

**Implementing AML/CFT Measures
in the Precious Minerals Sector:
Preventing Crime While Increasing Revenue**

Prepared by Emmanuel Mathias and Bert Feys

Legal Department

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TECHNICAL NOTES AND MANUALS

Implementing AML/CFT Measures in the Precious Minerals Sector: Preventing Crime While Increasing Revenue

Prepared by Emmanuel Mathias and Bert Feys¹

The trade in precious metals and stones has been linked to illicit financial flows, corruption, smuggling, drug trafficking, illicit arms trafficking, and the financing of terrorism. In addition, the extraction of precious minerals and the subsequent trade in these resources, if properly managed, present significant revenue opportunities, particularly for countries facing development needs.

Building on staff expertise in anti-money laundering and combating the financing of terrorism (AML/CFT) and technical support and analytical advice on the management of natural resources, this note is a reference guide to aid countries in using the AML/CFT framework to help combat crime related to and affecting the precious minerals sector while raising revenue.

I. Precious minerals are attractive to criminals and are used in money laundering and financing of terrorism schemes

High value, portable, and odorless commodities

There is no unique definition of precious metals and stones (PMS). The scope differs from one country to another, but in general precious stones will include diamonds, emeralds, sapphires and rubies and precious metals are comprised of gold, silver, platinum, and platinoid metals.²

Some of the characteristics which make precious minerals attractive to legitimate buyers explain why launderers and terrorist financiers are drawn to them. Precious minerals have a high value (especially diamonds have the potential to be highly valuable relative to their

¹ We would like to thank Nadim Kyriakos-Saad, Paul Ashin, Chady El Khoury, Antonio Hyman Bouchereau, Thomas Story, Gil Bareket, Inneke Geyskens, Mark Hammond, and Bernd Schlenther, for providing excellent insights. The views expressed herein are those of the authors and should not be attributed to the IMF, its Executive Board, or its management.

² Other minerals such as coltan, cassiterite, tanzanite, or tungsten, are actively mined, traded and used in a variety of industrial applications. However, their characteristics set them apart from PMS. Their value-to-weight ratio is generally lower, making it necessary to mine and smuggle them in greater quantities. Furthermore, they are most often not traded as widely as PMS. Therefore, while there are issues related to the mining and trade in these minerals, they are not considered in the context of this Technical Note.

weight, with a relatively stable price), are compact and therefore easy to smuggle (gold is easy to melt and to cast in any shape), the trade is often conducted in cash, they are negotiable worldwide and may be used as a form of currency, are durable, are virtually untraceable, are odorless and therefore difficult to detect in case of smuggling, can be held anonymously without a need for records to be kept, and are considered a safe investment.

Patterns of misuse of precious minerals in ML and FT schemes

First, as a source of illegal proceeds to be laundered, precious minerals have been smuggled from producer to consumer countries, including to finance armed conflicts or to avoid domestic taxation. In other instances producers have refrained from declaring the real value of their production to the authorities in order to minimize their tax exposure.³ The high value of precious minerals may lead civil servants to demand or accept bribes at every level of the extraction and trade process. The proceeds of smuggling, and corruption (e.g. bribes) will have to be laundered. In Belgium, a major diamond trading hub, law enforcement authorities have conducted several investigations into fraud and tax evasion involving diamonds.⁴

Second, as actual vehicles for laundering, precious minerals can be purchased with illegal funds, such as the proceeds of drug or human trafficking. As an illustration, drug dealers in the U.S. were alleged to have purchased gold with the proceeds of drug trafficking. This gold was then reworked and disguised into everyday items in order to ship it back to a South American nation.⁵ Drug gangs in Western Europe have reportedly turned to the diamond trade to launder funds.⁶

Third, precious minerals are attractive because they can be used in trade based money laundering (TBML) schemes, as a cover for laundering illegal funds generated by other crimes, for example through price manipulation or false invoices covering fictitious sales of gold or diamonds when, in fact, the money was generated by various offenses. The proceeds are thus passed off as having been generated by the legitimate buying and selling of diamonds.

Fourth, precious minerals have been used as an alternative currency to purchase prohibited or restricted goods, such as gold for cocaine, and diamonds for weapons, or as a mean to store wealth generated by illegal activity and avoid seizure and confiscation.

³ “De miljardentrafiek van Omega Diamonds, criminele organisatie aan de Schelde” (De Tijd, September 7, 2013). The Belgian media reports that the customs service seeks EUR4.6 billion from Omega Diamonds and related parties for shipments of diamonds that were not declared. “Hoe geslepen is de Antwerpse diamantsector?” (De Tijd, January 14, 2012).

⁴ “An Industry Struggles to Keep Its Luster” (The New York Times, November 5, 2013), “Antwerpse Diamantbank voor strafrechter” (De Standaard, March 29, 2013), “Diamond, Money Laundering Trial Begins” (IDEX Online, May 13, 2012).

⁵ “Drug Money Laundered Into Gold, U.S. Says” (The New York Times, June 6, 2003).

⁶ “Drug gangs go to London’s diamond dealers for cash” (The Guardian, March 8, 2003).

Box 1: What are money laundering and the financing of terrorism?

Money laundering refers to activities intended to conceal or disguise the origins of the proceeds of crime (i.e. “predicate crimes” or “predicate offenses”) through processes that transform illegal inputs into apparently legitimate outputs. Proceeds generated by crimes such as theft, fraud, corruption, and drug trafficking are made to look as if they are the fruits of honest activities--transformed, for instance, into seemingly legitimate bank accounts, real estate, or luxury goods.

The financing of terrorism involves the raising and processing of funds, from both legal and illegal sources, to supply terrorists with resources to carry out their attacks. While the phenomena differ in key ways, they often seek to exploit the same vulnerabilities that allow for an inappropriate level of anonymity and non-transparency in the execution of transactions.

Finally, there are indications that PMS have been used to finance terrorism. This has been done through the involvement or control of the production or trade of precious minerals by terrorist organizations.⁷

II. Precious minerals present major revenue opportunities for developing countries

Relevance of precious minerals in some countries

Precious minerals can be an important boon for a country and can account for a sizable percentage of their GDP or exports, licit and illicit.

A review of Sub-Saharan African countries in the early 2000 indicated that diamond mining often represented some 10 percent of national GDP and in several cases about 50 percent or more of total exports.⁸ In Sierra Leone diamond exports accounted for 40 percent of exports in 2011.⁹ In Lesotho, diamond exports currently account for 7% of GDP but are expected to rise to over 20% of GDP by 2016-2017.¹⁰ Other examples include the Democratic Republic of the Congo, with diamond exports amounting to 8% of its GDP¹¹ and Zimbabwe, where diamond dividend revenues in 2012 were expected to account for 2.2% of GDP in 2012.¹² In

⁷ “Gold Beats Cocaine as Colombia Rebel Money Maker: Police” (Bloomberg, June 21, 2013); For a Few Dollars More: How Al-Qaeda Moved into the Diamond Trade (Global Witness, April 2003).

⁸ Oomes N., Vocke M. (2003), Diamond Smuggling and Taxation in Sub-Saharan Africa, IMF Working Paper 03/167

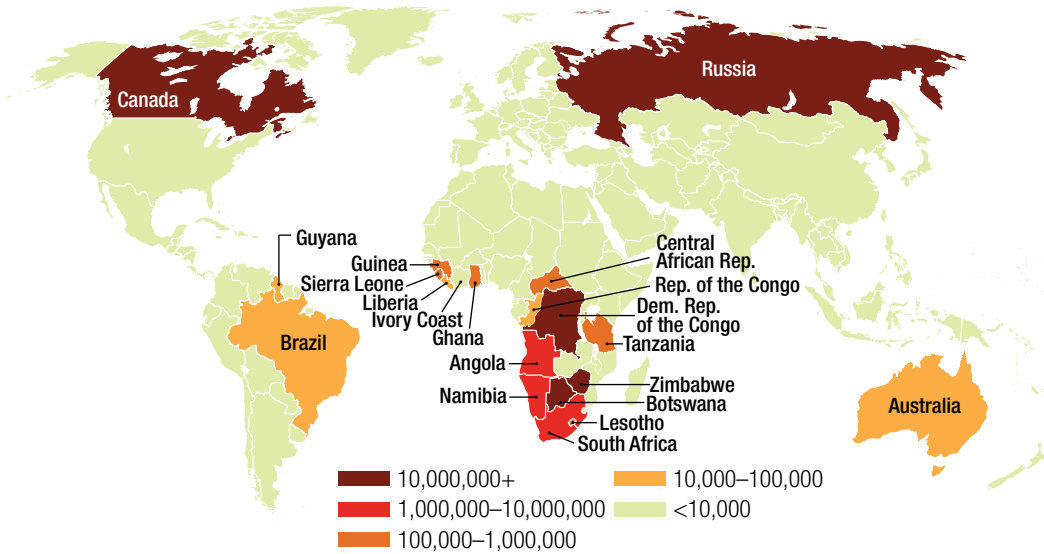
⁹ Sierra Leone, 2013 Article IV Staff Report, IMF

¹⁰ Lesotho, 2012 Article IV Staff Report, IMF

¹¹ Democratic Republic of the Congo (DRC), 2007 Article IV Staff Report, IMF

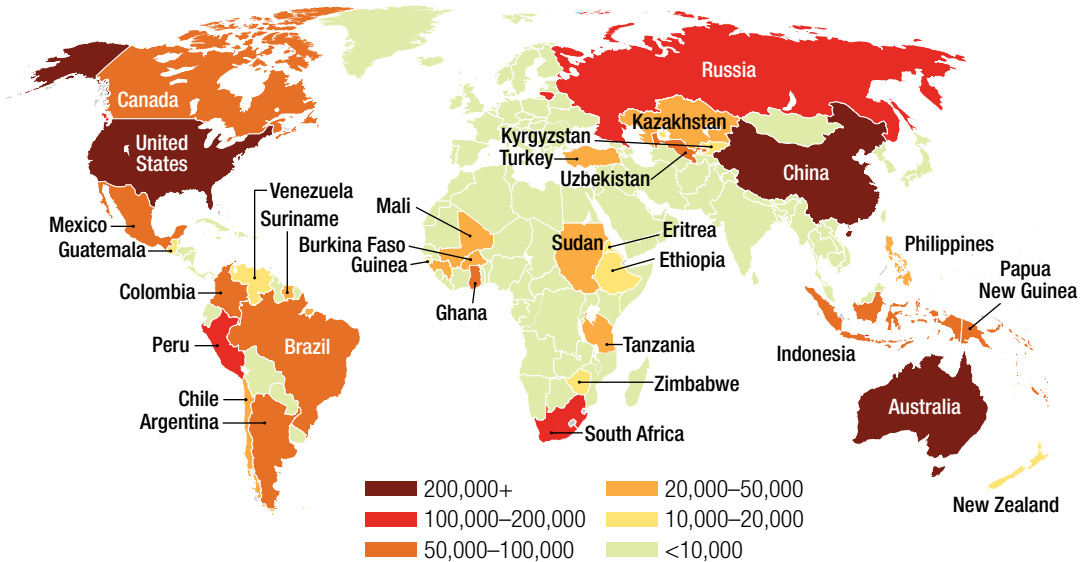
¹² Zimbabwe, 2012 Article IV Staff Report, IMF

Figure 1. Major gem-quality diamonds producing countries (carats, 2012)



Source: Map based on the United States Geological Survey's (USGS) Minerals Yearbook, August 2014.

Figure 2. Major gold producing countries (kilograms, 2011)



Source: Map based on the United States Geological Survey's (USGS) Mineral Commodity Summary data, January 2013.

Thailand the gem and jewelry exports were worth US\$12 billion in 2011 and accounted for more than 5 percent of the country's total export earnings.

Gold is equally significant. It represented 7 and 16 percent of GDP in Tanzania and Mali, respectively in 2010.¹³ The African continent is responsible for 21% of world production and

¹³ Tanzania: 2011 Article IV Staff Report, IMF; Mali: 2012 Article IV Staff Report, IMF.

is estimated to have 60% of the world's gold resources. In South America, gold has recently overtaken sugar as Guyana's top export, generating over US\$1 billion in revenue.

Revenues can be well below potential

While a number of countries present evidence of large production or reserves of precious metals and stones, the official statistics of exports and revenues can reflect figures well below what would be expected. A case in point is the Democratic Republic of the Congo, where total official exports of gold were estimated at 150 kilograms in 2008¹⁴ while its annual gold production was estimated at about 10 metric tons.¹⁵

Another interesting case is Zimbabwe, where the alluvial diamond production is promising. Production in the Marange fields started in 2006, and estimates of its potential range from 25 to 36 million carats per year, with total gross revenue of US\$1-2 billion, which could be sustained for 14 years.¹⁶ Diamond industry officials believe that, within five years, Zimbabwe will produce one quarter of the world production in carats.¹⁷ However, the 2013 national budget for Zimbabwe shows that Treasury only received US\$41 million from diamond mining in 2012.¹⁸

In Peru, the 6th largest official producer in the world, 20 percent of the gold is estimated to be mined illegally and roughly US\$3 billion worth of gold was illegally exported in 2011 alone, according to an NGO report released in January 2013.¹⁹

Possible causes for underperformance

Informality is dominant in the small scale mining sector

One of the reasons for the government's inability to collect revenue from the production of precious minerals relates to the informality of small scale mining in alluvial mines. As detailed in box 2 and 3, there are different ways of producing gold and diamonds, and industrial extraction is generally more susceptible to oversight of the production by the authorities. Botswana, where most of the production is industrial, is a case in point on how diamond production might positively benefit the economy.²⁰ On the other hand, small-scale mining is often not under control, particularly in countries or fields where industrial production is not possible or capacity is weak. A substantial number of persons are working globally in the

¹⁴ Democratic Republic of Congo, IMF Country Report 10/11, Statistical Appendix, Table 7, p. 10.

¹⁵ Yager, T. R., 'The mineral industry of Congo (Kinshasa)', 2007 Minerals Yearbook, (US Department of the Interior, US Geological Survey: Reston, VA, March 2010), p. 11.3.

¹⁶ Zimbabwe, IMF Country report 12/279, 2012 Art. IV Consultation.

¹⁷ "Antwerpse diamantindustrie heeft nog toekomst" (De Tijd, September 7, 2013). Interview with Antwerp World Diamond Centre (AWDC) official.

¹⁸ "Zimbabwe Parliament Committee Says Diamond Revenue Missing" (Bloomberg, June 13, 2013).

¹⁹ Risk Analysis of Indicators of Force Labor and Human Trafficking in Illegal Gold Mining in Peru (Verité, January 2013).

²⁰ Are Diamonds Forever? Using the Permanent Income Hypothesis to Analyze Botswana's Reliance on Diamond Revenue (O. Basdevant, IMF Working Paper 08/80, March 2008).

Box 2: Specifics of Diamond Production and Trade

Diamond formation necessitates very high temperatures and pressures, deep under the surface of the earth. A distinction can be made between primary deposits, called kimberlite/lamproite pipes, where the diamond-rich volcanic rock is concentrated in a carrot-shaped vertical deposit, and secondary (sedimentary) deposits, called alluvial mines, where the play of wind, weather and water have broken down the eruptive primary deposits and spread the diamonds over a large area, often along streams and coasts.

Production of diamonds can occur in five ways: Small-scale or traditional mining, often in or near rivers, using primitive tools; and four more advanced and industrial methods: underground mining; open pit mining, when the diamond-rich rock is near the surface; sand bank mining; and finally undersea mining. Once mined, the processing begins. Diamonds must be separated according to whether they are destined for jewelry (gem and near gem) or are to be used in industrial applications (e.g. bore heads or surgical tools). Jewelry-grade diamonds must then be cut. This requires great skill as any erroneous cuts can result in a great loss of value.

Among the dominant companies in diamond production are Alrosa, De Beers, Dominion Diamonds, and Rio Tinto. De Beers occupies the leadership position in sales value terms. Worldwide, the six most important diamonds centers are Antwerp (Belgium), the world's biggest diamond center with four major diamond exchanges ; Dubai (UAE), the fastest growing center ; New York (USA), the primary center for U.S. companies; Hong Kong SAR, the major sourcing center for cutters and polishers in Southeast Asia; Mumbai (India); and Tel Aviv (Israel), home to about 3,200 companies.

Diamond valuation is complex. They are unique objects whose individuality is determined by the four C's: cut, carat,¹ color and clarity. A unique combination of each one of these four factors will determine the value of the diamond. As such, the valuation process is quite complex and requires specialist training.

¹ Carat refers to weight, one carat being 0.2 grams and with carat itself being subdivided into 100 points.

small-scale mining sector. There are an estimate of 800,000 diggers in the Democratic Republic of the Congo, 120,000 in Sierra Leone, up to 100,000 in the Central African Republic, and many thousands in countries such as Angola, Liberia, Brazil, Guyana and Venezuela.

Weak capacity of tax and other administrations²¹

As production of precious minerals often takes place on geographically extensive territories, governmental administrations have often insufficient resources to monitor the organization of the mining. In addition, the lack of technical skills is also critical. With regard to diamonds, the lack of expertise to evaluate diamonds puts the revenue administration in a weak position when attempting to assess the tax base.

²¹ Supporting the Development of more Effective Tax Systems, report to the G-20 Development Working Group by the IMF, OECD, UN and World Bank, 2011.

Box 3: Specifics of Gold Production and Trade

Some gold can be found in certain rock types which are called hard rock gold deposits. Other gold, called placer gold, like placer diamonds, is found over a larger area, often in streams. Gold prospecting in hard rock requires drilling and analysis of the samples by a lab. For placer gold it is possible to use pans and sluices.

Gold is mined in three main ways: Small-scale or traditional mining using pans and other simple tools; semi-industrial mining, when there is partial mechanization; and finally industrial mining, either underground or in an open pit.

The top 10 gold producers as of 2012 are China (370 metric tons), Australia (250), the United States (230), Russia (205), South Africa (170), Peru (165), Canada (102), Indonesia (95), Uzbekistan (90), and Ghana (89).¹

The major gold exchanges can be found in London and New York. China, as the largest producer and consumer of gold, is seeking to establish itself as a major gold exchange also.² Dubai is also fast becoming an important trading center for gold. It reportedly trades US\$70 billion of gold in 2012, meaning that over one fifth of the world production passed through the United Arab Emirates.³

After processing, gold must then be assayed, meaning that the exact gold content must be established. Karat is an expression of purity, designating a gold content of 4.167% (hence 18 karat designates a gold content of 75%). There are various ways for trading gold. It can be traded as gold bullion, i.e. as coins or bars. Gold certificates (allocated—pertaining to a specific bar, or unallocated) are a means of trading gold without having to move physical bullion. In addition gold is hedged as forwards, derivatives and options. Unlike diamonds, there is a constant market for gold. For valuation purposes its purity is easy to determine, and assay marks are well understood.

¹ Mineral Commodity Summary - Gold (U.S. Geological Survey, January 2013). Production in metric tons in the year 2012.

² "China Aims To Be "Major Gold Trading Center" With Interbank Gold Trading" (GoldCore, July 19, 2012).

³ "U.A.E. Precious Metals Hub Seen Growing as Location Feeds Demand" (Bloomberg, October 2, 2013), "Dubai Looking To Become Global Gold Hub" (GoldResource, April 9, 2013).

Vested interests and poor governance

Breakdowns in governance are generally recognized as the principal reason why natural resource wealth does not generate more sustainable development. Governance challenges trump economic challenges since for the latter technical solutions are well known and more easily implemented.²² The tendency towards secrecy, very prevalent in natural resource matters, is facilitated by the specifics of precious minerals (high value, portability and odorlessness), and by the limited number of wholesale buyers, particularly in the case of diamonds.

²² Managing Natural Resource Wealth - Topical Trust Fund (MNRW-TTF), Program document (IMF, November 2010). Find it here: <http://www.imf.org/external/np/otm/2010/110110.pdf>

Poor implementation of AML/CFT measures in the financial sector

While cash is still commonly used in emerging and developing countries where diamonds are produced and traded, financial institutions such as banks are also involved in diamond trade in these countries. Accordingly, diamond dealers should be subjected to customer due diligence (CDD) procedures. However, the overall level of compliance of these countries with the FATF recommendations related to preventive measures for financial institutions is relatively low.²³

III. The AML/CFT regime can help prevent and deter the misuse of precious minerals by criminals, while increasing revenue

Relevant AML/CFT tools

A properly functioning anti-money laundering (AML) system can help protect revenue and combat crime throughout the value chain: from the time a precious mineral is first mined, subsequently processed, sold to a wholesaler, a retailer and then on to a consumer, and eventually recycled or returned to the market for resale.

The FATF standards refer to “dealers in precious metals and stones” without precisely defining it. Accordingly, a proper definition of the scope is required by a country, so as to ensure that it encompasses a wide range of actors and their respective activities. A possible definition is suggested by the FATF in its “Risk-Based Approach (RBA) Guidance for Precious Metals and Stones Dealers.” It encompasses a broad range of actors, from miners, to intermediate buyers and brokers, to those who cut, polish or refine precious minerals, to retail sellers and finally those operating in the secondary and scrap markets. The definition will determine all the categories of persons who will be subject to the relevant AML/CFT requirements.

There are six of the FATF’s 40 Recommendations that are of direct relevance for the precious minerals sector (see the text of these recommendations in Annex II):

- FATF R.1 – Assessing the risks and applying a risk-based approach (RBA): This would allow national authorities to allocate more resources to the monitoring of the precious minerals sector in case a country identifies the precious minerals sector as posing a high level of risk;
- FATF R.22 – Requires precious minerals dealers to implement customer due diligence (CDD) measures.²⁴ With regard to any transaction in cash equal to or above the applicable designated threshold of US\$/EUR 15,000, precious minerals dealers are required to know their customers and to collect enough information to be satisfied that the transaction is legitimate;

²³ See Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) – Report on the Review of the Effectiveness of the Program, IMF Policy Paper, May 11, 2011.

²⁴ Precious metals and stones dealers are one of the FATF designated non-financial businesses and professions (DNFBPs).

- FATF R.23 – Requires, in particular, that precious minerals dealers to send suspicious transaction reports (STRs) to the authorities. Whenever the dealer suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing he must report this information to the financial intelligence unit (FIU) for further analysis;
- FATF R.28 – Dealers in precious minerals should be regulated and monitored for compliance with the AML/CFT requirements, namely customer due diligence (CDD), record-keeping, and reporting. Furthermore, criminals or their associates should be prevented from being accredited, licensed, or being the beneficial owner of a significant or controlling interest in, or holding a management function in a precious minerals dealer, e.g. by evaluating persons on the basis of a “fit and proper” test;
- FATF R.32 – Measures should be in place to detect the cross-border transportation of cash and bearer negotiable instruments. Countries may specify that precious minerals are to be considered as bearer negotiable instruments, hence persons carrying precious minerals would be subject to a declaration or disclosure requirement;
- FATF R.34 – Guidelines and feedback should be provided to precious minerals dealers by competent authorities including their supervisors.

In addition to these FATF recommendations, the AML/CFT standard might be relevant in its entirety to detect, deter and prosecute crimes and the laundering of the proceeds of crimes related to precious minerals such as illegal mining, smuggling, tax evasion and corruption, including in the financial sector, and to confiscate proceeds.

Usefulness of the AML/CFT framework to combat predicate crimes

Illegal mining

FATF Recommendations 22 pertaining to CDD and record-keeping and 32 regarding cash couriers are particularly relevant to combat illegal mining. The requirement that precious minerals dealers keep records (when they engage in cash transactions above a maximum of EUR/USD 15,000)²⁵ enables the authorities to exercise more control on who gains title to work a certain plot and, once the product has been mined, to ascertain the identity of the miner selling the precious mineral for processing.

The AML framework is also relevant to combat other crimes related to illegal mining such as environmental crimes and human trafficking.

Smuggling

Recommendation 32 regarding cash couriers is very relevant in the precious minerals context to combat smuggling. It should be pointed out that the FATF did not include precious metals and stones for purposes of the recommendation regarding cash couriers. However,

²⁵ Financial transactions above the designated threshold include situations where the transaction is carried out in a single operation or in several operations that appear to be linked.

it does recognize that precious metals and stones are characterized by “their high liquidity and use in certain situations as a means of exchange or transmitting value.” Furthermore, if a country discovers an unusual cross-border movement of precious metals or precious stones, it should consider notifying, as appropriate, the Customs Service or other competent authorities of the countries from which these items originated and/or to which they are destined, and should co-operate with a view toward establishing the source, destination, and purpose of the movement of such items and toward the taking of appropriate action. Therefore, while it is not required by the FATF standard, a country may choose to include precious metals and stones as part of their declaration/disclosure system, alongside currency and bearer negotiable instruments. This means that countries would be able to compel travelers to declare/disclose whether they are carrying any (i) currency, (ii) bearer negotiable instruments, or (iii) precious minerals into or out of the country. For example, if countries have a declaration system in place and precious metals and stones are designated as goods which must be declared travelers would be obliged to report whether or not they are carrying a quantity of precious minerals worth more than a certain threshold and, if so, how much they are carrying. This would enable countries that face precious minerals smuggling challenges to impose a reporting obligation on persons crossing their borders, thereby exposing those who do not report (or misrepresent what they are carrying) to administrative sanctions and criminal penalties, and enabling the authorities to follow up with an investigation to determine the origin and destination of the precious minerals. This would also allow the authorities to develop intelligence regarding the origin and destination of precious minerals transiting through their country, including possible risk factors pertaining to certain types of traveler.

In addition, gold and diamonds purchases from dealers in small-scale mining areas often take place in cash and there have been reports of large flows of cash entering some producing countries for the purpose of buying precious minerals. Accordingly, effectively monitoring and targeting cross-border cash couriers could also be a way to detect smuggling rings.

Corruption

As indicated earlier, precious minerals can be both a source of rent for officials, and one of the possible instruments for the laundering of the proceeds of corruption. As part of the CDD process all financial institutions and DNFBPs should ascertain whether any of their customers have a high exposure to corruption risks (and are thus so-called “politically exposed persons” or PEPs), such as holding a senior position in the government, military, or judiciary.²⁶ If so,

²⁶ The FATF defines PEPs as follows: “Foreign PEPs are individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Domestic PEPs are individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Persons who are or have been entrusted with a prominent function by an international organisation refers to members of senior management, i.e. directors, deputy directors and members of the board or equivalent functions. The definition of PEPs is not intended to cover middle ranking or more junior individuals in the foregoing categories.”

these customers should be subjected to enhanced due diligence measures. Suspicious transactions, including those possibly related to corruption, should be reported to the country's financial intelligence unit.

The two main corruption risks regarding PEPs and precious metals and stones are, first, that PEPs try to launder the proceeds of corruption²⁷ by purchasing precious minerals and, second, that PEPs attempt to launder the proceeds generated by the illicit sale of precious minerals, or bribes paid by outside parties to illegally obtain privileged access to the precious minerals.²⁸ Possible risk indicators for financial institutions or DNFBPs when dealing with PEPs may be: Significant sums are transferred to or from the accounts of persons known to be active in the precious minerals industry; known associates or family members of PEPs do business with dealers in the precious minerals sector frequently, for significant amounts, or in sectors that lie outside of what they are expected to engage in (e.g. business dealings with persons active in the scrap gold market as opposed to jewelers); PEPs request special facilities at financial institutions, such as safe deposit boxes of a certain size, which could be used to safeguard precious minerals.

FATF Recommendations 26 and 28 also require the competent supervisor to make sure that financial institutions and DNFBPs are not directed or controlled by criminals or their associates and that such persons are not the beneficial owners of a significant or controlling interest in, nor hold a management function in, such institutions.

Improving tax compliance by formalizing dealers

The implementation of the AML/CFT framework should lead to the formalization and licensing/registration of dealers and increased transparency of transactions which, in turn, would render tax laws easier to enforce.

FATF Recommendation 28 on monitoring precious minerals dealers for anti-money laundering purposes is also beneficial to their general supervision, including for tax purposes, and in particular, audits. The competent authority should have adequate powers, including powers to monitor and sanction, as well as sufficient technical and other resources to perform its functions. FATF Recommendation 28 requires that dealers in precious metals/dealers in precious stones be subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements.

In addition, the FATF Recommendations on transparency of transactions should enhance tax collection as the lack of transparency of transactions in the precious minerals sector has been identified as a major impediment to tax collection. In particular, dealers in precious

²⁷ In this first case the proceeds were generated by corruption in relation to, for example, a major infrastructure contract, or the allocation of contracts in the telecommunications or defense sector. In other words, PEPs try to launder the proceeds of crimes by purchasing precious minerals with the proceeds of corruption.

²⁸ In this second case the illicit sale of precious minerals or access to these precious minerals have generated the proceeds of corruption, and these proceeds will have to be laundered.

minerals should be required to identify their customers and the beneficial owners of these customer, if applicable, and to verify their identity above a set threshold (of a maximum of US\$/EUR 15,000, where the authorities can set a lower threshold if they deem it appropriate), and should be prohibited to perform a transaction when they are unable to identify and verify the identity of the client. Dealers should conduct enhanced due diligence towards high risk customers, monitor complex and unusual transactions and give special attention to business relationships and transactions with persons from or in countries which do not, or insufficiently, apply the FATF Recommendations. Finally, and of particular interest in the context of tax audits, dealers have to maintain all necessary records on transactions for at least five years.

Make smuggling and tax crimes predicate offenses to money laundering

FATF Recommendation 3 requires countries to apply the crime of money laundering to all serious offenses which include smuggling (including in relation to customs and excise duties), and tax crimes (related to direct and indirect taxes).

Making these crimes predicate offenses to money laundering is important to enhance revenue collection of all taxes related to precious minerals: Customs duties, direct taxes (e.g. corporate tax), and indirect taxes (e.g. VAT and excise). When these crimes are predicate offenses to money laundering, financial and non-financial institutions (including dealers in precious minerals) are required to report their suspicions that funds are the proceeds of these crimes to the financial intelligence unit (FIU), as per FATF Recommendation 20. The FIU will collect and analyze the reports it receives, and, if appropriate, disseminate the results of its analysis to relevant authorities, such as the prosecution services, the tax authorities, or the relevant regulators, for further action. These actions may take the form of a closer examination by the relevant supervisor or, possibly, a criminal conviction and the confiscation of the proceeds of crime, which could include precious minerals.

Put in place cooperation and coordination mechanisms between AML and tax authorities

When conducting investigations related to smuggling or tax crimes, customs or tax authorities should be able to ask for all relevant information held by the FIU (FATF Recommendation 31). Conversely, it is important for the FIU to have access, on a timely basis, to information from tax and customs authorities in order to properly undertake its functions, and in particular the analysis of suspicious transaction reports. The FIU should also be able to disseminate the results of its analysis to tax and customs authorities when relevant for their own functions, and especially for revenue collection. Cooperation is also necessary between the FIU and the supervisor of precious minerals dealers which are normally subject to different sets of laws (such as AML, tax, and mining). The cooperation mechanisms should also include law enforcement authorities.²⁹

²⁹ Further information on FIU and law enforcement cooperation for financial investigations can be found in chapter 5 of the FATF Guidance on Financial Investigations: <http://www.fatf-gafi.org/media/fatf/documents/reports/>

In order to ensure the smooth exchange of information and appropriate coordination, it is advisable that, once the legal framework is in place and the strategy has been set out, processes are regulated in memoranda of understanding (MoUs) between the relevant authorities.

Adopting risk-based approaches to better allocate limited resources

Risk-based approach in implementing the AML/CFT regime

A central mechanism under the FATF standard is Recommendation 1, which requires countries to identify, assess and understand their money laundering and terrorist financing risk. Based on this national risk assessment (NRA) countries should deploy their resources using a risk-based approach (RBA), i.e. utilize their resources in such a way that the risks are effectively mitigated. Consequently, if the authorities investigate and conclude that their precious metals or stones sector is high risk, they should focus resources to mitigate this risk. For example, increase the number of onsite and/or offsite inspections of banks operating in the diamond sector, or enhanced due diligence of the management of gold buying houses.

For dealers and other exposed professionals³⁰

As per the FATF's "Risk Based Approach Guidance for Dealers in Precious Metals and Stones", the three main categories of risk that affect the precious minerals sector are: Country/geographic risk, customer/counter-party risk, and product/service risk (See more details and a non-exhaustive list of risk factors in Annex I). Competent authorities should provide guidance on such risk factors and monitor that they are considered by the precious minerals sector.

Country/geographic risk

There is no general definition that indicates when a country or a certain area is to be considered higher risk. It is a confluence of factors that will determine whether there is an elevated risk of money laundering or terrorist financing issues affecting a country/region's precious minerals. The relevant elements of the transaction that need to be considered in order to make this determination include (1) the location of the mine, (2) the site where the product is processed, (3) the location of the seller and the buyer (4) the origin or destination of the product and (5) the jurisdiction where the funds used for the transaction are held, or the destination of the funds, and in what currency. Other elements that may be taken into account are whether the country is a producer of precious minerals, a transit country, a trading hub, or a consumer as well as easy access to influential people, lack of border controls and level of economic stability.

Customer/counter-party risk

Business customer risk factors include a lack of knowledge of the diamond industry and the customs of the trade, reticence to reveal beneficial owners or controlling interests, activity

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³⁰ The joint FATF/Egmont Group 2013 diamond typology report provides useful background: <http://www.fatf-gafi.org/media/fatf/documents/reports/ML-TF-through-trade-in-diamonds.pdf>

or transaction inconsistent with the customer's economic profile, and seeking anonymity by conducting business through intermediaries such as accountants and lawyers. Purchases by retail customers are often made for personal reasons which are hard to factor into an assessment of the AML/CFT risks.

Product/service risk

The risk depends on the product offered. For launderers and terrorist financiers, diamonds are attractive as they represent a high value in a small package and they can be used as currency. Pure gold is easy to value the world over, as prices are publicly known, and it can itself be used as currency. When dealers are presented with precious minerals they should be aware that such products are also attractive to those who are seeking to launder the proceeds of crime, or that the precious minerals may have been fraudulently obtained. The services offered affect the risk of a particular transaction. Specialized diamond branches of banks and major gold dealers, if they properly identify their customers, can reduce the risk presented by anonymous, irregular transactions. Finally, the method of payment will also affect the risk. Payments channeled through banks reduce the risk, while payments in cash or through non-bank financial businesses and professions will increase the risk.

For AML/CFT supervisors and other competent authorities

The population of dealers in precious minerals is generally large, particularly in countries where small-scale mining activities are ongoing. Accordingly, the development of a risk-based approach to AML supervision would enable the authorities to better allocate limited resources. It involves two main components.

First, targeting dealers who are the most at risk of being abused by money launderers or terrorist financiers. This can be done by developing a solid off-site monitoring of dealers which can take the form of a risk matrix. This matrix would weight different factors to build an individual risk profile of each dealer. These factors can be grouped into structural factors (e.g. size of a dealer, geographical location, ownership/corporate structure, years in operation...); inherent risks which are business specific risk factors (e.g. origin of customers, share of regulated customers, quality of minerals traded...); and elements that mitigate the risks (e.g. adequacy of ML/TF risk management systems and controls). Once the risk profile is established, it will assist in general supervision, for planning and conducting onsite inspections, and more generally for developing supervisory strategies for each dealers.

Second, exploiting synergies with other supervisors of precious minerals dealers. In some countries, a number of administrations are involved in the monitoring of the dealers, in particular with regard to small scale mining where several government actors may have a stake, such as tax, customs, police, ministry of mines, and sometimes the army. A decision should be made as to where the AML/CFT precious minerals sector supervisor should be located. Some countries have a single AML/CFT supervisor, others attach it to the financial intelligence

unit (FIU) or to another administration. Depending of the context, the skills, governance and integrity of other authorities, AML/CFT supervision can take place jointly with other administrations or be delegated to other administrations.

A risk-based approach should also take into consideration private sector's views, the business model of a dealer and adapt requirements to specific situations. For example, it is useful if ease of compliance, especially in case of small reporting entities, takes precedence. While electronic communications may be easier for a financial intelligence unit to handle, analyze and store in a database, not all reporting entities may have the means to file suspicious transaction reports electronically.³¹ Similarly, avoiding unnecessary complexity in what needs to be reported would be conducive to ensuring that small dealers can comply with their reporting obligations.

In international cooperation

In order to effectively tackle the ML/TF behaviors in the precious minerals sector, it is critical to consider the international dimension. Here also, and particularly in light of resource limitations, a risk-based approach is advised to target countries of interest for international cooperation based on both past cases involving a foreign dimension and also the knowledge of the trade channels from the producing countries to the main trading countries (both legitimate and smuggling routes). With regard to diamonds, the competent authorities (FIU, customs, tax administration, law enforcement authorities) of a producer country might assess the interest of having cooperation agreements with countries such as Belgium, the UAE, India, Hong Kong SAR, Israel, or the U.S.

Risk-based approach in revenue administration

Goal: enhance tax collection

Properly implemented AML/CFT measures can help countries prevent so-called leakages (through smuggling, tax evasion, and corruption) from the precious minerals sector by requiring actors in the sector to assess the money laundering/terrorist financing risks they face, implement measures to identify dealers in the sector, impose record-keeping requirements and suspicious transaction reporting requirements, exercise adequate supervision of the sector, and impose controls on cross-border transportation of precious minerals. All of the above aid the tax administration in enhancing their map of their taxpayer base. Measures such as proper record-keeping by precious minerals dealers are directly helpful to the tax administration to fulfill its duty. All of this should help decrease the leakages from the precious minerals sector, while increasing the tax revenue coming from the sector.

³¹ Under such circumstances it may be preferable to utilize a paper reporting system at the level of the dealers, while providing the financial intelligence unit with more advanced capabilities to easily scan and use the information received.

Administration of taxpayers from the precious minerals sector

Modern tax administrations are moving towards voluntary compliance (self assessment) as their resources are limited. The assumption is that most tax payers will voluntarily comply. The relevance of this assumption should be assessed in a country's context. One of the tax administration's functions will be to detect the most egregious instances of non-compliance.

Most modern tax systems have split their tax base up into three categories of taxpayers: Large taxpayers, medium taxpayers, and small taxpayers. The same should be done for dealers in precious minerals, in conjunction with an effort to understand what category of taxpayer is responsible for what share of the revenue. Furthermore, the tax administration needs to have an idea of the players in the precious minerals market in light of their expected contributive capacity. This includes issues such as determining the number of reporting entities, their size, and whether there may be a few entities that have a dominant position in the market. The tax administration also needs to know how accustomed the precious minerals sector is to regulation and what the compliance cost for reporting entities would be. In addition, the tax administration should consider suitable tax types (e.g. corporate, turnover, presumptive, etc.) for different players which range from multi-nationals to small scale diggers.

The guiding principle should be to tailor the approach to the characteristics of the local precious minerals sector, and its individual components (e.g. miners, intermediate buyers, brokers, cutters, polishers, refiners, wholesalers, retailers...) instead of choosing a one-size-fits-all approach. The itinerant or rural workers with poor education and literacy represent a low priority segment demanding labor intensive actions for revenue administration. Comparative revenue gains from seeking their tax compliance is marginal relative to cost of administrations and the tax yields on these micro taxpayers is generally low.

Industry specialization in mining and resource taxation

The tax auditor will have to select a right mix of tools (auditing tools and enforcement tools) for different entities. The approach to large, dominant entities, for example, could involve comprehensive on-site assessments and immediate action in cases of non-compliance. For smaller entities consideration should be given to preparing detailed guidance setting out how to comply, and a phase-in period after which there would be enforcement action against non-compliance.

The usefulness of the data obtained will also depend on the ability to match taxpayer data to revenue data, and a cross-referencing of the largest exporters and importers to VAT and Customs databases. Access to FIU and Ministry of mines' information would also be useful in this process. It is also of critical importance that the revenue administration has experts and expertise in precious minerals, particularly for diamonds as evaluation of the value of the stone is crucial.

Factors discouraging compliance

Several factors could discourage or obstruct compliance with reporting entities' tax obligations. Tax administrations should carefully consider whether any of the following issues could be at play when assessing the efficiency of the taxation system.

High tax rates, a complex policy framework, illiteracy, and the inability to understand a complex tax system are all incentives to drive small taxpayers out of the system. Medium-sized and large taxpayers are better equipped to handle complex requirements, but could still be tempted by non-compliance. High compliance costs have a similar effect. Other potential issues are a discretionary application of the law and/or corrupt practices or a weak or unprofessional tax administration. Finally, a known low risk of detection of non-compliance and weak enforcement measures to deal with non-compliance also reduce the potential for collecting revenue.

Making it easy to comply

Tax administration authorities should help taxpayers from the precious minerals sector comply with their tax obligations. For large, better-equipped taxpayers, this means establishing an ongoing working relationship to better service their needs (e.g., e-filing), for smaller taxpayers, this could mean building a picture of the perhaps challenging environment in which they seek to comply with their tax obligations, and aiding them by providing appropriate guidance and establishing realistic goals that taxpayers are able to comply with. Therefore the use of enforcement, service and education tools should be applied in proportion to each unique situation.

IV. A holistic approach should mobilize all relevant administrations

Prevent legislative silos

In addition to changes to the AML/CFT legislation, adjustments to the mining code and supervisory institutions for the mining sector may be necessary to assist with the proper identification and control of actors in the precious minerals sector, especially in view of licensing or registration. Proper licensing/registration and supervision of miners in the precious minerals sector, for example by the Ministry of Mines, will help achieve compliance with the AML/CFT requirements. Similarly, a clear delineation of the role of the different administrations towards precious minerals dealers would be useful. Also, revisions to customs or tax laws should be done in light of the AML/CFT requirements, and vice versa.

Exploit synergies between law enforcement agencies

Proper implementation of FATF Recommendation 32 will require action on the part of the border control agencies, in particular whether the country will opt for a declaration system or a disclosure system. Under the former (declaration), all travelers crossing the border in possession of precious minerals with a value at or above the designated threshold must fill out a

form declaring what they are carrying and its value. Alternatively, a green channel/red channel system can also be used. Under the latter (disclosure), all travelers must disclose what they are carrying when requested to do so. Proper customs controls also involve larger challenges related to the porosity of the borders and the lack of resources to control them, and even, in some instances, border disputes with neighboring countries. When facing such challenges, a risk-based approach is even more encouraged, focusing resources and skills where the expected impact is the highest.

The identification of individuals (e.g., by issuing identity cards or, if the capacity is there, biometric identification) is another structural element which is of broad relevance for any country and would positively impact both AML/CFT implementation and revenue collection. The risk based analysis described above would also assist in exploiting synergies between law enforcement agencies.

Strengthen governance and anti-corruption frameworks

Progress in tax and AML/CFT compliance in the precious minerals sector would certainly be supported by the strengthening of a country's governance and anti-corruption framework. It is particularly critical to ensure both independent, adequately skilled and properly resourced law enforcement agencies, as well as a judicial system, as it is the ultimate guarantor of enforcement. While functioning revenue administration and AML/CFT authorities can create a credible threat of detection, a malfunctioning judicial system would not create the necessary threat of consequences for the most serious cases of non-compliance.

Progress in AML/CFT and revenue administration would also benefit from progress and effective implementation of broader governance and transparency initiatives having an impact on the precious minerals sector such as the Kimberley Process Certification Scheme (KPCS) (for diamonds), the Extractive Industry Transparency Initiative (EITI), and the IMF's Guide on Resource Revenue Transparency.³²

Anti-corruption measures such as the development of credible anti-corruption agencies and effectively implemented asset disclosure frameworks would also create an environment more conducive to tax and AML/CFT compliance.

³² Guide on Resource Revenue Transparency (IMF, Fiscal Affairs Department (FAD), 2007 Revised Edition). Find it here: <http://www.imf.org/external/np/fad/trans/guide.htm>

Annexes

Annex I. Relevant excerpts from the FATF's RBA guidance for dealers in precious metals and stones

1) Country/geographic risk (conflict, financial infrastructure etc.)

There is no universally agreed definition by either designated competent authorities, SROs, or dealers that prescribes whether a particular country or geographic area (including the country within which the dealer operates) represents a higher risk. Country risk, in conjunction with other risk factors, provides useful information as to potential money laundering and terrorist financing risks. Factors that may result in the determination that a country poses a higher risk are set out below.

Some countries and geographic locations are of greater AML/CFT concern, and the risk level can rise or lower dependent upon the country of any of the elements of a transaction, including (1) where a product is mined; (2) where a product is refined or finished; (3) location of a seller; (4) location of a purchaser; (5) location of the delivery of a product and (6) location of funds being used in the transaction.

Factors that should be considered in a determination that a country may or may not pose a higher risk with regard to a proposed transaction in diamonds, jewels or precious metals include:

- For rough diamonds, whether a producing or trading country participates in the Kimberley Process.
- Whether there is known mining or substantial trading of the transaction product — diamonds, jewels or precious metals — in a transaction source country.
- Whether a country would be an anticipated source of large stocks of existing diamonds, jewels or precious metals, based upon national wealth, trading practices and culture (centers of stone or jewel trading, such as Antwerp, Belgium) or unanticipated (large amounts of old gold jewelry in poor developing countries). It should be recognized, however, that gold and silver have cultural and economic significance in a number of developing countries, and very poor people may have, buy and sell these metals.
- The level of government oversight of business and labor in mining and/or trading areas.
- The extent to which cash is used in a country.
- The level of regulation of the activity.
- Whether informal banking systems operate in a country, e.g. hawalas operate in many developing countries.
- Whether designated terrorist organizations or criminal organizations operate within a country, especially in small and artisan mining areas.
- Whether there is ready access from a country to nearby competitive markets or processing operations, e.g. gold mined in Africa is more frequently refined in South Africa, the Middle East or Europe rather than in the United States, and a proposal to refine African gold in the United States would be unusual and higher risk.

- Whether, based on credible sources³, appropriate AML/CFT laws, regulations and other measures are applied and enforced in a country.
- The level of enforcement of laws addressing corruption or other significant organized criminal activity.
- Whether sanctions, embargoes or similar measures have been directed against a country.

2) Customer/counterparty risk (retail/business customers)

Retail customer risk

A retail customer of precious metals or precious stones will, in general, not have a business purpose for a purchase of an article of jewelry, a precious stone or a precious metal. A purchase is likely to be made for purely personal and emotional reasons that cannot be factored into an AML/CFT risk assessment. Higher risk can be seen, however, in certain retail customer transaction methods:

- Use of cash. It should be recognized, however, that many persons desire anonymity in jewelry purchases for purely personal reasons, or at least the absence of paper records, with no connection to money laundering or terrorist financing.
- Payment by or delivery to third parties. However, not all third party payments are indicative of AML/CFT. It is relatively common in jewelry purchases that a woman will select an article of jewelry, and a man will later make payment and direct delivery to the woman.
- Structuring.

Business customer risk

Higher risk categories include the following:

- Does not understand the industry in which he proposes to deal, or does not have a place of business or equipment or finances necessary and appropriate for such engagement, or does not seem to know usual financial terms and conditions.
- Proposes a transaction that makes no sense, or that is excessive, given the circumstances, in amount, or quality, or potential profit.
- Has significant and unexplained geographic distance from the dealer in precious metals or dealer in precious stones.
- Uses banks that are not specialized in or do not regularly provide services in such areas, and are not associated in any way with the location of the counterparty and the products.
- Makes frequent and unexplained changes in bank accounts, especially among banks in other countries.
- Involves third parties in transactions, either as payers or recipients of payment or product, without apparent legitimate business purpose.
- Will not identify beneficial owners or controlling interests, where this would be commercially expected.

- Seeks anonymity by conducting ordinary business through accountants, lawyers, or other intermediaries, see the paragraph above.
- Uses cash in its transactions with the dealer in precious metals or dealer in precious stones, or with his own counterparties in a nonstandard manner.
- Uses money services businesses or other non-bank financial institutions for no apparent legitimate business purpose.
- Is a politically exposed person (PEP).

3) Product/service risk (low/high value, portability etc.)

Products offered

All diamonds, jewels, and precious metals can potentially be used for money laundering and terrorist financing, but the utility and consequent level of risk are likely to vary depending on the value of the product. Unless transactions involve very large quantities, lower value products are likely to carry less risk than higher value products. However, dealers must be aware that values can be volatile dependent upon supply and demand. Relative values of some materials can vary dramatically between different countries, and over time.

Dependent upon the nature of the transaction, counterparties, and quantities, gold can be higher risk. Pure gold, or relatively pure gold, is the same substance worldwide, with a worldwide price standard published daily, and it can also be used as currency itself, e.g. by hawalas. Gold is available in a variety of forms, e.g. bars, coins, jewelry, or scrap, and trades internationally in all of these forms.

Although scrap gold alloys or other gold-bearing scrap may require substantial processing and refining to reach an end market, the costs will be discounted in advance, and the scrap may still trade for high value in multi-billion dollar worldwide markets. Values of many scrap materials are uncertain and not precisely knowable until they have been processed and assayed, which can present an AML risk if the parties undervalue or overvalue international shipments.

Alluvial gold and gold dust can be indicative of informal mining by individuals and small groups, often in areas that are characterized by informal banking and absence of regulation, and so may be higher risk.

The physical characteristics of the products offered are also a factor to consider. Products that are easily portable and which are unlikely to draw the attention of law enforcement are at greater risk of being used in cross border money laundering. For example, diamonds are small, light in weight, not detected by metal detectors, and a very large value can be easily concealed.

Finally, the risk of dealing in stolen or fraudulent products must be taken into account. As with all valuable objects, diamonds, jewels and precious metals are attractive to thieves, and dealers must be aware of the risks of trading in stolen products. For example, jewelry dealers, pawn shops and buyers of used gold jewelry should remain alert to the possibility of being

offered stolen jewelry. In addition to stolen goods, dealers should be aware of the risks associated with fraudulent goods, such as synthetic diamonds represented as natural diamonds, or 14 karat gold represented as 18 karat.

Services offered

Major gold dealers create metal accounts for their customers, for temporary secure storage or for investment, and they transfer counterparties' gold credits in these accounts among themselves, and among repositories and delivery destinations worldwide, with services comparable to those provided by banks with money and financial credits. Such services, by banks as well as by major gold dealers, may be useful to money launderers and terrorist financiers to move high values through international commerce, under the guise of legitimate business, but are unlikely to be anonymous and irregular, and thus may be of lower risk.

Market characteristics

It is helpful to bear in mind the following broad principles which may lower the risk levels of particular transactions:

- Limited resale opportunities — limited resale opportunities are likely to be unattractive to money launderers.
- Size of market — a small market is likely to make it more difficult for a money launderer to structure transactions, to layer multiple transactions (to create distance between the seller and the ultimate purchaser), and to conduct anonymous transactions, and will thus be less attractive to money launderers.
- Degree of expertise required — if specialized expertise is required for transactions, risk of use of such transactions by money launderers may be lower. For example, diamonds are unique objects, some with extremely high value, some with much less, all dependent upon size and physical characteristics, usually as judged by persons with expertise in diamond evaluation. As transaction values increase, either because of higher numbers of diamonds involved or higher quality of individual diamonds, so does the need for expertise and specialized markets increase. Money launderers may not have such expertise. Such expertise exists, however, in many places, and money launderers may be able to obtain it, or to employ it.
- Degree of market regulation — if a market is regulated, depending upon the degree of regulation, transactions in that market may be lower risk (see below the other variables to take into account for the determination of risks).
- Transaction costs — money laundering and terrorist financing can involve multiple transactions, with criminals first placing illegal assets within a legitimate product, as anonymously as possible, then layering those assets through intermediate transactions, and then removing them at a different time and place. Money launderers want to get as much as possible of their illegal assets out of these transactions. They may be prepared to accept losses in these layering transactions, but may prefer to keep them to a minimum. Therefore transactions involving high value product and low transaction costs may be particularly

attractive to money launderers and terrorist financiers. For example, a purchase of pure gold coins, and subsequent sale of those coins at another location, will quickly return most of the original purchase price. On the other hand a purchase of a specialty gold alloy may have a resale value of only the gold content, losing any value added in manufacturing, and losing gold refining charges as well. Such a transaction will cause a money launderer to pay substantial transaction costs and may therefore be lower risk.

Financing methods

The method of payment used affects the risk of money laundering and terrorist financing taking place. The risks are likely to be reduced if transactions take place through the mainstream banking system. Conversely, the risk may increase in the following situations:

- Cash, especially in large amounts, can be a warning sign, especially if the use of cash is anonymous or intentionally hides an identity, e.g. the true purchaser funds the transaction by giving cash to a third party, who then becomes the nominal and identified purchaser.
- Payments or delivery of product to or from third party accounts, e.g. accounts in the names of persons other than approved counterparties.
- Payments to or from accounts at financial institutions that are unrelated to a transaction or approved counterparties, such as banks located in countries other than the location of the counterparty or transaction.
- Non-bank financial mechanisms such as currency exchange businesses or money remitters.

Annex II. Relevant FATF recommendations regarding precious metals and stones

a. Definition of “dealer” (FATF RBA guidance for PMS dealers)

A definition of dealer is given in the FATF guidance for dealers in precious metals and stones: “For purposes of this guidance, the term “dealer” encompasses a wide range of persons engaged in these businesses, from those who produce precious metals or precious stones at mining operations, to intermediate buyers and brokers, to precious stone cutters and polishers and precious metal refiners, to jewellery manufacturers who use precious metals and precious stones, to retail sellers to the public, to buyers and sellers in the secondary and scrap markets.”

b. Recommendation 1 – Assessing risks and applying a risk-based approach

“Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively. Based on that assessment, countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. This approach should be an essential foundation to efficient allocation of resources across the anti-money laundering and countering the financing of terrorism (AML/CFT) regime and the implementation of risk-based measures throughout the FATF Recommendations. Where countries identify higher risks, they should ensure that their AML/CFT regime adequately addresses such risks. Where countries identify lower risks, they may decide to allow simplified measures for some of the FATF Recommendations under certain conditions.

Countries should require financial institutions and designated non-financial businesses and professions (DNFBPs) to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks.”

c. Recommendation 22 – DNFBPs: Customer due diligence (CDD)

“The customer due diligence and record-keeping requirements set out in Recommendations 10, 11, 12, 15, and 17, apply to designated non-financial businesses and professions (DNFBPs) in the following situations: [...] (c) Dealers in precious metals and dealers in precious stones – when they engage in any cash transaction with a customer equal to or above the applicable designated threshold. [...]”

d. Recommendation 23 – DNFBPs: Other measures

“The requirements set out in Recommendations 18 to 21 apply to all designated non-financial businesses and professions, subject to the following qualifications: [...] (b) Dealers in precious metals and dealers in precious stones should be required to report suspicious transac-

tions when they engage in any cash transaction with a customer equal to or above the applicable designated threshold. [...]"

e. Recommendation 28 – Regulation and supervision of financial institutions

"Designated non-financial businesses and professions should be subject to regulatory and supervisory measures as set out below.

[...] (b) Countries should ensure that the other categories of DNFBPs are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. This should be performed on a risk-sensitive basis. This may be performed by (a) a supervisor or (b) by an appropriate self-regulatory body (SRB), provided that such a body can ensure that its members comply with their obligations to combat money laundering and terrorist financing.

The supervisor or SRB should also (a) take the necessary measures to prevent criminals or their associates from being professionally accredited, or holding or being the beneficial owner of a significant or controlling interest or holding a management function, e.g. through evaluating persons on the basis of a "fit and proper" test; and (b) have effective, proportionate, and dissuasive sanctions in line with Recommendation 35 available to deal with failure to comply with AML/CFT requirements."

f. Recommendation 32 – Cash couriers

"Countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including through a declaration system and/or disclosure system.

Countries should ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing, money laundering or predicate offences, or that are falsely declared or disclosed.

Countries should ensure that effective, proportionate and dissuasive sanctions are available to deal with persons who make false declaration(s) or disclosure(s). In cases where the currency or bearer negotiable instruments are related to terrorist financing, money laundering or predicate offences, countries should also adopt measures, including legislative ones consistent with Recommendation 4, which would enable the confiscation of such currency or instruments."

g. Recommendation 34 – Guidance and feedback

"The competent authorities, supervisors and SRBs should establish guidelines, and provide feedback, which will assist financial institutions and designated non-financial businesses and professions in applying national measures to combat money laundering and terrorist financing, and, in particular, in detecting and reporting suspicious transactions."

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