

**ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST
FINANCING ORDINANCE (Chapter 615)**

Notice is hereby given that pursuant to section 53ZB(1) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615) and section 32 of the Interpretation and General Clauses Ordinance (Chapter 1), I hereby publish the Guideline on Imposition of Pecuniary Penalty ('the Guideline') to indicate the way in which I propose to exercise the disciplinary power to impose a pecuniary penalty.

The Guideline shall become effective on 1 March 2018.

9 February 2018

Ada L. L. CHUNG Registrar of Companies



公 司 註 冊 處
COMPANIES REGISTRY

Guideline on Imposition
of Pecuniary Penalty

March 2018

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Chapter 1

INTRODUCTION

- 1.1 The Guideline on Imposition of Pecuniary Penalty (“this Guideline”) is issued by the Registrar of Companies (“the Registrar”) pursuant to section 53ZB(1) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, Cap. 615 (“the AMLO”). **This Guideline indicates the way in which the Registrar proposes to exercise the disciplinary power to impose a pecuniary penalty on a person granted a licence to carry on a trust or company service business in Hong Kong (“TCSP licensee”).**
- 1.2 **The Registrar may, among other disciplinary actions, impose a pecuniary penalty on a TCSP licensee under the following situations¹:**
- **the TCSP licensee contravenes a requirement on customer due diligence and record-keeping²;**
 - **the TCSP licensee contravenes a regulation made by the Registrar under the AMLO;**
 - **the TCSP licensee contravenes a condition of the licence;**
 - **a person becomes an ultimate owner, a partner or director of the TCSP licensee without the Registrar’s prior approval³;**
 - **the TCSP licensee fails to notify the Registrar of any change in the particulars previously provided to the Registrar in connection with a licensee’s application for the grant or renewal of a licence within 1 month beginning on the date on which the change takes place⁴; and**
 - **the TCSP licensee fails to notify the Registrar before the intended date of cessation of its intention to cease to carry on its trust or company service business in Hong Kong and the intended date of cessation⁵.**

The Registrar will have regard to this Guideline in exercising the disciplinary power to impose a pecuniary penalty.

- 1.3 This Guideline is intended to explain and supplement relevant statutory requirements and should be read together with the statutory requirements. In case of doubt, you are advised to seek independent legal advice as you see fit.

¹ Please refer to section 53Z of the AMLO.

² Please refer to Schedule 2 to the AMLO for the requirements.

³ Please refer to sections 53S(1), 53T(1) and 53U(1) for the requirement to obtain the Registrar’s approval to become an ultimate owner, a partner or director of a TCSP licensee.

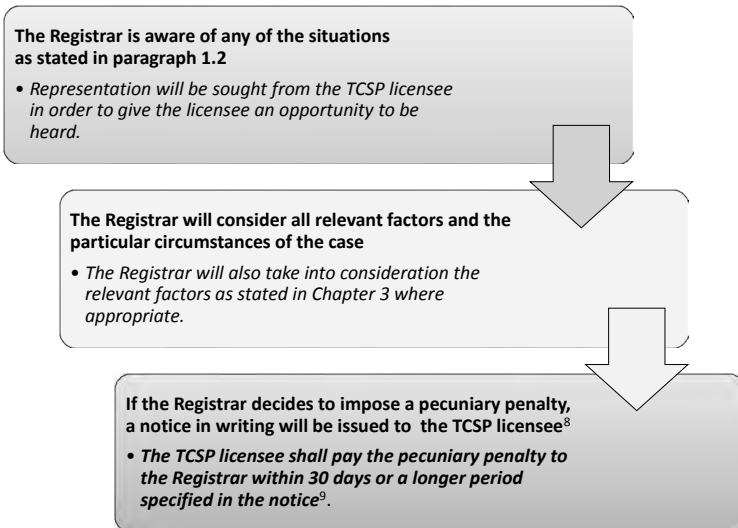
⁴ Please refer to section 53W(1) for the requirement to notify the Registrar of changes in particulars.

⁵ Please refer to section 53X(1) for the requirement to notify the Registrar of the cessation of business.

Chapter 2

IMPOSITION OF PECUNIARY PENALTY

- 2.1 **The Registrar may order a TCSP licensee to pay a pecuniary penalty not exceeding HK\$500,000⁶. In case where the Registrar orders a TCSP licensee to take remedial action but the TCSP licensee fails to comply with the order, the Registrar may further order the TCSP licensee to pay a daily pecuniary penalty not exceeding HK\$10,000 for each day on which the failure continues⁷.**
- 2.2 The following flow chart illustrates the major steps relating to the imposition of pecuniary penalty by the Registrar:



⁶ Please refer to section 53Z(3)(c) of the AMLO.

⁷ Please refer to section 53Z(4) of the AMLO.

⁸ Please refer to sections 53ZA(1) and (2) of the AMLO.

⁹ Please refer to section 53Z(5) of the AMLO.

2.3 The notice in writing referred to in paragraph 2.2¹⁰ will state:

- the reasons for the Registrar’s decision to impose the pecuniary penalty;
- the amount of the pecuniary penalty; and
- the period within which the pecuniary penalty is to be paid.

Imposing a pecuniary penalty in respect of directors of corporations¹¹

If a licensee which is a corporation contravenes any customer due diligence and record-keeping requirement and either the contravention was caused or allowed by a director of the corporation or the director failed to take reasonable steps to prevent the contravention, the Registrar may impose a pecuniary penalty against the director as if the director were a licensee except where the director is an accounting professional¹² or a legal professional¹³.

2.4 **After the decision of the Registrar to impose a pecuniary penalty has taken effect, the Registrar will as a matter of policy disclose to the public the particulars of the case¹⁴.** Such disclosure may be made by way of publication of the case on the website of the Companies Registry’s Trust and Company Service Providers Licensing Regime (www.tcsp.cr.gov.hk). **The following particulars of the case may be disclosed:**

- **details of the decision;**
- **the reasons for which the decision was made; and**
- **any material facts relating to the case.**

**Review of the decision of the Registrar on
the imposition of any pecuniary penalty**

The TCSP licensee may apply to the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal for a review of the decision within the period ending 21 days after the notice informing the TCSP licensee of the decision has been sent.

¹⁰ Please refer to section 53ZA of the AMLO.

¹¹ Please refer to section 53ZD of the AMLO.

¹² Please refer to section 1 of Part 2 of Schedule 1 to the AMLO for the definition of “accounting professional”.

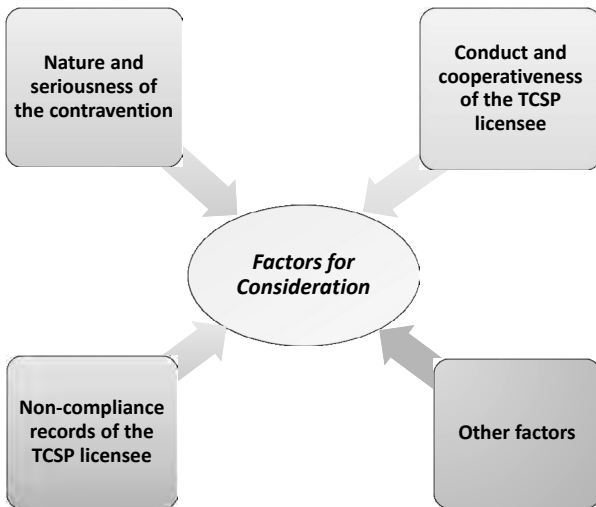
¹³ Please refer to section 1 of Part 2 of Schedule 1 to the AMLO for the definition of “legal professional”.

¹⁴ Please refer to section 53Z(6) for the Registrar’s power to disclose the particulars of the decision to impose pecuniary penalty.

Chapter 3

FACTORS TO BE CONSIDERED WHEN THE REGISTRAR EXERCISES THE POWER TO IMPOSE PECUNIARY PENALTY

- 3.1 **When considering whether a pecuniary penalty will be imposed and the amount of penalty for a contravention, the Registrar will consider all relevant factors (including the factors set out below) and the particular circumstances of the case.**
- 3.2 The factors set out in this Chapter are not exhaustive. **The Registrar may take into consideration any other factors which the Registrar thinks fit.**



Nature and seriousness of the contravention

Factors which the Registrar may take into consideration include:

- (a) the nature and extent of the contravention;
- (b) whether the contravention was intentional or resulted from recklessness or negligence;
- (c) the gains made or loss avoided by the TCSP licensee, or any person associated with the TCSP licensee, as a result of the contravention;
- (d) the potential losses or costs which might be incurred by any other person;
- (e) the systemic failure of the management or internal control of the business of the TCSP licensee in respect of the customer due diligence and record-keeping requirements;
- (f) other contraventions by the TCSP licensee which the Registrar may consider collectively;
- (g) the duration and frequency of the contravention(s); and
- (h) the nature and extent of any crime facilitated, occasioned or attributable to the contravention.

Conduct and cooperativeness of the TCSP licensee

Factors which the Registrar may take into consideration include:

- (a) any attempt to conceal the contravention by the TCSP licensee;
- (b) the timeliness to report the contravention to the Registrar by the TCSP licensee;
- (c) the cooperativeness of the TCSP licensee with the Companies Registry during the investigation of the contravention; and
- (d) remedial actions taken by the TCSP licensee to ensure that similar contraventions will not recur in the future.

Non-compliance records of the TCSP licensee

Factors which the Registrar may take into consideration include:

- (a) disciplinary actions previously taken by the Registrar against the TCSP licensee;
- (b) the TCSP licensee's previous contraventions of or non-compliances with the relevant requirements and/or regulations; and
- (c) sanctions imposed or regulatory action taken by other relevant authorities (both in and outside Hong Kong), in respect of previous incidents.

Other factors

Other factors which the Registrar may also take into consideration include:

- (a) the outcome of any prosecution for the contravention;
- (b) sanctions imposed or regulatory action taken, or likely to be imposed or taken, by other relevant authorities (both in and outside Hong Kong), in respect of the incident relating to the contravention;
- (c) the size of the business and financial resources of the TCSP licensee;
- (d) the likelihood of repeated contravention by the TCSP licensee if no pecuniary penalty or a lower level of pecuniary penalty is imposed; and
- (e) the particular circumstances in which the contravention took place.