



CUSTOMS AND EXCISE DEPARTMENT

Disciplinary Action Guidelines Imposition of a Pecuniary Penalty

Published under section 45(1), in Part 5, of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance, Chapter 615

April 2016

Guidelines issued by the Commissioner of Customs & Excise as to his Proposed Exercise of the Power to Impose a Pecuniary Penalty

Guidelines issued by the Commissioner of Customs and Excise under section 45(1) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Chapter 615)

Introduction

1. Under section 43 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance Chapter 615 (“AMLO”), the Commissioner of Customs and Excise (“CCE”) may, amongst other disciplinary actions, impose a pecuniary penalty on a person licensed to operate a money service (“the licensee”), if the licensee contravenes-
 - (a) any regulation made under section 51 of the AMLO;
 - (b) any of the conditions of the licensee’s licence; or
 - (c) sections 35(1), 36(1), 37(1), 38(1), 39(1), 40(1), or 41(1) of the AMLO.
2. Section 45(1) of the AMLO requires the CCE to publish guidelines to indicate the manner in which he proposes to exercise the power to impose a pecuniary penalty under section 43(2)(c), and section 45(2) requires the CCE to have regard to such guidelines in exercising such power.
3. These guidelines are published under section 45(1) of the AMLO to indicate the manner in which the CCE will exercise the power conferred by section 43(2)(c). The CCE will have regard to these guidelines when exercising the power conferred by section 43(2)(c) of the AMLO.
4. As a matter of policy, the CCE will usually publicise all his decisions to impose pecuniary penalty.

Factors to be considered by CCE when proposing to exercise the power

5. When proposing to exercise the power to impose a pecuniary penalty and the amount, the CCE will consider all of the circumstances of the particular case, as well as any of the factors set out below that are relevant.
6. Any pecuniary penalty imposed by the CCE is intended to act as a deterrent to the licensee concerned and to act as a general deterrent to other licensees.
7. A pecuniary penalty should not have the likely effect of putting the licensee concerned in financial jeopardy. In considering this factor, the CCE will take into account the size and financial resources of the licensee.
8. The more serious the contravention, the greater the likelihood that the CCE will impose a pecuniary penalty and that the amount of the penalty will reflect the gravity of the contravention.
9. In determining the seriousness of a contravention, the CCE will consider all of the circumstances of the case and take into account the factors set out below that are relevant. The factors listed below are not exhaustive. Some of them may not be applicable in a particular case and there may be other factors which are relevant but are not listed below.

(a) The nature, seriousness and impact of the contravention, including:

- (i) whether the contravention is intentional or results from recklessness or negligence - a contravention resulting from negligence or conduct which only results in a technical breach is generally regarded as less serious;
- (ii) the duration and frequency of the contraventions;
- (iii) whether the contravention is potentially damaging or detrimental to the integrity of the operation of money services in Hong Kong or the reputation of Hong Kong as an international financial centre;
- (iv) whether the contravention caused or had the potential to cause

loss to, or imposed or had the potential to impose costs on, any other person;

- (v) whether the contravention was committed by the licensee alone or by him as part of a group and the role played by the licensee in that group;
- (vi) whether the contravention reveals serious or systemic weaknesses in the management system or internal controls in respect of the customer due diligence and record-keeping procedures relating to all or part of a licensee's business;
- (vii) whether the contravention was indicative of a pattern resulting in contraventions;
- (viii) whether there are a number of smaller issues, which individually may not justify a pecuniary penalty, but which do so when taken collectively; and
- (ix) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the contravention.

(b) The conduct of the licensee after the contravention, including:

- (i) whether the licensee attempted to conceal its contravention(s);
- (ii) any remedial steps taken since the contravention(s) or the possible contravention was identified, and any action taken by the licensee against those involved and any steps taken by the licensee to prevent similar contraventions occurring in future;
- (iii) the degree of cooperation with the CCE, other relevant authorities and/or law enforcement agencies during the investigation into the contravention(s); and
- (iv) the likelihood that the licensee will commit the same type of contravention in the future if no or a lighter penalty is imposed.

(c) The previous disciplinary record and compliance history of the licensee, including:

- (i) the relevant previous disciplinary record of the licensee, including any previous similar contraventions;
- (ii) whether the licensee has previously undertaken not to engage in the particular conduct that resulted in the contravention; and
- (iii) any punishment imposed or regulatory action taken or likely to

be taken by other relevant authorities in respect of the same incident.

(d) Other relevant factors, including:

- (i) whether the CCE has issued any guidelines in relation to the conduct in question - generally the CCE will not take disciplinary action against a licensee for conduct that is in line with guidance which was current at the time of the conduct in question;
- (ii) what action the CCE and/or other relevant authorities have taken in previous similar cases - in general similar cases should be treated in a consistent manner;
- (iii) the amount of any benefit gained or costs avoided by the licensee or any of its directors or employees as a result of the contravention; and
- (iv) any mitigating factors, whether the licensee has promptly, effectively and completely brought the contravention or possible contravention to the attention of the CCE.

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Commissioner of Customs and Excise