

For discussion on  
7 June 2016

## Legislative Council Panel on Security

### Report on the Public Consultation on the Establishment of a Reporting System on the Physical Cross-Boundary Transportation of Large Quantities of Currency and Bearer Negotiable Instruments

#### Purpose

This paper briefs Members on the views received in the course of the public consultation exercise on the Government's proposal to establish a reporting system on the physical cross-boundary transportation of large quantities of currency and bearer negotiable instruments ("R32 System"), and the proposed way forward.

#### Background

##### Recommendation 32 of Financial Action Task Force

2. The Financial Action Task Force (FATF) is an inter-governmental body which sets international standards on anti-money laundering (AML) and counter-financing of terrorism (CFT) in 40 Recommendations for compliance by its member jurisdictions<sup>1</sup>. Recommendation 32 requires the establishment by statute an R32 System, which may be based on declaration or disclosure<sup>2</sup>, or a mixed system, to detect the physical cross-boundary transportation of currency and bearer negotiable instruments (CBNIs)<sup>3</sup>. The purpose is to ensure that terrorists

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

<sup>2</sup> Under a **declaration** system, persons physically transporting currency and bearer negotiable instruments (CBNIs) above a specified threshold across the boundary are required to report to the designated authority. Under a **disclosure** system, persons so transporting CBNIs are required to make a report upon request by the designated authority.

<sup>3</sup> According to the 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.

and other criminals cannot finance their activities or launder their crime proceeds through such means.

### Consultation on Proposed R32 System

3. We briefed this Panel on 7 July 2015 on the framework of the Government's proposal to establish an R32 System in Hong Kong. We subsequently issued a consultation document<sup>4</sup> setting out the proposed major features of the System for public consultation from 21 July to 20 October 2015. These features are recapitulated as follows –

- (a) for **passengers**: a mixed system would be adopted. Incoming passengers<sup>5</sup> bringing CBNIs over the designated threshold of HKD120,000 would need to declare to the Customs and Excise Department (C&ED) using the Red Channel under the existing Red and Green Channel System (RGCS). Outgoing passengers would need to disclose the amount of CBNIs carried upon the request of C&ED. Passengers in transit are not covered under the System;
- (b) for **cargoes**: a person who imports or exports a cargo which contains CBNIs exceeding the designated threshold of HKD120,000 would need to make a declaration to C&ED in advance through an electronic system. Mails as well as cargoes in transit are not covered under the System; and
- (c) **penalty**: a fixed penalty would generally be applicable to first-time offenders who have not previously committed any money laundering or terrorist financing offences. Other more complex cases would be referred to the Court for ruling which may lead to fines and/or imprisonment.

4. During the public consultation period, we received 28 written responses. We also met with over 40 parties including chambers of commerce, the cross-boundary transport and logistics sector, the financial sector, the tourism sector, the security escort sector, and

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<sup>4</sup> The consultation document is available online at [www.nd.gov.hk/en/R32.htm](http://www.nd.gov.hk/en/R32.htm).

<sup>5</sup> For persons entering Hong Kong not through control points (e.g. arriving on cruise vessels at anchorages), the present customs clearance is conducted through selection of passengers for examination on board or at the terminals, or upon passengers' own disclosure. Under the proposed R32 System, similar clearance arrangements would be adopted for passengers entering Hong Kong not through control points, i.e. passengers' disclosure of the amount of CBNIs upon the request of C&ED.

dealers in precious metals and stones. A list of the respondents (including parties attending meetings and/or providing written submissions) and a summary of the written submissions received are at **Annexes A** and **B** respectively.

## **Summary of Major Views**

### Need to Establish R32 System

5. Most respondents generally acknowledged the need for Hong Kong to introduce the R32 System to complement the AML/CFT efforts, and to fulfil Hong Kong's international obligations. They noted that the R32 System had been operating in many other jurisdictions, with Hong Kong being the only FATF member yet to put in place the System. They agreed that this deficiency would adversely affect Hong Kong's reputation as an international financial centre.

6. Many respondents expressed support for the affirmation that the R32 System would not be any form of currency control, while stressing the need to ensure that the System should not affect the freedom of movement, the free flow of capital, and the pursuit of the policy of free trade. However, some respondents expressed concerns that the System might adversely affect business travellers, tourists, jewellery transactions or auctioning involving large amounts of cash, and the competitiveness and economic development of Hong Kong.

7. The FATF has in fact made clear that an R32 System should be implemented "without restricting either (i) trade payments between countries for goods and services; or (ii) the freedom of capital movements in any way". In practice, the well developed banking and financial services in Hong Kong as well as the expansion in the credit card market worldwide should be able to substantially and conveniently facilitate cross-boundary business transactions and spending by tourists. We will therefore emphasize that the R32 System, which only requires reporting of the physical cross-boundary transportation of large quantities of CBNIs, will not impose any control on capital and currency movements into and out of Hong Kong, or have a major impact on cross-boundary transactions. In addition, the System will be based on the existing RGCS and cargo information systems, which should be simple for compliance and minimize any confusion to members of the public, tourists and the trade.

### Adoption of Mixed System for Passengers

8. The majority of the respondents agreed that a mixed system of declaration and disclosure, as described in paragraph 3(a) above, should be adopted for passengers.

9. Some respondents stressed the need to protect the safety of passengers making declarations lest they might fall prey to thefts or muggers. In this respect, we will upgrade relevant facilities at cross-boundary control points (e.g. installing cubicles/rooms for Red Channel users) for protecting passenger privacy and safety.

### Adoption of Declaration System with Advance Electronic Submission of Information for Cargoes

10. While raising no in-principle objection, some respondents raised comments on the operational details of the proposed declaration system for cargoes, including the need to specify persons with the responsibility to make declarations, the timing of making declarations, any exemptions available, the definition of cargoes in transit, handling of exchange rate fluctuations, the interface with the existing cargo information systems, etc. Taking account of the views received, we will seek to ensure that the declaration procedures will facilitate easy compliance by the trade. We will engage the trade and other relevant parties in working out the detailed technical arrangements.

### Adoption of Threshold at HKD120,000

11. The majority of the respondents agreed that the proposed designated threshold at HKD120,000 (as roughly equivalent to the FATF's recommended threshold at USD/EUR 15,000) was appropriate.

12. There were individual suggestions that the threshold be set at a higher value, given the large amounts of cash possibly carried by business travellers and tourists. In this connection, it should be noted the proposed threshold at HKD120,000 is already relatively more relaxed when compared to those adopted in other jurisdictions<sup>6</sup>. Adjusting the

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<sup>6</sup> Examples of designated thresholds adopted in other jurisdictions are as follows –

- (a) Australia: AUD 10,000 (around HKD 61,000);
- (b) Japan: JPY 1 million (around HKD 71,000);
- (c) Singapore: SGD 20,000 (around HKD 116,000);
- (d) United States of America: USD 10,000 (around HKD 78,000); and
- (e) United Kingdom (applicable to passengers travelling from or to non-EU countries): EUR 10,000 (around HKD 88,000).

threshold upward may adversely affect the effectiveness of the R32 System in detecting cross-boundary flow of large quantities of CBNIs for AML/CFT purposes, and risk not fulfilling the FATF's requirement and hence jeopardising Hong Kong's reputation as an international financial centre. We will therefore maintain the proposed designated threshold at HKD120,000.

#### Casino Tokens and Bearer Shares Certificates Not be Included

13. The majority of the respondents agreed that casino tokens and bearer share certificates should not be included in the R32 System.

14. Casino tokens, with the plethora of casino businesses and types of tokens worldwide, present practical difficulties for their identification and regulation in practice. Their circulation, transferability and money laundering/terrorist financing risks are not well established. Bearer share certificates are a type of BNIs, usually indicating the number of shares with only a par value (e.g. 1 cent per share), which is nominal in nature and does not reflect the share's real value. Some indicate no par value at all. They seldom perform the function of cash as they normally cannot circulate in open markets in many jurisdictions. In Hong Kong, companies are not allowed to issue bearer shares certificates under the Companies Ordinance (Cap. 622). We hence concur with the majority view that casino tokens and bearer share certificates should not be included in the R32 System.

#### Mails Not be Regulated

15. The majority of the respondents had no objection that the posting of CBNIs via the mail system should not be regulated under the R32 System at this stage. Some however expressed concerns about whether excluding mails would create a loophole.

16. Among the FATF members, there are divergent approaches regarding whether and how CBNIs are regulated with respect to mails. The FATF also notes that jurisdictions differ widely in their approaches in this respect, without a clearly proven global model. Moreover, the risk of mails being used to transport illicit cash is not conclusive, and more research and study are needed to enable understanding of the issues and factors involved. In view of the huge volume of international mails posted in and out of Hong Kong, the diversity of the modes of regulation worldwide and the practical implications of any form of control on the operation of Hong Kong's mail system, we will maintain that mails not

be regulated under the R32 System at this stage, while monitoring relevant international developments for considering any further necessary steps.

### Penalty be Proportionate

17. The majority of the respondents agreed to the proposed penalty system as described in paragraph 3(c) above. They generally considered that the penalty should be kept to a low level for bone fide passengers having breached the R32 requirements inadvertently as first-time offenders.

18. As required by the FATF, effective, proportionate and dissuasive sanctions should be put in place to deal with breaches of an R32 System. We will ensure that the penalty under our System is proportionate, taking into account the severity of the offences, the deterrent effect and comparable offences in the local legislation.

### Publicity Necessary

19. Almost all respondents agreed that wide publicity of the R32 System would be important. We will launch comprehensive and extensive publicity of the System before it is put into actual operation.

### Others

20. There were enquiries on how the R32 System would interface with the existing AML/CFT regime. Indeed the System would further improve the AML/CFT regime, and principally deal with the physical cross-boundary transportation of CBNIs. While it would assist law enforcement agencies' AML/CFT efforts, it would not affect the current statutory requirements in other AML/CFT legislation<sup>7</sup>.

21. Some respondents suggested that a grace period be provided during the initial implementation of the R32 System so as to allow time

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<sup>7</sup> Including the Organized and Serious Crimes Ordinance (Cap. 455) (OSCO), the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615), which provide for the criminalisation of money laundering/terrorist financing activities, confiscation of crime proceeds, requirements on filing suspicious transactions reports, requirements on carrying out customer due diligence and record keeping measures, etc.

for members of the public and tourists to get familiar with it. We will consider an appropriate timing for the actual operation of the System.

### **Proposed Way Forward**

22. Taking into consideration the views received in the public consultation exercise, we will prepare a new piece of legislation to cover the major features of the proposed R32 System as set out in paragraph 3 above as well as the powers necessary for effective enforcement<sup>8</sup>. Our plan is to introduce a bill into the Legislative Council in the next legislative session.

### **Advice Sought**

23. Members are invited to note this paper and provide comments.

**Narcotics Division**  
**Security Bureau**  
**June 2016**

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<sup>8</sup> These powers include stop and search, requesting and obtaining further information related to CBNIs concerned, making arrests, etc., which are largely comparable to those provided in the existing Customs and Excise Services Ordinance (Cap. 342) and Import and Export Ordinance (Cap. 60).

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the Physical Cross-Boundary Transportation of  
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**List of respondents**

<b>Organisations / Individuals</b>
<b>Financial Sector</b>
The Deposit-Taking Companies Association
The General Agents and Managers Association of Hong Kong
The Hong Kong Association of Banks
The Hong Kong Association of On-line Brokers Ltd.
The Hong Kong Federation of Insurers
The Hong Kong Investment Funds Association
The Hong Kong Money Service Operators Association
The Professional Insurance Brokers Association
The Institute of Financial Planners of Hong Kong
<b>Transport and Logistics Sector</b>
The Air Cargo Customer Liaison Group
The Airline Operators Committee
The Carrier Liaison Group
The China Hong Kong and Macau Boundary Crossing Bus Association
Chu Kong High-speed Ferry Co. Ltd.
Chu Kong Passenger Transport Co. Ltd.
DHL Aviation (Hong Kong) Limited
Guangdong and Hong Kong Feeder Association Ltd.
Hong Kong Business Aviation Centre
The Hong Kong Container Drayage Services Association Limited
The Hong Kong Container Tractor Owner Association
The Hong Kong Guangdong Boundary Crossing Bus Association
The Hong Kong Liner Shipping Association Ltd.
The Kowloon Trucks Merchant Association
The Lok Ma Chau China – Hong Kong Freight Association
The ROCARS Users' Liaison Group
Shun Tak – China Travel Ship Management Ltd.

<b>Security Escort Sector</b>
F&S Express (HK) Ltd.
General Security (Hong Kong) Ltd.
Guardforce
Security Cares Consultancy Ltd.
<b>Tourism Sector</b>
Carnival Corporation Hong Kong Ltd.
The Hong Kong Tourism Board
Royal Caribbean Cruises Hong Kong Ltd.
<b>Trade Associations</b>
The Chinese General Chamber of Commerce
The Chinese Manufacturers' Association of Hong Kong
The Federation of Hong Kong Industries
The Hong Kong General Chamber of Small and Medium Business
The Hong Kong Swatow Merchants Association
The Chinese Gold & Silver Exchange Society
The Diamond Federation of Hong Kong, China
The Hong Kong Jewellers' & Goldsmiths' Association
The Hong Kong & Kowloon Jade Merchants Union Association
The Hong Kong Gold & Silver Ornament Workers & Merchants General Union
The Hong Kong Jewellery & Jade Manufacturers Association
The Hong Kong Jewelry Manufacturer's Association
The Hong Kong Pearl Association
The Tahitian Pearl Association Hong Kong
<b>Professional Bodies</b>
The Hong Kong Bar Association
The Hong Kong Institute of Certified Public Accountants
The Hong Kong Institute of Chartered Secretaries
The Law Society of Hong Kong
<b>Others</b>
The Rotary Club of City Northwest Hong Kong
Youth Committee of the Zhangzhou District Association of Hong Kong
天地人生會社
<b>Individuals</b>
Hon Kenneth Leung
Four other individuals

**Public Consultation on  
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**Summary of Written Submissions**

The following is a summary of the 28 written submissions received.

**I. Views expressed in response to the questions set out in the public consultation document**

<b>Question 1</b>	<i>What are your views on the principles we have adopted in devising Hong Kong's R32 System? What other major factors do you think we should take into account?</i>
	<ul style="list-style-type: none"> <li>• 15 submissions agreed with the proposed principles.</li> <li>• 2 submissions disagreed with the proposed principles. There were views that the convenience of travellers should come first.</li> </ul>
<b>Question 2</b>	<i>Do you have any views for Hong Kong to adopt a mixed system for passengers?</i>
	<ul style="list-style-type: none"> <li>• 12 submissions agreed that Hong Kong should adopt a mixed system.</li> <li>• 4 submissions disagreed that Hong Kong should adopt a mixed system. There were views that a disclosure system for both incoming and outgoing passengers should be used, and enforcement would be based on intelligence.</li> </ul>
<b>Question 3</b>	<i>What do you think of the proposed arrangement of implementing a declaration system with advance electronic submission of information for importing and exporting cargoes?</i>
	<ul style="list-style-type: none"> <li>• 13 submissions agreed with the proposal.</li> <li>• 3 submissions disagreed with the proposal.</li> </ul> <p>Other comments:</p> <ul style="list-style-type: none"> <li>• The electronic reporting system should be user-friendly and operate 24 hours per day.</li> <li>• Paper-form submissions should also be accepted for those who do not know how to use computers.</li> </ul>

	<ul style="list-style-type: none"> <li>• Transit and transshipment cargoes should be excluded from the R32 System.</li> <li>• Ex-post declaration (e.g. 14 days after import or export) should be allowed.</li> <li>• There were diverse views on who should bear the responsibility of making a declaration.</li> </ul>
<b>Question 4</b>	<i>Should FATF's recommended threshold of USD/EUR 15,000 (equivalent to around HK\$120,000) be adopted as the designated threshold for Hong Kong's R32 System? Or should a lower / higher threshold be adopted?</i>
	<ul style="list-style-type: none"> <li>• 16 submissions agreed to set the threshold at HK\$120,000.</li> <li>• 3 submissions disagreed to set the threshold at HK\$120,000. There were views that the threshold could be further relaxed (to amounts such as HK\$750,000 or HK\$1 million).</li> </ul>
<b>Question 5</b>	<i>For declarations, should we follow the commonly adopted practice of requiring only those transporting CBNIs above the designated threshold to report? Or should all passengers/persons responsible for a cargo be required to declare, regardless of the amount of CBNIs they transport?</i>
	<ul style="list-style-type: none"> <li>• 15 submissions agreed that only those transporting CBNIs above the designated threshold should be required to declare.</li> <li>• 2 submissions suggested that all should be required to declare, regardless of the amount of CBNIs they transport.</li> </ul>
<b>Question 6</b>	<i>Do you think that Hong Kong's R32 System should or should not include specific items such as casino tokens and bearer share certificates?</i>
	<ul style="list-style-type: none"> <li>• 14 submissions suggested that no other items should be included.</li> <li>• 2 submissions suggested that casino tokens and bearer shares certificates should be included. One submission suggested that the regulation of store-value cards should be considered.</li> </ul>

<b>Question 7</b>	<i>Do you think that Hong Kong should not regulate the posting of CBNIs via the mail system at this stage?</i>
	<ul style="list-style-type: none"> <li>• 12 submissions agreed with the proposal. There were views that more research needed to be done on mails before deciding whether to regulate them.</li> <li>• 4 submissions disagreed with the proposal. There were views that the exclusion of mails might create a loophole.</li> </ul>
<b>Question 8</b>	<i>Do you have any suggestions on how we could enhance the publicity for the implementation of the R32 System so that members of the public and relevant practitioners could be well informed?</i>
	<p>Comments:</p> <ul style="list-style-type: none"> <li>• Wide publicity through mass media (e.g. TV, radio, newspapers, Internet platforms) is necessary.</li> <li>• Reminders should be made available on landing cards for tourists and at control points.</li> <li>• Sufficient publicity should be made in the Mainland and overseas targeting at tourists coming to Hong Kong.</li> <li>• Operators of conveyances should assist in handing out declaration forms.</li> <li>• Compulsory briefing sessions should be arranged for relevant trade and business practitioners.</li> </ul>

## II. Other views expressed

<b>Issue</b>	<b>Views</b>
<b>General</b>	<ul style="list-style-type: none"> <li>• The R32 System should not affect the freedom of movement, the free flow of capital and the pursuit of the policy of free trade guaranteed under the Basic Law.</li> <li>• The R32 System may affect business travellers, tourists, jewellery transactions or auctioning involving large amounts of cash, and the competitiveness and economic development of Hong Kong.</li> <li>• The R32 System has to work hand in hand with other measures so that Hong Kong could have an effective anti-money laundering (AML) and counter-financing of terrorism (CFT) regime.</li> </ul>

Issue	Views
	<ul style="list-style-type: none"> <li>• The prevailing AML/CFT regime is already sufficient.</li> </ul>
<b>Safety of passengers</b>	<ul style="list-style-type: none"> <li>• There is a need to protect the safety of passengers making declarations lest they might fall prey to thefts or muggers.</li> </ul>
<b>Grace period</b>	<ul style="list-style-type: none"> <li>• A grace period should be provided during the initial implementation of the R32 System so as to allow time for members of the public and tourists to get familiar with it.</li> </ul>
<b>Offences and Penalty</b>	<ul style="list-style-type: none"> <li>• Penalty should be kept to a low level for bone fide passengers having breached the R32 requirements inadvertently.</li> <li>• A tariff or a tier system could be considered in formulating the level of fines under the R32 System.</li> <li>• Penalty should be essentially the same as the failure to declare goods examined by the Customs and Excise Department.</li> <li>• Corresponding penalties and jail sentences should be in place to deter possible circumventions.</li> <li>• Some respondents suggested they would comment on the proposed levels of penalty when they are available.</li> </ul>
<b>Use of Data</b>	<ul style="list-style-type: none"> <li>• There were enquiries on how information collected under the R32 System would be used, and if it would be shared with authorities outside Hong Kong.</li> </ul>
<b>Relationship with existing AML/CFT regime</b>	<ul style="list-style-type: none"> <li>• There were enquiries on how the R32 System would interface with the existing AML/CFT regime.</li> </ul>