

立法會
Legislative Council

LC Paper No. CB(2)1617/15-16(02)

Ref : CB2/PL/SE

Panel on Security

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 7 June 2016**

**Public Consultation on the Establishment of a Reporting System on the
Physical Cross-Boundary Transportation of Large Quantities of Currency
and Bearer Negotiable Instruments**

Purpose

This paper summarizes past discussions of the Panel on Security ("the Panel") on issues relating to the Administration's public consultation on the establishment of a reporting system on the physical cross-boundary transportation of large quantities of currency and bearer negotiable instruments ("CBNIs").

Background

2. The Financial Action Task Force ("FATF"), established in 1989, is an inter-governmental body of a global scale responsible for setting international standards to combat money laundering and terrorist financing activities. FATF currently comprises 34 member jurisdictions and two regional organizations, among which Hong Kong has been a member jurisdiction since 1991.

3. FATF has developed 40 Recommendations with which member jurisdictions need to ensure compliance. Of the 40 Recommendations, Recommendation 32 ("R32") requires member jurisdictions to establish by statute a system to detect and prevent illicit physical cross-boundary transportation of CBNIs ("R32 System"). The primary objective is to ensure that terrorists and other criminals cannot finance their activities or launder the proceeds of their crimes through physically moving CBNIs across different

jurisdictions. FATF has also stated that member jurisdictions should implement R32 System "without restricting either (a) trade payments between countries for goods and services; or (b) the freedom of capital movements in any way".

4. Under FATF's recommendation, member jurisdictions should put in place a declaration system, a disclosure system or a mixed system for reporting the physical cross-boundary transportation of large quantities of CBNI, whether by passengers or through cargo or mail. Under a declaration system, proactive reporting to the designated authorities is required. Under a disclosure system, persons concerned are required to provide information about CBNI only upon request by the authorities. Member jurisdictions have the flexibility to adopt a system that best suits their own particular circumstances. FATF also recommends that reporting should be required for physical cross-boundary transportation of CBNI exceeding a threshold of USD/EUR15,000 (equivalent to around \$120,000).

Deliberations of the Panel

5. The Panel had been briefed on the Administration's plan to launch public consultation on the establishment of a reporting system on the physical cross-boundary transportation of large quantities of CBNI. The major views and concerns of members are summarized below.

The proposed reporting system

6. Members noted that the Administration proposed the establishment of a mixed system with the following features:

- (a) a designated threshold of HK\$120,000 would be adopted for the proposed reporting system;
- (b) an incoming passenger who brought with him CBNI above the designated threshold should make a declaration when arriving Hong Kong. An outgoing passenger should disclose CBNI carried when being asked by an authorized officer; and
- (c) for incoming and outgoing cargo consignments which contained CBNI exceeding the designated threshold, the person responsible for import or export of the cargo should make an advance declaration to the authority concerned through an electronic system.

7. Concern was raised about the need for the proposed reporting system. According to the Administration, Hong Kong had an obligation as a member of FATF to implement FATF's recommendations. R32 required member jurisdictions to establish by statute an R32 System to detect and prevent illicit physical cross-boundary transportation of CBNIs. Hong Kong was the only FATF member jurisdiction which had not yet introduced an R32 System.

8. Some members expressed concern why different declaration and disclosure requirements were proposed for incoming and outgoing passengers. According to the Administration, the arrangement was proposed having regard to the existing customs clearance arrangements where different measures for incoming and outgoing passengers were adopted on a risk-based approach. Notably, for an incoming passenger, if he brought with him CBNIs above the designated threshold, he should use the "Red Channel" to make a declaration; otherwise, he could just go through the "Green Channel". For an outgoing passenger, he should disclose information about CBNIs carried when being asked by an authorized officer. For passengers in transit, no declaration or disclosure would be required.

9. Some members queried the effectiveness of the proposed reporting system in tackling money laundering. According to the Administration, the proposed system was only one of the bundle of measures for combating money laundering. Other examples in the Hong Kong regime included the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO"), which set out relevant anti-money laundering and counter terrorist financing requirements on financial institutions.

Coverage of CBNIs

10. Information was sought on the coverage of CBNIs and whether they included casino tokens, share certificates and cheques without the bearer's name.

11. According to the Administration, CBNIs included monetary or negotiable instruments such as traveller cheques, cash cheques, promissory notes and money orders in such form that title to these instruments passes upon delivery. FATF had not given advice on whether CBNIs included casino tokens and share certificates. The Administration welcomed views on the coverage of CBNIs under the proposed system.

Designated threshold for declaration and disclosure

12. Some members were of the view that the proposed designated threshold of HK\$120,000 should be substantially increased to minimize inconvenience to passengers. According to the Administration, the designated threshold of \$120,000 was proposed in accordance with FATF's recommendation. It was higher, i.e. more lenient, than those of many other member jurisdictions, including the United States of America, the United Kingdom, Australia and Singapore, which were equivalent to around HK\$78,000, HK\$86,000, HK\$62,000 and HK\$117,000 respectively. The proposed threshold of HK\$120,000 would offer greater compliance convenience to the relevant parties, as the same local threshold had also been adopted by other anti-money laundering and counter terrorist financing measures under AMLO.

13. Concern was raised over whether a Hong Kong resident who carried cash exceeding the designated threshold out of Hong Kong for travel and brought most of it back to Hong Kong might face difficulties in proving the source of such cash on his return to Hong Kong. Members were advised that in general, a passenger would not be required to explain the source of CBNI's declared or disclosed, unless his case was one in which it was necessary to do so for countering money laundering or terrorist financing activities. The proposed declaration and disclosure system would not affect the legitimate flow of funds into and out of Hong Kong.

Penalty for violation of the proposed declaration and disclosure requirements

14. Some members considered that a grace period should be introduced in respect of imposing penalty on the violation of the reporting requirements, during which passengers found in violation of the reporting requirements for the first time should be warned only. According to the Administration, it kept an open mind on such a suggestion.

15. Information was sought on whether a person who violated the proposed reporting system would be liable on conviction to imprisonment. According to the Administration, there were overseas examples in which non-compliance would lead to imprisonment. The Administration proposed to introduce a fixed penalty for first-time offenders who had not committed any money laundering or terrorist financing offences in the past. For other offenders, the penalty would generally be heavier, subject to court proceedings.

Latest development

16. The Administration launched a three-month consultation exercise on establishing an R32 System in Hong Kong in July 2015. It would report to the

Panel on the results of the public consultation exercise at the meeting on 7 June 2016.

Relevant papers

17. A list of relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
1 June 2016

**Relevant papers on public consultation on the establishment
of a reporting system on the physical cross-boundary transportation
of large quantities of currency and bearer negotiable instruments**

Committee	Date of meeting	Paper
Panel on Security	7.7.2015	Agenda Minutes

Council Business Division 2
Legislative Council Secretariat
1 June 2016