
STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Monetary Authority (MA) has taken the following disciplinary action against Coutts & Co AG, Hong Kong Branch (also known as Coutts & Co Ltd, Hong Kong Branch) (Coutts Hong Kong):
 - (a) reprimanded Coutts Hong Kong, pursuant to section 21(2)(a) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Chapter 615 of the Laws of Hong Kong) (AMLO); and
 - (b) ordered Coutts Hong Kong to pay a pecuniary penalty of 7,000,000 Hong Kong Dollars, pursuant to section 21(2)(c) of the AMLO.

Summary of Contraventions and Facts

2. The disciplinary action follows an investigation by the Hong Kong Monetary Authority (HKMA) which found that, between April 2012 and June 2015, Coutts Hong Kong contravened five specified provisions, namely sections 3(1), 10(2), 15, 19(1) and 19(3) of Schedule 2 to the AMLO. Coutts Hong Kong's contraventions and the related findings are summarised below:-

Section 19(3) of Schedule 2 to the AMLO

- (a) Section 19(3) of Schedule 2 to the AMLO requires a financial institution, in respect of each kind of customer, business relationship, product and transaction, to establish and maintain effective procedures not inconsistent with the AMLO for the purpose of carrying out its duties under sections 3, 4, 5, 9, 10 and 15 of Schedule 2 to the AMLO. The investigation found that Coutts Hong Kong failed to establish and maintain effective procedures for the purpose of carrying out its duties under section 10 of Schedule 2 to the AMLO. In particular, the HKMA found insufficient procedures and controls for ensuring that staff followed up on confirmed alerts regarding politically exposed persons (PEPs) which Coutts Hong Kong received from a commercially available database and for ensuring that Coutts Hong Kong complied promptly with the requirements under section 10 of Schedule 2 to the AMLO once it came to know that an existing customer or a beneficial owner of a customer was a PEP or had become a PEP. One of the major deficiencies was the lack of a management information system report to track the timeliness of the process to seek senior management approval to continue a business relationship with a PEP. Periodic reviews and

event driven reviews also proved ineffective in ensuring that PEP alerts were followed up and management approval obtained promptly. The ineffectiveness of event driven reviews had been identified by a review conducted within the RBS Group, the findings of which were reported in April 2014. The report had commented that event driven reviews were not completed in a timely manner or to the required standard. The HKMA investigation found nine PEPs in respect of whom Coutts Hong Kong failed to promptly obtain senior management approval to continue the business relationship. In five of these cases, Coutts Hong Kong had received earlier PEP alerts but had failed to follow up promptly. These cases were considered symptomatic of the deficiencies in procedures and the failure of Coutts Hong Kong to establish and maintain effective procedures for the purpose of complying with its duties under section 10 of Schedule 2 to the AMLO. Failure to act on PEP alerts is considered a serious failing because it exposes the bank to significant potential legal and reputation risk. In view of the deficiencies in its procedures together with the failures noted, Coutts Hong Kong was found to have contravened section 19(3) of Schedule 2 to the AMLO.

Section 19(1) of Schedule 2 to the AMLO

- (b) Section 19(1) of Schedule 2 to the AMLO requires a financial institution to establish and maintain effective procedures for determining whether a customer or a beneficial owner of a customer is a PEP. Deficiencies were noted in the procedures of Coutts Hong Kong for identifying and determining whether a customer or beneficial owner of a customer was a PEP. For example, when the policy of conducting internet searches was introduced, searches were only required at the time of account opening but not to screen existing customers. Furthermore, internet searches were only conducted in periodic reviews in respect of customers who were classified by Coutts Hong Kong as high risk. The HKMA investigation found four examples of individuals who were not identified and determined to be PEPs despite the fact that the HKMA found relevant information had been available at the time either on a commercially available database or from publicly available sources from which it should have been possible to determine that they were PEPs. The four individuals were not classified as high risk customers and their status as PEPs therefore remained undiscovered for several years. These cases were considered symptomatic of the deficiencies in procedures and the failure of Coutts Hong Kong to establish and maintain effective procedures for determining whether a customer or a beneficial owner of a customer is a PEP. In view of the deficiencies in procedures together with the failures noted, Coutts Hong Kong was found to have contravened section 19(1) of Schedule 2 to the AMLO.

Section 10(2) of Schedule 2 to the AMLO

- (c) If a financial institution comes to know, from publicly known information or information in its possession, that an existing customer or a beneficial owner of an existing customer is a PEP or has become a PEP, it must not continue its business relationship with the customer unless it has complied with the requirements set out in section 10(2) of Schedule 2 to the AMLO, one of which is to obtain approval from its senior management. The delay in obtaining approval from the senior management or terminating the relationship ranged from four to 34 months after Coutts Hong Kong had come to know from publicly known information or information in its possession that the nine customers were PEPs and therefore Coutts Hong Kong was found to have contravened section 10(2) of Schedule 2 to the AMLO in respect of each of the nine individuals.

Section 3(1) of Schedule 2 to the AMLO

- (d) Section 3(1) of Schedule 2 to the AMLO requires a financial institution to carry out the customer due diligence measures set out in section 2 of Schedule 2 to the AMLO in certain circumstances. A case was found where Coutts Hong Kong failed to comply, before establishing a business relationship with a corporate customer, with the requirement set out in section 2(1)(b) of Schedule 2 to the AMLO to take reasonable measures to enable it to understand the ownership and control structure of the legal persons and the trust involved in the corporate structure of the customer. The measures taken were considered insufficient on the particular facts given the complexity of the ownership structure which involved five intermediate layers, multiple companies and jurisdictions and a trust. Coutts Hong Kong was therefore found to have contravened section 3(1) of Schedule 2 to the AMLO.

Section 15 of Schedule 2 to the AMLO

- (e) Section 15 of Schedule 2 to the AMLO requires a financial institution to take certain measures in a situation that by its nature may present a high risk of money laundering or terrorist financing. These include, in the case where a business relationship has been established, the requirement to obtain approval from its senior management to continue the business relationship. A case was found where Coutts Hong Kong failed to obtain approval from the senior management to continue its business relationship with a corporate customer when the situation of the corporate customer by its nature presented a high risk of money laundering or terrorist financing because one of the beneficial owners was a charitable foundation with close links to a high risk country and it was not clear who had the ultimate control over the charitable foundation. Coutts Hong Kong was therefore found to have contravened section 15 of Schedule 2 to the AMLO.

Conclusion

3. Having considered all of the evidence and the representations of Coutts Hong Kong, the MA has found that, between April 2012 and June 2015, Coutts Hong Kong contravened five specified provisions, namely sections 3(1), 10(2), 15, 19(1) and 19(3) of Schedule 2 to the AMLO.
4. In deciding the disciplinary action set out in the first paragraph, the MA had regard to the Guideline on Exercising Power to Impose Pecuniary Penalty¹ and took into account all relevant circumstances of the case, including but not limited to:
 - (a) the need to send a clear deterrent message about the importance of effective internal anti-money laundering and counter-terrorist financing controls and procedures;
 - (b) Coutts Hong Kong proactively engaged an external consultant to conduct an extensive review on its policies and procedures and remediation of client files;
 - (c) Coutts Hong Kong has taken positive and intensive remedial measures to address the deficiencies identified by the HKMA; and
 - (d) Coutts Hong Kong co-operated with the HKMA during the investigation.

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¹ 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 on an authorized institution and the amount of the pecuniary penalty if the authorized institution contravenes a specified provision as defined by section 5(11) of the AMLO.