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27 March 2017

Miss Rosalind CHEUNG
PAS(Narcotics)1
Security Bureau
Narcotics Division
30th floor, High Block,
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66 Queensway, Hong Kong

Dear Miss CHEUNG,

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

We are scrutinizing the legal and drafting aspects of the captioned Bill and shall be grateful if you could clarify the following matters:

Examples in clause 2(1)

It is noted that there are examples in the definition of **CBNI** under clause 2(1). Please clarify whether the examples have legislative/legal effect. Please also clarify whether these examples are necessary and appropriate.

The declaration requirement under clause 4

Clause 4(5) of the Bill seeks to provide that where a traveller is not a young person (i.e. an adult) or where the traveller is a young person (i.e. under the age of 16) who is not accompanied by any adult who knows that the young person is in possession of a large quantity of CBNIs, if such traveller fails to make a declaration to an authorized officer, such traveller commits an offence. Please clarify whether it is intended that the young person under the circumstances prescribed in clause 4(5)(a)(ii) is required to make the declaration

under clause 4(2) and may commit an offence for non-compliance under the clause 4(5). Please also clarify whether a young person, who is accompanied by an adult who does not know that the young person is in possession of a large quantity of CBNIs, is required to make the declaration.

The disclosure requirement under clause 5

Please clarify whether under clause 5(4), it is intended that an adult who is accompanying a person, knowing that the person he/she is accompanying is a young person, and also knowing that the young person is in possession of a large quantity of CBNIs, commits an offence if the adult, upon request, fails to disclose to an authorized officer, in accordance with clause 5(2)(b), whether the young person is in possession of a large quantity of CBNIs.

The declaration requirement for the imports and exports of CBNIs on cross-boundary conveyances under clauses 9 and 10

Under clause 9(1), a person commits an offence if the person imports or exports, or causes to be imported or exported, in one batch a large quantity of CBNIs for which no declaration has been made in accordance with clause 11. Under clause 10(3)(a), CBNIs are taken to have been imported or exported by a carrier for a customer in one batch if the customer directly engages the carrier to import or export the CBNIs, or if the customer directly engages a forwarder who, in the course of providing logistics service business, transports or arranges for the transportation of the CBNIs to the carrier for the carrier to import or export the CBNIs. Please clarify who (the customer, the carrier, and/or the forwarder) is/are required to make the declaration under clause 9(1).

Further, under clause 9(2), it is provided that the declaration requirement does not apply to a person who is in charge of a cross-boundary conveyance on which CBNIs are imported or exported if the person is "not otherwise responsible for importing or exporting the CBNIs". Please explain how the exemption is intended to apply in practical terms (e.g. the types of person who may qualify as "not otherwise responsible for importing or exporting the CBNIs").

Clause 23(2)(a)

Under clause 23(2)(a), an authorized officer, upon having exercised the power to stop and search under clause 16, or the power to enter and search any premises under clause 21, and having found CBNIs or anything ("found item") which he reasonably suspects to be connected with a contravention of

Part 2 of the Bill, may further require a person to produce any further thing that he reasonably suspects "to relate to the found item and, if produced, to examine the thing". Please clarify under what condition(s) can an authorized officer exercise such a power, specifically, what is intended to be covered by "reasonably suspects to relate to the found item". Please also clarify whether the clause should be construed to mean that the "further thing" in question must also be reasonably suspected to be connected with a contravention of Part 2 of the Bill.

Clause 27(3)(b)

Under clause 27, the Court of First Instance may order compensation to be paid by the Government to an interested person in relation to a seized item and under clause 27(3)(b), the Court may only make such an order if, in particular, it is satisfied that "there has been serious default on the part of a person concerned with the seizure or detention of the item". Please clarify the meaning of "a person concerned with the seizure or detention of the item" and in particular, whether "person concerned with" is to be construed to refer to for example, any person(s), apart from the authorized officer(s) who seized and detained the item, who has/have the requisite authority to handle and has/have come into contact with the seized item in question.

It is appreciated that your reply in both English and Chinese could reach us as soon as practicable.

Yours sincerely,



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