

EXTRACT

立法會
Legislative Council

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by the Administration)

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LegCo Panel on Security

**Minutes of meeting held on Thursday, 4 March 1999
at 2:30 pm in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon CHEUNG Man-kwong
Hon Gary CHENG Kai-nam
Hon Howard YOUNG, JP
Hon Andrew CHENG Kar-foo

Members absent : Hon David CHU Yu-lin
Dr Hon LUI Ming-wah, JP

Public Officers attending : Item III

Mrs Clarie LO
Commissioner for Narcotics

Ms Mimi LEE
Principal Assistant Secretary for Security (Narcotics)

Mr Henrique KOO
Chief Superintendent
Narcotics Bureau
Hong Kong Police Force

Mr Gareth WILLIAMS
Superintendent
Narcotics Bureau
Hong Kong Police Force

Mr CHAN Hon-kit
Senior Superintendent
Customs Drug Investigation Bureau
Customs & Excise Department

Item IV

Mr Philip CHAN
Principal Assistant Secretary for Security E

Mr Spencer FOO
Regional Commander Marine
Hong Kong Police Force

Item V

Mr SO Kam-shing
Principal Assistance Secretary for Security D

Mr CHEUK Koon-cham
Assistant Director of Immigration (Administration and Planning)
Immigration Department

Mr MAK Kwai-yun
Assistant Director of Immigration (Liasion and Support)
Immigration Department

Mr KWAN Pak-lam
Deputy Director of Architectural Services
Architectural Services Department

Mr Peter YUEN Ka-tat
Chief Architect
Architectural Services Department

Mr Sidney Gary CROW
Chief Project Manager
Architectural Services Department

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

Staff in attendance : Miss Betty MA
Senior Assistant Secretary (2) 1

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III. Proposed amendments to Drug Trafficking (Recovery of Proceeds) Ordinance and Organized and Serious Crimes Ordinance

(LC Paper No. CB(2) 1374/98-99(02))

Briefing by the Administration

6. Commissioner for Narcotics (Com for N) took members through the information paper. The purpose of the proposed legislative amendments was to introduce requirements for money changers and remittance agents to adopt anti-money laundering measures.

7. Com for N said that money changers and remittance agents had been identified by the Financial Action Task Force on Money Laundering (FATF) as an important link in the money laundering chain. Under the existing legislation, all persons, including financial institutions as well as money changers and remittance agents, were required to report suspicious transactions in relation to possible money laundering offences. While financial institutions in Hong Kong were subject to statutory control under various ordinances and administrative guidelines issued by financial regulators, remittance agents were not regulated under any legislation. Although money changers were subject to the Money Changers Ordinance, the Ordinance aimed primarily to protect consumers and did not contain any specific anti-money laundering regulations. The Administration had issued administrative guidelines to money changers and remittance agents advising them to adopt anti-money laundering measures. It was found that although the majority of them did keep some information on their customers and transactions, the information was generally insufficient for the purpose of investigation into suspected money laundering operations. Against this background, the Administration proposed amendments to the legislation. The key features of the proposals were laid down in paragraph 9 of the information paper.

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8. Com for N added that the Administration had consulted the industry, the Action Committee Against Narcotics and the legal professional bodies on the proposal. They all supported the proposals in principle.

Discussion

Penalty for breaching the statutory requirements

9. Mr CHEUNG Man-kwong considered that the proposed penalty imposed on money changers and remittance agents for non-compliance with the statutory requirements set out in paragraph 9(a) to (c) was too light to have deterrent effect. Given a lack of regulators in the trade, Mr CHEUNG expressed doubt about the effectiveness of the proposals. Com for N responded that administrative measures had been adopted to combat the problem of using money changers and remittance agents in money laundering operations. Amendments to the legislation were, however, considered necessary in the light of experience since the issue of administrative guidelines to the industry. Under the proposals, it was expected that sufficient information would be available for the purpose of investigation into suspected money laundering operations. The Administration was open minded on the level of fine and imprisonment term. The proposed penalty was on a par with other offences related to drug trafficking or dangerous drug trading. She added that should money changers and remittance agents fail to report money laundering activities, they were liable to a fine and imprisonment on conviction under the existing legislation.

10. Noting from paragraph 6 of the information paper that the average amount of money dealt with by the remittance agents was about \$830,000 per transaction per day, Mrs Selina CHOW said that the increasing use of remittance agents in money laundering operations was probably due to a lack of control over remittance agents. She was of the view that a more stringent control should be imposed on the industry. The Chairman echoed with Mrs CHOW's view that the proposed penalty was too light.

11. Chief Superintendent (Narcotics Bureau) /Hong Kong Police Force (CSP(N)) said that according to the findings of a survey on the practice of the industry, the number of transactions dealt with by the remittance agents ranged from two to about one hundred transactions per month. The amount of money involved ranged from \$100,000 to over \$360 million per month. Thus, an average of about \$830,000 per transaction per day was calculated.

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12. Having noted members' views, Com for N undertook to further consider the penalty for breaching the statutory requirements.

Criteria adopted for setting the threshold

13. In response to Mr Howard YOUNG's enquiry about the criteria adopted for setting the threshold at \$20,000 for both money changers and remittance agents, Com for N said that the Administration proposed the threshold to be set at \$20,000 after taking into account overseas legislation and local operational experience. The other key consideration was to avoid causing too much unnecessary disruption to the trade. Mr Howard YOUNG opined that in order not to cause too much inconvenience to the tourists, the Administration should set the threshold at a reasonable level having regard to the average amount per transaction of the tourists. The Chairman pointed out that if any persons intended to use remittance agents in money laundering operations, a threshold of \$20,000 could still enable such operations. Com for N responded that the Administration might further consider the threshold.

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Enforcement of the regulatory mechanism of remittance agents

14. Mrs Selina CHOW questioned how the Administration could ensure that the remittance agents would comply with the notification requirement stipulated in paragraph 9(e) of the information paper, given that there was, at present, no legislation and licensing system to regulate the remittance agents. Mr Andrew CHENG also expressed concerned about the enforcement of the regulatory mechanism.

15. In response, Com for N said that FATF had no specific requirements on how to regulate the operation of money changers and remittance agents in accordance with local circumstances. The modes of regulatory mechanism varied amongst FATF members. Given remittance agents were not regulated under any legislation at present, the proposal to require remittance agents to notify a public officer of their existence was already an important step forward. Under the proposed legislation, a definition of remittance agent would be provided. It would be an offence for remittance agents not to notify the designated public officer, appointed by the Secretary for Security, of their existence. The Joint Financial Intelligence Unit which was jointly staffed by the Police and the Customs personnel was the central unit for receiving suspicious transaction reports in the form of disclosure in Hong Kong. Upon the enactment of the proposed legislation, this unit would be responsible for keeping the register. CSP(N) added that unreported suspicious money laundering transactions could be identified in the course of their routine investigations.

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16. Regarding the effectiveness of the enforcement work, Principal Assistant Secretary for Security (Narcotics) (PAS(S)N) said that the notification requirements would enable the Administration to keep a comprehensive and up-to-date register on money changers and remittance agents. The new requirements would be implemented in conjunction with some corresponding administrative arrangements which were under active consideration. At present, the administrative guidelines issued by the Police to money changers and remittance agents were considered effective only to a limited extent. Prior to the issue of the administrative guidelines, about 25% of these institutions kept some information on their customers and transactions. Although the proportion of such institutions rose to 80%, the types and amount of details kept varied greatly from one institution to another. She added that future enforcement work would be enhanced by accompanying administrative guidelines, visits by enforcement agencies and education for the industry.

17. Mrs Selina CHOW commented that paragraph 9(e) of the information paper did not spell out clearly whether it was an offence for non-compliance with the requirements and what penalty would be imposed. She requested the Administration to review whether the proposed regulation on remittance agents was adequate. Mr Albert HO concurred with Mrs CHOW.

Implementation of FATF's recommendations

18. Noting that there were discrepancies between Recommendation Nos.11 and 12 of FATF for regulation of money changers and remittances agents and the Administration's legislative proposals, Mr Andrew CHENG enquired about the reasons for not following strictly FATF's recommendations. Regarding the implementation of Recommendation No. 12 of FATF, Com for N said that in line with the practice in financial institutions in Hong Kong, money changers and remittance agents were required to keep records on their customers and transactions for a period of time. The industry had been consulted and had no objection to the proposals.

Operation of remittance agents

19. In response to Mr Albert HO's enquiry about the operation of remittance agents, CSP(N) said that a remittance agent usually requested its customer to buy a bank draft payable to the remittance agent. Thus, even the bank observed closely the guidelines issued by the Hong Kong Association of Banks, it was unable to have further information on the identity of the beneficiary in the transaction. There was a missing link in conducting investigations into suspicious transactions. Nevertheless, the

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Administration was aware of the existence of various remittance agents through such transactions.

20. Com for N added that financial institutions in Hong Kong, including banks, securities and insurance companies, followed closely the administrative guidelines issued by their respective financial regulators. FATF expressed satisfaction at these administrative guidelines after conducting a detailed examination of Hong Kong's anti-money laundering regime in 1998. Only the lack of specific anti-money laundering regulations for the money changers and remittance agents were considered insufficient for the enforcement agencies to carry out enforcement actions. The anti-money laundering proposals were therefore drawn up. It, however, did not necessarily mean that money changers and remittance agents were already heavily engaged in money laundering activities.

Definition of remittance agent

21. Mr Albert HO asked whether any persons occasionally engaged in remittance transactions were within the meaning of remittance agent under the legislative proposals; if so, he considered that the Administration was unable to be aware of their existence unless there was a licensing system. The Chairman further asked whether the making of any remittance transactions not in the course of business would also be regulated under the legislative proposals. Com for N said that currently, it was proposed that all persons engaging in remittance business, regardless the frequency of transactions engaged, were within the meaning of remittance agent. She added that the Administration had no plan for introducing a licensing system for remittance agents at the moment. The legislative proposals were to impose statutory requirements on non-bank financial institutions which carried on money changing or remittance businesses. The new requirements were considered simple and easy to enforce and yet sufficient for combating money laundering as it provided an audit trail of the businesses or transactions conducted.

22. Mrs Selina CHOW opined that having regard to the large amount of money dealt with by the remittance industry, a clear definition of remittance agent should be provided in the legislation.

23. Mr Albert HO expressed concern about the latest trend on money exchange arising from the frequent business transactions between Hong Kong residents and the Mainlanders. It was a common phenomenon that Hong Kong residents exchanged Hong Kong dollars for Renminbi by paying money to someone in Hong Kong and collected the exchanged amount in the Mainland and vice versa without resorting to money

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changers or remittance agents. The identities of customers and details of transactions were unidentifiable. PAS(S)N said that the primary objective of the proposals was to introduce requirements for money changers and remittance agents to adopt anti-money laundering measures, rather than to regulate the operation of money changers and remittance agents, having regard to the fact that money changers and remittance agents had been found to have been involved or being used as a conduit in money laundering. The current thinking was that the statutory requirements would be imposed on all persons carrying on money changing or remittance businesses but the Administration could fine-tune the proposals having regards to Members' views.

Licensing system for remittance agents

24. Mr CHEUNG Man-kowng remarked that the proposals would be unenforceable if the Administration did not introduce a licensing system for remittance agents simultaneously. It was likely that a culprit would not notify the relevant authorities of their existence. He considered that it was difficult for the enforcement agencies to identify their existence. He said that the Administration should spell out clearly in the legislation under what circumstances, such as the transaction amount and the number of transactions, should a remittance agent be required to register with the relevant authorities. PAS(S)N reiterated that under the proposed legislation, it would be an offence to engage in money changing or remittance businesses without notifying the relevant authority. Having regard to Members' concerns, the Administration would review the proposed penalty.

25. Mr CHEUNG Man-kwong stressed that the effectiveness of enforcing the new requirements depended very much on the introduction of a corresponding licensing system. He enquired about the difficulties of introducing a licensing system for the money changing or remittance trade.

26. The Chairman said that members expressed serious concern about the lack of a licensing system for effective implementation of the new statutory requirements. He requested the Administration to further consider members' views. The Chairman also urged the Administration to take note of the unreported money exchanging transactions arising from the frequent business transactions between Hong Kong and the Mainland and consider whether such transactions were within the meaning of money changers or remittance agents who were required to report their transactions to the relevant authorities under the legislative proposals. The Administration might also consider consulting the Mainland enterprises in drawing up the proposals.

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27. In response, Com for N undertook to provide more background information for not introducing a licensing system. She pointed out that in drawing up the proposals, the Administration had made reference to overseas experience. For example, money changers and remittance agents were not required to obtain licences for operation in the United Kingdom. They were regulated under the law by means of keeping a similar register. Com for N said that the implementation of a licensing system would incur additional manpower for carrying out enforcement actions. Other factors such as what kinds of activities would be included, when and under what circumstances would a remittance agent or money changer need to obtain a licence, etc. had to be taken into account.

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Legislative Council Secretariat
20 April 1999