

Drug Trafficking and Organized Crimes (Amendment) Bill 2000
Proposed change to section 25(1A)

At the meeting of the Bills Committee on Drug Trafficking and Organized Crimes (Amendment) Bill 2000 (the Bill) on 16 March 2001, a few Members expressed concerns on the possibilities that an innocent person who genuinely did not suspect that the proceeds he had dealt with were proceeds of drug trafficking or indictable offence might be caught under the proposed new money laundering offence under section 25(1A) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and Organized and Serious Crimes Ordinance (Cap. 455) using the mental element of “having reasonable grounds to suspect”. The Administration has been requested to further consider providing such persons with protection under the Bill.

The proposal

2. The Administration has repeatedly explained to Members that under the existing proposals, the burden and standard of proof for conviction of money laundering offence will not be changed. That is, the onus of proof will still lie totally with the prosecution. In addition, the prosecution still has to prove beyond reasonable doubt the relevant mental elements. This follows that still it will not be easy to convict a person of the new money laundering offence or failure to disclose suspicious transaction. However, having considered Members’ views, the Administration now proposes to build in a defence provision to provide that in proceedings against a person for an offence under section 25(1A) (dealing offence), it is a defence to prove that he did not suspect the property he dealt with in whole or in part directly or indirectly represented any person’s proceeds of drug trafficking or indictable offence and in all circumstances of his case, it was reasonable that he did not so suspect. The proposal, in the form of a Committee Stage Amendment, is enclosed at Annex.

3. Having regard to Members’ concern on proposals concerning section 25A (reporting offence), the Administration proposed at the last

Bills Committee meeting a provision for those who have followed the requirements of anti-money laundering guidelines stipulated by their employers and professional bodies. Subsequent to the last meeting, the Administration has further refined the Committee Stage Amendment to make it clear that the court may consider the defendant's observance or non-observance of the guidelines issued by regulatory bodies, amongst others, in the proceedings for an offence under section 25A. The relevant revised Committee Stage Amendment is also annexed.

Security Bureau
April 2001

DRUG TRAFFICKING AND ORGANISED CRIMES (AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 1	<p>(a) In section 10(d), by adding before the proposed section 25(4)</p> <p>-</p> <p>"(3A) In proceedings against a person for an offence under <u>subsection (1A)</u>, it is a defence to prove that -</p> <p>(a) he did not suspect that the property he dealt with in whole or in part directly or indirectly represented any person's proceeds of drug trafficking; and</p> <p>(b) in all the circumstances of his case, it was reasonable that he did not so suspect."</p> <p>(b) In section 11 -</p>

(i) in paragraph (e), by deleting the fullstop and substituting a semi-colon;

(ii) 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;

(B) a body representing a profession to which the defendant belonged at the material

time; or

(C) a regulatory body which pursuant to any enactment regulates the industry or other activity in which the defendant worked or was engaged at the material time;

(ii) applied to the defendant at the material time in his capacity as an employee of that employer, as a member of that profession,

or as a person
working or engaged
in that industry or
activity, 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."."

Schedule 2 (a) In section 9(d), by adding before the proposed section 25(3A)

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"(3AA) In proceedings against a person for an offence under subsection (1A), it is a defence to prove that -

(a) he did not suspect that the property he dealt with in whole or in part directly or indirectly represented any person's proceeds of an indictable offence; and

(b) in all the circumstances of his case, it was reasonable that he did not so suspect."

(b) In section 10 -

(i) in paragraph (e), by deleting the fullstop and substituting a semi-colon;

(ii) 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;

(B) a body representing a profession to which the defendant belonged at the material time; or

(C) a regulatory body which pursuant to any enactment regulates

the industry
or other
activity in
which the
defendant
worked or
was
engaged at
the material
time;

- (ii) applied to the
defendant at the
material time in his
capacity as an
employee of that
employer, as a
member of that
profession, or as a
person working or
engaged in that
industry or activity,
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."."