

## **Legislative Council Panel on Security**

### **Hong Kong's Work on Combating Money Laundering and Terrorist Financing**

#### **PURPOSE**

This paper gives an account of the current work carried out by Hong Kong, both domestically and internationally, in the areas of combating money laundering and terrorist financing. It also outlines the major tasks ahead.

#### **BACKGROUND**

2. Criminals of every kind - from drug traffickers, smugglers, illicit arms dealers to corrupt officials - must launder the money flowing from their crimes to conceal such proceeds from being target of investigation and seizures. They make their ill-gotten wealth look clean by moving it around, and legitimizing it in the world's financial systems. Attacking criminals where it hurts - in their pockets - by preventing them from profiting from their crimes is an effective deterrent. Combating money laundering is therefore of paramount importance in suppressing serious and organized crimes.

3. By its very nature, money laundering occurs outside of the normal range of economic activities. As with other aspects of underground activities, it is extremely difficult to give some sense of scale to the

problem. The Financial Action Task Force on Money Laundering (FATF) initiated an exercise in 1999 to estimate the magnitude of illicit drug money laundered globally each year, but the study was terminated in 2000 because of weaknesses in the underlying data, such as drug consumption figures and statistics on drug prices. The International Monetary Fund (IMF) guesstimated in 1998 that the aggregate size of money laundering in the world could be somewhere between two to five percent of the world's gross domestic product.

4. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 was the first international convention to require its signatories to criminalize drug money laundering in their national legislation. The United Nations Convention against Transnational Organized Crime 2000 went one step further by imposing an obligation on the signatories to establish as criminal offences the laundering of proceeds of crimes, and to take measures contained in the Convention to combat money laundering. On the formulation of anti-money laundering policies and measures, the standard setter is the FATF, a pre-eminent independent international organization established after the G-7 Summit in 1989 to develop and promote policies, both at national and international levels to combat money laundering (membership list at [Annex A](#)).

5. Like other international financial centres, Hong Kong is not immune from the risk of being used by criminals to launder their illicit proceeds. Our open economy makes detection of transfer of illicit funds even more difficult. Notwithstanding this, Hong Kong has been vigilant in safeguarding the stability and integrity of our financial sector against such risks. Proactive actions have also been taken against money laundering,

both domestically and on the international front.

## **WORK IN HONG KONG**

6. Over the years, Hong Kong has built up a robust and comprehensive anti-money laundering (AML) regime. The regime has continuously been strengthened by a number of measures and initiatives on the legislative, enforcement, and regulatory fronts.

### Legislation

7. The Drug Trafficking (Recovery of Proceeds) Ordinance (DTROP) (Cap 405) and the Organized and Serious Crimes Ordinance (OSCO) (Cap 455) are the main weapons to trace, restrain and confiscate proceeds of drug trafficking as well as other serious offences. The AML provisions in the two ordinances have been enhanced in recent years. Following amendments to the OSCO, money changers and remittance agents are required, since June 2000, to register their operations with the Police and to follow AML measures such as customer identification and transaction record keeping.

8. The Drug Trafficking and Organized Crimes (Amendment) Ordinance 2002, which came into operation on 1 January 2003, has further enhanced the provisions in the two Ordinances relating to initiation of restraint/charging orders and confiscation orders against properties of persons who have committed money laundering offences.

9. The United Nations (Anti-Terrorism Measures) Ordinance was enacted in July 2002 to implement, among others, the more pressing

elements of the FATF's Eight Special Recommendations on Terrorist Financing and the mandatory elements of the United Nations Security Council Resolution 1373 relating to measures for the prevention of terrorist acts.

### Law Enforcement

10. Anti-money laundering and countering terrorist financing legislation are vigorously enforced by both the Police and Customs and Excise Department. The two agencies jointly operate the Joint Financial Intelligence Unit (JFIU) which collects and analyses reports on suspicious transactions. It disseminates financial intelligence to the Police and Customs for follow-up investigations for purpose of prosecution of money laundering and terrorist financing offences. Statistics on suspicious transaction reports (STRs) received by the JFIU since 1998 are set out in Annex B, while the number of investigations and the number of cases for which there were prosecutions and conviction of money laundering offences are set out in Annex C.

11. Since the introduction of the DTROP in 1989 and the OSCO in 1994, a total of HK\$383 million had been confiscated and paid to the Government. As at 30 April 2003, a total of HK\$1,172 million of proceeds of crime was under restraint. In addition, HK\$101 million had been ordered to be confiscated and were pending recovery from the defendants. Detailed breakdown is at Annex D. To enhance international co-operation, Hong Kong has shared with foreign jurisdictions, on four occasions, confiscated assets related to drug trafficking. Details of the sharing jurisdictions and amounts involved are at Annex E.

12. Hong Kong has the ability to provide mutual legal assistance to other jurisdictions under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525) and to surrender fugitive offenders under the Fugitive Offenders Ordinance (Cap 503) in respect of money laundering and terrorist financing offences. At present, Hong Kong has signed 14 agreements under the Mutual Legal Assistance in Criminal Matters Ordinance and 13 agreements under the Fugitive Offenders Ordinance. The lists of jurisdictions with which Hong Kong has signed agreements under the two Ordinances are at Annexes F and G respectively.

### Regulatory Bodies

13. The legislative framework is supplemented by administrative guidelines issued by regulatory authorities, including the Hong Kong Monetary Authority, the Securities and Futures Commission and the Office of the Commissioner of Insurance. Through these guidelines, financial institutions in the three sectors are required and reminded of the need to implement AML measures, including verification of customer's identity, record keeping and suspicious transaction reporting and providing AML training to staff. The guidelines are reviewed periodically to keep in pace with legislative changes and the latest international standards. For example, supplements to the guidelines and advisory circulars have been issued over the past two years to give effect to the Eight Special Recommendations on Terrorist Financing.

### Financial Sector Assessment Program

14. In 2002, Hong Kong participated in the Financial Sector Assessment Program (FSAP) conducted by the IMF/World Bank, which

aims at strengthening the financial stability of the jurisdiction under review by identifying the strengths and weaknesses of its financial system and assessing compliance with key international codes and standards. As part of the FSAP, a team of financial and legal experts visited Hong Kong in January this year to assess the effectiveness of Hong Kong's anti-money laundering/countering financing of terrorism (AML/CFT) regime against the FATF Forty Recommendations and the Eight Special Recommendations, using the common methodology jointly developed with the FATF. The result of the assessment on Hong Kong will shortly be released by the IMF.

15. In sum, the IMF commended Hong Kong for having put in place an AML/CFT framework that was largely in accordance with the FATF recommendations. They pointed out that Hong Kong, amongst others, had issued and updated guidelines for relevant banking, insurance and securities industries to conform with the international standards. However, some weaknesses in our AML/CFT regime were noted including oversight of remittance agents and money changers; resources of the JFIU; customer identification in the case of shell companies; quality of STRs; and mental element necessary for establishing money laundering offence.

## **WORK AT THE INTERNATIONAL LEVEL**

16. Given the transnational nature of money laundering activities, international co-operation is essential and crucial in the fight against money laundering. In this respect, Hong Kong has participated actively in various FATF activities since becoming a member of the organization in 1990. Besides taking part in its plenary meetings, Hong Kong has also played an active role in the self-assessment, mutual evaluation, typologies

and Non-Cooperative Countries and Territories<sup>1</sup> (NCCT) exercises of the FATF, all of which aim at raising the international standards and practices for combating money laundering. Other significant activities that Hong Kong has taken part included, among others, the mutual evaluation of Qatar in 2001, acting as the principal contact in the NCCT review exercise of Indonesia (i.e., assessing Indonesia's AML regime against the 25 NCCT criteria) since 2000, and more recently participating in the FATF delegation to the Philippines in March 2003 which successfully convinced the Philippines legislature to pass legislative amendments to their AML laws, thus avoiding additional counter-measure by the FATF in the context of the NCCT exercise. The list of jurisdictions currently on the NCCT list is at Annex H.

17. From October 2000 to June 2003, Hong Kong serves as a member of the Steering Group of the FATF, an advisory body which sets the direction and priority of the work of the Task Force (membership list at Annex I). In recognition of Hong Kong's efforts against money laundering, it was selected as the President of the FATF for the period from 1 July 2001 to 30 June 2002. The Commissioner for Narcotics, as the coordinator of Hong Kong's anti-money laundering efforts, represented Hong Kong in this role.

### Major Initiatives Launched During Hong Kong's Presidency

18. Under the presidency of Hong Kong, the FATF had made

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<sup>1</sup> The Non Co-operative Countries and Territories (NCCT) exercise was launched by the FATF in 2000. A list of 25 criteria was established for defining NCCTs. Countries and territories found to meet the criteria will be listed as uncooperative and recommendations will be drawn up for the jurisdiction in question to improve its AML system. Training and technical assistance will be provided, and possibility of counter-measures will encourage the jurisdictions to comply with the recommendations.

considerable progress in the fight against money laundering and terrorist financing, the latter role was taken up after the events of September 11, 2001. Some of the major accomplishments included a comprehensive review of the FATF Forty Recommendations against money laundering, formulation of the Eight Special Recommendations on Terrorist Financing and a worldwide global programme of engagement, and enhanced collaboration with the IMF and the World Bank.

### Review of the Forty Recommendations

19. The FATF Forty Recommendations were initially developed in 1990 and revised in 1996. They set out the framework for anti-money laundering standards and are designed for universal application. They provide a comprehensive set of measures against money laundering covering the judicial system and law enforcement, the financial system and its regulation, and international co-operation. They have become an internationally accepted benchmark in this area. But money laundering methods and trends change over time and the advent of new payment technology offers further and unforeseen channels for money launderers to exploit. Experience has also highlighted certain areas where the Forty Recommendations could be further strengthened or refined. Against this background, under Hong Kong's presidency, the FATF pursued vigorously a thorough review of the Forty Recommendations. Following the publication in May 2002 of a consultation paper which set out the proposals for improvement<sup>2</sup>, a world-wide public consultation exercise

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<sup>2</sup> Major proposals include (a) customer due diligence by financial institutions, suspicious transaction reporting and regulation and supervision of financial institutions; (b) prevention of misuse of corporate vehicles by criminals; and (c) extension of the Forty Recommendations to seven categories of designated non-financial businesses and professions. The seven categories of non-financial businesses and professions include – casinos and gambling businesses, real estate agents, trust and company service providers, lawyers, accountants, dealers in high value goods, and investment advisors.

was launched by the FATF and member governments.

20. Hong Kong has participated actively in the review exercise as a member of the Working Group on the Review of the Forty Recommendations. Locally, all the related parties are kept informed of the proposals. They were encouraged to put forward their views to the FATF and to take part in the private sector forums held by the FATF. After extensive consultation with various international bodies and national organizations/professional associations, the FATF has drawn up a final draft set of the revised recommendations. It intends to have the review completed by June 2003.

#### Initiatives on Combating the Financing of Terrorism

21. Following the events of September 11 in the United States, under Hong Kong's presidency, the FATF expanded its remit to cover the financing of terrorism. At a special plenary held in Washington D.C. in October 2001, the FATF adopted the Eight Special Recommendations on Terrorist Financing to respond to the threat posed by terrorists and terrorist organizations.

22. The Eight Special Recommendations are in addition to the existing Forty Recommendations and commit FATF members to taking prompt action in a number of areas, including the criminalisation of terrorist financing, freezing of terrorist assets, enhanced disclosure, international co-operation and measures to prevent the misuse of wire transfer, alternative remittance systems and non-profit organizations for the financing of terrorism.

23. The fight against terrorist financing requires the united effort of countries around the world, including both FATF and non-FATF members. Hong Kong took the initiative to host, for the first time, a Forum on Terrorist Financing at the conclusion of the FATF Plenary meeting in February 2002 in Hong Kong. About 60 jurisdictions from the FATF and FATF-style regional bodies in Asia, Eastern and Southern Africa, South America, the Caribbean and Europe, as well as the Offshore Group of Banking Supervisors participated in the Forum. Another nine international organizations, including the United Nations, IMF and World Bank were also represented. Consensus was reached on the importance of global adoption and implementation of the Eight Special Recommendations, and in joining the FATF's efforts to combat terrorist financing on a global and regional basis. All the jurisdictions present also agreed to complete a self assessment questionnaire drawn up by the FATF for assessing compliance with the Eight Special Recommendations. As to the rest of the jurisdictions that did not take part in the Forum, the President of the FATF wrote individual letters appealing for their co-operation to comply with the new standard.

24. To facilitate implementation of the necessary measures to combat terrorist financing, the FATF has established, in June 2002, a working group on terrorist financing. The objective of the working group (of which Hong Kong is a member) is to draw up guidance and interpretation notes for implementation of the Eight Special Recommendations. The working group has already issued interpretative notes on Special Recommendations VI and VII (on alternative remittance and wire transfer respectively) as well as best practice guide for Special Recommendation VIII relating to non-profit organizations. Interpretative notes for the other Special Recommendations are being prepared. The working group is

currently reviewing the self assessment questionnaires received from over 130 jurisdictions subsequent to the special forum hosted by Hong Kong, with a view to identifying those jurisdictions which may need follow-up technical assistance.

### Collaboration with the IMF and the World Bank

25. Another major initiative launched during Hong Kong's tenure was the collaboration with the two major international financial institutions - the IMF and the World Bank. These two organizations recognize the Forty Recommendations and the Eight Special Recommendations as the international standards for fighting money laundering and combating terrorist financing. They agreed in 2001 to develop jointly with FATF a common methodology for assessing the measures that jurisdictions have taken to combat money laundering and to counter terrorist financing. The co-operation has resulted in production in October 2002 of a common methodology for assessment on AML/CFT standards which is being used by the IMF/World Bank in their FSAP (paragraphs 14 and 15 above), and by the FATF in its mutual evaluation process. Hong Kong contributed towards the furtherance of co-operation between the FATF and the IMF/World Bank by participating in latter's assessment of Mauritius' AML/CFT regime under the FSAP in December 2002.

### Asia Pacific Group on Money Laundering

26. Hong Kong is a founding member of the Asia Pacific Group on Money Laundering (APG), one of the FATF-style Regional Bodies (FSRBs) (a list of the FSRBs is at Annex J). The Group was set up in 1997 with the aim to facilitate adoption, implementation and enforcement of

internationally accepted AML standards by jurisdictions in the region. As an active member contributing to the Group's work, Hong Kong is a co-chair of the APG Working Group on Alternative Remittance and Underground Banking Systems and joined with other APG members in the mutual evaluation of Cook Islands and Thailand in 2001 and 2002 respectively.

## **WORK AHEAD**

27. Hong Kong's work on combating money laundering had been recognized by the international community. For instance, in a report published in 2002, the Commission of the European Communities commented that Hong Kong had built up a robust and comprehensive anti-money laundering regime and that particular effort had been made to continue improving the regime<sup>3</sup>. In its report to the UK Parliament in July 2002, the Foreign and Commonwealth Affairs Office of the UK also commented that Hong Kong continued to play a constructive role in global effort against terrorism<sup>4</sup>. More recently, the US-Hong Kong Policy Act Report released in April 2003 highlighted the important leadership role played by Hong Kong in anti-terrorism finance efforts as the President of the FATF and then as a FATF Steering Group member. To maintain the stability and integrity of our financial systems and our leadership role, continuous efforts will need to be made to ensure our AML/CFT regime is in step with international standards.

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<sup>3</sup> "Hong Kong Special Administration Region: Fourth Annual Report – 2001" by the Commission of the European Communities to the Council and the European Parliament published in August 2002.

<sup>4</sup> "Six-monthly Report on Hong Kong, January – June 2002" presented by the UK Foreign and Commonwealth Affairs Office to the UK Parliament in July 2002.

28. On the AML side, the revised set of the FATF Forty Recommendations will be discussed at the forthcoming FATF Plenary meeting to be held in Berlin from 18 to 20 June 2003. Following endorsement, members of the FATF, including Hong Kong, are expected to put the revised set in place within their own jurisdictions. This would include, among others, consulting the trade and the professions on the implementation of the new recommendations; preparing the requisite draft legislation to provide the necessary legal framework for the new recommendations; and launching of public education campaign to promote awareness and compliance with the new set of recommendations. A review on how to address the deficiencies identified by the recent IMF report on our existing AML/CFT regime will also need to be carried out. To further enhance the effectiveness of our regime, consideration will also be given to introducing in Hong Kong a new system of civil forfeiture in respect of serious crimes proceeds and reviewing the existing policy on assets sharing. It is noted that at present, there is no civil forfeiture system in Hong Kong and only assets confiscated arising from enforcement of external confiscation orders can be shared with foreign jurisdictions. Under the new set of FATF recommendations, members are encouraged to consider adopting a civil forfeiture system and extending co-operation internationally in the area of asset sharing.

29. On countering the financing of terrorism, Hong Kong will continue to implement the remaining parts of the Eight Special Recommendations, having regard to the best practices and interpretative notes developed and issued by the FATF. Measures will also be taken to implement the relevant provisions of the United Nations Convention for the Suppression of the Financing of Terrorism 1999 when it is applied to Hong Kong.

30. We shall also continue with our efforts in training up the private sector and promoting public awareness in countering money laundering and terrorist financing, through the holding of seminars and workshops and involving international experts where necessary and possible.

31. Some of the work highlighted in paragraphs 28 and 29 above may require amendments to our existing legislation. We shall revert to the Legislative Council Panel on Security with the relevant proposals in due course.

**Narcotics Division**

**Security Bureau**

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**FATF Membership**

**Member Jurisdictions**

1. Argentina
2. Australia
3. Austria
4. Belgium
5. Brazil
6. Canada
7. Denmark
8. Finland
9. France
10. Germany
11. Greece
12. Hong Kong, China
13. Iceland
14. Ireland
15. Italy
16. Japan
17. Luxembourg
18. Mexico
19. Kingdom of the Netherlands
20. New Zealand
21. Norway
22. Portugal
23. Singapore
24. Spain
25. Sweden
26. Switzerland
27. Turkey
28. United Kingdom
29. United States

**Regional Organizations**

30. European Commission
31. Gulf Cooperation Council

\* There are a number of international organizations which have joined FATF as observers. They are: the African Development Bank, the Asia Development Bank, the Commonwealth Secretariat, the Egmont Group of Financial Intelligence Units, the European Central Bank, Europol, the International Monetary Fund, the Inter-American Development Bank, the Inter-American Drug Abuse Control Commission of the Organisation of American States, Interpol, the International Organisation of Securities Commissions, the Offshore Group of Banking Supervisors, the United Nations Office for Drug Control and Crime Prevention, the World Bank, and the World Customs Organisation.

**Number of Suspicious Transaction Reports (STRs)  
Received since 1998**

	<b>Banks</b>	<b>Non-bank Institutions</b>	<b>Total</b>
1998	5531	39	5570
1999	5757	47	5804
2000	5995	109	6104
2001	6296	188	6484
2002	10587	284	10871
2003 (Jan – April)	4057	78	4135
Total number	38223	745	38968

**Annex C**

**No. of investigations, prosecutions and convictions cases**

<b>Year</b>	<b>No. of Investigations</b>	<b>No. of Prosecutions</b>	<b>No. of Convictions</b>
1998	621	12	5
1999	866	15	10
2000	625	16	14
2001	607	26	6
2002	687	23	13
2003 (Jan – April)	255	11	5
Total	3661	103	53

**Property Restrained, Seized and Confiscated**

(As on 30 April 2003)

	<b>Drug Trafficking (Recovery of Proceeds) Ordinance</b>	<b>Organised and Serious Crimes Ordinance</b>	<b>Total</b>
Amount of assets restrained	\$ 24,633,579	\$ 1,147,111,320	\$ 1,171,744,899
Amount of assets ordered to be confiscated	\$ 89,009,419	\$ 12,188,300	\$ 101,197,719
Amount of assets confiscated and paid to the Government	\$ 368,609,812	\$ 14,285,661	\$ 382,895,473

**Details of Asset Sharing Cases**

<b>Sharing Jurisdiction</b>	<b>No. of Asset Sharing Cases</b>	<b>Amount of Confiscated Assets Shared by Hong Kong</b>	<b>Amount of Confiscated Assets Shared to Hong Kong</b>
United States	3	\$44,690,407	\$7,020,000
Australia	1	\$5,636,706	
Total	4	\$50,327,113	\$7,020,000

**List of countries with which Hong Kong has signed agreements  
under the Mutual Legal Assistance in Criminal Matters Ordinance**

1. Australia
2. Canada
3. France
4. Ireland
5. Italy
6. Netherlands
7. New Zealand
8. Philippines
9. Portugal
10. South Korea
11. Switzerland
12. Ukraine
13. United Kingdom
14. United States

**List of countries with which Hong Kong has signed agreements  
under the Fugitive Offenders Ordinance**

1. Australia
2. Canada
3. India
4. Indonesia
5. Malaysia
6. Netherlands
7. New Zealand
8. Philippines
9. Portugal
10. Singapore
11. Sri Lanka
12. United Kingdom
13. United States

**List of Non-Cooperative Countries and Territories**

1. Cook Islands
2. Egypt
3. Guatemala
4. Indonesia
5. Myanmar
6. Nauru
7. Nigeria
8. Philippines
9. St. Vincent and the Grenadines
10. Ukraine

**FATF Steering Group Members**

1. France
2. Germany
3. Hong Kong, China
4. New Zealand
5. Portugal
6. Sweden
7. United States

**FATF-Style Regional Bodies**

1. Asia/Pacific Group on Money Laundering
2. Caribbean Financial Action Task Force
3. Eastern and Southern Africa Anti-Money Laundering Group
4. Select Committee of Experts on the Evaluation on Anti-Money Laundering Measures of the Council of Europe
5. South American Financial Action Task Force