

II. REPORT

The date of First Reading of the Bill is 1 March 2017. Members may refer to the Legislative Council ("LegCo") Brief (Ref: NCR 3/1/16 S/F(U)G) issued by the Security Bureau ("SB") on 22 February 2017 for further details.

Object of the Bill

2. The Bill seeks to establish a declaration and disclosure system to detect the cross-boundary movement of a large quantity of physical currency and bearer negotiable instruments into or out of Hong Kong ("declaration and disclosure system"); to provide for the powers to restrain the movement of physical currency and bearer negotiable instruments suspected to be related to money laundering and terrorist financing; and to provide for related matters.

Background

3. The Financial Action Task Force ("FATF") is an inter-governmental body responsible for setting international standards on anti-money laundering ("AML") and counter-financing terrorism ("CFT"). Hong Kong has been a member of FATF since 1991. FATF has issued 40 Recommendations in total with which member jurisdictions are expected to comply. Recommendation 32 ("R32") requires member jurisdictions to establish by statute a system to detect the physical cross-boundary transportation of currency and bearer negotiable instruments ("CBNIs")¹. Hong Kong is the only member jurisdiction which has yet to establish such a system in compliance with R32. The Bill seeks to ensure Hong Kong's compliance with R32.

Provisions of the Bill

Declaration and disclosure requirements

4. The Bill seeks to establish a declaration and disclosure system to detect movement of a large quantity of CBNIs² into or out of Hong Kong.

¹ According to paragraph 2 of the LegCo Brief, FATF has made clear that the R32 system is not currency control and should not restrict trade payments between countries or jurisdictions for goods and services or the freedom of capital movement in any way.

² Under clause 2(1) of the Bill, CBNI means "a note, or coin, that is legal tender in Hong Kong or a place outside Hong Kong; or a negotiable instrument that is in bearer form; endorsed without any restriction; made out to a fictitious payee; in a form under which the title of it passes on delivery; or signed but does not state a payee's name" (e.g. bearer cheques, promissory notes, bearer bonds, traveller's cheques, money orders and postal orders).

Divisions 1 and 2 of Part 2 of the Bill provide for the declaration and disclosure requirements applicable to import or export of CBNIs in the possession of individuals and CBNIs imported or exported on a cross-boundary conveyance respectively.

Import or export of CBNIs in the possession of individuals

5. Under the Bill, persons arriving in Hong Kong via specified control points³ ("travellers") and who are in possession of CBNIs of a total value over the designated threshold specified in Schedule 4, which is proposed to be \$120,000⁴, would be required to make written declarations to an authorized officer⁵ to provide certain information specified in Schedule 2 (e.g. name, Hong Kong identity card or travel document number, nationality, permanent address and the type and value of the CBNIs in their possession). Travellers who do not arrive in Hong Kong via specified control points (such as when they arrive on cruise vessels) and those who are about to leave Hong Kong (via specified control points or otherwise such as by cruise vessels) would be required to disclose, upon the request of an authorized officer, whether they are in possession of CBNIs of a total value over \$120,000 and if so, to provide certain information specified in Schedule 2 to an authorized officer. The proposed declaration or disclosure requirements would not apply to persons in transit.

6. Where the traveller is a young person under the age of 16 and is accompanied by an adult, the accompanying adult would be responsible for making the above declaration or disclosure, whichever is applicable, on the young person's behalf if it is known to the accompanying adult that the young person is in possession of CBNIs of a total value over \$120,000.

Other import or export of CBNIs

7. In respect of CBNIs imported to or exported from Hong Kong via cross-boundary conveyance (including an aircraft, vehicle, and vessel), the Bill proposes that advanced electronic declaration (containing the information specified in Schedule 3) must be provided to the Commissioner of Customs and Excise ("Commissioner") by the importer or exporter (e.g. airlines and shipping companies)

³ Under the Bill, there are altogether 12 "specified control points" listed in Schedule 1 to the Bill.

⁴ According to paragraph 11 of the LegCo Brief, the designated threshold is set at \$120,000 which is roughly equivalent to FATF's standard, i.e. not higher than USD/EUR15,000. The Secretary of Security may, by notice published in the Gazette, amend the amount specified in Schedule 4.

⁵ "authorized officer" is defined under clause 2(1) of the Bill to mean a person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342), or a public officer appointed under clause 29(1).

if the total value of CBNI⁶s imported or exported in one batch⁶ is more than \$120,000. Under clause 8 of the Bill, the proposed declaration requirement does not apply to cargoes in transit, air transshipment cargoes⁷, and postal packets⁸.

Enforcement powers

8. Part 3 of the Bill proposes to confer on authorized officers a range of enforcement powers, which include:

- (a) the power to inspect travellers' Hong Kong identity cards or travel documents, to stop and search travellers and cross-boundary conveyances, and to examine travellers' possessions and cargoes on cross-boundary conveyances;
- (b) the power to seize and detain CBNI⁶s or anything reasonably suspected to be in connection with a contravention of the declaration or disclosure requirements, or CBNI⁶s reasonably suspected to be crime proceeds under section 25(1) of the Organized and Serious Crimes Ordinance (Cap. 455) or terrorist property under section 2(1) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575);
- (c) the power to enter and search premises, upon obtaining a warrant issued by a magistrate, if the officer reasonably suspects that there is on or in the premises anything connected with a contravention of the declaration or disclosure requirements; and
- (d) the power to arrest and detain without warrant anyone reasonably suspected to have contravened any provisions of the Bill.

Penalties for non-compliance

9. Under the Bill, non-compliance with the declaration or disclosure requirements and making false declaration or disclosure would be an offence punishable by a fine of \$500,000 and imprisonment for two years. Division 3 of Part 2 of the Bill proposes a procedure for dealing with such offence by paying a

⁶ The meaning of "in one batch" is defined in clause 10 of the Bill, which refers to CBNI⁶s imported or exported as cargo by a particular person, or by a person carrying on a logistics service business for the same customer.

⁷ Under section 2(1) of the Import and Export Ordinance (Cap. 60), "air transshipment cargo" means "transshipment cargo that is both imported and consigned for export in an aircraft and which, during the period between its import and export, remains within the cargo transshipment area of Hong Kong International Airport".

⁸ Under section 2(1) of the Post Office Ordinance (Cap. 98), "pocket packet" means a "postal article, or a collection of postal articles, which is in course of transmission by post as one postal unit".

specified amount (proposed to be \$2,000) provided that the person suspected of committing the offence is a first-time offender and the CBNIs concerned are not suspected to be crime proceeds or terrorist property. Criminal proceedings may be instituted against persons who fail to pay the specified amount within the specified time.

10. The Bill also proposes that non-compliance with the requirements of authorized officers made pursuant to Part 3 of the Bill or wilfully resisting or obstructing an authorized officer would be an offence punishable by a fine at level 3 (i.e. \$10,000) and imprisonment for six months.

Other provisions

11. Other provisions of the Bill relate to calculation of the value of CBNIs that are not denominated in Hong Kong dollars, the power of the Commissioner to exempt persons from the application of the declaration or disclosure requirements, and the qualified immunity of authorized officers against civil suits, etc.

Commencement

12. The Bill, if passed, would come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

Public Consultation

13. According to paragraph 17 of the LegCo Brief, a public consultation exercise was conducted between July and October 2015. SB received 28 written responses and met with over 40 parties from different sectors. The majority of the respondents acknowledged the need for Hong Kong to comply with FATF's AML and CFT standards, and expressed support for a system of declaration and disclosure in line with R32. Respondents generally emphasized the need to ensure that any measure to implement R32 would not affect the freedom of movement, the free flow of capital, and the free trade policy, while some respondents expressed concerns that business travellers, tourists and transactions involving large amount of cash might be adversely affected.

Consultation with LegCo Panel

14. The Clerk to the Panel on Security has advised that the Panel was briefed on the framework of the public consultation on the proposed declaration and disclosure system on 7 July 2015. The Panel was 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. Members generally raised no objection to the proposal, but expressed concerns on various issues including the need for the proposed declaration and disclosure system, the scope of CBNIs, the designated threshold and penalty for non-compliance.

Conclusion

15. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to establish a new declaration and disclosure system to combat money laundering and terrorist financing, Members may wish to form a Bills Committee to study the Bill in detail.

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