

G.N. 4858

**INSURANCE ORDINANCE (Chapter 41) AND ANTI-MONEY LAUNDERING AND
COUNTER-TERRORIST FINANCING ORDINANCE (Chapter 615)**

Pursuant to section 133(1) of the Insurance Ordinance (Chapter 41) and section 23(1) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615), the revised Guideline on Exercising Power to Impose Pecuniary Penalty in respect of Anti-Money Laundering and Counter-Terrorist Financing ('GL3A') is published by the Insurance Authority.

The revised Guideline will come into operation on 30 June 2018, and shall supersede the previous version of the Guideline.

29 June 2018

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**GUIDELINE ON EXERCISING POWER TO
IMPOSE PECUNIARY PENALTY IN RESPECT
OF ANTI-MONEY
LAUNDERING AND COUNTER-
TERRORIST FINANCING**

**(For authorized insurers, reinsurers,
appointed insurance agents and
authorized insurance brokers
carrying on or advising on long term business)**

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1. Introduction

- 1.1. This Guideline is issued by the Insurance Authority (“IA”) pursuant to section 23(1) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (“AMLO”) and section 133 of the Insurance Ordinance (Cap. 41). Under section 21 of the AMLO, the IA may impose a pecuniary penalty either on its own or together with other disciplinary sanctions on an authorized insurer, appointed insurance agent or authorized insurance broker carrying on or advising on long term business (“insurance institution”) if the insurance institution contravenes a specified provision as defined by section 5(11) of the AMLO.
- 1.2. In exercising the power to impose pecuniary penalty referred to in section 21(2)(c) of the AMLO, the IA shall have regard to this Guideline which indicates the manner in which it proposes to exercise that power.

2. Considerations in exercising the Insurance Authority’s power to impose pecuniary penalty

- 2.1. As a matter of policy, the IA will usually publicize all his decisions to impose pecuniary penalty.
- 2.2. When considering whether to impose a pecuniary penalty and the amount of the penalty, the IA will consider all of the circumstances of the particular case, including the relevant factors described below.
- 2.3. A pecuniary penalty imposed by the IA should act as a deterrent to the insurance institution concerned from contravening a specified provision as defined by section 5(11) of the AMLO. It should also act as a general deterrent to other insurance institutions from contravening the same or similar specified provisions.
- 2.4. Although section 21(2)(c)(ii) of the AMLO states that one alternative maximum level of the pecuniary penalty that can be imposed is three times the amount of the profit gained, or costs avoided, the IA will not automatically link the penalty imposed in any particular case with

the profit gained, or costs avoided.

- 2.5. A pecuniary penalty should not have the likely effect of putting the insurance institution concerned in financial jeopardy. In considering this factor, the IA will take into account the size and financial resources of the insurance institution.
- 2.6. The more serious the contravention, the greater the likelihood that the IA will impose a pecuniary penalty and that the size of the penalty will be larger. In determining the seriousness of a contravention, the IA will consider all of the circumstances of the case and take into account but not limited to the factors set out below.
 - (a) *The nature, seriousness and impact of the contravention, including:*
 - (i) whether the contravention is intentional or reckless or negligent – a contravention caused merely by 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 and stability of the insurance industry, and/or the reputation of Hong Kong as an international financial centre;
 - (iv) whether the contravention caused or potentially caused loss to, or imposed costs on, any other person;
 - (v) whether the contravention was committed by the insurance institution alone or whether as part of a group and the role the insurance institution played in that group;
 - (vi) whether the contravention reveals serious or systemic weaknesses of the management systems or internal controls in respect of the customer due diligence and record-keeping procedures relating to all or part of that insurance institution's business;
 - (vii) whether the contravention was indicative of a pattern of 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 insurance institution after the contravention, including:*
- (i) whether the insurance institution attempted to conceal its contravention;
 - (ii) any remedial steps taken since the contravention or the possible contravention was identified, and any action taken by the insurance institution against those involved and any steps taken to ensure that similar contraventions will not occur in future;
 - (iii) the degree of cooperation with the IA, other relevant authorities and/or law enforcement agencies during the investigation of the contravention; and
 - (iv) the likelihood that the insurance institution 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 insurance institution, including:*
- (i) the relevant previous disciplinary record of the insurance institution, including its previous similar contraventions particularly that for which it has been disciplined before;
 - (ii) whether the insurance institution has previously undertaken not to engage in that particular conduct that results in the contravention; and
 - (iii) any punishment imposed or regulatory action taken or likely to be taken by other relevant authorities on the same incident.
- (d) *Other factors, including:*
- (i) whether the IA has issued any guideline in relation to the conduct in question – generally the IA will not take disciplinary action against an insurance institution for conduct that is in line with the guideline which was current at the time of the conduct in question;
 - (ii) what action the IA and/or other relevant authorities have taken in previous similar cases – in general, similar cases should be treated consistently;
 - (iii) the amount of any benefit gained or costs avoided by the

- insurance institution or any of its directors or employees as a result of the contravention; and
- (iv) as a mitigating factor, whether the insurance institution has promptly, effectively and completely brought the contravention or possible contravention to the attention of the IA.

3. Commencement

This Guideline shall take effect from 30 June 2018.

June 2018