

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded Mason Securities Limited (**MSL**), formerly known as GuocoCapital Limited¹ (**GCL**), and fined it HK\$3.6 million pursuant to section 194 of the Securities and Futures Ordinance.
2. The disciplinary action is taken because GCL and MSL failed to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of money laundering and terrorist financing as it:
 - (a) opened accounts in December 2014 and January 2015 for six clients whose account opening documents failed to meet the certification requirements for customers not physically present for identification purposes; and
 - (b) did not have policies and procedures in place to identify third party deposits prior to June 2017.

Summary of facts and breaches

Failure to meet certification requirements for accounts opened using a non-face-to-face approach

3. Six clients opened accounts with GCL using a non-face-to-face approach between December 2014 and January 2015 (**Six Clients**). A licensed representative, who was not accredited to GCL but to another licensed corporation, signed as witness on their account opening forms.
4. A former licensed representative of GCL who has never met the Six Clients signed on the copy identity documents of the Six Clients. The name of the certifier was not printed in capitals on their copy identity documents. There was also no indication of the certifier's position or capacity, or confirmation that the certifier has seen the original identity document of the Six Clients. Further, the copy identity documents of the Six Clients were not dated.
5. Paragraph 4.12.3 of the Guideline on Anti-Money Laundering and Counter-Terrorist Financing² (**AML Guideline**) provides that for customers not physically present for identification purposes, the use of an independent suitable certifier guards against the risk that documentation provided does not correspond to the customer whose identity is being verified. However, for certification to be effective, the certifier will need to have seen the original documentation. Paragraph 4.12.5 of the AML Guideline further states that the certifier must sign and date the copy document (printing his/her name clearly in capitals underneath), and clearly indicate his/her position or capacity on it. The certifier must also state that it is a true copy of the original (or words to similar effect).

¹ MSL was formerly known as GCL until 25 February 2016.

² References to the AML Guideline are to the versions of the AML Guideline effective from April 2012 to March 2015 and from April 2015 to February 2018.

6. Despite the certification of client identity documents noted in paragraph 4 were not in compliance with the requirements set out in the AML Guideline, GCL approved the opening of the Six Clients' accounts. The SFC considers that GCL did not have controls in place to ensure that certification process was conducted in accordance with the AML Guideline, and that the prescribed customer due diligence (**CDD**) for GCL's customers have been carried out.

Failure to implement policies and procedures to identify third party deposits

7. MSL also failed to identify that 15 cheques issued by third parties were deposited into the accounts of five clients (**Five Clients**) between May and July 2016 (**Third Party Cheque Deposits**) until the SFC requested for the relevant cheque copies. This was due to GCL and MSL's lack of policies and procedures for the identification of third party cheque deposits prior to June 2017. There were also no specific procedures on the identification and handling of deposits made by third parties via bank transfers.
8. Although MSL conducted a review on the Third Party Cheque Deposits in September 2016 and identified the third party depositors, including a money exchange operator and three private companies, the enquiries made as to the relationship between the Five Clients and the third parties and reason for third party deposits were inadequate. Without enquiring into the relationship and reasons, it would not be possible for MSL to ascertain whether or not the third party cheque issuers were related to the Five Clients, and whether such payments may constitute suspicious transactions.
9. While MSL explained that the Five Clients had difficulty in remitting funds from the Mainland to Hong Kong for the purpose of settling their margin loans, there is no evidence to suggest that MSL made enquiries as to whether the funds used to settle the margin loans originated from the Five Clients.
10. GCL and MSL's failures constitute a breach of paragraph 2.1 of the AML Guideline, which requires licensed corporations to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of money laundering and terrorist financing. To ensure compliance with this requirement, licensed corporations should implement appropriate internal anti-money laundering (**AML**) / counter-terrorist financing (**CTF**) policies, procedures and controls.
11. MSL's failure to identify third party deposits also breached paragraph 5.1 of the AML Guideline, which requires licensed corporations to continuously monitor its business relationship with its customers, including monitoring their activities (for both cash and non-cash transactions) to ensure that they are consistent with the nature of business, risk profile and source of funds.
12. In view of the failure to comply with the AML Guideline, GCL and MSL also failed to comply with General Principle 7 and paragraph 12.1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, which require licensed corporations to comply with, and implement and maintain measures appropriate to ensuring compliance with, all regulatory requirements applicable to the conduct of their business activities.

Conclusion

13. Having considered all the circumstances, the SFC is of the view that MSL is guilty of misconduct, and its fitness and properness to carry on regulated activities have been called into question.
14. In reaching the decision to take the disciplinary action set out in paragraph 1 above, the SFC has taken into account all relevant circumstances, including:
 - (a) the authentication of client identity is paramount to an effective CDD process and is necessary to guard against the risks of money laundering and terrorist financing;
 - (b) GCL and MSL's failures in complying with AML/CTF requirements lasted for an extensive period of time – its failure to put in place written procedures to identify third party deposits lasted from September 2009 (when the Prevention of Money Laundering and Terrorist Financing Guidance Note (**AML Guidance Note**) came into effect)³ to June 2017;
 - (c) a strong deterrent message has to be sent to the market to deter similar misconduct; and
 - (d) MSL's cooperation with the SFC in resolving the SFC's concerns.

³ Paragraph 6.1.2(d) of the AML Guidance Note dated September 2009 provides that licensed corporations were required to conduct ongoing due diligence and scrutiny on the transactions and account throughout the course of the business relationship to ensure that the transactions being conducted are consistent with its knowledge of the customer, its business and risk profile, taking into account, where necessary, the customer's source of funds.