

S.11 of Money Changers Ordinance (Cap 34)

11. Criminal liability

(1) If a person employed by a money changer does an act which would be an offence under this Ordinance if done by a money changer, each of the following persons is guilty of that offence as if he were a money changer who had committed the offence and each person is liable to the penalty prescribed for the offence—

- (a) the person employed by the money changer;
- (b) the money changer, unless the money changer took reasonable steps to prevent the commission of the offence; and
- (c) where the employer of the person is a corporation, each director, manager, secretary and other similar officer of the corporation and any person purporting to act in any of those capacities unless he took reasonable steps to prevent the commission of the offence.

(2) Subject to subsection (3), for the purposes of this section, a person is deemed to be a director of a corporation if he occupies the position of a director by whatever name he may be called or is a person in accordance with whose directions or instructions a director of the corporation acts.

(3) A person shall not, by reason only that a director of the corporation acts on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions a director acts.

(4) If a partner in a partnership of money changers commits an offence under this Ordinance, each other partner shall be guilty of the offence unless he took reasonable steps to prevent the commission of the offence.

(5) Where under this section a person employed by a money changer is deemed to have committed an offence—

- (a) his employer; and
- (b) where the employer is a corporation, each director, manager, secretary, person purporting to act as a director, manager or secretary of the corporation,

is presumed, in the absence of evidence to the contrary, to have not taken reasonable steps to prevent the commission of the offence.

(6) Where a money changer who is in a partnership with another money changer commits an offence, the partner of that money changer is presumed, in the absence of evidence to the contrary, to have not taken reasonable steps to prevent the commission of the offence.

(Added 9 of 1989 s. 8)

11. 刑事法律責任

(1) 如貨幣兌換商所僱用的任何人作出某項作為，而該項作為倘由貨幣兌換商作出，根據本條例即屬犯罪，則以下每人均屬犯該罪行，猶如他是犯該罪行的貨幣兌換商一樣，而每人均可處以就該罪行而訂明的刑罰——

- (a) 貨幣兌換商所僱用的上述的人；
- (b) 貨幣兌換商，除非他已採取合理步驟防止該罪行發生；及
- (c) 如該人的僱主是一個法團，則該法團的每名董事、經理、秘書及其他相類高級人員，以及其意是以任何該等身分行事的任何人，除非他已採取合理步驟防止該罪行發生。

(2) 除第(3)款另有規定外，就本條而言，如某人擔任董事職位，不論其稱號為何，或如法團的董事須按照某人的指示或指令而行事，則該人須被當作是法團的董事。

(3) 任何人不得只因法團的董事按其以專業身分給予的意見行事，而被視為是董事須按照其指示或指令行事的人。

(4) 如任何合夥貨幣兌換商的合夥人犯本條例所訂罪行，則其他每位合夥人即屬犯該罪行，除非他已採取合理步驟防止該罪行發生。

(5) 凡根據本條，貨幣兌換商所僱用的任何人被當作已犯罪，則——

- (a) 其僱主；及
- (b) (如其僱主是一個法團) 該法團的每名董事、經理、秘書，以及其意是以該法團的董事、經理或秘書身分行事的人，

在無相反證據的情況下，即被推定為並無採取合理步驟防止該罪行發生。

(6) 凡與另一名貨幣兌換商合夥的貨幣兌換商犯罪，則在無相反證據的情況下，該貨幣兌換商的合夥人即被推定為並無採取合理步驟防止該罪行發生。

(由 1989 年第 9 號第 8 條增補)