定的集团内部反洗钱信息共享机制而开展相关活动应不适用第 47 条规定。

Extract from proposed revisions to the AML Law of the PRC - Article 35:

《修订草案》第 35 条规定:

“Article 35: Financial institutions with onshore or offshore branches or controlling financial institutions as well as financial holding companies, shall establish a unified AML system at the headquarter or group level. For the share of AML information within the company or among group members in order to fulfill AML obligations, the information sharing mechanism shall clarify and ensure that the relevant information will not be used for purposes other than AML and counter-terrorism financing efforts.”

“第三十五条: 在境内外设有分支机构或者控股其他金融机构的金融机构, 以及金融控股公司, 应当在总部或者集团层面建立统一的反洗钱制度。为履行反洗钱义务在公司内部、集团成员之间共享反洗钱信息的, 应当明确信息共享机制, 并确保相关信息不被用于反洗钱和反恐怖主义融资以外的用途。”

Also, other global jurisdictions in which the NPC’s proposed AML law amendments are not in line with, include jurisdictions such as Hong Kong and Singapore, as seen in the below extracts from the Hong Kong Monetary Authority’s ‘HKMA Guideline on Anti-Money Laundering and Counter Financing of Terrorism (For Authorized Institutions)’ (section 3.17), and the Monetary Authority of Singapore’s ‘MAS Notice 626 – Notice to Banks Financial Services and Markets Act 2022, Prevention of Money Laundering and Countering the Financing of Terrorism – Banks’ (section 15.6 and 15.9A).

此外, 《修订草案》第 47 条与全球其他司法管辖区的规定并不一致, 例如: 香港金融管理局《打击洗钱及恐怖分子资金筹集条例(适用于授权机构)》第 3.17 条的规定和“新加坡金融管理局第 626 号通知: 2022 年《金融服务和市场法》通知-反洗钱和反恐怖融资-银行”第 15.6 条和第 15.9A 条的规定(详见下述)。

Hong Kong Monetary Authority - Group-wide AML/CFT Systems⁷

香港金融管理局 – 集团层面反洗钱反恐怖融资制度

“3.17 [...] a Hong Kong-incorporated AI should also implement measures, through its group-wide AML/CFT Systems, for: (a) sharing information required for the purposes of CDD and ML/TF risk management; and (b) provision to the AI’s group-level compliance, audit and/or AML/CFT functions, of customer, account, and transaction information from its overseas branches and subsidiary undertakings that carry on the same business as an FI as defined in the AMLO, when necessary for AML/CFT purposes.”

“第 3.17 条: [...] 在香港注册的授权机构还应通过其集团层面的反洗钱反恐怖融资制度采取措施, 以: (a) 为客户尽职调查和洗钱/恐怖融资风险管理目的共享所需信息; 以及(b) 出于反洗钱反恐怖融资的需要, 向授权机构集团层面的合规、审计和/或反洗钱反恐怖融资职能部门, 提供其从事与《打击洗钱及恐怖分子资金筹集条例》定义的金融机构的相同业务的境外分支机构和附属机构的客户、账户和交易信息。”

Monetary Authority of Singapore - Group Policy⁸

新加坡金融管理局 – 集团制度

⁷ HKMA Guideline on Anti-Money Laundering and Counter Financing of Terrorism (For Authorized Institutions) - https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/guideline/Guideline_on_AML-CFT_for_AIs_eng_May%202023.pdf

⁸ MAS Notice 626 – Notice to Banks Financial Services and Markets Act 2022, Prevention of Money Laundering and Countering the Financing of Terrorism – Banks - <https://www.mas.gov.sg/-/media/mas-media-library/regulation/notices/amld/notice-626/mas-notice-626-dated-28-march-2024.pdf>

“15.6 [...] the bank shall develop and implement group policies and procedures for its branches and subsidiaries within the financial group, to share information required for the purposes of CDD and for money laundering and terrorism financing risk management, [...]”

15.9A In the case of a Singapore branch of a bank incorporated outside Singapore, [...], the Singapore branch shall share customer, account and transaction information within the bank’s financial group when necessary for money laundering and terrorism financing risk management purposes.”

“第 15.6 条： [...] 银行应针对其金融集团内部分支机构和附属机构为客户尽职调查以及洗钱/恐怖融资风险管理目的共享所需信息，制定和实施集团层面的政策和程序，[.....]”

第 15.9 条：对于在新加坡境外注册的银行的新加坡分行，[.....]，新加坡分行应出于反洗钱反恐怖融资风险管理的需要在银行金融集团内部共享客户、账户和交易信息。”

3. Article 46: Close financial tie with China

关于第 46 条规定的“其他密切金融联系”

Under Article 46 (see below), Members would also appreciate guidance and clarification on which parties, “a close financial tie with China” would be applicable to, and if the classification would apply to a foreign bank entity/branch in China.

针对《修订草案》第 46 条 (详见下述)，如果能够进一步就哪些实体将被视为与中国存在“其他密切金融联系”以及在中国的外国银行实体/分行是否属于与中国存在“其他密切金融联系”提供指导和澄清，我们的会员将不胜感激。

Extract from proposed revisions to the AML Law of the PRC - Article 46:

“Article 46: In the process of conducting an investigating under the law into a money laundering or terrorism financing activity, the relevant state authority may request cooperation from an overseas financial institution who has set up a correspondent account in China or otherwise has a close financial tie with China either by the principle of reciprocity or by an agreement negotiated and reached with the country concerned”.

《修订草案》第 46 条规定：

“第四十六条：国家有关机关在依法调查洗钱和恐怖主义融资活动过程中，按照对等原则或者经与有关国家协商一致，可以要求在境内开立代理行账户或者与我国存在其他密切金融联系的境外金融机构予以配合。”

4. Inclusion of corporate service providers and trusts into the scope of DNFI

将公司服务提供商和信托纳入特定非金融机构的范围

Under Article 60 of the proposed revisions, trust and corporate service providers are not included in the scope of DNFI, which is inconsistent with the current FATF methodology.

根据《修订草案》第 60 条的规定，信托和公司服务提供商并未纳入特定非金融机构的范畴，这与 FATF 建议不一致。

Extract from proposed revisions to the AML Law of the PRC - Article 60:

The term “specified non-financial institutions” referred to in this Law shall mean:

- a. real estate development enterprises or real estate intermediary agencies that provide house sales or house trading brokerage services;*
- b. accounting firms, law firms, and notary institutions that accept clients’ entrustment to handle the purchase and sale of real estate, take custody of funds, securities, or other assets, take custody of bank accounts and securities accounts, raise funds for the establishment and operation of enterprises, and act as agents for the purchase and sale of operating entities;*
- c. traders engaged in spot trading of precious metals and gemstones;*
- d. other institutions that need to perform AML obligations as determined by the PBOC in conjunction with relevant authorities of the State Council based on the money laundering risk profile.*

《修订草案》第 60 条规定：

“第六十条：本法所称特定非金融机构，是指：

- (一)提供房屋销售、房屋买卖经纪服务的房地产开发企业或者房地产中介机构;
- (二)接受委托为客户办理买卖不动产, 代管资金、证券或者其他资产, 代管银行账户、证券账户, 为成立、运营企业筹措资金以及代理买卖经营性实体业务的会计师事务所、律师事务所、公证机构;
- (三)从事贵金属、宝石现货交易的交易商;
- (四)其他由国务院反洗钱行政主管部门会同国务院有关部门根据洗钱风险状况确定的需要履行反洗钱义务的机构。”

Extract from Recommendation 22:

FATF 建议 22:

“The customer due diligence and record-keeping requirements ... apply to designated non-financial businesses and professions (DNFBPs) in the following situations: ...

(e) Trust and company service providers – when they prepare for or carry out transactions for a client concerning the following activities:

(i) acting as a formation agent of legal persons; (ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; (iv) acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement; (v) acting as (or arranging for another person to act as) a nominee shareholder for another person.”

“客户的尽职调查和记录保存要求: ...在以下情况下, 适用于特定非金融行业与人员: ...

(e) 信托和公司服务提供商从事如下业务时:

(i) 为法人设立提供代理服务; (ii) 担任或安排他人担任公司董事或秘书、合伙企业合伙人或其他法人实体的类似职位; (iii) 为公司、合伙企业或其他法人实体提供注册地址、办公地址或通讯地址安排; (iv) 担任或安排他人担任明示信托的受托人, 或其他法律安排形式的同等职能; (v) 担任或安排他人担任名义股东。”

Extract from Recommendation 23:

FATF 建议 23:

The requirements set out in Recommendations 18 to 21 apply to all designated non-financial businesses and professions, subject to the following qualifications:

(c) Trust and company service providers should be required to report suspicious transactions for a client when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to in paragraph (e) of Recommendation 22.

Based on the above, we humbly suggest including the corporate service provider and trust in the scope of DNFBs to align with the FATF's recommendations.

建议 18 至 21 中规定的要求适用于所有特定非金融行业和人员, 并符合以下条件: (c) 信托和公司服务提供商从事有关建议 22 第(e)段所述业务时, 应要求该信托和公司服务提供商报告客户的可疑交易。

基于以上, 我们建议将公司服务提供商和信托机构纳入“特定非金融机构”的范围, 以符合或协调 FATF 建议的要求。

5. DNFBs' performance of AML obligations **特定非金融机构反洗钱义务的履行**

The proposed revisions do not provide detailed and practical guidance for DNFBs on how to perform their AML obligations, but generally mention that DNFBs shall perform the AML obligations by reference to financial institutions' practices. It may confuse DNFBs on how to practically implement the AML provisions.

《修订草案》并未就特定非金融机构如何履行反洗钱义务提供详细和可操作的指导, 而是概括性地要求参照金融机构的实践。这可能会对特定非金融机构具体如何执行未来反洗钱法的条款造成疑惑。

According to the FATF methodology, there are two aspects regarding DNFI's performance of AML obligation: (1) customer due diligence and record-keeping requirements set out in Recommendations 10, 11, 12, 15, and 17 for engaging in prescribed activities depending on the types of the DNFI; (2) reporting suspicious transactions for engaging in prescribed activities depending the types of the DNFI.

根据 FATF 建议，特定非金融机构履行反洗钱义务有两大方面：一是 FATF 要求特定非金融机构从事特定业务(根据机构类型)适用建议 10、12、15 和 17 关于客户尽职调查和记录保存的要求；(2)要求特定非金融机构根据机构类型和所从事的业务报告可疑交易。

Based on the above, we humbly suggest referring to the FATF methodology to give more clarity for DNFI to perform their AML obligations.

基于上述，我们建议可以参考 FATF 建议，为特定非金融机构履行反洗钱义务提供更明确的指导。

Closing

结语

We are grateful and would like to thank again the NPC for the opportunity it has provided ASIFMA and its' members to participate in the consultation and share our members' views. ASIFMA and its' members are keen to continue engagement with you on this important topic and address any concerns with this submission that you may have.

我们十分感激全国人大常委会为 ASIFMA 及其会员提供了参与立法并提交意见和建议的机会。ASIFMA 及其会员真诚希望继续探讨我们的意见，并在有需要时进一步解答任何疑虑。

If you have any questions, please do not hesitate to reach out to us at lvanderloo@asifma.org or phone: +65 6622 5972.

如果有任何疑问，请随时通过电子邮箱 lvanderloo@asifma.org 或电话+65 6622 5972 联系我们。

Yours sincerely,

此致，



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