

LEGCO PANEL ON SECURITY

Regulation of Money Changers and Remittance Agents Against Money Laundering

PURPOSE

This paper seeks Members' advice with regard to amending the Organized and Serious Crimes Ordinance (Cap 455) to introduce requirements for money changers and remittance agents to adopt anti-money laundering measures such as identifying customers and keeping transaction records.

BACKGROUND

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 exercises 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 I.

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 financial regulators, i.e. the Hong Kong Monetary Authority, the Securities and Futures Commission and the Insurance Authority respectively. All the above sectors, as well as money changers and remittance agents, are required to report suspicious transactions under section 25 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) and section 25 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 customers 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 refused to self-regulate responsibly by keeping full customer and transaction records. According to the Police, none of the remittance agents has ever made any suspicious transaction report on money laundering despite the large amount of money dealt with by the industry (the average amount is about \$830,000 per transaction per day according to a survey in November 1998).

Administrative Guidelines

7. In February 1997, the Police had issued administrative guidelines (Annex II) 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.

PROPOSALS

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 proposal :-

- (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.

9. The key features of the proposals are as follows :-

- (a) before a transaction takes place, a money changer or remittance agent should record the name, identity card number (or travel document number and place of issue in case of a visitor),

address and telephone number of his customer. He should also keep records of the transaction including the transaction serial number, date, time of the transaction and the currency, amount and rate of exchange involved. For remittance agents, it is proposed that additional information including the personal particulars of the instructor and sender of a remittance, method of delivery and acknowledgement, name and particulars of recipient(s) including bank account should be kept;

- (b) to avoid causing too much unnecessary disruption, it is proposed that a threshold be set below which the requirements for client identification and record-keeping should not apply. Having regard to past operational experience, it is proposed that the threshold should be set at \$20,000 for both money changers and remittance agents;
- (c) money changers and remittance agents are required to keep the records mentioned in (a) above for at least 6 years, in line with FATF's Recommendations and the requirements set out in the current anti-money laundering guidelines issued by the Hong Kong Monetary Authority, the Securities and Futures Commission and the Insurance Authority to institutions under their respective purview;
- (d) to ensure compliance, it is proposed that those who are convicted of breaching the requirements set out in paragraph 9(a) to (c) above should be liable to a maximum fine at level 6 (i.e. \$100,000) and imprisonment for one month. It is also proposed that the law enforcement agencies should be empowered to carry out on-site inspections on suspicion that a money changer or remittance agent has breached the requirements, and examine the records kept by such money changer and remittance agent; and
- (e) to enable the Government to keep a comprehensive and up-to-date register on money changers and remittance agents, it is suggested that existing money changers and remittance agents should notify a public officer to be appointed by the Secretary for Security of their existence within a stipulated time-frame after the legislation comes into force. The details to be

provided will be kept to the minimum, and will mainly include the names and addresses of the money changers and remittance agents.

CONSULTATION

10. 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 were registered respectively. More than 72% of the money changers and 66% of the remittance agents who responded to the questionnaires supported the proposed requirements to identify customers and keep transactions details. A summary of the views received in this consultation exercise is analysed at Annex III.

11. Apart from the trade, we have consulted the Action Committee Against Narcotics (ACAN) on the proposals. ACAN supported the proposals and, in particular, the introduction of a threshold in order to minimise inconvenience for clients and administrative burden for the trade.

12. We have also consulted the Hong Kong Bar Association, the Law Society of Hong Kong and the Privacy Commissioner for Personal Data on our proposals. 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. All three parties took the view that minimum interference to private transactions should be imposed. In the context of other anti-money laundering measures, we are consulting the two legal professional bodies further. It is possible that they may have other detailed comments in about two weeks' time.

TIMETABLE

13. The proposed amendments are scheduled for introduction to the Legislative Council on 21 April 1999.

ADVICE SOUGHT

14. Members are invited to advise on the proposed amendments as set out in paragraph 9 above.

Security Bureau
February 1999

(draft-c/20-2leg2/pn)

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="958 360 2085 671">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="958 762 2085 831">In order to fulfil identification requirements concerning legal entities, financial institutions should, when necessary, take measures:</p> <ul data-bbox="958 922 2085 1155" style="list-style-type: none"><li data-bbox="958 922 2085 1070">(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="958 1082 2085 1155">(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 | <p>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).</p> |

| Recommendation No. | Subject | Recommendation |
|--------------------|----------------------|---|
| 12 | Record-keeping Rules | <p data-bbox="958 357 2096 592">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="958 639 2096 794">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="958 842 2096 914">These documents should be available to domestic competent authorities in the context of relevant criminal prosecutions and investigations.</p> |

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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 co-operate fully with the law enforcement agencies and to provide prompt advice of suspicious transactions.

**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. The majority (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