
STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Monetary Authority (MA) has taken the following disciplinary action against Industrial and Commercial Bank of China (Asia) Limited (ICBCA):
 - (a) ordered ICBCA to submit to the Hong Kong Monetary Authority (HKMA) a report prepared by an independent external advisor assessing the sufficiency and effectiveness of the remedial measures taken by ICBCA to address the contraventions and other deficiencies identified by the HKMA, pursuant to section 21(2)(b) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615 of the Laws of Hong Kong) (AMLO)¹; and
 - (b) ordered ICBCA to pay a pecuniary penalty of HK\$20,700,000, pursuant to section 21(2)(c) of the AMLO.

Summary of Contraventions and Facts

2. The disciplinary action follows an on-site examination and further investigation by the HKMA which found that ICBCA contravened nine specified provisions, namely (i) sections 5(1), 12(5), 15, 19(1), 19(2) and 19(3) of Schedule 2 to the AMLO during the period from April 2012 to September 2014 (Relevant Period A); (ii) sections 10(1) and 10(2) of Schedule 2 to the AMLO during the period from April 2012 to September 2017 (Relevant Period B); and (iii) section 20(3) of Schedule 2 to the AMLO during the period from October 2014 to September 2018 (Relevant Period C). ICBCA's contraventions and the related findings are summarised below.

Sections 5(1) and 19(3) of Schedule 2 to the AMLO

3. According to ICBCA's policies and procedures, customers classified as high risk would be subject to periodic review on an annual basis to ensure that their existing records were up-to-date and relevant. It was found from the HKMA's sample review that during Relevant Period A, periodic reviews for 87 high risk customers were conducted with an undue delay and therefore ICBCA contravened paragraph (a) of section 5(1) of Schedule 2 to the AMLO.

¹ The short title of Chapter 615 of the Laws of Hong Kong was cited as the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance prior to 1 March 2018.

4. During Relevant Period A, ICBCA also contravened section 19(3) of Schedule 2 to the AMLO in that it failed to establish and maintain effective procedures for periodic reviews, given the lack of an automated centralised record, or a suitable alternative, in respect of periodic reviews (to be) conducted by ICBCA for capturing crucial information to enable effective continuous monitoring of its business relationship with customers, and the absence of clear practical guidance in respect of how periodic reviews should be conducted.

Sections 10(1), 10(2) and 19(1) of Schedule 2 to the AMLO

5. During Relevant Period B, ICBCA contravened sections 10(1) and 10(2) of Schedule 2 to the AMLO in respect of a number of (existing) customers, in that after ICBCA knew or came to know that the relevant (existing) customers or the beneficial owners (BOs) of the (existing) customers were politically exposed persons (PEPs) or had become PEPs (as the case may be), there were delays for more than seven months in obtaining senior management approval as well as failure in establishing the source of wealth and source of funds of the (existing) customers or the BOs of the (existing) customers before establishing or continuing its business relationship with the (existing) customers.
6. ICBCA contravened section 19(1) of Schedule 2 to the AMLO in that it failed to establish and maintain effective procedures for determining whether a customer or a BO of a customer was a PEP during Relevant Period A. This was evidenced by substantial delay or suspension in conducting PEP batch scanning, long time taken to review the potential hits generated therefrom and lack of effective procedures to ensure that name search was conducted properly for identifying PEPs.

Sections 12(5) and 19(2) of Schedule 2 to the AMLO

7. During Relevant Period A, ICBCA, as an ordering institution, contravened section 12(5) of Schedule 2 to the AMLO for failing to include certain originator's information in 1,076 payment messages of cross-border outgoing wire transfers, and the originator's address in 475 payment messages was incomplete.
8. ICBCA failed to establish and maintain effective procedures for identifying and handling wire transfers with incomplete information in payment messages. ICBCA thus contravened section 19(2) of Schedule 2 to the AMLO.

Section 15 of Schedule 2 to the AMLO

9. During Relevant Period A, ICBCA contravened section 15 of Schedule 2 to the AMLO in respect of 59 customers of the samples reviewed by the HKMA. In most cases, ICBCA failed to obtain approval from its senior management for establishing or continuing the business relationship with its customers in a timely manner in high risk situations.

Section 20(3) of Schedule 2 to the AMLO

10. ICBCA was unable to locate and provide the HKMA with the relevant risk assessment forms in respect of 26 customers during Relevant Period C and thus contravened section 20(3) of Schedule 2 to the AMLO.

Conclusion

11. Having considered all of the evidence and the representations of ICBCA, the MA has found that ICBCA contravened the nine specified provisions during the respective periods as set out in paragraphs 2 to 10 above.
12. In deciding the disciplinary action set out in paragraph 1 above, the MA has had regard to the Guideline on Exercising Power to Impose Pecuniary Penalty² and the Guidance Note on Cooperation with the HKMA in Investigations and Enforcement Proceedings³. The MA has taken into account all relevant circumstances of the case, including but not limited to:
 - (a) the seriousness of the investigation findings;
 - (b) the need to send a clear deterrent message to ICBCA and the industry about the importance of effective controls and procedures to address money laundering and terrorist financing risks;
 - (c) ICBCA has taken remedial and enhancement actions to address the deficiencies identified by the HKMA; and
 - (d) ICBCA has no previous disciplinary record in relation to the AMLO and co-operated with the HKMA during the investigation and enforcement proceedings.

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² This guideline was published by the HKMA on 29 June 2012 under section 23(1) of the AMLO. It sets out the factors that the MA will consider, where applicable, in determining whether to impose a pecuniary penalty and the amount of the pecuniary penalty if there has been a contravention of a specified provision as defined by section 5(11) of the AMLO. A revised version of this guideline was published on 27 April 2018.

³ This guidance note was issued by the HKMA on 22 August 2018 to provide an overview of how the HKMA considers and recognises cooperation in its investigations and enforcement proceedings and highlight the benefits of cooperation.