

JUDICIAL INTERPRETATION RELEASED TO REINFORCE ANTI-MONEY LAUNDERING IN CHINA

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In mid-February, the European Commission adopted its new list of 23 high-risk countries for money laundering. As a result of the listing, banks and other entities covered by the European Union anti-money laundering rules will be required to apply increased checks on financial operations involving customers and financial institutions from these countries. China, as a member of FATF, has also devoted to fight against money laundering. One of the recent developments in this regard is the issuance of *Interpretation on Several Issues concerning the Application of Laws in the Handling of Criminal Cases Involving Illegal Fund Payment and Settlement Business and Illegal Foreign Exchange Trading* (the “**Interpretation**”) by Chinese Supreme People's Court and Chinese Supreme People's Procuratorate to combat criminal activities involving underground banks which in nature have largely facilitated money laundering.

Due to changes of economic situation in China, some people are trying to transfer their funds out of China illegally. This is a severe threaten to financial stability and national security. The Interpretation was released to fight against illegal money transfer and other money laundering activities. It addresses several issues concerning the application of laws in handling criminal cases involving illegal fund payment and settlement business (“**Illegal Settlement**”) and illegal foreign exchange trading (“**Illegal Trading of FX**”).

ILLEGAL SETTLEMENT OR FX TRADING

Pursuant to the Interpretation, the following circumstances will constitute Illegal Settlement, which will be subject to criminal punishment under the *Criminal Law of the People's Republic of China* (the “**Criminal Law**”).

- using acceptance terminals or network payment interfaces, etc., to pay monetary funds to designated payers in an illegal manner such as fictitious transactions, false prices, and transaction refunds;
- illegally providing others with corporate bank settlement accounts for cashing out or providing others with services to change corporate bank settlement accounts into individual accounts; and
- illegally providing others with cheque cashing services.

The following activities will constitute Illegal Trading of FX as it conflicts with foreign exchange administration in China. Such activities shall be convicted as offence of criminal law.

- trading foreign exchange at unauthorized foreign exchange platform for profit purpose; and
- privately matching RMB with foreign exchange, i.e. repaying RMB in foreign exchange or repaying foreign exchange in RMB, among individuals or entities privately instead of going to authorized financial institutions.

Since most offence is conducted via internet, it is difficult to identify where it happened. The Interpretation identifies that law enforcer at any of the following place has jurisdiction to charge the criminal offence (i) the place where the bank account is opened, (ii) the place where the funds are received, (iii) the place where the account for transiting the funds is opened, (iii) the place where the fund account is operated, and (iv) the place for delivery and remittance of funds by the trading counterparty. This will help to fight against illegal settlement or FX trading.

AML LAW AND REGULATIONS IN CHINA

The legal framework of anti-money laundering in China is established by *Anti-money Laundering Law of the People's Republic of China* (the “**AML Law**”) in 2006, and supplemented by PRC Criminal Law and its Amendment III and Amendment VI. Money laundering and unauthorized dealing of FX would be criminal offences. The Interpretation clearly defines to what extent an act of Illegal Settlement or Illegal Trading of FX will be convicted as a crime.

In August 2017, General Office of the State Council issued *Opinions on Improving Anti-money Laundering, Anti-Terrorism Financing and Anti-Tax Evasion Regulatory Systems and Mechanisms* (the “**Opinions**”) which sets up a comprehensive proposal to upgrade China’s AML system. Several measures have been proposed under the goal of full coverage of financial fields with focus on regulation in specific non-financial sector with high risks.

People's Bank of China (“PBOC”) as the key AML regulator has released a comprehensive set of rules on AML. Some recent important rules are:

- *Notice on Strengthening the Anti-Money Laundering Supervision over Specific Non-Financial Institutions* issued in July 2018, which provides for AML responsibilities on certain non-financial institutions, including real estate development companies, real estate agencies, precious metals traders and exchange centers, accounting firms, law firms, and notary agencies, etc.
- *Administrative Measures for Anti-Money Laundering and Counter-Terrorism Financing by Internet Financial Service Agencies (for Trial Implementation)* issued in October 2018 and took effective from January 2019, which sets up rules on regulating internet financial service providers.
- *Measures for Anti-money Laundering and Anti-terrorism Financing Administration of Banking Financial Institutions* issued in February 2019, which strengthens AML in banking industry from the perspective of internal controls, regulatory mechanism, market access standards, etc.

IMPACT AND OUTLOOK

AML has attracted more and more attention in China. Due to the fast development of new technology in financial sector which may circumvent existing AML rules, it is expected that a few more AML rules or regulations would be put forward and implemented from several aspects. These new rules would reinforce punishment of money laundering activities, or upgrade regulating mechanism. In addition, we believe that the inter-ministerial AML joint conference led by PBOC will be further enhanced to guide the AML work in China. We will continue to pay close attention to China's AML regulation update and be delighted to render related advice.

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