

立法會
Legislative Council

LC Paper No. LS 150/98-99

**Paper for the House Committee Meeting
of the Legislative Council
on 23 April 1999**

**Legal Service Division Report on
Organized and Serious Crimes (Amendment) Bill 1999**

Objects of the Bill

To amend the Organized and Serious Crimes Ordinance (Cap. 455) to add a new Part IVA to, in the interests of detecting and suppressing money laundering-

- (a) require a register to be kept of the names and addresses of all remittance agents and money changers (new section 24B);
- (b) require remittance agents (as defined in new section 24A) and money changers (as defined in section 2 of the Money Changers Ordinance (Cap. 34)) to keep records of transactions which concern amounts of \$20,000 or more or an equivalent amount in any other currency (new section 24C);
- (c) include a new section 24D to specify the criminal liability of remittance agents and money changers and their employees; and
- (d) include a new section 24E to specify the powers of authorized officers to enter the premises of remittance agents and money changers and inspect their records.

LegCo Brief Reference

- 2. NCR 3/1/8(G) Pt 16 issued by the Security Bureau on 7 April 1999.

Date of First Reading

- 3. 21 April 1999.

Comments

4. New section 24B empowers the Secretary for Security to appoint a responsible officer to keep a register of remittance agents and money changers.
5. New section 24C requires a remittance agent or money changer to keep records of remittance or exchange transactions. It exempts duty of a remittance agent or money changer from keeping records of transactions which are less than \$20,000 in value or an equivalent amount in any other currency. The Legal Service Division has asked the Administration to consider whether or not the intention of requiring a remittance agent or money changer to keep records be easily defeated if the sender splits up a large amount of money transaction into several transactions each of which is at a value less than \$20,000. The Legal Service Division has further asked the Administration to consider whether the proposed law is clear for a remittance agent or money changer to determine, at the right point in time of the transaction, the value of a foreign currency in terms of Hong Kong currency.
6. New section 24D provides that if a person employed by a remittance agent or money changer does an act which would be an offence under new section 24C(4) (duty on remittance agents and money changers to keep records) if done by a remittance agent or money changer, where the employer of the person is a corporation, each director, etc. of the corporation unless he took reasonable steps to prevent the commission of the offence, commits an offence. New section 24D(2) deems, among other things, that a person is a director of the corporation if a director acts in accordance with his directions or instructions given otherwise than in his professional capacity.
7. New section 24E empowers an authorized officer, on reasonable suspicion that a remittance agent or money changer has committed an offence under the new part, to enter any premises where the activities of the remittance agent or money changer are being carried on and demand the production of and inspect the remittance agent's or money changer's records of transactions. The Legal Service Division has asked the Administration to consider whether the proposed law covers the situation where the remittance agent or money changer has ceased his business but is still required to keep records under new section 24C(2)(c).
8. New Schedule 6 provides for details of records of transactions. The Legal Service Division has asked the Administration to confirm whether, in complying with the Personal Data (Privacy) Ordinance (Cap. 486), the personal details required are not excessive.
9. The Administration has given the Legal Service Division a reply to our queries about the Bill. Copies of the correspondence between the Legal Service Division and the Administration are at Annex.

Public Consultation

10. The Administration has consulted 92 money changers and 87 remittance agents, whom the Administration knows to be in operation in the industry, on the legislative proposals. The majority of the responses supports the proposals.

11. The Administration has consulted the 2 legal professional bodies and the Privacy Commissioner for Personal Data. They have no objection in principle to the broad proposals and their comments have been incorporated in the Bill.

12. The Administration has also consulted the Action Committee Against Narcotics which supports the proposals.

Consultation with the LegCo Panel

13. The Administration has briefed the LegCo Security Panel on the proposals at its meeting held on 4 March 1999. The Panel proposed that the penalties for not complying with the customer identification and record keeping requirements be increased to enhance the deterrent effect. Accordingly, the penalty for non-compliance is now proposed to be a fine at level 6 (\$100,000) and imprisonment for 3 months (instead of one month as originally proposed).

Conclusion

14. The Legal Service Division is still studying the Administration's reply to our queries about the Bill, including the duty of a remittance agent or money changer to keep records of transactions and the power of authorized officers to enter premises and inspect records. Members may also wish to study those issues and other proposals in the Bill in detail. A Bills Committee is recommended to be formed.

Encl

Prepared by

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Legislative Council Secretariat
20 April 1999

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16 April 1999

BY FAX
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Total Page(s) : 2

Dear Miss Chong,

Organized and Serious Crimes (Amendment) Bill 1999

We are scrutinising the legal and drafting aspects of the Bill. We should be grateful for your clarification of the following points:

New section 24A

In the definition of “remittance agent”, is it necessary to add “in whole or in part” after “business”? The reason for our suggestion is that the remittance service may be the whole, principal or minor part of the person’s business.

New section 24C(1)

New section 24C imposes duty on a remittance agent and money changer to keep records of remittance or exchange transactions. Section 24C(1) however exempts duty of a remittance agent and money changer from keeping record of a remittance or exchange transaction which is less than \$20,000 in value or an equivalent amount in any other currency. Will the intention of requiring a remittance agent and money changer to keep records be easily defeated if the instructor splits up a large amount of money transaction into several transactions each of which is at a value less than \$20,000?

New section 24C(2)(c)

The provision requires a remittance agent or money changer to keep record for not less than 6 years after the date of the transaction notwithstanding that the remittance agent or money changer may have ceased his business subsequent to the transaction. In the case of a defunct corporation, who is responsible under the law for keeping the records?

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Section 24E

The provision empowers an authorized officer, on reasonable suspicion that a remittance agent or money changer has committed an offence under this new Part, to enter any premises where the activities of the remittance agent or money changer are being carried on and demand the production of and inspect the remittance's or money changer's records of the transaction. It appears that the provision does not cover the situation where a person is required to keep records of transactions under new section 24C(2)(c). In this respect, will there be a legal vacuum?

Record of transactions (New Schedule 6)

The records of transactions require, among other things, the sender or instructor to supply his personal particulars. In complying with the Personal Data (Privacy) Ordinance (Cap. 486), can the Administration confirm that the personal details required are not excessive ?

Exchange rates

Section 24C requires a remittance agent or money changer to record a remittance or exchange transaction which is \$20,000 in value or an equivalent amount in any other currency. In the case of a remittance agent who receives or arranges for the receipt of a remittance from a place outside Hong Kong. Would the amount of HK\$20,000 be decided with reference to the point in time when the sender sent the amount , the remittance agent receives the amount or the recipient receives the amount?

In facilitating us to report on the Bill to the LegCo House Committee meeting to be held on 23 April 1999, we should be grateful for your reply, in bilingual versions, could reach us by 19 April 1999.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

政府總部禁毒處的信頭
Letterhead of NARCOTICS DIVISION GOVERNMENT SECRETARIAT

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19 April 1999

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Dear Mr Lam,

Organized and Serious Crimes (Amendment) Bill 1999

Thank you for your letter of 16 April 1999.

Our reply to the questions you raised in your letter is as follows:

New Section 24A

Our policy objective is to include all those carrying on remittance as a business, either in whole or in part, under the new legislation. However, we do not think the definition of "remittance agent" requires the inclusion of the words "Fin whole or in part" to achieve the stated objective. It is quite clear from the persons excluded by virtue of paragraph (b) of the definition of "remittance agent" that paragraph (a) of the definition catches persons irrespective of whether the remittance service provided is the "whole, principal or minor part of the person's business". That is to say, paragraph (b) of the definition would be unnecessary if paragraph (a) only catches persons whose sole or principal business is providing a remittance service.

New section 24C(1)

One of the purposes of the current legislative amendments is to enhance the comprehensiveness of our legislation in combating money laundering by making money laundering in Hong Kong as difficult and costly as possible. The proposed

threshold represents an appropriate balance to achieve this objective on the one hand, and to minimise disruption to the trade and their clients on the other. It should also be noted that new section 24C(5)(a) empowers the Secretary for Security to amend the threshold. Thus, there is a means to broaden the application of section 24C(1) should this become necessary in the light of future operational experience.

New Section 24C(2)(c)

If the business of a remittance agent/money changer has been wound up, the records of the company would be handled by the liquidator of the company acting in accordance with the provisions of the Companies Ordinance (Cap 32), his terms of appointment and any directions by the Court of First Instance. If the remittance agent/money changer merely ceases business but remains as a legal entity, the company directors and officers will continue to be responsible for keeping the records of the companies, including transaction records.

New Section 24E

In the situation where a person is required to keep records of transactions under new Section 24C(2)(c), the law enforcement agencies can search and enter into his premises for investigation into money laundering offence through the issue of a Court Order.

Record of transactions (New Schedule 6)

In drawing up the proposals, the Administration has consulted the Privacy Commissioner for Personal Data and his advice has been taken into account when drafting the Amendment Bill. The personal details to be obtained are necessary and commensurate with the purpose of investigating money laundering offences.

Exchanges rates

The particulars that are required to be recorded by a remittance agent or money changer pursuant to new Schedule 6 dictate when the remittance agent or money changer determines the value of the amount. The new section 24C(2)(a) and (3)(a) state that the remittance agent/money changer shall “not complete” the remittance transaction/exchange transaction unless the required particulars are recorded.

The Chinese version of this reply will be forwarded to you very shortly.

Yours sincerely,

(Ms Mimi Lee)
for Secretary for Security