

Drug Trafficking and Organized Crimes (Amendment) Bill 2000
Submission by the Hong Kong Federation of Insurers

The Hong Kong Federation of Insurers (the Federation) wrote to the Clerk to the Bills Committee on 16 March 2001 on the Drug Trafficking and Organized Crimes (Amendment) Bill 2000.

Proposals in respect of section 25 and section 25A

2. The Administration had explained on various occasions the reasons for introducing the proposals in respect of section 25 and section 25A using the mental element of “having reasonable grounds to suspect”. 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 corresponding period) and the possible proceeds generating from crime in one single year were only some of the reasons for the proposed amendments.

3. The Federation mentioned that “...This represents a fundamental shift of responsibility from the law enforcement agencies to the financial institutions”. The Administration had pointed out repeatedly that the current proposals of introducing a new money laundering offence using the mental element of “has reasonable grounds to suspect” under the proposed section 25(1A) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455), and altering the mental element from “knows or suspects” to “knows or has reasonable grounds to suspect” under section 25A of the two Ordinances will not change the onus of proof and standard of proof of the offences. The onus of proof for conviction of the offences will still lie totally with the prosecution. Under the current proposals, the prosecution still has to prove beyond reasonable doubt the relevant mental elements and it is still not easy to convict a person of the new money laundering offence or failure to disclose suspicious transaction.

4. The Federation also mentioned that “To replace such a well-established government guidelines with the test of reasonableness which

is vague and unclear would impose an unreasonable and excessive burden on the financial institutions”. The Administration stresses that the proposals are not intended to replace any guideline issued by financial regulators. Indeed, at the Bills Committee meeting on 16 March 2001, the Administration also proposed to the Bills Committee a provision for those who have followed the requirements of anti-money laundering guidelines stipulated by their respective regulators. The proposal is attached at Annex I for reference.

5. In drafting the Bill, the Administration had consulted the Hong Kong Federation of Insurers (the Federation) on the proposed legislative amendments through the Office of the Commissioner of Insurance on 14 October 1999. The Federation then indicated that it did not have any comments on the proposed amendments. The letter dated 22 October 1999 from the Federation is attached at Annex II.

Security Bureau
April 2001

Proposed CSA to section 11 of Schedule 1 to the Bill

- 11
- (a) In paragraph (e), by deleting the fullstop and substituting a semicolon.

 - (b) By adding -
 - "(f) by adding -
 - "(9) In proceedings for an offence under this section -
 - (a) any provision of a guideline which -
 - (i) was issued or otherwise approved by -
 - (A) the defendant's employer at the material time; or
 - (B) a body representing a profession to which the defendant

belonged at the material
time;

(ii) applied to the defendant at the
material time in his capacity as an
employee of that employer or as a
member of that profession, as the
case may be; and

(iii) appears to a court to be relevant to
a provision of this section alleged
to have been contravened,

shall be admissible in evidence in the
proceedings; and

(b) the court may give the defendant's
observance or non-observance of the
guideline such weight in

the proceedings as the court thinks proper
in the interests of justice.

(10) In subsection (9) -

"court" () includes a magistrate;

"guideline" () includes a code of practice."."

Ref: Lv076/99

22 October 1999

By Fax and By Mail
(Fax No.: 2869 0252)

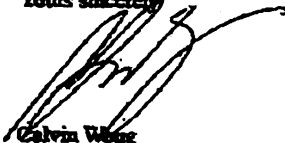
Mr S K Leung
Office of the Commissioner of Insurance
21/F Queensway Government Office
66 Queensway
Hong Kong

Dear Mr Leung

Drug Trafficking and Organised Crimes (Amendment) Bill 1999

I refer to your letter dated 14 October 1999 seeking comments of the Hong Kong Federation of Insurers on the above Bill. Since anti-money laundering issue concerns primarily life insurance, your letter was passed on to the Legal Working Group (LWG) of the Life Insurance Council for consideration. The LWG has reviewed the relevant amendments proposed and has no specific comments thereon.

Yours sincerely



Calvin Wong
Chairman
LIC Legal Working Group

CW/JW/vc

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