

CENSUS AND STATISTICS (SURVEY OF EXTERNAL
CLAIMS, LIABILITIES AND INCOME) ORDER
(Made under section 11 of the Census and Statistics
Ordinance (Cap. 316))

1. Interpretation

(1) In this Order, unless the context otherwise requires---

"affiliated undertaking" (相關聯經營), in relation to a local undertaking, means a non-local undertaking---

(a) that holds an affiliated interest in the local undertaking; or

(b) in which the local undertaking holds an affiliated interest;

"business" (業務) means business with or without a view to profit;

"business undertaking" (業務經營) means an undertaking that carries on any business;

"client" (客戶), in relation to an agent or custodian, means a person who, on his own behalf or on behalf of another person, uses any service provided by the agent or custodian;

"custodian" (保管人) means a person who engages in any of the following activities---

(a) safekeeping, managing, controlling or taking custody of shares, debt securities or other assets in the name of that person on trust for clients, or in the name of clients, whether that person also makes investments on behalf of clients or not;

(b) holding himself out as a nominee;

(c) providing nominees to clients;

(d) acting as a trustee;

"external claim" (對外申索) means a claim that a resident is entitled to make against a non-resident in respect of any kind of property, service or interest;

"external factor income flows" (對外要素收益流動) means any of the following---

(a) the inflow to Hong Kong of any income or benefits, whether in cash or in kind, arising in or derived from---

(i) investment in any place outside Hong Kong by a resident; or

(ii) employment by a non-resident of a local individual to work principally in any place outside Hong Kong;

(b) the outflow from Hong Kong of any income or benefits, whether in cash or in kind, arising in or derived from---

(i) investment in Hong Kong by a non-resident; or

(ii) employment by a resident of a non-local individual to work principally in Hong Kong;

"external liabilities" (對外負債) means the liabilities of a resident owed to a

non-resident in respect of any kind of property, service or interest;

"external transaction" (對外交易) means a transaction between a resident and a non-resident;

"fund" (基金) means a mutual fund, a unit trust, or any other collective investment scheme (whether the scheme is open to public subscription or not);

"lease" (租契) includes a licence, a tenancy agreement and an agreement for a lease, licence or tenancy agreement;

"loan" (貸款) includes the following---

(a) advance;

(b) discount;

(c) money paid for, or on account of, or on behalf of, or at the request of, any person;

(d) forbearance to require payment of money owing on any account;

(e) an agreement (whatever its terms or form may be) that is in substance or effect a loan of money;

(f) an agreement to secure the repayment of a loan;

"local fund" (本地基金) means---

(a) in the case of a mutual fund, a fund incorporated in Hong Kong;

(b) in the case of a unit trust, a fund whose trustee is domiciled in Hong Kong;

(c) in the case of any other collective investment scheme, a fund whose beneficial owner is a resident;

"local individual" (本地個人) means an individual---

(a) who, on the last day of the reference period of a survey, has resided in Hong Kong for not less than 12 months; or

(b) in respect of whom, in the opinion of the Commissioner, reasonable grounds exist for believing that the person will have stayed in Hong Kong for at least 12 months by the end of that reference period;

"local undertaking" (本地經營) means a business undertaking having---

(a) its principal place of productive operations in Hong Kong; or

(b) its place of incorporation in Hong Kong if it has no productive operation; or

(c) its principal place of business in Hong Kong if it has no productive operation and is not incorporated;

"margin payment" (保證金) means a payment made by a person to another as security against the performance of an obligation under a contract;

"mutual fund" (互惠基金) means a body corporate that---

(a) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities; and

(b) offers for sale or has outstanding any redeemable shares of which it is the issuer;

"non-local fund" (非本地基金) means a fund other than a local fund;

"non-local individual" (非本地個人) means an individual other than a local individual;

"non-local undertaking" (非本地經營) means a business undertaking other than a local undertaking;

"non-resident" (非居港者) means a non-local individual or non-local undertaking;

"payment" (付款) includes a payment in money or money's worth;

"policy holder" (保單持有人), in relation to an insurance policy, includes a person to whom, under the policy, a benefit is due or a periodic payment is payable;

"productive operation" (生產作業) means an operation, process or activity that results directly or indirectly in goods or services available for sale;

"rate of return" (回報率) means the return on an investment, expressed as a percentage of the original amount of the investment;

"receipt" (收入) includes a receipt in money or money's worth;

"reference period" (統計期)---

(a) in relation to a survey mentioned in section 5(2), means the reference period referred to in that section;

(b) in relation to a survey mentioned in section 5(3), means the reference period referred to in that section;

"reporting individual" (申報資料的個人) means a local individual required by the Commissioner to give information under section 3(1);

"reporting undertaking" (申報資料的經營) means a local undertaking required by the Commissioner to give information under section 3(1);

"repurchase transaction" (回購交易) means a sale of securities whereby the seller is obliged to repurchase from the buyer, or the buyer is obliged to resell to the seller, securities of the same description, at a pre-determined price on an agreed future date;

"resident" (居港者) means a local individual or local undertaking;

"survey" (調查) means the statistical survey referred to in section 2;

"survey period" (調查期) means any of the survey periods specified in section 5(1);

"transaction" (交易) includes any transaction that creates, transforms, exchanges, transfers or extinguishes any economic value in connection with the acquisition or provision of goods, services, labour, capital, or other assets or liabilities;

"unit trust" (單位信託) means an arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management

or disposal of securities or any other property;

"voting share" (有表決權股份), in relation to a body corporate having a share capital, means a share that entitles its registered owner to vote at meetings of shareholders of the body corporate.

(2) In this Order, a reference to external claims, liabilities and income is a reference to external claims, external liabilities and external factor income flows.

(3) For the purposes of the definition of "affiliated undertaking" (相關聯經營), a business undertaking holds an affiliated interest in another business undertaking---

(a) in the case of the other undertaking being a body corporate having a share capital, if the first-mentioned undertaking owns not less than 10% of the voting shares of the other undertaking; or

(b) in any other case, if the first-mentioned undertaking has contributed (otherwise than by way of a loan) not less than 10% of the capital of the other undertaking.

(4) For the purposes of this Order, a business undertaking is a related undertaking of another business undertaking if---

(a) one of those two undertakings holds a related interest in the other; or

(b) both of them belong to a series of 3 or more business undertakings that comply with the following conditions and sequence---

(i) one of those two first-mentioned undertakings is the first in the series; and

(ii) each undertaking holds a related interest in its immediately following undertaking in the series.

(5) For the purposes of subsection (4), a business undertaking holds a related interest in another business undertaking---

(a) in the case of the other undertaking being a body corporate having a share capital, if the first-mentioned undertaking owns not less than 20% of the voting shares of the other undertaking; or

(b) in any other case, if the first-mentioned undertaking has contributed (otherwise than by way of a loan) not less than 20% of the capital of the other undertaking.

2. Survey of external claims, liabilities and income

The Commissioner must carry out a statistical survey in respect of each survey period for the purposes of compiling statistics relating to the external claims, liabilities and income of residents.

3. Commissioner may require information to be given

(1) For the purpose of carrying out a survey, the Commissioner may require a local individual or local undertaking to give information in respect of the matters specified in the Schedule for the reference period of the survey.

(2) A reporting individual or undertaking must give the information to the Commissioner---

(a) in accordance with such schedule as the Commissioner may issue for that purpose; and

(b) within such period as the Commissioner may specify in the schedule.

4. Which person of a reporting undertaking is to give information

In the case of a reporting undertaking, the information referred to in section 3 must be given---

(a) in the case of the undertaking being a body corporate, by a director, secretary or other person concerned in the management of the body corporate;

(b) in the case of the undertaking being a partnership, by a partner of the partnership;

(c) in any other case, by the proprietor of the undertaking.

5. Survey periods and reference periods

(1) For the purposes of this Order, the survey periods are---

(a) each calendar year beginning from 1998; and

(b) each period of 3 consecutive months beginning from the first 3 months of 1999.

(2) For the purpose of carrying out a survey in respect of any calendar year specified in subsection (1)(a), the Commissioner may require information to be given for a reference period of any of the following---

(a) that calendar year;

(b) such other period of 12 consecutive months as the Commissioner may determine in any particular case, but the period must commence not earlier than 1 January of that calendar year and end not later than 31 December of the next calendar year.

(3) For the purpose of carrying out a survey in respect of any period of 3 consecutive months specified in subsection (1)(b), the Commissioner may require information to be given for a reference period of that 3 consecutive months.

(4) In this section, "calendar year" (公曆年) means the period of 12 months beginning with the first day of January in any year.

6. Sampling methods may be used

The Commissioner may use sampling methods to collect information for the purpose of a survey.

7. Application of Order in certain cases

This Order applies in relation to a business undertaking for the purpose of a survey notwithstanding that the undertaking commenced business after the commencement of the reference period of the survey or ceased to carry on business during that period.

8. Date for destruction of schedules

The Commissioner must ensure that all completed schedules collected or received by census officers for a survey and all copies of the schedules are destroyed not later than 60 months after the reference period of the survey.

9. Repeals

The following Orders are repealed---

(a) the Census and Statistics (Annual Survey of External Investments in Non-manufacturing Undertakings) Order (Cap. 316 sub. leg.);

(b) the Census and Statistics (Annual Survey of External Factor Income Flows) Order (Cap. 316 sub. leg.).

SCHEDULE [s. 3]

Matters in Respect of Which Information is to be Given

1. In the case of a reporting undertaking, the following matters in respect of that undertaking and each of its related undertakings (individually "the undertaking concerned")---

(a) name and business address;

(b) percentage of the following equity ownership---

(i) in the case of the undertaking concerned being a body corporate having a share capital, percentage of shareholdings by place of residence of persons who are each a registered owner of not less than 10% of the voting shares of the undertaking concerned;

(ii) in any other case, percentage of equity ownership by place of residence of persons who have each contributed (otherwise than by way of a loan) not less than 10% of the capital of the undertaking concerned;

(c) name and business address of each of the affiliated undertakings of the undertaking concerned (if the undertaking concerned is a local undertaking);

(d) name and business address of each of the related undertakings of those affiliated undertakings;

(e) name and business address of any other business undertaking that---

(i) acts as a manager, custodian or agent on behalf of the undertaking concerned in conducting external transactions; or

(ii) has connections through which the undertaking concerned conducts external transactions;

(f) number of employees, by type and by function;

(g) value of working capital, loans, staff training expenditures and research and development expenditure, by type;

(h) particulars of technology transfer between the undertaking concerned and its affiliated undertakings (if the undertaking concerned is a local undertaking), and

between the undertaking concerned and the related undertakings of those affiliated undertakings;

(i) business plan in Hong Kong;

(j) opinions on Hong Kong as a location for investment.

2. In the case of a reporting individual, any external claims, liabilities and income (including the rates of returns, payments and receipts arising in or derived from any external transactions) in respect of---

(a) that individual; and

(b) his clients by place of residence (if that individual acts as an agent or custodian).

3. In the case of a reporting undertaking, any external claims, liabilities and income (including the rates of returns, payments and receipts arising in or derived from any external transactions) in respect of---

(a) that undertaking; and

(b) its clients by place of residence (if that undertaking acts as an agent or custodian); and

(c) each of the related undertakings of that undertaking.

4. The external claims, liabilities and income referred to in sections 2 and 3 include those arising in or derived from any of the following operations, processes or activities---

(a) investment made by a resident in the equity of a non-local undertaking, or by a non-resident in the equity of a local undertaking;

(b) investment made by a resident in debt securities issued by a non-local undertaking, or investment made by a non-resident in debt securities issued by a local undertaking;

(c) dealing in financial derivatives between a resident and a non-resident;

(d) lending or borrowing of money by way of loans or repurchase transactions between a resident and a non-resident;

(e) placing of money in the form of deposits or margin payments by a resident with a non-local undertaking, or by a non-resident with a local undertaking;

(f) purchase, negotiation or discount by a resident of a bill of exchange where the drawee is a non-resident;

(g) acceptance by a resident of a bill of exchange where the payee is a non-resident;

(h) extension of trade credits, or making of prepayments, relating to imports and exports by a resident to a non-local undertaking, or by a non-resident to a local undertaking;

(i) investment made by a resident in real property located in any place outside Hong Kong, or by a non-resident in real property located in Hong Kong;

(j) holding of insurance policies where the policy holder is a resident and the

insurer is a non-resident, or where the policy holder is a non-resident and the insurer is a resident;

(k) investment made by a resident in a non-local fund, or by a non-resident in a local fund;

(l) holding of gold bullion or foreign currencies (whether in notes or coins) by a resident;

(m) granting of a lease of real property owned by a resident and located in any place outside Hong Kong, or of real property owned by a non-resident and located in Hong Kong;

(n) employment by a resident of a non-local individual to work principally in Hong Kong;

(o) acquisition or provision of any service between a resident and a non-resident.

Rafael S. Y. HUI

Secretary for Financial Services

1 February 1999

Explanatory Note

This Order directs the Commissioner for Census and Statistics to carry out statistical surveys relating to the external claims, liabilities and income of local individuals and local undertakings. It sets out, among other things, the purposes of the survey, the matters in respect of which information is required to be given, the manner of data collection and the subsequent disposal of the data.

2. This Order repeals the Census and Statistics (Annual Survey of External Investments in Non-manufacturing Undertakings) Order (Cap. 316 sub. leg.) and the Census and Statistics (Annual Survey of External Factor Income Flows) Order (Cap. 316 sub. leg.).