

立法會
Legislative Council

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by the Administration)

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**Bills Committee on Cross-boundary Movement of Physical Currency and
Bearer Negotiable Instruments Bill**

Minutes of meeting
held on Tuesday, 28 March 2017, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex

Members present : Dr Hon Elizabeth QUAT, JP (Chairman)
Hon James TO Kun-sun
Hon WONG Ting-kwong, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon YIU Si-wing, BBS
Hon Kenneth LEUNG
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon CHAN Chun-ying
Dr Hon YIU Chung-yim

Public Officers attending : Item II

Ms Manda CHAN
Commissioner for Narcotics

Miss Rosalind CHEUNG
Principal Assistant Secretary (Narcotics)
Security Bureau

Mr Kevin LAI
Assistant Secretary (Narcotics)
Security Bureau

Ms Louise HO Pui-shan
Assistant Commissioner
(Intelligence and Investigation)
Customs and Excise Department

Ms LAI Sau-ieng
Senior Superintendent
(Syndicate Crimes Investigation)
Customs and Excise Department

Mr CHONG Man-kai
Superintendent (Special Project Team)
Customs and Excise Department

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Miss Joyce CHAN
Assistant Legal Adviser 1

Ms Mina CHAN
Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

Action

I. Election of Chairman

Dr Elizabeth QUAT was elected Chairman of the Bills Committee.

2. Members agreed that there was no need for the Bills Committee to elect a Deputy Chairman.

Application for late membership

3. Members agreed to accept the application from Mr Kenneth LEUNG for late membership of the Bills Committee pursuant to Rule 23(c) of the House Rules.

Action

II. Meeting with the Administration

4. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Admin

5. The Bills Committee requested the Administration to:

- (a) explain the considerations for determining that a person was in possession of currency and bearer negotiable instruments ("CBNIs") over HK\$120,000 and was thus required to make a declaration when arriving in Hong Kong via specified control points, in particular whether such person was required to make a declaration when accompanying a young person under the age of 16 and also knowing that the young person was in possession of a large quantity of CBNIs. In that connection, in a hypothetical scenario where an adult was accompanying a young person and they each had CBNIs of a total value of HK\$100,000, whether the adult, who was carrying the CBNIs (totaling HK\$200,000) for himself and on behalf of the young person, would be required to make a declaration and further, whether the adult could avoid having to make a declaration by, for instance, placing CBNIs of a total value of HK\$100,000 on the young person (e.g. an infant), such that the young person was arguably "in possession of" such CBNIs;
- (b) advise on the legal liability of a person who had made a declaration or disclosure to an authorized officer, but the details of such declaration or disclosure were found to be inaccurate, for example, where the total value of CBNIs in his possession was higher than the total value specified in the declaration or disclosure because of exchange rate fluctuation;
- (c) consider the proposal of allowing a frequent traveller to make a declaration on the total value of CBNIs in his possession, if it exceeded HK\$120,000, prior to arriving in Hong Kong and/or to consider whether there were means of allowing frequent travellers who often carried CBNIs over the total value of HK\$120,000 to be exempted from having to make a declaration each time they arrived at a specified control point;

Action

- (d) clarify whether the particulars of persons and information collected pursuant to the declaration and disclosure requirements under the Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Bill ("the Bill") would be used for law enforcement purposes other than those provided under the Bill, and further, whether and under what circumstances would such information be provided to other member jurisdictions of the Financial Action Task Force;
- (e) explain the policy intent of providing the power to exempt under clause 28 of the Bill and provide illustrating examples of the power being exercised by the Commissioner of Customs and Excise pursuant to clause 28;
- (f) consider the need to substitute the references to "a large quantity of CBNIs" with "specified amount of CBNIs" in the Bill; and
- (g) consider whether the term "traveller" was appropriate or whether it was liable to give rise to confusion for Hong Kong residents who might not be aware that the declaration and disclosure requirements also applied to them.

Invitation of public views

6. Members agreed to invite written submissions on the Bill from the public. Members also agreed that for those who wished to make oral representations on the Bill, they were requested to indicate in their submissions for consideration by the Bills Committee.

III. Any other business

7. Members agreed that the next two meetings of the Bills Committee would be scheduled for 24 April and 9 May 2017 from 4:45 pm to 6:45 pm respectively.

8. There being no other business, the meeting ended at 6:23 pm.

**Proceedings of meeting of the
Bills Committee on Cross-boundary Movement of Physical Currency and
Bearer Negotiable Instruments Bill
held on Tuesday, 28 March 2017, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action required
000000 - 000331	Mr James TO Mr CHAN Chun-ying Mr YIU Si-wing Dr Elizabeth QUAT	Election of Chairman	
000332 - 000407	Chairman	Mr Kenneth LEUNG's application for late membership	
000408 - 001446	Chairman Admin	Powerpoint presentation by the Administration on the background and salient features of the Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Bill ("the Bill") [LC Paper No. CB(2)1096/16-17(01)]	
001447 - 001802	Chairman Dr YIU Chung-yim Admin	<p>Dr YIU Chung-yim sought clarification on:</p> <p>(a) whether a person could avoid having to make a declaration by making multiple entries into Hong Kong in the same day and carrying currency and bearer negotiable instruments ("CBNIs") less than HK\$120,000 on each occasion; and</p> <p>(b) whether a person accompanying a group, for instance, family members, who was carrying CBNIs over HK\$120,000 for himself and the group he was with (e.g. family members), would be required to make a declaration or disclosure.</p> <p>The Administration explained that:</p> <p>(a) a traveller in possession of a total value of CBNIs above HK\$120,000 was required to make declaration or disclosure on each occasion he arrived in or departed from Hong Kong;</p> <p>(b) authorized officers were empowered under the Bill to conduct searches and seize and detain CBNIs reasonably suspected to be crime proceeds or terrorist property, irrespective of whether the traveller was required to make a declaration or disclosure; and</p>	

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		<p>(c) it was proposed under the Bill that a person, irrespective of whether he was travelling alone or accompanying others, who was in possession of CBNIs of a total value over HK\$120,000 would be required to make a declaration when arriving in Hong Kong via a specified control point. Similar arrangement was adopted in many other member jurisdictions of the Financial Action Task Force ("FATF").</p>	
001803 - 002437	Chairman Mr CHAN Chun-ying Admin	<p>Mr CHAN Chun-ying asked:</p> <p>(a) why it had taken the Administration such a long time to implement FATF's recommendation of establishing a declaration and disclosure system, when Hong Kong had already been rated as "non-compliant" in the third round of mutual evaluation conducted by FATF in 2008;</p> <p>(b) how the personal particulars and information collected under the declaration or disclosure requirements under the Bill would be handled;</p> <p>(c) why mails were not subject to the proposed declaration and disclosure system; and</p> <p>(d) whether the penalties for non-compliance with the declaration or disclosure requirements under the Bill were comparable to those adopted by other FATF member jurisdictions.</p> <p>The Administration advised that:</p> <p>(a) FATF had set international standards on anti-money laundering ("AML") and counter-financing of terrorism ("CFT") through 40 Recommendations. Specifically, Recommendation 32 required member jurisdictions to establish by statute a declaration and/or disclosure system to detect the physical cross-boundary transportation of CBNIs ("R32 System"). In preparing the Bill, the Administration had made references to the practices adopted by other member jurisdictions of FATF, collected stakeholders' views and conducted public consultation;</p> <p>(b) to effectively combat money laundering and terrorist financing, FATF required the R32 Systems of member jurisdictions to allow for international cooperation and assistance;</p>	

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		<p>(c) there were divergent approaches amongst FATF members regarding whether and how CBNIs were regulated with respect to mails. FATF also noted that member jurisdictions differed widely in their approaches in implementing control over movement of currency via mails, without a proven global model. Besides, the risk of mail being used to transport illicit cash was thus far not conclusive, and more research and study were required to understand the issue and factors behind. In view of the huge volume of international mails posted in and out of Hong Kong, the diversity of the modes of regulation worldwide and the practical implications of any form of control on the operation of Hong Kong's mail system, the Administration did not propose to include mails under the Bill. It would closely monitor the international developments; and</p> <p>(d) as required by FATF, appropriate sanctions with deterrent effect should apply to non-compliance with the declaration or disclosure requirements. FATF, however, had not specified the level of sanctions, and there was not a universal approach in imposing sanctions in overseas jurisdictions. The penalty imposed by FATF member jurisdictions for a breach of the declaration or disclosure requirements ranged from administrative penalty to a maximum fine of US\$1,000,000 and 10 years' imprisonment upon conviction.</p> <p>Mr CHAN asked about the criteria adopted by the Customs and Excise Department ("C&ED") in selecting passengers for examination at specified control points. The Administration advised that C&ED adopted a risk-based approach in selecting passengers for examination.</p>	
002438 - 003050	Chairman Mr James TO Admin	<p>Mr James TO enquired:</p> <p>(a) whether the designated threshold of CBNIs of a total value over HK\$120,000 should be relaxed having regard to domestic circumstances, i.e. there was an increasing number of incoming travellers who carried large amounts of cash when they visited Hong Kong; and</p> <p>(b) about the customs clearance arrangements for arriving visitors at specified control points if the Bill was passed.</p>	

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		<p>The Administration advised that:</p> <p>(a) the designated threshold of HK\$120,000 was proposed in accordance with FATF's recommended threshold of no higher than US\$/€15,000. Compared with other FATF's member jurisdictions, the threshold of HK\$120,000 was largely comparable and was even more relaxed; and</p> <p>(b) the proposed declaration and disclosure system dovetailed with the Red and Green Channel System for clearance of travellers arriving at control points and the existing customs clearance arrangements. Specifically, travellers arriving in Hong Kong via specified control points with an amount of CBNI's exceeding the designated threshold should use the Red Channel to make a written declaration; and for those with CBNI's not exceeding the designated threshold could simply go through the Green Channel. Customs officers would adopt a risk-based approach in selecting passengers for examination at specified control points.</p>	
003051 - 003539	Chairman Mr Kenneth LEUNG Admin	<p>Mr Kenneth LEUNG sought clarification about the declaration requirement for a young person under the age of 16 under clause 4 of the Bill.</p> <p>The Administration advised that under clause 4(3) of the Bill, if a traveller was a young person under the age of 16 (including infants) and accompanied by an adult who knew that the young person was in possession of CBNI's exceeding the designated threshold, the adult must make the declaration for the young person. If the young person was not accompanied by any adult, he was required to make the declaration himself.</p> <p>Mr LEUNG expressed concern about the enforceability and compliance of the declaration requirement, in particular how to ensure that travellers arriving in Hong Kong with CBNI's above HK\$120,000 would not use the Green Channel. The Administration explained that travellers using the Green Channel were not exempt from customs examination. C&ED adopted a risk-based approach in selecting travellers for examination at specified control points. Green Channel users were liable to prosecution or penalty if they were found in possession of CBNI's of a total value over HK\$120,000 but had not made a declaration for the CBNI's.</p>	

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003540 - 004111	Chairman Mr YIU Si-wing Admin	<p>Mr YIU Si-wing considered that a grace period should be provided at the initial stage of enforcement so as to allow time for members of the public and visitors to become familiarized with the proposed declaration or disclosure requirements.</p> <p>The Administration advised that comprehensive and extensive publicity of the new declaration and disclosure system would be launched before it was put into actual operation. To cater for travellers inadvertently failing to observe the declaration or disclosure requirements, the R32 System would provide for a procedure for discharging the liability of a traveller in breach of a declaration or disclosure requirement, upon the payment of HK\$2,000. This would be applicable to first-time offenders who had not previously committed any money laundering or terrorist financing offences and whose CBNIs were not reasonably suspected to be crime proceeds or terrorist property. That said, the Administration would take note of Mr YIU's suggestion.</p> <p>In response to Mr YIU's enquiry about the legislative timetable, the Administration advised that as the next round (i.e. the fourth round) of mutual evaluation was expected to be conducted by FATF in 2018, it was hoped that the Bill could be passed within the current legislative session.</p>	
004112 - 004654	Chairman Mr Christopher CHEUNG Admin	<p>Mr Christopher CHEUNG enquired:</p> <ul style="list-style-type: none"> (a) about the legal liability of a person who had made a declaration or disclosure, but the actual value of CBNIs in his possession was found to be higher than that specified in his declaration or disclosure; and (b) whether the person in (a) above would be asked to account for the sources of CBNIs in possession; (c) how C&ED selected travellers for customs examination; and (d) whether there was room to relax the proposed designated threshold of HK\$120,000 given that many people currently carried a large amount of cash travelling between Hong Kong and the Mainland. <p>The Administration advised that:</p>	

Time marker	Speaker	Subject(s) / Discussion	Action required
		<p>(a) if a declaration or disclosure contained any information that was false in a material particular, the person who made such declaration or disclosure committed an offence;</p> <p>(b) a traveller would in general not be required to explain the source of CBNI in his declaration or disclosure unless the CBNI were suspected to be crime proceeds or terrorist property;</p> <p>(c) C&ED adopted the risk-based approach in selecting travellers for customs examination; and</p> <p>(d) FATF's recommended threshold was US\$/€15,000. It was the limit set by FATF which the threshold of member jurisdictions should not relax. The Administration stressed that the proposed declaration and disclosure system would not affect the legitimate flow of funds across boundaries.</p>	
004655 - 005201	Chairman Mr Paul TSE Admin	<p>Mr Paul TSE asked:</p> <p>(a) whether in proposing to adopt the proposed designated threshold, consideration has been given to the preference of some visitors, particularly those from the Mainland, to use cash when travelling; and</p> <p>(b) whether Macao had implemented the declaration and disclosure system recommended by FATF.</p> <p>The Administration advised that:</p> <p>(a) according to a market survey report released in September 2016 on the spending patterns of Mainland residents when travelling abroad, the average spending of each Mainland tourist was far below the proposed designated threshold. Having regard to expansion of the credit card market and the fact that most popular tourist destinations had already implemented the R32 System, it was believed that the proposed declaration and disclosure requirements would not adversely affect tourists; and</p> <p>(b) the Government of Macao Special Administrative Region had introduced the relevant legislation for establishing the R32 System with a threshold set at MOP\$120,000, targeted for implementation within 2017.</p>	

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005202 - 005502	Chairman Dr Junius HO Admin	<p>In response to Dr Junius HO's enquiry about whether the Mainland had implemented the R32 System, the Administration replied in the affirmative and added that the threshold for declaration for foreign currencies was set at US\$5,000, above which was subject to currency control.</p> <p>Dr HO asked whether the designated threshold of HK\$120,000 could be increased to, say, HK\$200,000. The Administration advised that adjusting the threshold upward would risk not fulfilling the FATF's requirement.</p> <p>Dr HO's enquiry and the Administration's response regarding the comparison of the penalties proposed under the Bill with those of other FATF member jurisdictions.</p>	
005503 - 010322	Chairman Mr James TO Admin ALA1	<p>Mr James TO sought clarification on whether gold was defined as one of the types of CBNIs. The Administration advised that according to FATF, CBNIs did not include precious metals and stones.</p> <p>Mr TO asked, in the scenario where an adult was accompanying an infant (i.e. young person under the age of 16) and they each had CBNIs of a total value of HK\$100,000, whether the adult, who was carrying the CBNIs (totaling HK\$200,000) for himself and on behalf of the young person, would be required to make a declaration and further, whether the adult could avoid making a declaration by placing CBNIs of a total value of HK\$100,000 on the infant.</p> <p>The Administration advised that a person in possession of CBNIs over HK\$120,000 arriving in Hong Kong via specified control points would be required to make a declaration.</p> <p>ALA1 drew members' attention to the declaration or disclosure requirements under the Bill which were applicable to the person who was in possession of CBNIs, instead of the owner of CBNIs.</p> <p>As non-compliance with the declaration or disclosure requirements would be subject to criminal prosecution, Mr TO requested the Administration to provide the considerations for determining whether a person was in possession of CBNIs over the designated threshold in writing.</p>	Admin

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010323 - 010727	Chairman Mr YIU Si-wing Admin	<p>Mr YIU Si-wing sought clarification on the meaning of first-time offender under the Bill. The Administration explained that the Bill proposed a procedure for dealing with non-compliance with the declaration or disclosure requirements by paying a specified amount provided that the person suspected of committing the offence was a first-time offender and the CBNIs concerned were not suspected to be crime proceeds or terrorist property.</p> <p>Mr YIU enquired about the legal liability of a repeated offender whose CBNIs were not suspected to be crime proceeds or terrorist property. The Administration advised that such case would be subject to criminal prosecution which might result in fines and/or imprisonment upon conviction. The level of penalty would be determined by the court.</p> <p>Mr YIU pointed out that tour guides often carried a large amount of cash while at work and might inadvertently fail to observe the declaration or disclosure requirements having regard to the need to attend to various needs of the tourists during customs clearance. He expressed concern about C&ED's enforcement actions against a tour guide who was found in contravention of the declaration or disclosure requirements in the circumstances.</p> <p>The Administration assured members that C&ED would take appropriate enforcement actions in the light of actual circumstances of individual cases.</p>	
010728 - 011343	Chairman Mr Paul TSE Admin	<p>Mr Paul TSE asked whether consideration could be given to allowing a frequent traveller to make a declaration on the total value of CBNIs in his possession, if it exceeded HK\$120,000, prior to arriving in Hong Kong and/or allowing frequent travellers who often carried CBNIs over the total value of HK\$120,000 to be exempted from having to make a declaration each time they arrived at a specified control point. The Administration agreed to provide a written response to Mr TSE's suggestion after the meeting.</p> <p>Mr TSE asked whether CBNIs of a total value exceeding HK\$120,000 in the possession of a person arriving in or about to leave Hong Kong on a cross-boundary conveyance should be declared as imported or exported cargoes in accordance with clause 11 of the Bill. The Administration clarified</p>	Admin

Time marker	Speaker	Subject(s) / Discussion	Action required
		that the declaration for such CBNIs should be made according to the declaration requirements for passengers under clause 4 of the Bill.	
011344 - 011532	Chairman Mr CHAN Chun-ying Admin	Mr CHAN Chun-ying expressed concern about whether the term "traveller" was appropriate and whether it was liable to give rise to confusion for Hong Kong residents who might not be aware that the declaration and disclosure requirements also applied to them. The Administration advised that "traveller" as referred to in clause 4 of the Bill included Hong Kong residents who would also be subject to the declaration and disclosure requirements. The Administration was requested to consider Mr CHAN's view.	Admin
011533 - 011807	Chairman Mr James TO Mr YIU Si-wing	Suggestion of invitation for written submissions from the public.	
011808 - 012358	Mr James TO Chairman Admin	Mr James TO requested the Administration to provide written response on the legal liability of a person who had made a declaration or disclosure to an authorized officer, but the details of such declaration or disclosure were found to be inaccurate, for example, where the total value of CBNIs in his possession was higher than the total value specified in the declaration or disclosure because of exchange rate fluctuation.	Admin
012359 - 013000	Chairman Mr Paul TSE Admin	<p>Mr Paul TSE noted with concern that under the Bill, the penalty for non-compliance with the requirements of authorized officers, which was a fine at level 3 (i.e. HK\$10,000) and six months of imprisonment, was far below than the maximum penalty for offences of failure to comply with the declaration or disclosure requirements (i.e. a fine of HK\$500,000 and two years of imprisonment). He was concerned whether the disparity in the penalty level would create a loophole such that a person could evade the higher penalty for non-compliance with the declaration or disclosure requirements by for example simply refusing to take part in a customs examination as required by an authorized officer.</p> <p>The Administration advised that under the Bill, C&ED was provided with the necessary enforcement powers, which included, among others, examining the things in the possession of the person concerned, for ascertaining whether there was any contravention of the declaration or disclosure requirements.</p>	

Time marker	Speaker	Subject(s) / Discussion	Action required
		<p>Mr TSE was concerned whether the particulars of persons and information collected pursuant to the declaration or disclosure requirements under the Bill would be used for law enforcement purposes other than those provided under the Bill. At the request of Mr TSE, the Administration would provide written response to the above concerns, and whether and under what circumstances would such information be provided to other FATF member jurisdictions.</p>	<p>Admin</p>
<p>013001 - 014235</p>	<p>Chairman Mr James TO Admin</p>	<p>Mr James TO reiterated his concern over the legal liability of a person who had declared or disclosed an inaccurate amount of CBNIs because of exchange rate fluctuation. The Administration advised that the value of CBNIs that were not denominated in Hong Kong dollars would be determined in accordance with reference exchange rate published by The Hong Kong Association of Banks. A defence for persons charged with providing false material particular in a declaration or a disclosure was provided under clause 4(10) of the Bill.</p> <p>Mr TO further requested the Administration to:</p> <ul style="list-style-type: none"> (a) consider the need to substitute the references to "a large quantity of CBNIs" with "specified amount of CBNIs" in the Bill; and (b) explain the policy intent of providing the power to exempt under clause 28 of the Bill and provide illustrating examples of the power being exercised by the Commissioner of Customs and Excise pursuant to clause 28 of the Bill. 	<p>Admin</p>
<p>014236 - 014317</p>	<p>Chairman Admin</p>	<p>The Chairman's enquiry and the Administration's advice that travellers on incoming and outgoing cruise vessels were subject to the proposed declaration and disclosure system.</p>	
<p>014318 - 015049</p>	<p>Chairman Mr Paul TSE Admin</p>	<p>Mr Paul TSE enquired:</p> <ul style="list-style-type: none"> (a) about money laundering and terrorist financing in Hong Kong; and (b) how the Administration could ensure that the implementation of the Bill would not affect the freedom of movement, the free flow of capital, and the pursuit of the policy of free trade. <p>The Administration advised that:</p>	

Time marker	Speaker	Subject(s) / Discussion	Action required
		<p>(a) Hong Kong had put in place a robust AML/CFT regime in line with the relevant international standards. The existing legislation, specifically, the Organized and Serious Crimes Ordinance (Cap. 455) and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) had prescribed offences for money laundering and terrorist financing. According to the relevant statistics in 2015, there were more than 110 prosecution cases arising from money laundering and more than 160 people were prosecuted in such cases. To ensure full and effective implementation of its Recommendations at the global level, FATF would assess members' performance and compliance with its Recommendations by conducting mutual evaluation of members' AML/CFT systems and closely monitoring follow-up actions after each mutual evaluation;</p> <p>(b) FATF had stressed that the R32 System was not any form of currency control. To facilitate compliance with the new declaration and disclosure system by members of the public and minimize any inconvenience caused to them as a result of compliance, the Administration proposed a threshold as equivalent to that recommended by FATF and adopted customs clearance procedures similar to the existing arrangements. Further, extensive publicity would be launched to promote awareness of the new system; and</p> <p>(c) it was of paramount importance for Hong Kong to establish the proposed declaration and disclosure system, which would fulfill Hong Kong's international obligations as a FATF member, as well as maintain Hong Kong's reputation as an international financial centre.</p>	
015050 - 015248	Chairman	Dates of future meetings.	