

Drug Trafficking and Organized Crimes (Amendment) Bill 2000
“Drug trafficking offence” referred to under section 25A of the Drug
Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and “indictable
offence” under section 25A of
the Organized and Serious Crimes Ordinance (Cap. 455)

At the Bills Committee meeting on 20 November 2000, Members discussed the situations where a person was required under section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455) to disclose suspicious transaction. In connection with this discussion, the Hon Eric Li wrote to the Secretary for Security on 15 November 2000 on, amongst others, the drug trafficking offence referred to under section 25A of Cap. 405 and indictable offence referred to under section 25A of Cap. 455. The letter from the Hon Eric Li (English translation) is at *Annex I*. The reply from the Secretary for Security dated 21 November 2000 (English translation) is at *Annex II*. As the information sought in the letter was relevant to the deliberation of the Bills Committee, Members proposed and the Hon Eric Li agreed on 20 November 2000 that the Administration’s response to the Hon Eric Li’s letter, together with other relevant supplementary information should be provided to the Bills Committee for reference.

Section 25A of Cap. 405 and Cap. 455

2. Section 25A (1) of Cap. 405 and Cap. 455 stipulates “where a person knows or suspects that any property-

- (a) in whole or in part directly or indirectly represents any person’s proceeds of;
- (b) was used in connection with; or
- (c) is intended to be used in connection with, drug trafficking (in the case of Cap. 405; “an indictable offence” in the case of Cap. 455),

he shall as soon as it is reasonable for him to do so disclose that knowledge or suspicion”.

3. “Drug trafficking” in section 25A of Cap. 405 is defined in section 2 of the Ordinance as follows:

“drug trafficking” means doing or being connected in, whether in Hong Kong or elsewhere, any act constituting-

- (a) a drug trafficking offence; or
- (b) an offence punishable under a corresponding law,

and includes dealing, whether in Hong Kong or elsewhere, with any property which in whole or in part directly or indirectly represents any person’s proceeds of drug trafficking.”

“drug trafficking offence” means-

- (a) any of the offences specified in Schedule 1;
- (b) conspiracy to commit any of these offences;
- (c) inciting another to commit any of those offences;
- (d) attempting to commit any of those offences;
- (e) aiding, abetting, counselling or procuring the commission of any of those offences.”

4. The list of Schedule 1 offences of Cap. 405 is attached at *Annex III*.

5. “Indictable offences” referred to in section 25A of Cap. 455 are serious offences which may be dealt with “on indictment” i.e. in the Court of First Instance, although some indictable offences may be dealt with in the District Court or Magistrates’ Court. A list of such offences under Cap. 455 is at *Annex IV*.

Whether section 25A of Cap. 405 and Cap. 455 covers overseas offences

6. The drug trafficking and indictable offences mentioned in section 25A of Cap. 405 and Cap. 455 cover like offences committed overseas. In the case of Cap. 405, see the definitions of “corresponding law”, “drug trafficking” (in particular paragraph (b) of that definition) and “drug trafficking offence” in section 2 as read with the references to “drug trafficking” in section 25A. In the case of Cap. 455, see section 25(4) as read with the references to “indictable offence” in section 25A. However, under the dual criminality principle, it should be noted that the overseas offences caught are those where the conduct which constitutes the overseas

offence would also be an offence in Hong Kong if the conduct had occurred in Hong Kong.

Report of Suspicious Transaction and Prosecution

7. In a prosecution, the particular transaction and the person's knowledge or suspicion are important. It is very difficult to prove a person's knowledge or suspicion from the fact of the transaction alone.

8. The Government Joint Financial Intelligence Unit (JFIU) has received more than 29,000 suspicious transaction reports from 1989 to 2000. The Police and the Customs and Excise Department have investigated into these reports at various levels. Such reports generally yielded useful information which helped investigations into drug trafficking as well as other indictable offences. So far, one person has been prosecuted and convicted under section 25A of Cap. 405 and nil under the same section of Cap. 455.

Security Bureau
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