
STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Monetary Authority (MA) has taken disciplinary action against Commerzbank AG, Hong Kong Branch (CBHK) to order it to pay a pecuniary penalty of HK\$6,000,000, pursuant to section 21(2)(c) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615 of the Laws of Hong Kong) (AMLO)¹.

Summary of Contraventions and Facts

2. The disciplinary action follows an on-site examination and further investigation by the Hong Kong Monetary Authority (HKMA) which found that CBHK contravened four specified provisions, namely paragraph (a) of section 3(1) (section 3(1)(a)), paragraph (b) of section 3(4) (section 3(4)(b)), section 19(1) and section 19(3) of Schedule 2 to the AMLO during the period between 1 April 2012 and 30 June 2016 (Relevant Period). CBHK's contraventions and the related findings are summarised below.

Sections 3(1)(a) and 3(4)(b) of Schedule 2 to the AMLO

3. The HKMA's sample review found that during the Relevant Period, CBHK failed to carry out the customer due diligence (CDD) measures specified in any one or all of sections 2(1)(a), 2(1)(b) and 2(1)(d) of Schedule 2 to the AMLO in respect of 17 customers before establishing business relationships with them. Delays of carrying out such measures ranged from two to 46 months. CBHK therefore contravened section 3(1)(a) of Schedule 2 to the AMLO.
4. CBHK did not terminate the business relationships with 12 customers for periods ranging from six to 46 months when CBHK was unable to comply with section 3(1) of Schedule 2 to the AMLO. CBHK thus contravened section 3(4)(b) of Schedule 2 to the AMLO.

Section 19(1) of Schedule 2 to the AMLO

5. CBHK contravened section 19(1) of Schedule 2 to the AMLO as it failed to establish and maintain effective procedures for determining whether a customer or a beneficial owner (BO) of a customer is a politically exposed person (PEP). Before August 2015, CBHK's automated PEP name screening was conducted

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.

only on customers but not on customers' BOs. Furthermore, the procedures of CBHK for manual PEP name screening of customers' BOs were not implemented effectively, with some delays in name screening of, and omissions in identifying, BOs of PEP-related customers. CBHK's failure to establish and maintain effective procedures for carrying out the CDD measures set out in section 2(1)(b) of Schedule 2 to the AMLO to identify customers' BOs also contributed to CBHK's failure to have effective procedures for determining whether a customer's BO was a PEP.

Section 19(3) of Schedule 2 to the AMLO

6. During the Relevant Period, the procedures adopted by CBHK for carrying out CDD fell short of the standards in respect of the relevant requirements under the AMLO and the HKMA's Guideline on Anti-Money Laundering and Counter-Terrorist Financing for Authorized Institutions. The procedures allowed continuity of a business relationship despite the failure to carry out CDD measures, as long as the approval from a line manager was obtained. Moreover, no requirement had been established nor maintained in any of CBHK's procedures or manuals for checking the completeness of CDD measures or the time of completion of the CDD measures before establishing business relationships. CBHK therefore contravened section 19(3) of Schedule 2 to the AMLO.

Conclusion

7. Having considered all of the evidence and the representations of CBHK, the MA has found that CBHK contravened the four specified provisions during the Relevant Period as set out in paragraphs 2 to 6 above.
8. 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 CBHK and the industry about the importance of effective controls and procedures to address money laundering and terrorist financing risks;

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.

- (c) CBHK has taken prompt remedial actions to address the deficiencies identified by the HKMA; and
- (d) CBHK 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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