

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

**Response to the issues raised in the letter of 27 March 2017  
from the Legislative Council Assistant Legal Adviser**

**Clause 2(1) – use of examples in definition of *CBNI***

Under Clause 2(1) of the Bill, *CBNI* means –

- (a) a note, or coin, that is legal tender in Hong Kong or a place outside Hong Kong; or
- (b) a negotiable instrument that is –
  - (i) in bearer form;
  - (ii) endorsed without any restriction;
  - (iii) made out to a fictitious payee;
  - (iv) in a form under which the title of it passes on delivery; or
  - (v) signed but does not state a payee's name.

2. The examples set out at the foot of paragraph (b) of the definition of *CBNI* (i.e. bearer cheque, promissory note, bearer bond, traveller's cheque, money order and postal order) form part of the definition. These examples are based on those as advised by the Financial Action Task Force. An example of a provision enacted as part of the law forms part of the context in which the provision is to be interpreted.

3. There are many precedents of using examples in Hong Kong legislation. They are necessary and appropriate in seeking to explain the underlying concept of some abstract or technical terms or the operation of complex provisions in legislation, in order to improve comprehensibility of a provision. They assist in communication by supplying concrete illustrations. The examples set out in the definition of *CBNI* in Clause 2(1) of Bill serve the same purpose.

**Clause 4 – declaration by a young person**

4. Clause 4 of the Bill sets out the declaration requirements on a person who arrives at a specified control point from a place outside

Hong Kong (traveller). Clause 4(5) provides that the traveller commits an offence if –

- (a) the traveller is –
  - (i) not a young person (Clause 2(1) provides that a young person means a person under the age of 16 years); or
  - (ii) a young person who is not accompanied by any adult who knows the traveller is a young person in possession of a large quantity of CBNIs (Clause 2(3) provides that a reference to a large quantity of CBNIs is a reference to CBNIs of a total value that is more than the amount of HKD120,000 as specified in Schedule 4); and
- (b) the traveller fails to comply with Clause 4(2) (which requires the traveller to make a declaration for the CBNIs in accordance with Clause 4(4)).

5. Clause 4(5)(a)(ii) is intended to require a young person as covered therein to make a declaration for the CBNIs concerned in accordance with Clause 4(2) and (4). If the young person fails to make the declaration, he/she may commit an offence under Clause 4(5). Specifically, Clause 4(5)(a)(ii) covers the following situations -

- (a) a young person in possession of a large quantity of CBNIs who is not accompanied by any adult; or
- (b) a young person in possession of a large quantity of CBNIs, as accompanied by an adult who does not know that the young person is in such possession.

### **Clause 5 – disclosure for a young person**

6. Clause 5(2)(b) provides that an authorized officer may require an adult accompanying a young person to disclose whether the young person is in possession of a large quantity of CBNIs. Under Clause 5(4), the adult commits an offence if he/she knows that the person he/she accompanies is a young person and that the young person is in possession of a large quantity of CBNIs, but fails to comply with a requirement under Clause 5(2)(b).

## **Clauses 9 and 10 – declaration by importers or exporters of CBNI**

7. 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 CBNI for which no declaration has been made in accordance with Clause 11. Clause 10 stipulates the meaning of “in one batch”. Clause 9(1) does not stipulate the person who is to make the declaration. For import or export of CBNI in cargoes, it is not uncommon for a number of parties to be involved, including the customer, forwarder and carrier as provided for under Clause 10. The formulation of Clause 9(1) allows the declaration to be made by any of such parties.

8. Clause 9(2) provides that Clause 9(1) does not apply to a person who is in charge of a cross-boundary conveyance if the person is not otherwise responsible for importing or exporting the CBNI concerned. In practical terms, Clause 9(2) is intended to apply to such persons as drivers of cargo trucks, masters of ships and pilots of aircrafts, whose role is confined to driving/operating the cross-boundary conveyances and does not cover other responsibilities in importing or exporting the CBNI concerned. It has taken reference from a similar provision in section 4(7) of the Import and Export (Electronic Cargo Information) Regulations (Cap. 60L).

## **Clause 23(2)(a) – “further thing”**

9. Under Clause 23(1), an authorized officer may exercise the powers under Clause 23(2) in relation to CBNI, or anything the officer reasonably suspects to be connected with a contravention of Part 2, found as a result of the exercise of a power under Clause 16 or 21 (found item). Clause 23(2)(a) provides that the officer may require the production of any further thing that the officer reasonably suspects to relate to the found item and, if produced, may examine the thing. It is intended to facilitate the officer to ascertain the facts of a case upon uncovering CBNI or thing(s) in accordance with Clause 16 or 21. Whether the “further thing” relates to the found item is a matter of fact to be considered depending on the circumstances of individual cases, and such “further thing” may or may not be reasonably suspected to be connected with a contravention of Part 2.

**Clause 27(3)(b) – coverage of “a person concerned with the seizure or detention of the item”**

10. Clause 27 provides for the payment of compensation in the circumstances as prescribed. “A person concerned with the seizure or detention of the item” under Clause 27(3)(b) is mainly intended to refer to the authorized officers involved in the seizure and detention of the item concerned.

**Narcotics Division  
Security Bureau  
April 2017**