

**Drug Trafficking and Organized Crimes (Amendment) Bill 2000**  
**Proposed mental element of**  
**“Having reasonable grounds to suspect”**

At the Bills Committee meeting on 8 February 2001, the Administration explained the differences between the mental element of “having reasonable grounds to believe” under the existing section 25 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455) and “having reasonable grounds to suspect” under the section 25(1A) of the Drug Trafficking and Organized Crimes (Amendment) Bill 2000, and elaborated on the reasons for proposing the amendment. Members were also informed that similar mental element was being used in Australia, and the UK was proposing to adopt a lower mental element (i.e. “having reasonable grounds to suspect”) in its legislative provision regarding disclosure of suspicious transactions. Members were concerned whether the money laundering situation in Hong Kong warranted the proposed changes.

**Anti-money laundering regime in Hong Kong**

2. It needs to be stressed that different countries have different systems to counter money laundering, having regard to their differences in legal and administrative systems, policy priority attached to money laundering, etc. While overseas countries’ practices may serve as a reference in considering the current proposals put before the Bills Committee, the Administration considers that emphasis should be placed on Hong Kong’s situation which gives rise to the proposed change. The Administration has repeatedly explained the ineffectiveness of the existing anti-money laundering legislation by quoting the low number of prosecutions (85 persons from 1996 to 2000) and convictions (49 persons from 1996 to 2000) versus the large number of investigations (2778 in the same period) and actual case examples which revealed the difficulties of convicting suspects based on existing legislation.

3. Hong Kong’s legislation, as it presently stands, does not follow similar legislation elsewhere in its entirety. A case in point is the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), which was

modeled upon the UK's Drug Trafficking Offences Act 1986 when enacted in 1989. However, given the operational experience in respect of the Ordinance, and the inadequacy revealed during the course of operation, the Ordinance was amended in 1995<sup>1</sup>. Such amendments resulted in the Ordinance being substantially different from the law in the UK regarding the "disclosure" provision and showed that amendments were introduced primarily to cater for the situation of Hong Kong.

### **Money laundering situation in Hong Kong**

4. In assessing the need for introducing the changes proposed in the Bill, one needs to take into account the status of Hong Kong as an important financial centre in the world, the vulnerability of Hong Kong in being used for money laundering and the need to safeguard the integrity of our systems against money laundering.

5. Hong Kong is an international financial centre with an integrated network of financial institutions and markets. As a city which imposes no restrictions on capital flows into and out of the territory, Hong Kong is widely regarded as one of the world's freest economies. Its financial markets are characterised by a high degree of liquidity, and a strong presence of international financial institutions. As at early 2001, about 260 authorised institutions (including licensed banks, restricted licence banks and deposit-taking companies) and local representative offices of banks from more than 40 countries conduct businesses in Hong Kong. Hong Kong is the world's tenth largest banking centre in terms of external banking transactions<sup>2</sup>. In 1998, Hong Kong was already rated the world's seventh largest centre for foreign exchange trading<sup>3</sup>, and its stock market is Asia's second largest in terms of market capitalisation. With its strategic location at the doorway to China, Hong Kong now ranks the ninth largest trading entity in the world. As an integral part of the global financial market and economy, Hong Kong's financial systems are prone to, and must be safeguarded against the risks of money laundering. In addition, Hong Kong's reputation as an international financial centre is further enhanced by its effective anti-money laundering

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<sup>1</sup> The 1995 amendments include a money laundering offence of dealing with property knowing or having reasonable grounds to believe it to represent the proceeds of drug trafficking or indictable offence; and impose a duty on all persons to report suspicious transaction.

<sup>2</sup> BIS Quarterly Review

<sup>3</sup> Rating was according to the 1998 triennial global survey conducted by the Bank for International Settlements

measures.

6. Apart from the above, it needs to be stressed that todate, there is still no internationally accepted method to estimate the magnitude of money laundering. The Financial Action Task Force on Money Laundering (FATF), a pre-eminent inter-governmental body recommending international standards and best practices in countering money laundering, has explored this issue but has not come up with any conclusion. In spite of this, the following parameters may assist in gauging the severity of the money laundering situation in a place: -

- (a) the estimated expenditure/revenue of illicit drug trade, as drug trafficking and related criminal activities are known to generate substantial illicit proceeds which need to find ways into legitimate financial/economic activities;
- (b) the estimated proceeds generated from other serious crimes;
- (c) the amount of criminal assets under restraint and confiscation; and
- (d) the amount of criminal proceeds shared or to be shared with foreign jurisdictions.

7. With regard to drug proceeds (paragraph 6(a) above), in spite of Government's efforts in combating the drug problem, and the fact that the total number of drug abusers in Hong Kong as compared to the total population was still quite small (less than 0.3% as at 2000), there were still over 18 000 reported drug abusers in Hong Kong in 2000. According to the Central Registry of Drug Abuse, the daily expenditure on drugs by reported drug abusers in 2000 was HK\$230 each. According to a research on "Social Cost of Drug Abuse in Hong Kong" conducted by the Chinese University of Hong Kong, the estimated expenditure on drugs by drug abusers is \$1,273 million in 1998. Another point to note is that in 2000 alone, drugs worth about a total of \$360 million were seized by the Police and Customs.

8. As for proceeds of serious crimes (paragraph 6(b) above), a rough indicator is that the Organized Crime and Triad Bureau of the Police currently has 73 money laundering investigations ongoing involving some \$4,900 million in suspected laundered proceeds. The

Commercial and Crime Bureau which handles most major commercial fraud cases has reported the following figures :-

<u>Year</u>	<u>Complaints</u>	<u>Amount Reported Lost</u>
1998	144	\$3,800 million
1999	91	\$3,100 million
2000	92	\$2,300 million

There are also plenty of other commercial frauds investigated by other Police units. Apart from these, there is illegal bookmaking turnover through off-course horse bookmaking and soccer bookmaking etc. Furthermore, other sources of proceeds of crime which need laundering include extortion, loansharking, casino gambling, syndicated vice activities, syndicated human smuggling, syndicated vehicle theft, one-off crimes such as robberies and kidnappings, tax evasion and overseas crime, etc. It is hard to put a value on the amount laundered connected to these crimes, but the value is definitely considerable.

9. As a supplementary information, from 1996 to 2000, the Police and the Customs & Excise Department successfully arrested more than 57 431 persons due to drug related offences, and more than 133 000 due to serious crime offences. The resultant convictions were more than 47 000 persons for drug related offences and more than 64 000 persons for serious crime offences. When compared to the number of persons prosecuted (85 persons) and convicted (49 persons) in respect of money laundering offences in the same period, it shows that a considerable number of criminals could have escaped the existing anti-money laundering system.

10. As regards assets which have been restrained and confiscated (paragraph 6(c)), as at the end of January 2001, a total of HK\$671 million has either been restrained, confiscated or recovered by Government under the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) and Organized and Serious Crimes Ordinance (Cap 455).

11. As for asset sharing with other jurisdictions (paragraph 6(d)), in 1998, a total of HK\$16.9 million was shared with the United States in the Chan Ching-wai case. In 2000, another HK\$7 million was shared with the United States, this time on the Giorgio Farina case. Another case of sharing involving a total amount of HK\$20 million is being negotiated

with a foreign jurisdiction.

## **Conclusion**

12. It needs to be stressed that the magnitude of money laundering is impossible to quantify. Indeed, money launderers make no distinction between proceeds of illicit drug trade and other crimes. It is also understandable that with the presence of large-scale crime syndicates, many serious and organized crimes are interlinked and increasingly, they transcend national boundaries. It is therefore not possible to come up with an accurate estimate as to the magnitude of the crime proceeds that our anti-money laundering system is intended to catch. But it is certain that such proceeds, either seen in isolation in respect of an individual case, or in aggregate, represent extremely large amount of money that could penetrate into our existing legitimate financial/economic networks.

13. In considering why we should act against money laundering, apart from security reasons, we should also take into account macro-economic reasons and micro-economic reasons. The former include the contaminating effect money laundering activities have on legal financial transactions, the adverse effects on a jurisdiction's tax collection and public expenditure and increased prudential and systemic risks. The latter include control by criminals of legitimate businesses, and capability of criminal proceeds breeding other crimes. The current proposals in respect of section 25 and section 25 A of Cap. 405 and Cap. 455 are but one step to strengthen the capabilities of Hong Kong's anti-money laundering regime by making our law more effective in dealing with money laundering.

Security Bureau

March 2001