

# **立法會**

## ***Legislative Council***

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

#### **Background brief prepared by the Legislative Council Secretariat**

#### **Purpose**

This paper sets out background information and summarizes the past discussions of the Panel on Security ("the Panel") on the Administration's proposal to establish 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 which sets international standards on anti-money laundering and counter-financing of terrorism in 40 Recommendations for compliance by its member jurisdictions.<sup>1</sup> Specifically, Recommendation 32 ("R32") requires the establishment by statute of a system, which may be based on declaration or disclosure, or a mixed system, to detect the physical cross-boundary transportation of CBNIs<sup>2</sup> ("the R32 System"). FATF has also stated that member jurisdictions should implement R32 "without restricting either

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<sup>1</sup> Hong Kong has been an FAFT member since 1991.

<sup>2</sup> According to FATF, "currency" refers to banknotes and coins that are in circulation as a medium of exchange, and foreign currency which may be brought into a jurisdiction. "Bearer negotiable instruments" include monetary instruments in bearer form (e.g. travellers cheques); negotiable instruments (e.g. cheques, promissory notes and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or in a form that the title thereto passes upon delivery; and incomplete instruments signed, but with the payee's name omitted. Precious metals and stones are not included.

- (a) trade payments between countries or jurisdictions for goods and services; or
- (b) the freedom of capital movements in any way".

3. The Administration issued a consultation document setting out the major features of the proposed R32 System for public consultation from 21 July to 20 October 2015.

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

4. The Bill seeks to establish a declaration and disclosure system to detect the cross-boundary movement of a large quantity of CBNIs into or out of Hong Kong; to provide for the powers to restrain the movement of CBNIs suspected to be related to money laundering and terrorist financing; and to provide for related matters.

### **Deliberations of the Panel**

5. The Panel was briefed on the framework of the public consultation on the proposed R32 System on 7 July 2015. The Panel was subsequently briefed on the views received in the course of the public consultation exercise and the legislative proposal to establish the declaration and disclosure system on 7 June 2016. The major views and concerns of members are summarized in the ensuing paragraphs.

#### Need to establish the R32 System

6. Some members expressed concern about the effectiveness of the proposed R32 System in combating money laundering, and queried the need for establishing the proposed system. The Administration explained that as a member of FAFT, Hong Kong had an obligation to implement FATF's recommendations. R32 required member jurisdictions to establish by statute a 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. Many non-FATF members, including Vietnam, the Philippines, Indonesia and Malaysia, had also implemented R32.

7. On the effectiveness of the proposed R32 System in tackling money laundering, members were advised that the proposed system was only one of the bundle of measures for combating money laundering. For instance, relevant anti-money laundering and counter terrorist financing requirements on financial

institutions were set out in the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO"). The proposed R32 System served to ensure that criminals could not conduct money laundering through physical cross-boundary transportation of large quantities of CBNIs, and would complement other measures adopted by the Administration to combat money laundering.

8. Concern was raised about the possible impact of the proposed R32 System on the competitiveness of Hong Kong. The Administration stressed that the R32 System was not currency control and would not impose restrictions on the transportation of CBNIs. Taking reference from the experience of many developed economies having implemented the system, it was not expected to have a negative impact on the competitiveness of Hong Kong.

#### Declaration and disclosure requirements

9. Members noted that under the proposed R32 System, an incoming passenger who brought with him CBNIs above the designated threshold should make a declaration when arriving Hong Kong. An outgoing passenger should disclose CBNIs carried when being asked by an authorized officer. Some members enquired why different declaration and disclosure requirements were proposed for incoming and outgoing passengers.

10. The Administration explained that 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.

#### Designated threshold for declaration and disclosure

11. Some members were of the view that the proposed designated threshold of HK\$120,000 should be substantially increased to minimize inconvenience to passengers. The Administration advised that the proposed system only required passengers to make declarations or disclosures of CBNIs above the designated threshold. Members were further advised that the designated threshold of HK\$120,000 was proposed in accordance with FATF's recommendation. It was relatively more relaxed when compared to those adopted by 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 Administration considered that 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.

12. Some members raised concern about 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 CBNIs 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 R32 System would not affect the legitimate flow of funds into and out of Hong Kong.

#### Penalty for violation of the declaration and disclosure requirements

13. Members generally considered that the penalty for violation of the declaration and disclosure requirements should be kept to a low level for bona fide passengers. Some members considered that a grace period should be introduced in respect of imposing penalty on the violation of the declaration and disclosure requirements, during which passengers found in violation of the requirements for the first time should be warned only. Some members also enquired whether a person who violated an R32 System would be liable on conviction to imprisonment in other FATF member jurisdictions.

14. According to the Administration, there were overseas examples in which non-compliance would lead to imprisonment. The Administration was considering introduction of a penalty of \$2,000 for first-time offenders who had not committed any money laundering or terrorist financing offences in the past. For repeated offenders, the penalty would be determined by the court.

#### Publicity

15. Some members expressed concern about whether publicity would be launched to bring the declaration and disclosure requirements to the attention of Hong Kong residents and visitors. Notably, some travellers might misinterpret that the same threshold (i.e. HK\$120,000) would apply in relation to entry into their destination countries. The Administration advised that the proposed R32

System would not alter the relevant thresholds of destination countries of travellers, and assured members that comprehensive and extensive publicity on the system would be launched before it was put into operation.

### **Relevant papers**

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

Council Business Division 2  
Legislative Council Secretariat  
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**Relevant papers on the proposed establishment of  
a reporting system on the physical cross-boundary transportation of  
large quantities of currency and bearer negotiable instruments**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Security	7.7.2015 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	7.6.2016 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>

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