

For discussion on  
7 July 2015

## **Legislative Council Panel on Security**

### **Public consultation on the Establishment of a Reporting System on the Physical Cross-Boundary Transportation of Large Quantities of Currency and Bearer Negotiable Instruments**

#### **Purpose**

This paper sets out the framework of Government's proposal to establish a reporting system for the physical cross-boundary transportation of large quantities of currency and bearer negotiable instruments (CBNIs)<sup>1</sup>, as an effort to move towards compliance with the international anti-money laundering (AML) and counter-financing of terrorism (CFT) standards.

#### **Background**

##### ***Recommendation 32 of FATF***

2. The Financial Action Task Force (FATF) is an inter-governmental body<sup>2</sup> which sets international AML/CFT standards. It has developed 40 Recommendations with which member jurisdictions need to ensure compliance. Of the 40 Recommendations, Recommendation 32 (R32) requires member jurisdictions to establish by statute a system to detect and prevent illicit physical cross-boundary transportation of CBNIs (the "R32 System"). FATF's statement on R32 is at **Annex**. The

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<sup>1</sup> "Currency" is defined by the Financial Action Task Force (FATF) as banknotes and coins that are in circulation as a medium of exchange, and foreign currency which may be brought into a jurisdiction, whereas "bearer negotiable instruments" include monetary or negotiable instruments such as traveller cheques, cash cheques, promissory notes and money orders, in such form that title to these instruments passes upon delivery; or include incomplete but signed instruments with the payee's name omitted. Gold, precious metals and precious stones are not included, despite their high liquidity and use in certain situations as a means of exchange or transmitting value.

<sup>2</sup> Members of FATF are obliged to implement FATF's Recommendations, and mutual evaluations are conducted by FATF on their compliance with the international standards. Hong Kong has been a member of FATF since 1991.

primary objective is to ensure that terrorists and other criminals cannot finance their activities or launder the proceeds of their crimes through physically moving CBNIs across different jurisdictions. On this note, the R32 System is not, and should not be perceived as, any form of currency control. FATF has also stated clearly that jurisdictions should implement the R32 System “*without restricting either (i) trade payments between countries for goods and services; or (ii) the freedom of capital movements in any way*”.

3. Under FATF’s recommendation, member jurisdictions should put in place a declaration system, a disclosure system or a mixed system for reporting the physical cross-boundary transportation of large quantities of CBNIs, whether by passengers or through cargo or mail. Under a declaration system, proactive reporting to the designated authorities is required. Under a disclosure system, persons concerned are required to provide information about the CBNIs only upon request by the authorities. Member jurisdictions have the flexibility to adopt a system that best suits their own particular circumstances. For instance, a mixed system comprising both declaration and disclosure requirements is acceptable.

4. FATF also recommends that reporting should be required for physical cross-boundary transportation of CBNIs exceeding a threshold of USD/EUR15,000 (equivalent to around HK\$120,000<sup>3</sup>).

### **Proposal for Hong Kong’s R32 System**

5. Over the years, Hong Kong has gradually developed a comprehensive regime along FATF’s Recommendations in the fight against money laundering and terrorist financing activities. This includes, amongst other things, the criminalisation of such activities, the restraint and confiscation of crime proceeds, the requirements on reporting suspicious transactions and for financial institutions to carry out customer due diligence measures and record-keeping, etc. Hong Kong has thus far not introduced an R32 System and is the only FATF member jurisdiction which has not yet done so. It is important that we accord priority to establishing an R32 System as soon as possible to complement our prevailing efforts in AML/CFT and measure up to international standards.

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<sup>3</sup> Based on an exchange rate of USD1:HK\$7.8 and EUR1: HK\$8.6 as at 1 June 2015, the threshold is about HK\$117,000 and HK\$ 129,000 respectively. We have rounded it up to become HK\$120,000 for the purpose of this paper.

6. In devising Hong Kong’s R32 System, we have made reference to the following major principles –

- (a) the system should meet the international standards recommended by FATF, and at the same time take into account domestic circumstances;
- (b) the system should be effective in enabling the physical movement of illicit funds to be detected and the flow of such funds to be traced;
- (c) the system is not, and would not have the effect of currency control, and would not affect the legitimate flow of funds across boundaries;
- (d) the system should facilitate compliance with the reporting obligations by members of the public and minimise any inconvenience caused to them as a result of compliance; and
- (e) the smooth and efficient operation of our existing control points should not be compromised.

7. Based on the above principles, we propose that the R32 System in Hong Kong should have the following key features –

<b>Cross-boundary transportation</b>		<b>Proposed reporting system</b>
<b>Passengers</b>	Outgoing	Disclosure <i>(i.e. to report upon request)</i>
	Incoming <sup>4</sup>	Declaration <i>(i.e. to report proactively if CBNI<sup>s</sup> carried are above designated threshold)</i>
<b>Cargoes</b>	Outgoing and incoming	

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<sup>4</sup> The proposed reporting system for incoming passengers is declaration, except for persons entering Hong Kong not through control points, such as travellers arriving on passenger vessels at the Ocean Terminal or at anchorages. At present, customs clearance for this mode of arrival is done through selection of passengers for examination, either on board or at the terminal, and upon which a passenger has to reveal the items brought with him. For the R32 System, we propose to adopt a similar arrangement by requiring such incoming passengers to disclose the amount of CBNI<sup>s</sup> only upon request by the authorities. For the sake of succinctness, the term “incoming passengers” in the rest of this paper would refer to those entering Hong Kong through control points only.

## *Passengers*

8. Under the existing general customs clearance practice, the Customs and Excise Department (C&ED) adopts a risk-based approach in selecting passengers for examination at control points. To expedite the local clearance procedures, C&ED has, since November 2005, implemented the Red and Green Channel System (RGCS) for clearance of arriving passengers at all control points. For the outbound direction, C&ED selects passengers for examination according to risk profiling.

9. There is merit for our R32 System to dovetail with the RGCS and the existing customs clearance arrangements as much as possible, since this will simplify compliance under the system and minimise confusion which may result from different arrangements. It would have the added advantage of being proven to be effective in handling the huge volume of passenger flow that passes through our various control points every day.

10. In this light, we propose that a mixed system be adopted for passengers (i.e. declaration for incoming passengers and disclosure for outgoing passengers). For an incoming passenger, if he brings with him CBNIs above the designated threshold, he should use the “Red Channel” to make a declaration; otherwise, he could just go through the “Green Channel”. For an outgoing passenger, he should disclose information about CBNIs carried when being asked by an authorised officer. For passengers in transit, no declaration or disclosure would be required<sup>5</sup>.

## *Cargoes*

11. Currently, Hong Kong has already established an electronic infrastructure for customs clearance of cargoes carried by different modes of transport. In particular, the Road Cargo System has been established since 2010 to require the advance electronic submission of information of cargoes imported or exported through land boundary control points. In addition, there are further arrangements with airlines and shipping companies on the advance electronic submission of cargo information for customs clearance.

12. Likewise, for implementing the R32 System, we propose to make use of an advance electronic declaration system for both incoming

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<sup>5</sup> Indeed FATF has not set explicit requirements for subjecting transiting passengers to the R32 System.

and outgoing cargo consignments. In other words, if an incoming or outgoing cargo contains CBNIs exceeding the designated threshold, an advance declaration needs to be made by the person responsible for the import or export of the cargo (being the owner of the cargo or his agent(s)) to the authority concerned, through an electronic system. Meanwhile, similar to the case for passengers, we do not propose to include cargoes in transit.

13. Our proposed arrangement will enable the responsible law enforcement agency to conduct risk profiling on a cargo consignment in advance and determine whether it needs to be inspected upon arriving or before leaving Hong Kong. On the contrary, a system with declaration or disclosure on-site will likely impede cargo traffic flow and the effectiveness of screening seriously.

### ***Designated Threshold***

14. Regarding the threshold for the R32 System in Hong Kong, we propose to adopt FATF's recommended level, i.e. at HK\$120,000, which is equivalent to around USD/EUR 15,000. The threshold will be applicable only to declaration (i.e. incoming passengers and all cross-boundary cargoes). As for disclosure (i.e. outgoing passengers), one would have to provide information upon request by an authorised officer, regardless of the amount of CBNIs being carried.

### ***Mails not included***

15. Among FATF's members, there are divergent approaches regarding whether and how CBNIs are regulated with respect to mail. FATF also notes that countries differ widely in their approach to the control of CBNIs in mail, without a proven model around the world. Moreover, the risk of mail being used to transport illicit cash is considered not conclusive, and more research and study have to be conducted to enable us to understand the issues and factors behind.

16. It calls for caution as to whether (and if so, how) Hong Kong should cover mail in its R32 System, in particular in light of the huge volume of international mails being posted in and out of Hong Kong. Also, we have to take into account the diversity of the modes of regulation worldwide, and the practical implications of any form of control on the operation of Hong Kong's mail system. On balance, we propose not to regulate the posting of CBNIs via the mail system in Hong

Kong at this stage. We will closely monitor the situation of mail in the context of AML/CFT enforcement.

### ***Others***

17. As the R32 System involves primarily the enforcement of the relevant requirements at control points, we propose that C&ED be designated as the lead agency in enforcing the R32 System with contributions from other local law enforcement agencies in respect of intelligence analysis and investigation. To allow effective enforcement action, C&ED will be empowered to process the declarations received and information disclosed.

18. FATF requires effective, proportionate and dissuasive sanctions to be imposed on the failure to report CNBIs transported as required or making false declarations or disclosures. We propose that for Hong Kong's R32 System, a fixed penalty system be introduced, but applicable only to first-time offenders who have not committed any money laundering or terrorist financing offences in the past. Other cases should be subject to court proceedings which might lead to more rigorous punishment comprising fines and/or imprisonment.

19. We should stress that the R32 System is not currency control, and will not affect the legitimate flow of funds across boundaries. Since Hong Kong has a sophisticated banking system which can effectively support cross-boundary transactions of legitimate business and tourists' spending on a non-cash basis, we do not expect the implementation of the proposed R32 System to bring a substantial impact on the commercial sector and travellers. On the other hand, with the proposed R32 System, our AML/CFT regime could better align with international standards.

### **Way Forward**

20. Based on the above proposals, we intend to start a three-month consultation exercise on establishing an R32 System in Hong Kong in July 2015. During the consultation exercise, we will arrange suitable publicity and consultative sessions with relevant sectors.

21. Subject to the comments received from Members and during the consultation exercise, we intend to prepare a piece of new legislation to enable the implementation of the R32 System.

## **Advice Sought**

22. Members are invited to note and comment on the contents of this paper.

**Narcotics Division  
Security Bureau  
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## **FATF's Recommendation 32**

### **32. Cash Courier**

Countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including through a declaration system and/or disclosure system.

Countries should ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing, money laundering or predicate offences, or that are falsely declared or disclosed.

Countries should ensure that effective, proportionate and dissuasive sanctions are available to deal with persons who make false declaration(s) or disclosure(s). In cases where the currency or bearer negotiable instruments are related to terrorist financing, money laundering or predicate offences, countries should also adopt measures, including legislative ones consistent with Recommendation 4, which would enable the confiscation of such currency or instruments.