



Disciplinary Action Guideline on Imposition of Pecuniary Penalty

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Anti-money Laundering and Counter-Terrorist Financing
Ordinance, Chapter 615, Laws of Hong Kong**

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Introduction

1. Under section 53ZVF of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, Chapter 615 (“AMLO”), the Commissioner of Customs and Excise (“CCE”) may, amongst other disciplinary actions, impose a pecuniary penalty on a person registered as a Category B registrant (“CBR”) for carrying on a precious metals and stones business that includes the carrying out of specified transactions and specified cash transactions, in any of the following situations –
 - (a) if the CBR contravenes –
 - (i) a requirement set out in Schedule 2 of the AMLO that applies to a designated non-financial businesses and profession (“DNFBP”) who is a CBR;
 - (ii) a regulation made under section 53ZVS of the AMLO; and
 - (iii) a condition of the registration; and
 - (b) there is a contravention of sections 53ZUW, 53ZUX, 53ZUY, 53ZV, 53ZVA or 53ZVB of the AMLO.
2. Section 53ZVH(1) of the AMLO requires the CCE to publish guidelines to indicate the way in which the CCE proposes to exercise the disciplinary power to impose a pecuniary penalty under section 53ZVF, and section 53ZVH(3) of the AMLO requires the CCE to have regard to such guidelines in exercising such power.
3. This Guideline is published under section 53ZVH(1) of the AMLO to indicate the way in which the CCE will exercise the power conferred by section 53ZVF of the AMLO. The CCE will have regard to this Guideline when exercising the power conferred by section 53ZVF of the AMLO.
4. As a matter of policy, the CCE will usually publicise all the decisions of the CCE 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 CBR concerned and to act as a general deterrent to other CBRs.
7. A pecuniary penalty should not have the likely effect of putting the CBR concerned in financial jeopardy. In considering this factor, the CCE will take into account the size and financial resources of the CBR.
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 precious metals and stones business 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 CBR alone or by the CBR as part of a group and the role played by the CBR 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 CBR'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 CBR after the contravention, including:
- (i) whether the CBR 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 CBR against those involved and any steps taken by the CBR 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 CBR 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 CBR, including:
- (i) the relevant previous disciplinary record of the CBR, including any previous similar contraventions;
 - (ii) whether the CBR 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 CBR 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 CBR or any of its directors or employees as a result of the contravention; and
- (iv) any mitigating factors, whether the CBR 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