
STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Monetary Authority (MA) has taken the following disciplinary action against Shanghai Commercial Bank Limited (SCOM):-
 - (a) reprimanded SCOM, pursuant to section 21(2)(a) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615 of the Laws of Hong Kong) (AMLO)¹ for contravening section 19(3) of Schedule 2 to the AMLO by failing to establish and maintain effective procedures for the purpose of carrying out its duty to continuously monitor business relationships;
 - (b) ordered SCOM to submit to the Hong Kong Monetary Authority (HKMA), by a date and in manner to be specified by the MA, a report prepared by an independent external advisor assessing whether the remedial measures implemented by SCOM are sufficient to address the contraventions and the effectiveness of the implementation, pursuant to section 21(2)(b) of the AMLO; and
 - (c) ordered SCOM to pay a pecuniary penalty of HKD5,000,000, pursuant to section 21(2)(c) of the AMLO.

Summary of Contraventions and Facts

2. The disciplinary action follows an investigation by the HKMA which found that SCOM contravened sections 5(1) and 19(3) of Schedule 2 to the AMLO during the period from July 2014 to June 2016 (Relevant Period A) and section 6(1) of Schedule 2 to the AMLO during the period from April 2012 to August 2017 (Relevant Period B). SCOM's contraventions and the related findings are summarised below:-

Section 5(1) of Schedule 2 to the AMLO

- (a) During Relevant Period A, SCOM relied on daily and monthly Management Information System (MIS) reports to identify unusual or suspicious transactions. In total, 24,225 MIS alerts were generated for transaction monitoring purposes. Through review of the MIS reports

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

annotated by the Business Units (BUs), SCOM's Compliance Department identified 394 MIS alerts involving 321 customers for further enquiry or investigation. Taking into account the design and procedures of SCOM's transaction monitoring system, which reflected different customer risk levels, customer types and transaction types, the HKMA conducted a full review of the 394 MIS alerts which were considered by SCOM's Compliance Department at the material time to be of higher risk of money laundering and terrorist financing and requiring more attention and resources. It was found that SCOM contravened paragraph (c) of section 5(1) of Schedule 2 to the AMLO by failing to adequately examine the background and purposes of transactions in 40 MIS alerts involving 33 customers and to set out its findings in writing, and the contravention rate was 10.3% (i.e. 33 out of 321 customers).

- (b) For the 33 customers concerned, although transactions that were complex, unusually large in amount or of an unusual pattern and had no apparent economic or lawful purpose were identified through SCOM's MIS reports and the queries of SCOM's Compliance Department at the material time, SCOM failed to adequately examine the background and purposes of those transactions and to set out the findings in writing. By way of example, some of those transactions are described below:-
- (i) in one case, funds were transferred through a complex arrangement involving a number of individual and corporate accounts owned by the same customer and ultimately deposited into a company's account for alleged investment purpose. However, the relevant bank staff failed to make enquiries of the customer as to why the fund transfers were structured in such a complicated way at the material time, and failed to examine the background and purposes of the transactions and set out the findings in writing;
 - (ii) an individual customer received a single payment of over HKD75,000,000 from a corporate counterparty. At the material time, the BU explained that the funds received were a loan provided by the counterparty for a business purpose. Despite the significant amount of the alleged loan and its business nature, the relevant bank staff failed to raise enquiries as to why the fund was deposited into the customer's personal account, instead of his company's account. In fact, SCOM listed in its internal policies and procedures that "using personal accounts to handle commercial transactions of companies" as one of the red flags of tax evasion. Despite the presence of such red flag, proper examination of the background (e.g. the reason(s) for not conducting the transaction through the account of the customer's company) and purposes of the transaction was not conducted and the findings were not set out in writing;
 - (iii) an individual customer received a cheque exceeding HKD20,000,000 from another individual. At the material time, the relevant bank staff only documented the name of the counterparty in the internal records. There was no examination of the background (e.g. the relationship

between the customer and the counterparty) and purposes of the transaction in question and the findings were not set out in writing; and

- (iv) in 11 cases (i.e. one-third of the 33 customers concerned), while the relevant transactions took place between September 2014 and March 2016, SCOM did not make suspicious transaction reports to the Joint Financial Intelligence Unit (JFIU) until November and December 2016 after having revisited the cases again in the process of the HKMA's investigation. All these cases could have been reported earlier to the JFIU had there been proper examination at the material time.

Section 19(3) of Schedule 2 to the AMLO

- (c) SCOM also contravened section 19(3) of Schedule 2 to the AMLO by failing to establish and maintain effective procedures for the purpose of carrying out its duty under section 5 of Schedule 2 to the AMLO during Relevant Period A, in that:-
 - (i) there was a contravention rate of 10.3% as regards paragraph (c) of section 5(1) of Schedule 2 to the AMLO by SCOM;
 - (ii) SCOM failed to establish and maintain effective policies and procedures for monitoring the handling and/or management of MIS alerts including properly recording the follow-up actions taken; and
 - (iii) SCOM failed to monitor the time taken to review MIS alerts, resulting in significant delay in MIS alert clearance.

Section 6(1) of Schedule 2 to the AMLO

- (d) During Relevant Period B, SCOM contravened section 6(1) of Schedule 2 to the AMLO by failing to carry out the customer due diligence (CDD) measures set out in section 2(1) of Schedule 2 to the AMLO in respect of certain pre-existing customers² when a transaction took place with regard to each of these customers that (i) was, by virtue of the amount or nature of the transaction, unusual or suspicious, or (ii) was not consistent with SCOM's knowledge of the customer or the customer's business or risk profile, or with its knowledge of the source of the customer's funds.
- (e) One of the pre-existing customers conducted the relevant transactions as early as in May 2012, but SCOM failed to identify those transactions at the material time as unusual or suspicious or not consistent with its knowledge of the customer and failed to conduct CDD measures accordingly. Among other things, some of those transactions indicated that the personal

² Part 1 of Schedule 2 to the AMLO defines a pre-existing customer, in relation to a financial institution, as a customer with whom the financial institution has established a business relationship before the date of commencement of the AMLO, i.e. 1 April 2012.

accounts of the customer concerned might be used as a temporary repository for funds, which is one of the suspicious activity indicators most commonly associated with money laundering as listed by the JFIU. In 2012, 2014 and 2015, some of those transactions were captured by SCOM's daily and monthly MIS reports. However, for clearance of the relevant MIS alerts, the relevant bank staff accepted pre-defined answers (e.g. fund transfers between group companies) without conducting further enquiry or took the pre-existing customer's explanation at face value, even though the relevant explanation was implausible or inconsistent with SCOM's knowledge of the pre-existing customer.

- (f) As for the other pre-existing customers concerned, their relevant transactions were identified by SCOM through its own review after the launch of the HKMA's investigation. The relevant transactions were either indicative of the pre-existing customers' accounts being used as a temporary repository for funds or explained as loan repayments from a friend without proper enquiries or verification.

Conclusion

- 3. Having considered all of the evidence and the representations of SCOM, the MA has found that SCOM contravened sections 5(1) and 19(3) of Schedule 2 to the AMLO during Relevant Period A and section 6(1) of Schedule 2 to the AMLO during Relevant Period B.
- 4. In deciding the disciplinary action set out in the first paragraph, the MA has had regard to the Guideline on Exercising Power to Impose Pecuniary Penalty³ and has taken into account all relevant circumstances of the case, including but not limited to:-
 - (a) the need to send a clear deterrent message to the industry about the importance of effective internal anti-money laundering/counter-terrorist financing (AML/CFT) controls and procedures;
 - (b) SCOM has taken and will take extensive remedial measures to enhance its AML/CFT systems and controls; and
 - (c) SCOM has no previous disciplinary record and was co-operative throughout the investigation.

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³ 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 the Guideline was published on 27 April 2018.