

Legislative Council Panel on Financial Affairs
Anti-Money Laundering Measures related to
Human Trafficking Activities

Purpose

This note outlines the Government’s approach to tackling human trafficking and the anti-money laundering and counter-terrorist financing (“AML/CTF”) regime in place to guard against possible abuse of Hong Kong’s financial system for handling crime proceeds, including those arising from human trafficking activities.

Multi-pronged Approach to Combatting Trafficking in Persons

2. The Government attaches great importance to combatting human trafficking. We respond to this evolving international issue with targeted and multi-pronged measures, covering such areas as victim identification and protection, law enforcement, prosecution, capacity building, and forming partnership with local and overseas stakeholders.

Legal Framework

3. We have a solid legal framework to effectively combat human trafficking crimes. Although Hong Kong does not have a single piece of legislation prohibiting human trafficking and the Palermo Protocol¹ has not been applied here, the laws of Hong Kong already cover the conduct of “trafficking in persons” (“TIP”) as defined in the Palermo Protocol, including in the following aspects –

- (a) The Crimes Ordinance (Cap. 200) prohibits TIP to or from Hong Kong for the purpose of prostitution; harbouring another person or exercising control or direction over another person for the purpose of that person’s prostitution or that that person shall do unlawful sexual acts with others; and any other person from procuring another person to become a prostitute or cause prostitution of that person in Hong Kong or elsewhere. It also

¹ Viz. the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.

prohibits other crimes including rape, procuring another person by threats to do unlawful sexual acts with others, and criminal intimidation. Moreover, there are provisions under the Crimes Ordinance that provide extra-territorial effect against certain sexual offences committed against children outside Hong Kong, including related arrangements and advertisements, making them punishable in Hong Kong;

- (b) The Human Organ Transplant Ordinance (Cap. 465) prohibits commercial dealings in human organs;
- (c) The Prevention of Child Pornography Ordinance (Cap. 579) prohibits printing, making, producing, reproducing, copying, importing or exporting, publishing and possessing child pornography;
- (d) The Immigration Ordinance (Cap. 115) prohibits arrangement for an unauthorised entrant to Hong Kong and employing illegal workers;
- (e) The Employment Ordinance (Cap. 57) imposes criminal liability on employers involved in non-payment, under-payment of wages or delay in payment of wages, failure to grant rest days and statutory holidays to employees; and
- (f) Other relevant ordinances prohibit such crimes as assault, forcible taking or detention of persons with intent to sell them, child abduction, deception and blackmail, etc.

4. The “multiple-legislation” approach provides our law enforcement agencies (“LEAs”) and prosecutors with a wide range of powers to investigate and prosecute TIP cases. The most serious penalty for these offences is life imprisonment.

Recent Efforts to Combat TIP

5. Underpinned by the legal framework, we tackle TIP through the joint efforts of various government departments which may directly come

across victims and witnesses in their day-to-day operation. Measures introduced in recent years include –

- (a) An inter-departmental TIP working group was established in 2010 to enhance the enforcement strategy against TIP. The working group is chaired by the Security Bureau and comprises members from the LEAs, the Department of Justice, the Labour Department and the Social Welfare Department. In 2016, the working group issued a *Guideline on Inter-departmental Cooperation for the Handling of Suspected Cases of Trafficking in Persons* for reference by the relevant departments;
- (b) In 2013, the Department of Justice incorporated a new paragraph entitled “Human Exploitation Cases” into the Prosecution Code to highlight the identification of TIP cases and broad principles on their handling, having regard to applicable international standards and practices. Last year, a new chapter on “Human Exploitation” was added to the Prosecution Manual to provide further guidance to prosecutors on TIP issues; and
- (c) The first TIP victim screening mechanism was introduced in 2015 by the Immigration Department. The mechanism was extended to cover some Police districts and the Customs and Excise Department in 2016 and 2017 respectively. It will be further extended to cover all Police districts in 2018, as well as the Labour Department in the next phase.

6. In March 2018, a high-level Steering Committee led by the Chief Secretary for Administration was set up to oversee inter-departmental efforts to combat TIP. The Steering Committee is tasked to provide strategic guidance in respect of tackling TIP and enhancing protection of foreign domestic helpers; formulate and monitor the implementation of an *Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong*; and ensure the provision of adequate resources to relevant bureaux and departments for effective implementation of the Action Plan. The Action Plan includes new and improved measures to address TIP issues,

covering victim identification, protection and support, investigation, law enforcement, prosecution, prevention, and partnership with local and overseas counterparts.

Hong Kong's AML/CFT Regime

7. The Government is committed to upholding a robust and effective AML/CFT regime that prevents, deters, disrupts and prosecutes the abuse of Hong Kong's financial system for handling crime proceeds. Our AML/CFT regime is characterised by a solid legal framework, effective law enforcement, rigorous preventive measures, efficient international cooperation, and ongoing capacity-building efforts. The regime tackles human trafficking with the same vigilance and strength as with other predicate offences criminalised under the laws of Hong Kong. Due regard is given to the fact that human trafficking poses similar money laundering ("ML") and terrorist financing ("TF") threats to a system, in much the same way as other criminal activities, in terms of the channels, instruments and sectors implied.

8. Below is a brief account of the main pieces of legislation underpinning the Government's efforts to detect, deter and disrupt the movement of illicit funds through our system, be they generated by human trafficking or other criminal activities.

ML/TF Offences

9. The Organized and Serious Crimes Ordinance ("OSCO") (Cap. 455) criminalises ML by prohibiting any person from dealing with any property known or reasonably believed by the person to represent proceeds of an indictable offence or a crime committed elsewhere which would constitute an indictable offence if it had occurred in Hong Kong.

10. The United Nations (Anti-Terrorism Measures) Ordinance ("UNATMO") (Cap. 575) criminalises TF by prohibiting the provision or collecting of property to commit terrorist acts; making property or financial (or related) services available to or collecting property or soliciting financial (or related) service for a terrorist or terrorist associate;

and dealing with terrorist property or property of a terrorist or terrorist associate.

11. The maximum penalty for the ML offence under the OSCO is imprisonment for 14 years and a fine of \$5 million, whereas a person who commits any of the TF offences under the UNATMO is liable to imprisonment for 14 years and a fine of unlimited amount.

12. Under the OSCO and UNATMO, any person who knows or suspects that any property represents proceeds of an indictable offence, or is a terrorist property, must report his/her knowledge or suspicion to the authorities as soon as is reasonable or practicable. Failure to do so constitutes an offence punishable by \$50,000 and up to three months' imprisonment.

13. The Anti-Money Laundering and Counter-Terrorist Financing Ordinance ("AMLO") (Cap. 615) provides a statutory framework to underpin the prevention and detection of ML/TF activities by requiring financial institutions² and designated non-financial businesses and professions ("DNFBPs")³ to conduct customer due diligence ("CDD") and keep relevant records. Financial institutions and DNFBPs have to put in place effective AML/CFT controls, comprising CDD measures, transaction monitoring, as well as the reporting of any suspicion transactions. Regulatory authorities for financial institutions⁴ and DNFBPs⁵ are empowered under the AMLO and other applicable Ordinances to supervise the AML/CFT conduct of regulatees and impose sanctions where regulatory breaches are found. Coupled with other capacity-building efforts of the regulators and the Government, the AMLO promotes a compliance culture that helps safeguard the integrity of our business regime and financial system.

² Including authorized institutions, licensed corporations, insurers/insurance agents/insurance brokers and money service operators.

³ Including legal professionals, accounting professionals, estate agents and trust or company service providers.

⁴ Including the Hong Kong Monetary Authority, the Securities and Futures Commission, the Insurance Authority, and the Customs and Excise Department.

⁵ Including the Law Society of Hong Kong, the Hong Kong Institute of Certified Public Accountants, the Estate Agents Authority, and the Companies Registry.

Way Forward

14. The Government will continue to implement the various measures under the Action Plan to tackle TIP, review its implementation from time to time and identify further initiatives as and when necessary. Ongoing efforts will also be made to enhance our AML/CFT regime, having regard to the evolving international standards and security landscape, while taking into account the latest crime trends, typologies, and associated ML/TF threats.

Financial Services and the Treasury Bureau
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