

立法會
Legislative Council

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the Administration)

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**Bills Committee on
Organized and Serious Crimes (Amendment) Bill 1999**

**Minutes of meeting
held on Tuesday, 9 November 1999 at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon David CHU Yu-lin
Hon Cyd HO Sau-lan
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Ronald ARCULLI, JP
Hon Gary CHENG Kai-nam, JP
Hon SIN Chung-kai
- Member absent** : Hon Albert HO Chun-yan
- Public Officers attending** : Security Bureau
Ms Mimi LEE
Principal Assistant Secretary for Security (Narcotics)
- Hong Kong Police Force
Mr Henrique KOO
Chief Superintendent
Narcotics Bureau
- Customs and Excise Department
Ms Diana WONG
Acting Superintendent
Customs Drug Investigation Bureau

Department of Justice

Mr Geoffrey FOX
Senior Assistant Law Draftsman

Miss Leonora IP
Government Counsel

Financial Services Bureau

Miss Clara TANG
Principal Assistant Secretary for Financial Services
(Banking and Monetary)

Hong Kong Monetary Authority

Ms Carman CHIU
Senior Manager
Licensing and Compliance

Securities and Futures Commission

Mr Stephen PO
Director of Intermediaries Supervision

Office of the Commissioner of Insurance

Mr H Y MOK
Assistant Commissioner of Insurance

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Miss Betty MA
Senior Assistant Secretary (2) 1

I. Meeting with the Administration

Outstanding issues

(LC Paper No. CB(2) 282/99-00(01))

Exemption under the definition of "remittance agent"

Principal Assistant Secretary for Narcotics (PAS(S)N) said that the financial regulators, viz. the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC) and the Insurance Authority (IA) had put in place a robust and comprehensive regime for the institutions under their purview. The Administration considered that the regime was adequate to prevent financial institutions from being used for money laundering operations and thus these institutions should be exempted from the Bill.

2. As regards customer identification and record keeping requirements of authorized institutions, PAS(S)N said that the anti-money laundering guidelines issued by HKMA required banks to apply the "know your customer" principle to all customers irrespective of the value of transaction. Banking institutions were required to issue internal instruction manuals which covered record keeping relating to remittance and money changing business with both account or non-account holders. Major banks had specific guidelines on identification of walk-in customers involved in significant transactions. Under the Organized and Serious Crimes Ordinance (Cap.455) and the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap.405), regulated institutions were required to report suspicious transactions. The Administration considered that the regime put in place by financial regulators could ensure compliance by these institutions.

3. The Chairman said that he was satisfied that the regime put in place by the financial regulators had served to guide the institutions under regulation in compliance with the legislative requirements in respect of anti-money laundering. His concern was that if banking institutions were exempted from the Bill, the difference in statutory requirements between money changers and banking institutions in respect of keeping records of customer identification in money changing transactions would result in unfair competition.

4. PAS(S)N responded that it was inappropriate to compare money changers and remittance agents with financial institutions solely in terms of the customer identification and record keeping requirements. As the mode of operation between regulated financial institutions and money changers and remittance agents was different, comparison should be made by reference to the overall regime in the respective sectors. The regime in financial institutions served to prevent such institutions from being used for money laundering operations and ensured that an audit trail of businesses conducted was available when such need arose. HKMA, SFC and IA were ready to review the anti-money laundering guidelines for financial institutions in the light of the proposals under the Bill.

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PAS(S)N added that the objective of the Bill was to tie in with the international focus of attention on the unregulated sectors such as money changers and remittance agents in countering money laundering. The Administration would ensure that there was a consistent policy on countering money laundering.

5. Principal Assistant Secretary for Financial Services (Banking and Monetary) (PAS(FS)B&M) said that financial institutions were subject to comprehensive regulatory requirements of adopting anti-money laundering measures, including customer identification, record keeping, reporting of suspicious transactions, staff education and training as well as inspection power of regulators. Such requirements were applicable to money changing and remittance transactions carried out by financial institutions. The efforts made by financial regulators and the regulated financial sectors were well recognized internationally. PAS(FS)B&M pointed out that the cost of complying with these regulatory requirements would not be lower than the cost of complying with the Bill. The question of unfair competition between the financial institutions and the remittance agents and money changes should therefore not arise.

6. The Chairman said that his major concern was on the difference in the requirements of customer identification and record keeping in respect of walk-in customers involved in money changing transactions between banking institutions and money changers. He therefore questioned why the proposed customer identification and record keeping requirements of money changers for transactions exceeding \$20,000 could not be extended to banking institutions.

7. PAS(FS)B&M responded that section 5.26 of the guideline issued by HKMA entitled "Prevention of Money Laundering" served to guide banking institutions on transactions undertaken for non-account holders (occasional customers). It stipulated that where the transaction involved large sums of cash, or was unusual, the applicant should be asked to produce positive evidence of identity and in the case of a foreign national, the nationality recorded. Banking institutions were required to comply with the guidelines.

8. The Chairman enquired about the specific amount involved in significant transactions under which the identification of walk-in customer was required. PAS(FS)B&M said that no threshold was set by HKMA for banking institutions above which requirements for customer identification and record keeping would apply. Based on HKMA's guidelines and individual customers' transaction history, an employee of a banking institution was able to exercise his judgement on whether additional information on customer identification and transaction record keeping was required as well as under what circumstances a transaction involving walk-in customers should be reported. She stressed that although the requirements for money changing and remittance transactions varied between money changers and remittance agents and financial institutions, measures adopted by the latter were effective in achieving the objectives of the Bill, i.e. combating money laundering operations and providing an audit trail of the

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businesses or transactions conducted.

9. Senior Manager (Licensing and Compliance)/HKMA said that most banking institutions had formulated internal guidelines on identification of walk-in customers involved in significant transactions which were based on HKMA's guidelines on prevention of money laundering. The threshold above which the requirements for customer identification and record keeping would apply varied amongst different banks. Customer information required of by individual banks was in compliance with that required under the guidelines issued by HKMA. For instance, an applicant for a transaction should be asked to produce positive evidence of identity and in the case of a foreign national, the nationality should be recorded if the transaction involved a significant amount or was unusual.

10. The Chairman asked whether the different requirements of customer identification and record keeping in money changing transactions would create a greater loophole in the legislation from the enforcement point of view. Chief Superintendent (Narcotics Bureau) (CSP(NB)) responded that according to the Force's operational experience, banking institutions were in compliance with the guidelines issued by HKMA. He pointed out that over 99% of the suspicious transaction reports were made by banking institutions. Two suspicious transaction reports were made by the insurance sector. No suspicious transaction report had ever been made by money changers. Suspicious transaction would be reported by banks regardless of the amount involved. The Police considered that the anti-money laundering measures adopted by banking institutions were sufficient.

11. Having regard to the difference in the mode of operation between financial institutions and money changers, Mrs Selina CHOW considered that it was inappropriate to set a threshold for financial institutions. Instead, these institutions should adhere to the key principles in drawing up the legislative proposals, i.e. the requirements should be simple and easy to enforce and yet effective in combating money laundering through the creation of an audit trail of the businesses or transactions conducted, and the requirements should not be too onerous or costly for the affected business to comply with. Mrs Selina CHOW asked whether the proposed threshold at \$20,000 could satisfy the key principles.

12. CSP(NB) said that it was important to strike a right balance between enhancing enforcement by the Police and causing inconvenience to the trade when setting the threshold. The Administration considered that the threshold set at \$20,000 was an optimal level. CSP(NB) added that guidelines would be issued to remittance agents and money changers on countering money laundering after the enactment of the Bill, and examples of suspicious transactions would be provided. Although the guidelines had no legal effect, CSP(NB) pointed out that under section 25 of Cap 455, it was an offence for non-compliance with the requirement to report suspicious transactions.

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13. The Chairman enquired about the number of suspicious transaction reports made by banking institutions related to walk-in customers, its proportion to the total number of suspicious transaction reports and the amount involved. He reiterated his concern about the unfair competition to money changers and the possible loophole if banking institutions were not subject to statutory requirement of customer record keeping in money changing transactions, particularly the identification of walk-in customers. PAS(S)N agreed to provide the requested information, if available. She said that to allay members' concerns, the Administration would review in conjunction with HKMA the specific guidelines put in place by banking institutions on walk-in customers involved in money changing transactions. She stressed that the proposed exemption of financial institutions under the Bill was in line with international practice.

14. Responding to the Chairman, Director of Intermediaries Supervision, SFC said that during the course of business of financial intermediaries, registered persons might have to settle overseas securities transactions of clients and make arrangements for remittance for overseas clients. All registered persons were required to know their clients and keep sufficient records on all money transactions with/for their clients under the existing law and anti-money laundering guidelines. In addition, such transactions would normally settle through banking institutions. These requirements were effective to provide an audit trail for investigation into suspected money laundering offence.

15. Members agreed to the Administration's proposals to exempt institutions and registered person from the definition of "remittance agent" as set out in proposed section 24A as well as to add to the list of exemption licensed leveraged foreign exchange traders and insurance brokers.

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16. PAS(S)N assured members that the Administration would review in conjunction with the respective financial regulators the anti-money laundering guidelines for financial institutions in the light of the proposals under the Bill.

Definition of money

17. PAS(S)N said that in the day-to-day operation, money changers and remittance agents dealt exclusively with money in various currencies and forms including cash and orders for payment of specified sums, but not valuable commodities. The Administration considered that the intent of the definition was clear and no revision was necessary.

Criminal liability

18. PAS(S)N said that in the light of members' suggestion, the Administration agreed to amend the proposed section 24D(1)(a). The proposed amendment was spelt out in paragraph 13 of the Administration's response (LC Paper No. CB(2)

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282(01)).

19. With regard to section 24D(1)(c), PAS(S)N said that the Administration considered that omission of any of the corporate figures in the section would create a loophole. The liability of the corporate figures proposed was consistent with that covering corporate figures in other types of business affected by legislation of a similar regulatory nature. In addition, a safeguard provision was already provided in section 24D(1)(c). The Administration was of the view that to make the legislation effective, it was necessary for the scope of liability in this section to remain as proposed.

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20. Mrs Selina CHOW, on behalf of Mr Ronald ARCULLI, pointed out that under section 31 of the Money Lenders Ordinance (Cap.163), the onus of proof was on the prosecution in relation to liability for offences by companies whereas the onus of proof was on the defendant under the Bill. She enquired about the rationale for the difference. Senior Assistant Law Draftsman (SALD) agreed to provide a written response.

21. Responding to the Chairman's enquiry about the operational experience in instituting prosecutions under Cap.163, CSP(NB) said that it was very difficult, if not impossible, for the prosecution to prove that the employers in question had taken reasonable steps to prevent the commission of the offence.

22. Assistant Legal Adviser 4 pointed out that the drafting of section 31 of Cap.163 was similar to section 101E of the Criminal Procedure Ordinance (Cap.221) in its application to corporation which was different from the proposed section 24D(1)(c) of the Bill.

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23. The Chairman suggested that reference should be made to the relevant provisions on the criminal liability in their application to partnerships and corporations in other types of business affected by legislation of a similar regulatory nature. SALD said that many of the proposed new sections in the Bill were based on Cap.163. He agreed to revert to the Bills Committee.

Clause-by-clause examination

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

24. PAS(S)N said that "premises" in section 24E included domestic premises. Having considered members' concerns raised at the last meeting, the Administration proposed to add to section 24E the definition of "domestic premises" and the requirement for a judicial warrant prior to entry to domestic premises. The proposed amendments were set out in paragraph 19 of the Administration's response.

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25. Responding to members, PAS(S)N said that the proposed definition of "domestic premises" was based on the relevant section of the Import and Export Ordinance (IEO) (Cap.60). Under the proposed amendments, a judicial warrant would be required to enter premises or place used exclusively for residential purposes and constituting a separate household unit.

26. Mrs Selina CHOW asked whether composite residential/commercial premises would be regarded as domestic premises and whether a judicial warrant would be required for entering such premises. She pointed out that there might be difficulties in separating the area used for residential purposes in such premises. The Chairman enquired about the operational experience in respect of entering composite residential/commercial premises for suspected money laundering operations.

27. CSP(NB) said that if the residential part of the premises was separated clearly from the area used for commercial purpose, the Police would not enter the area used for residential purpose. PAS(S)N added that according to the operational experience of the Customs and Excise Department in enforcing IEO, it would apply for a judicial warrant prior to enter a domestic premises if there was doubt on whether the premises in question was within the meaning of domestic premises in IEO. She said that the enforcement authorities would be cautious in exercising their power to enter premises for suspected money laundering operations.

28. The Chairman and Mrs Selina CHOW considered that the proposed amendments to section 24E were acceptable.

29. The Chairman said that as money changers and remittance agents were required to notify the responsible officer under the Bill of their addresses where money changing and remittance transactions were conducted, the Administration might consider spelling out in the Bill that whenever these premises were involved, the enforcement authorities would not be required to apply for judicial warrants for entry. PAS(S)N responded that the proposed section 24E empowered the relevant authorities to enter the premises to inspect the records of money changers and remittance agents for any suspected money laundering activities. As the intent was clear, no further elaboration was needed.

30. Regarding the handling of records seized, PAS(S)N said that if an owner of the seized documents requested copies of those documents, the authorized officer would normally oblige, except in circumstances where there were reasons to suspect that providing copies would lead to furtherance of the offence or commission of another offence. CSP(NB) said that for offences related to illegal gambling or loan sharking, owners of the seized documents would not be provided with copies.

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31. The meeting agreed that the Administration's response to issues raised by members on the proposed section 24D would be circulated to members for consideration, and that the next meeting would be scheduled, if considered necessary.

32. The meeting ended at 12:05 pm.

Legislative Council Secretariat

30 November 1999