

LEGISLATIVE COUNCIL BRIEF

Organized and Serious Crimes Ordinance
(Chapter 455)

ORGANIZED AND SERIOUS CRIMES (AMENDMENT) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 23 March 1999, the Council ADVISED and the Chief Executive ORDERED that the Organized and Serious Crimes (Amendment) Bill 1999 (Annex A) should be introduced into the Legislative Council, to require money changers and remittance agents to adhere to anti-money laundering measures including customer identification and keeping of transaction records.

BACKGROUND AND ARGUMENT

Financial Action Task Force on Money Laundering

2. The Financial Action Task Force on Money Laundering (FATF) is an inter-governmental organisation established by the G-7 Summit in 1989 to examine measures to combat money laundering. It is internationally recognised as the pre-eminent world body concerned with money laundering issues. A condition of FATF membership is an undertaking to adopt the 40 Recommendations promulgated by FATF as far as practicable given local circumstances. The 40 Recommendations were last revised in 1996 to take into account the latest money laundering trends. Since 1990, Hong Kong has been an active member of FATF and has implemented most of its 40 Recommendations.

3. Money changers and remittance agents have been identified by FATF as an important link in the money laundering chain. Typologies which provide FATF members with opportunities to discuss money laundering trends and exchange views on methods of investigation have also indicated an increasing use of money changers and remittance agents in money laundering operations. In addition to financial institutions, FATF also advises that the 40 Recommendations, where appropriate, should apply to non-bank financial institutions such as money changers and remittance agents. The relevant Recommendations of FATF are at Annex B.

Existing Regulation

4. At present, financial institutions in Hong Kong including banks, securities and insurance companies, etc., are subject to statutory control under various Ordinances and administrative guidelines issued by their regulators, i.e. the Hong Kong Monetary Authority, the Securities and Futures Commission and the Insurance Authority respectively. All persons, including the above sectors, as well as money changers and remittance agents etc., are required to report suspicious transactions under section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) and section 25A of the Organized and Serious Crimes Ordinance (Cap 455) in relation to possible money laundering offences.

5. Money changers are subject to the Money Changers Ordinance (Cap 34) which aims primarily to protect consumers by requiring money changers to produce transaction notes and display exchange rates for currency exchange transactions. However, Cap 34 does not contain any specific anti-money laundering regulations. Its customer protection regulations are, from the enforcement agencies' point of view, insufficient to serve as effective anti-money laundering regulations.

6. As regards remittance agents, they are not regulated under any particular legislation. However, they have frequently been found to have been involved or being used as a conduit in money laundering, and have refused to self-regulate responsibly by keeping full customer and transaction records. According to the Police, no remittance agent has ever made any suspicious transaction report on money laundering despite the large amount of money dealt with by the industry (according to a survey conducted in late 1997, over 50% of the remittance agents handled up to 100 transactions per month, and 64% claimed a turnover of less than HK\$10 million per month.

An average transaction can therefore be calculated as being from several tens of thousand dollars, up to a few hundred thousand dollars).

Administrative Guidelines

7. In February 1997, the Police issued administrative guidelines (Annex C) to money changers and remittance agents advising them to adopt anti-money laundering measures such as customer identification, record-keeping and reporting of suspicious transactions. Subsequent to the issue of those guidelines, the Police surveyed some of those institutions and found that although the majority of them did keep some information on their customers and transactions, the types and amount of details kept varied from one institution to another, and were generally not sufficient for the purpose of investigation into suspected money laundering operations.

THE PROPOSAL

8. In order to enhance Hong Kong's anti-money laundering regime, and to ensure that such regime will not fall short of FATF's Recommendations and international best practices, it is proposed that statutory requirements should be imposed on all persons carrying on money changing or remittance businesses to identify customers before engaging in transactions with them and to keep proper records of such transactions. Two key principles have been taken into consideration in drawing up the relevant proposals :-

- (a) the new requirements should be simple and easy to enforce and yet effective in combating money laundering e.g., through the creation of an audit trail of the businesses or transactions conducted; and
- (b) the requirements should not be too onerous or costly for the affected businesses to comply with.

THE BILL

9. **Clause 2** of the Bill, at Annex A, proposes a new Part IVA containing new sections 24A to E be added to Cap 455:-

- (a) **New section 24A** defines certain terms, including “remittance agent” and “money changer”. This section exempts an “authorized institution” within the meaning of the Banking Ordinance (Cap 155), an “authorized insurer” within the meaning of the Insurance Companies Ordinance (Cap 41) and a “registered person” within the meaning of the Securities and Futures Commission Ordinance (Cap 24) as they are already regulated by the relevant legislation and their respective regulators (i.e. the Hong Kong Monetary Authority, the Insurance Authority and the Securities and Futures Commission).
- (b) **New section 24B** provides that a register be kept to enable the Government to keep a comprehensive and up-to-date record on remittance agents and money changers for the purpose of enforcing the new requirements. This section provides that all existing money changers and remittance agents should inform a responsible officer to be appointed by the Secretary for Security of their names and addresses within three months after the commencement of the new legislation. A person who becomes a remittance agent or money changer after the commencement of the new legislation will be required to do so within one month after he commences operation. This section also requires a remittance agent or money changer to report on changes in reported particulars, and sets out the penalty for non-compliance.
- (c) In order not to cause too much disruption to the businesses concerned and the clients of the trade, **new section 24C** provides a threshold below which the requirements for customer identification and record keeping do not apply. Having regard to past operational experience, it is proposed that the threshold should be set at \$20,000 for both remittance agents and money changers. This section also provides for a cross-reference to Schedule 6 (clause 3 of the Bill) which stipulates the particulars to be recorded by remittance agents and money changers, the requirements for customer identification and record keeping for at least six years, and the penalty for not complying with the requirements. The keeping of records for at least six years

satisfies FATF's Recommendations, as do the record keeping requirements in the current anti-money laundering guidelines issued by the Hong Kong Monetary Authority, the Insurance Authority and the Securities and Futures Commission to the institutions under their respective purview.

- (d) **New section 24D** specifies the criminal liability of remittance agents and money changers and their employees.
- (e) **New section 24E** specifies the powers of authorized officers to enter the premises of remittance agents and money changers on suspicion that such institutions have breached the requirements mentioned in paragraph (c). It also provides for the powers to inspect and seize records, and stipulates that any such records must be returned to the source from which they were seized within six months if no prosecution is instituted following that seizing of records.

10. **Clause 3** proposes a new Schedule 6 be added to Cap 455 to stipulate the particulars to be recorded by remittance agents and money changers before completion of a transaction. The details to be recorded are consistent with the purpose of investigating suspected money laundering offences, and are generally in line with the current requirements in respect of authorized institutions.

LEGISLATIVE TIMETABLE

11. The legislative timetable approved by the Chief Executive in Council is :

Publication in the Gazette	9 April 1999
First Reading and commencement of Second Reading debate	21 April 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

COMMENCEMENT

12. The proposed amendments will take effect on a date to be appointed by the Secretary for Security.

BASIC LAW IMPLICATIONS

13. The Department of Justice advises that the proposed Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

14. The Department of Justice advises that the proposed Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

15. The amendments will not affect the current binding effect of the Organized and Serious Crimes Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

16. There will be additional workload arising from the proposed register for money changers and remittance agents, especially during the initial registration period. However, the Police and the Customs and Excise Department will absorb the additional workload from within their existing resources.

ECONOMIC IMPLICATIONS

17. The Bill will cause minimal, if any, economic implications.

PUBLIC CONSULTATION

18. The Administration had consulted 92 money changers and 87 remittance agents on the proposed requirements through questionnaires and visits in November and December 1998. A response rate of 36% from money changers and 52% from remittance agents had been registered respectively. More than 72% of the money changers and 66% of the remittance agents who responded to the questionnaires supported the proposals. A summary analysis of the views received is at Annex D.

19. The Action Committee Against Narcotics (ACAN) and the LegCo Panel on Security were consulted in December 1998 and March 1999 respectively and both supported the proposals. The LegCo Panel had proposed that the penalties for not complying with the customer identification and record keeping requirements be increased to enhance the deterrent effect. Accordingly, the penalty for non-compliance has been increased from one month to three months imprisonment.

20. The Hong Kong Bar Association, the Law Society of Hong Kong and the Privacy Commissioner for Personal Data have also been consulted. In brief, they have no objection in principle to the broad proposals put forward to suppress money laundering through the money changing and remittance trade, and have put forward some comments. All three parties took the view that minimum interference to private transactions should be imposed. Their comments have been incorporated in the Bill.

PUBLICITY

21. A press release will be issued on 7 April 1999. A spokesman will be available for answering media enquiries.

ENQUIRIES

22. For any enquiries on the Amendment Bill, please contact Ms Mimi Lee, Principal Assistant Secretary for Security (Narcotics), at 2867 2748.

Security Bureau
7 April 1999
[NCR 3/1/8 (G) Pt 16]

ORGANIZED AND SERIOUS CRIMES (AMENDMENT) BILL 1999

ANNEXES

- Annex A - Organized and Serious Crimes (Amendment) Bill 1999

- Annex B - Relevant FATF's Recommendations for Regulation of Money Changers and Remittance Agents

- Annex C - Money Laundering - Administrative Guideline

- Annex D - A consultation exercise to solicit the views of money changers and remittance agents on the proposed anti-money laundering measures

A BILL

To

Amend the Organized and Serious Crimes Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Organized and Serious Crimes (Amendment) Ordinance 1999.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

2. Part added

The Organized and Serious Crimes Ordinance (Cap. 455) is amended by adding -

“PART IVA

REMITTANCE AGENTS AND MONEY CHANGERS

24A. Interpretation

In this Part and Schedule 6, unless the context otherwise requires -

“certificate of identity” (身分證明書), “document of identity” (簽證身公書), “identity card” (身分證) and “travel document” (旅行證件) have the meanings respectively assigned to them under section 2 of the Immigration Ordinance (Cap. 115);

“currency” (貨幣), “exchange transaction” (兌換交易) and “money changer” (貨幣兌換商) have the meanings respectively

assigned to them under section 2 of the Money Changers Ordinance (Cap. 34);

“money” (金錢) means money in whatever form or currency;

“premises” (處所) includes place;

“record” (紀錄) includes, in addition to a record in writing -

- (a) a disc, tape or other device in which data other than visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the disc, tape or other device; and
- (b) a film, tape or other device in which visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the film, tape or other device;

“remittance agent” (匯款代理人) -

- (a) subject to paragraph (b), means a person who provides a service to another person or persons as a business, of one or more of the following -
 - (i) sending, or arranging for the sending of, money to;
 - (ii) receiving, or arranging for the receipt of, money from; or
 - (iii) arranging for the receipt of money in,
a place outside Hong Kong;

- (b) does not include -
 - (i) an authorized institution within the meaning of the Banking Ordinance (Cap. 155);
 - (ii) an authorized insurer within the meaning of the Insurance Companies Ordinance (Cap. 41);
 - (iii) a registered person within the meaning of the Securities and Futures Commission Ordinance (Cap. 24);

“remittance transaction” (匯款交易) means a service falling within paragraph (a) of the definition of “remittance agent”.

24B. Register of remittance agents and money changers

- (1) The Secretary for Security shall, by notice in the Gazette -
 - (a) appoint a public officer to be the responsible officer for the purposes of this section;
 - (b) specify an address to which a notice required to be given under this section to the responsible officer shall be sent.
- (2) The responsible officer shall maintain a register, in such form as he thinks fit, containing -
 - (a) the name of every remittance agent and the address of every premises in Hong Kong at which

a remittance agent provides, whether in whole or in part and whether or not any other activity is carried on in the premises, a service as a remittance agent;

- (b) the name of every money changer and the address of every premises in Hong Kong at which a money changer carries on, whether in whole or in part and whether or not any other activity is carried on in the premises, business as a money changer; and
- (c) such other particulars of remittance agents and money changers as the responsible officer thinks fit.

(3) The register shall be kept at such place as is notified by the responsible officer by notice in the Gazette.

(4) A person who is already, immediately before the commencement of this section, a remittance agent or money changer shall, not later than 3 months after that commencement, send a notice in writing to the responsible officer at the specified address stating, in the case of a remittance agent, the particulars required to be included in the register under subsection (2) (a) and, in the case of a money changer, the particulars required to be included in the register under subsection (2) (b).

(5) A person who becomes a remittance agent or money changer on or after the commencement of this section shall, not later than 1 month after so becoming a remittance agent or money

changer, as the case may be, send a notice in writing to the responsible officer at the specified address stating, in the case of a remittance agent, the particulars required to be included in the register under subsection (2) (a) and, in the case of a money changer, the particulars required to be included in the register under subsection (2) (b).

(6) Where a person ceases to be a remittance agent or money changer, or any particulars given by the person to the responsible officer under subsection (4) or (5) changes subsequent to the original submission, then the person shall not later than 3 months after the event send a notice in writing to the responsible officer at the specified address informing the responsible officer of his ceasing to be a remittance agent or money changer, or of such change, as the case may be.

(7) Any person may, with effect from such date and during such hours as shall be notified by the responsible officer by notice in the Gazette -

- (a) inspect the register;
- (b) with the consent of the responsible officer, obtain a copy of an entry in the register or an extract from the register.

(8) A person who, without reasonable excuse, contravenes subsection (4), (5) or (6) commits an offence and is liable on conviction to a fine at level 5.

(9) A person who sends any particulars under subsection (4), (5) or (6) which are false in a material particular commits

an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

(10) In this section -

“register” (紀錄冊) means the register maintained under subsection (2);

“responsible officer” (負責人員) means the responsible officer appointed under subsection (1) (a);

“specified address” (指明地址) means the address specified under subsection (1) (b).

24C. Duty on remittance agents and money changers to keep records

(1) This section shall not apply to a remittance transaction or exchange transaction which is less than \$20,000 in value or an equivalent amount in any other currency.

(2) A remittance agent shall -

(a) not complete a remittance transaction unless the remittance agent keeps a record of -

- (i) if the transaction falls within paragraph (a) (i) of the definition of “remittance agent” in section 24A, the particulars specified in Part 1 of Schedule 6;
- (ii) if the transaction falls within paragraph (a) (ii) of the definition of “remittance agent” in section 24A,

- the particulars specified in Part 2 of Schedule 6;
 - (iii) if the transaction falls within paragraph (a) (iii) of the definition of “remittance agent” in section 24A, the particulars specified in Part 3 of Schedule 6;
 - (b) verify the name and identity of the instructor or recipient referred to in the particulars, as the case may be, by reference to his certificate of identity, document of identity, identity card or travel document, if such instructor or recipient appears in person; and
 - (c) keep that record for not less than 6 years after the date of the transaction notwithstanding that the remittance agent may have ceased his business subsequent to the transaction.
- (3) A money changer shall -
 - (a) not complete an exchange transaction (and notwithstanding section 3(1)(c) of the Money Changers Ordinance (Cap. 34)) unless the money changer keeps a record of the particulars specified in Part 4 of Schedule 6;
 - (b) verify the name and identity of the client referred to in the particulars by reference to his certificate of identity, document of

identity, identity card or travel document, if such client appears in person; and

- (c) keep that record for not less than 6 years after the date of the transaction notwithstanding that the money changer may have ceased his business subsequent to the transaction.

(4) A remittance agent who contravenes subsection (2), or a money changer who contravenes subsection (3), commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 3 months.

(5) The Secretary for Security may, by notice in the Gazette, amend -

- (a) the amount specified in subsection (1);
- (b) Schedule 6.

24D. Criminal liability

(1) If a person employed by a remittance agent does an act which would be an offence under section 24C(4) if done by a remittance agent, each of the following persons is guilty of that offence as if he were a remittance agent who had committed the offence and each person is liable to the penalty prescribed for the offence -

- (a) the person employed by the remittance agent;
- (b) the remittance agent, unless the remittance agent 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 remittance agents commits an offence under section 24C(4) and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any other partner of the partnership, that other partner shall be guilty of the like offence.

(5) This section shall apply to and in relation to a money changer as it applies to and in relation to a remittance agent as if any reference in subsections (1) to (4) to a remittance agent were a reference to a money changer.

24E. Power of authorized officers to enter premises and inspect books, etc.

(1) Where an authorized officer has a reasonable suspicion that a remittance agent has committed an offence under this Part (in this section referred to as the “suspected offence”), he may enter any premises where the activities of the remittance agent are being carried on and may demand the production of and inspect the remittance agent’s records relating to any remittance transaction carried out by the remittance agent or relating to his activities as a remittance agent, and may take notes, copies or extracts thereof or therefrom.

(2) Where pursuant to subsection (1) an authorized officer has entered any premises where the activities of a remittance agent are being carried on, he may seize any records relating to any remittance transaction carried out by the remittance agent or relating to his activities as a remittance agent, that the officer reasonably believes to be related to the suspected offence.

(3) Any records seized under subsection (2) shall, as soon as practicable after such seizure, be delivered to the Commissioner of Police or the Commissioner of Customs and Excise, or to some person nominated by either Commissioner in that behalf, by the authorized officer who seized them.

(4) Where any records seized under subsection (2) are delivered in accordance with subsection (3) to the Commissioner of Police or the Commissioner of Customs and Excise, or to some

person nominated by either Commissioner in that behalf, the Commissioner of Police, the Commissioner of Customs and Excise or that person, as the case may be, shall, if no prosecution is instituted within 6 months after such delivery in respect of the suspected offence to which they relate, return, or arrange for the return of, such records to the remittance agent from whom they were so seized.

(5) This section shall apply to and in relation to a money changer as it applies to and in relation to a remittance agent as if any reference in subsections (1) to (4) —

- (a) to a remittance agent were a reference to a money changer;
- (b) to a remittance transaction were a reference to an exchange transaction.”.

3. Schedule added

The following is added —

“SCHEDULE 6 [ss. 24A & 24C]

PARTICULARS TO BE RECORDED BY REMITTANCE AGENTS AND MONEY CHANGERS

PART 1

PARTICULARS TO BE RECORDED BY REMITTANCE AGENTS WHERE PARAGRAPH (a) (i) OF THE DEFINITION OF “REMITTANCE AGENT” IN SECTION 24A IS APPLICABLE

1. Transaction serial number
2. Currency and amount involved

3. Date and time of receiving instructions from instructor(s)/sender(s)
4. Instruction details (including method of delivery and/or acknowledgement)
5. Name, identity card number (or certificate of identity, document of identity or travel document number with place of issue), telephone number and address of instructor (s)
6. Name, identity card number (or certificate of identity, document of identity or travel document number with place of issue), telephone number and address of sender (s), if available
7. Bank account (s) involved, if any
8. Name and particulars of recipient (s)
9. Currency and amount to each recipient
10. Date and time sent

PART 2

PARTICULARS TO BE RECORDED BY REMITTANCE AGENTS WHERE PARAGRAPH (a) (ii) OF THE DEFINITION OF “REMITTANCE AGENT” IN SECTION 24A IS APPLICABLE

1. Transaction serial number
2. Currency and amount involved
3. Date and time of receiving instructions by the agent
4. Instruction details (including method of receipt and/or acknowledgement)
5. Name and address, or name and bank account number of instructor (s)

6. Name, telephone number and address of sender (s)
7. Bank account (s) involved, if any
8. Name, identity card number (or certificate of identity, document of identity or travel document number with place of issue), telephone number, address or, if payment is to be made into a Hong Kong bank account, the name of the account holder and account number, of the recipient (s) apart from the remittance agent
9. Currency and amount involved by each recipient
10. Date and time received by recipient (s)

PART 3

PARTICULARS TO BE RECORDED BY REMITTANCE AGENTS WHERE
PARAGRAPH (a) (iii) OF THE DEFINITION OF “REMITTANCE
AGENT” IN SECTION 24A IS APPLICABLE

1. Transaction serial number
2. Currency and amount involved
3. Date and time of receiving instructions from instructor (s)
4. Instruction details (including method of delivery and/or acknowledgement)
5. Name, identity card number (or certificate of identity, document of identity or travel document number with place of issue), telephone number and address of instructor (s)
6. Date and time of giving instructions to agent outside Hong Kong
7. Bank account (s) involved, if any

8. Name, particulars, telephone number and address of recipient (s)
9. Currency and amount to each recipient

PART 4

PARTICULARS TO BE RECORDED BY MONEY CHANGERS

1. Transaction serial number
2. Date and time of transaction
3. Currencies and amount exchanged
4. Exchange rate
5. Name, identity card number (or certificate of identity, document of identity or travel document number with place of issue) of client
6. Telephone number and address of client”.

Explanatory Memorandum

The purpose of this Bill is to amend the Organized and Serious Crimes Ordinance (Cap. 455) to add a new Part IVA to, in the interests of detecting and suppressing money laundering —

- (a) require a register to be kept of the names and addresses of all remittance agents and money changers (new section 24B). (See, also, the definition of “remittance agent” in new section 24A and the definition of “money changer” in section 2 of the Money Changers Ordinance (Cap. 34));

- (b) require remittance agents and money changers to keep records of transactions which concern amounts of \$20,000 or more or an equivalent amount in any other currency (new section 24C);
- (c) include a new section 24D to specify the criminal liability of remittance agents and money changers and their employees; and
- (d) include a new section 24E to specify the powers of authorized officers to enter the premises of remittance agents and money changers and inspect their records (the new section is based on section 28 of the Money Lenders Ordinance (Cap. 163)).

Relevant FATF's Recommendations for Regulation of Money Changers and Remittance Agents

Recommendation No.	Subject	Recommendation
8	Scope of the Financial Recommendations	Recommendations 10 to 29 should apply not only to banks, but also to non-bank financial institutions. <u>Even for those non-bank financial institutions which are not subject to a formal prudential supervisory regime in all countries</u> , for example, bureaux de change, governments should ensure that these institutions are subject to the same anti-money laundering laws or regulations as all other financial institutions and that these laws or regulations are implemented effectively.

Recommendation No.	Subject	Recommendation
10	Customer Identification	<p data-bbox="1095 308 2123 722">Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names: they should be required (by law, by regulations, by agreements between supervisory authorities and financial institutions or by self-regulatory agreements among financial institutions) to <u>identify</u>, on the basis of an official or other reliable identifying document, and <u>record</u> the identity of their clients, either occasional or usual, when establishing business relations or conducting transactions (in particular opening of accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, performing large cash transactions).</p> <p data-bbox="1095 791 2101 866">In order to fulfil identification requirements concerning legal entities, financial institutions should, when necessary, take measures:</p> <ul data-bbox="1095 935 2123 1254" style="list-style-type: none"><li data-bbox="1095 935 2123 1158">(i) to verify the legal existence and structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;<li data-bbox="1095 1174 2123 1254">(ii) to verify that any person purporting to act on behalf of the customer is so authorised and identify that person.

Recommendation No.	Subject	Recommendation
11	Beneficial Owner	Financial institutions should <u>take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction conducted if there are any doubts as to whether these clients or customers are acting on their own behalf</u> , for example, in the case of domiciliary companies (i.e. institutions, corporations, foundations, trusts, etc. that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located).

Recommendation No.	Subject	Recommendation
12	Record-keeping Rules	<p data-bbox="1099 316 2112 587">Financial institutions should maintain, <u>for at least five years</u>, all necessary records on transactions, both domestic or international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of criminal behaviour.</p> <p data-bbox="1099 651 2112 826">Financial institutions should keep records on customer identification (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), <u>account files and business correspondence for at least five years after the account is closed.</u></p> <p data-bbox="1099 890 2112 971">These documents should be available to domestic competent authorities in the context of relevant criminal prosecutions and investigations.</p>

(a671)

Money Laundering-Administrative Guideline

Client Identification

You should take all reasonable steps to establish the true and full identity of every client, including, if the client is a company, the identity of any beneficial owners, shareholders, and directors of the company.

Record Keeping

The investigating authorities require a satisfactory audit trail to assist in their investigation of suspected money laundering. As such, proper record keeping is required. The Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) and the Organised and Serious Crimes Ordinance (Cap 455) entitle the authorities under a search warrant and/or a production order to examine all relevant past transactions to assess whether any person has benefited from drug trafficking or an indictable offence.

Retention of Records

The overriding principle is that company should be able to retrieve relevant information, without undue delay when required under a search warrant and/or a production order.

Recognition of Suspicious transactions

As the types of transactions which may be used by a money launderer are unlimited, it is difficult to define a suspicious transaction. However, a suspicious transaction will often be the one which is inconsistent with a customer's known legitimate business or personal activities. Therefore, the first key to recognition is knowing enough about your customer and his business.

Report of Suspicious transactions

There is a statutory obligation on all to report suspicions of money laundering. The central unit for receiving suspicious transaction reports in the form of disclosure in Hong Kong is the Joint Financial Intelligence Unit jointly staffed by Police and Customs personnel.

The Need for Staff Awareness

Staff must be aware of their own personal obligations under both Ordinances and that they can be personally liable for failure to report information to the authorities. They must be encouraged to cooperate fully with the law enforcement agencies and to provide prompt advice of suspicious transactions.

Admgline

**A consultation exercise to solicit the views
of money changers and remittance agents
on the proposed anti-money laundering measures**

DATA COLLECTION

On 24 November 1998, a questionnaire was sent to 92 money changers and 87 remittance agents known to the Hong Kong Police Force (the Police) and the Customs and Excise Department (the Customs). A total of 19 money changers and remittance agents were subsequently visited by officers from the Police and the Customs. By the deadline on 9 December 1998, 33 completed questionnaires were received from money changers and 45 from remittance agents, representing a response rate of 36% and 52% respectively.

MAJOR FINDINGS

Money changers

2. Some salient points on the statistics are summarised below.

Existing business practice/establishment

3. Most (45%) of these 33 money changers had an establishment between 2 to 5 staff. About 91% of them had claimed that they kept some records of transactions. Customers' name (79%), date of transaction (79%), type and amount of currency transacted (73%) are the most common information recorded in transactions.

Views on the proposed amendments

4. More than 72% of the money changers agreed to the basic principles of the proposed amendments. Among them, more

than half of the respondents agreed to the proposed details regarding customer identification (75%), record retention period (67%), details to be recorded in each transaction (58%). However, the majority (52%) of money changers had no comments on details regarding the proposed penalty.

5. The findings also indicated that a detailed guideline should be drawn up to assist them in client identification and record keeping.

Remittance agents

6. Some salient points on the statistics are summarised below.

Existing business practice/establishment

7. The majority (64%) of these 45 remittance agents had an establishment of no more than 5 staff. Over 91% of them had kept some records of transactions. Name of recipient (87%), type and amount of currency to be received (80%), receiving bank account number (78%), date of transaction (69%) and telephone number of fund recipient (64%) are the most common information recorded in transactions.

Views on the proposed amendments

8. More than 66% of the money changers agreed to the basic principles of the proposed amendments. Among them, more than half agreed to the proposed details regarding details to be recorded in each transaction (70%), record retention period (60%) and customer identification (57%). However, the majority (62%) of remittance agents had no comments on details regarding the proposed penalty.

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