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**IN THE ANTI-MONEY LAUNDERING AND
COUNTER-TERRORIST FINANCING (FINANCIAL
INSTITUTIONS) REVIEW TRIBUNAL**

IN THE MATTER of a Decision made
by the Commissioner of Customs and
Excise pursuant to s 30 of the
Anti-Money Laundering and Counter-
Terrorist Financing (Financing
Institutions) Ordinance, Cap. 615

and

IN THE MATTER of s 59 of the
Anti-Money Laundering and Counter-
Terrorist Financing (Financing
Institutions) Ordinance, Cap. 615

BETWEEN

HONG KONG DIGITAL CURRENCY INVESTMENT Applicant
MANAGEMENT COMPANY LIMITED

and

COMMISSIONER OF CUSTOMS AND EXCISE Respondent

Before : Chairman, Martin Liao Cheung-kong

Date of Decision : 2nd March 2018

DECISION

1. On 9 November 2016, Hong Kong Digital Currency Investment Management Company Limited (“the Applicant”) made an application No. P-NL-16-00188 to the Customs & Excise Department (“C&E”) for a money service operator (“MSO”) licence. Due to incomplete information in that application, a second application was submitted to C&E on 16 March 2017. As the Applicant is a body corporate, the application gave particulars of its director, Mr. Zhang You-Biao (“Mr. Zhang”) in Part 6 of the application form as ultimate owner of the Applicant and provided Unit 203, 2nd Floor, Office Plus Sheung Wan, 93-103 Wing Lok Street, Sheung Wan, HK (“the Applicant’s address”) as its correspondence address in Part 2(1) of the application form. It is noted that this address is the same address as that listed in the Applicant’s business registration certificate.

2. On 11 August 2017, the Commissioner of C&E decided to refuse the application on the basis the Commissioner was not satisfied that Mr. Zhang, being a sole director of the Applicant, was a fit and proper person to operate a money service. A notice of refusal containing the Commissioner’s decision (“the Refusal Notice”) was sent to the Applicant’s address by registered mail on 14 August 2017. The Refusal Notice also contained a notification to the Applicant in that should the Applicant feel aggrieved by the decision, it could appeal to this tribunal (“the Tribunal”) for a review of that decision within 21 days after the

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Refusal Notice had been sent. The deadline for filing an appeal to this tribunal in this case is 4 September 2017.

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3. Before the decision, on 7 August 2017, Mr. Stephen Chow (“Mr. Chow”), said to be the Operation Manager of the Applicant, sent an e-mail to Mr. Henry Cheng (“Mr. Cheng”), who was the officer handling the application on behalf of the Commissioner, requesting Mr. Cheng to speed up the application process to make way for their marketing activities.

4. On 25 August 2017, having checked the status of the registered mail, C&E officers learned that the registered mail was still pending collection. They have tried to contact the Applicant by telephone but in vain. On 28 August 2017, Mr. Cheng wrote an e-mail to Mr. Chow advising him that the application result had been sent to the Applicant’s address.

5. On the next day, 29 August 2017, Mr. Chow via e-mail thanked Mr. Cheng for his prompt reply and asked for information as to the status of the application. Within 12 minutes, Mr. Cheng responded by e-mail and advised that the application was unsuccessful and that the Refusal Notice had been sent to the Applicant’s address by registered mail. Mr. Cheng also asked Mr. Chow to collect the mail as soon as possible.

6. On the same day, Mr. Chow again wrote to Mr. Cheng asking for the reason why the application was rejected. Within 5 minutes, Mr. Cheng responded and asked Mr. Chow to refer to the Refusal Notice.

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7. On 5 September 2017, the Secretary of the Tribunal received a telephone call from Mr. Chow making enquiry on the procedure for lodging an application for review. Having understood the situation, the Tribunal Secretary advised Mr. Chow that the Applicant should first apply for an extension of time before proceeding on an application for review.

8. Meanwhile, C&E re-sent the Refusal Notice again by registered mail to the Applicant's address on 8 September 2017. On the same day and by e-mail, Mr. Cheng wrote to Mr. Chow advising him that the Refusal Notice had been returned by post and they would re-send the Refusal Notice to the Applicant's address by registered mail and provided in the e-mail a scanned copy of the Refusal Notice for Mr. Chow's reference.

9. In the afternoon of 13 September 2017, Mr. Chow visited the Secretariat of the Tribunal to file an application for an extension of time. It was noted that the application was addressed to C&E and not the Tribunal. Mr. Chow was advised to file a corrected application as soon as possible.

10. On 14 September 2017, Mr. Chow e-mailed Mr. Cheng and indicated that the Applicant wished to appeal to "*financial Institute Review tribunal department and Custom Hong Kong*". Later in the early evening on the same day, the Secretary of the Tribunal received an e-mail from Mr. Chow attaching a copy of a scanned letter dated 13 September 2017 and signed by Mr. Zhang in which Mr. Zhang stated:

"Unfortunately, due to Hong Kong Courier service issue, we did not received (sic) any notification letter from Hong Kong Custom office until

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this week Monday, we received email from SH Cheng, TCO (Ag.)T(LSU2)1/LSD/MSSB 08-Sept-2017 (Thursday). Therefore, we're unable to appeal the application on time."

11. In the morning of 20 September 2017, the Secretariat of the Tribunal received the original copy of the letter from Mr. Zhang via courier service enclosed with a copy of the Refusal Notice and a copy of a branch registration certificate of "Huameng Motorcar of Hong Kong Digital Assets Investment Management Group Limited". Upon enquiry by the Secretariat of the Tribunal, Mr. Chow indicated that the Applicant had changed its name to "Hong Kong Digital Assets Investment Management Group Limited" since 24 April 2017, but its registered address remained unchanged.

12. The Commissioner objected to the Applicant's request for time extension. The Commissioner informed the Tribunal, amongst other things, that:

- (a) On 14 August 2017, C&E duly sent out the Refusal Notice;
- (b) The Refusal Notice was sent by registered mail to the address provided by the Applicant;
- (c) E-mail was sent urging the Applicant to collect the Refusal Notice but it remained uncollected and was ultimately returned from the Post Office; and
- (d) It was not until 14 September 2017 that the Applicant indicated an intention to apply for a review, that is, on the

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10th day after the period ending 21 days after the Refusal Notice had been sent.

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13. On my behalf, the Secretary of the Tribunal has in writing asked both parties whether they would require a hearing for the application for the extension of time. Both parties responded that they did not require a hearing.

14. The Tribunal has power to extend the time for filing an application for review under *section 59(2) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance, Cap.615* (“the Ordinance”). By *section 59(3)* of the Ordinance, the Tribunal may grant an extension of time (1) after a reasonable opportunity to be heard has been given to the parties and (2) if it is satisfied that there is good cause for granting an extension of time.

15. As both parties have declined a hearing, it remains for me to consider whether there is good cause for granting an extension of time in the circumstances shown in the documents before me.

16. There is no dispute that the Applicant’s address was provided by the Applicant to C&E. It is the responsibility of the Applicant to provide an effective address and to keep C&E informed of any changes in such address so that communications by post or courier could be sent to and received by the Applicant in a timely fashion. This would be important in an application for a licence from the government. It appears to me that the Applicant’s failure in receiving the Refusal Notice in time is attributable to its own failure since (1) the Refusal Notice was sent to the Applicant’s address and, according to the Applicant, it has not

changed since the application, and (2) Mr. Chow had been notified of the Commissioner's rejection of the application and asked to collect the Refusal Notice in e-mail correspondence on 29 August 2017.

17. *Section 59(3)* of the Ordinance allows the Tribunal to grant an extension of time if it is satisfied that there is good cause for doing so. Such good cause could best be provided by the Applicant seeking the extension. The Applicant merely provided the reason in Mr. Zhang's letter as recited in paragraph 10 above. Bearing in mind the history regarding the dispatch of the Refusal Notice, the reason tendered by Mr. Zhang is at best tenuous. I also cannot find anything done on the part of the Commissioner or on his behalf that might have affected timely delivery of the Refusal Notice.

18. Having regard to the circumstances shown before me, I am not satisfied that there is good cause for granting an extension of time.

19. The application for time extension is accordingly dismissed.



(Martin Liao)

Chairman,

Anti-Money Laundering and

Counter-Terrorist Financing (Financial Institutions) Review Tribunal