



Financial Action Task Force

Groupe d'action financière

**THIRD MUTUAL EVALUATION REPORT
ANTI-MONEY LAUNDERING AND
COMBATING THE FINANCING OF TERRORISM**

HONG KONG, CHINA

11 JULY 2008

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PREFACE

Information and Methodology Used for the Evaluation of Hong Kong, China

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Hong Kong, China (hereinafter ‘Hong Kong’)¹ was based on the *Forty Recommendations 2003* and the *Nine Special Recommendations on Terrorist Financing 2001* of the Financial Action Task Force (FATF), and was prepared using the *Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations*, 27 February 2004 (updated as of February 2007)². As Hong Kong is a member of both the FATF and the Asia/Pacific Group on Money Laundering (APG), this evaluation was conducted jointly by both bodies. The evaluation was based on the laws, regulations and other materials supplied by Hong Kong, and information obtained by the evaluation team during its on-site visit to Hong Kong from 12 to 23 November 2007 inclusive, and subsequently. During the on-site visit the evaluation team met with officials and representatives of all relevant Hong Kong government agencies and the private sector. A list of the bodies met is set out in [Annex 2](#) to this mutual evaluation report.

2. The evaluation was conducted by an assessment team, which consisted of members of the APG Secretariat, the FATF Secretariat and FATF experts in criminal law, law enforcement and regulatory issues: Mr. Eliot Kennedy of the APG Secretariat; Mr. John Carlson and Ms. Rachelle Boyle of the FATF Secretariat; Mr. Garry Nichols, Financial Transactions Reports and Analysis Centre, Canada, law enforcement expert; Mr. Gregor Allan, Ministry of Justice, New Zealand, legal expert; Mr. Richard Chalmers, Financial Services Authority, United Kingdom, financial expert; and, Mr. Jeremy Lee Eng Huat, Bank Negara Malaysia, Malaysia, financial expert. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and terrorist financing (TF) through financial institutions and designated non-financial businesses and professions (DNFBPs), as well as examining the capacity, implementation and effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in Hong Kong as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Hong Kong’s levels of compliance with the *FATF 40+9 Recommendations* (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

¹ All references to country apply equally to territories or jurisdictions.

² As updated in June 2006.

EXECUTIVE SUMMARY

Background Information

1. This report provides a summary of the anti-money laundering (AML) and combating the financing of terrorism (CFT) measures in place in Hong Kong, China (hereinafter Hong Kong) at November 2007 (the date of the on-site visit) and immediately thereafter. It describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Hong Kong's level of compliance with the Financial Action Task Force (FATF) *40+9 Recommendations* (see attached table *Ratings of Compliance with the FATF Recommendations*).

2. Hong Kong is a special administrative region of the People's Republic of China (PRC). According to the design of the *Basic Law*, which is Hong Kong's constitutional document, the political structure is basically an executive-led system headed by a Chief Executive. Hong Kong also has a Legislative Council, the powers and functions of which include enacting, amending and repealing laws in accordance with the provisions of the *Basic Law* and legal procedures. It is a common law legal system and the independence of the judiciary is enshrined in the *Basic Law*. Hong Kong is an international financial centre with over 200 banking institutions and vibrant insurance and securities sectors. Authorities are not able at this time to determine the volume of money laundered in or through Hong Kong. The laundering of drug proceeds has declined in recent years and is increasingly derived from trafficking for domestic use. The primary domestic sources of laundered funds in Hong Kong are illegal gambling, fraud and financial crime, loan sharking and vice. The availability of corporate services and the relative ease with which shell companies can be purchased contribute to the risk of Hong Kong being used for structuring of the proceeds of financial crime, corruption, tax evasion and smuggling. Investigations have found no evidence of terrorist funds moving through Hong Kong.

3. Hong Kong has a good legal structure to combat money laundering (ML) and terrorist financing (TF). The ML offence, established in 1989 and expanded in 1994, is broad and almost fully meets the FATF requirements. It is well prosecuted with a satisfactory conviction rate. The terrorist financing offence in the *United Nations (Anti-Terrorism Measures) Ordinance* is less expansive as it does not cover provision/collection for an individual terrorist or terrorist organisation. In addition, the offence applies to 'funds' but not non-financial assets and does not extend to terrorism directed towards international organisations. Terrorist funds have not been detected in Hong Kong and there have been no prosecutions for TF. While Hong Kong has a workable and fairly comprehensive criminal confiscation regime, these measures are not available in all cases, do not extend to all predicate offences and the number of confiscations is relatively low. While legislative provisions have been enacted for confiscation of the proceeds of TF, these provisions are not yet in force. Hong Kong's financial intelligence unit is effective and is the focal point for Hong Kong's law enforcement efforts to combat ML and TF. It and other competent authorities have been designated responsibility for investigation and prosecution of ML and TF offences. Measures for domestic and international co-operation are generally effective.

4. The preventive system addresses customer identification and other AML/CFT obligations and applies to a range of financial institutions and some designated non-financial businesses and professions (DNFBPs) as defined by the FATF. There are relatively limited requirements in place for

remittance agents, money changers, money lenders (including those financial factoring businesses which are not ‘authorised institutions’, *i.e.* banking institutions), credit unions, the post office and financial leasing companies³. A number of the AML/CFT obligations exist only in mandatory guidelines issued by the regulatory authorities which are generally comprehensive and constitute other enforceable means. The preventive system for some non-core financial institutions does not incorporate adequate customer due diligence (CDD) requirements with respect to politically exposed persons. While the volume of suspicious transaction reports (STRs) has increased in recent years, the submission of STRs by DNFBPs could be improved. Sound requirements as to internal controls and compliance functions are in place for core financial institutions (banking, securities and insurance). Supervision is effective for the banking, insurance and securities sectors, but weak or non-existent for many types of DNFBPs. The range of sanctions available for AML/CFT breaches is broad for core financial institutions other than insurance and is appropriately employed by the supervisory authorities.

Legal System and Related Institutional Measures

5. The offence of ML related to drug trafficking was enacted in 1989 under the *Drug Trafficking (Recovery of Proceeds) Ordinance* and its application broadened by a complementary ML offence in the 1994 *Organized and Serious Crimes Ordinance*. The ML offence implements the elements of the *Vienna* and *Palermo* Conventions. Whilst predicate offences in Hong Kong generally cover a broad ambit of offences within each of the designated categories of offences, the range of environmental crimes that constitute predicate offences is limited. The offence of ML extends to any property that constitutes criminal proceeds, regardless of value, and a broad range of ancillary offences attaches to it. The ML offence applies to natural and legal persons, though there have not been any prosecutions of legal persons for ML. The ML offence is well prosecuted with a satisfactory conviction rate. The maximum penalties available for ML offences are appropriately high. The sentencing starting point for ‘more serious’ cases sits at four to six years’ imprisonment, in line with sentences passed for ‘mid-tier’ frauds.

6. Terrorist financing was criminalised under the *United Nations (Anti-Terrorism Measures) Ordinance* (UNATMO) in 2002, however the offence is narrow in scope and certain key provisions of this ordinance are not yet in force. Certain provisions within the *United Nations Sanctions (Afghanistan) Regulation* (UN SAR) also make it an offence to make funds or other financial assets available to listed entities. The TF offence under UNATMO does not cover provision/collection for an individual terrorist or terrorist organisation and the offence under UN SAR extends only to those individuals and entities designated by the 1267 Committee. The TF provision does not apply where the terrorism is directed at an international organisation or where the financing is in the form of assets other than ‘funds’. Its applicability is also subject to ‘civil dissent’ exceptions of potentially broad reach. As noted above, Hong Kong has not, to date, brought any TF prosecutions.

7. Hong Kong has a workable and fairly comprehensive criminal forfeiture regime. Restraint and confiscation provisions are limited in their availability as they can be used only for those indictable offences listed in the *Organized and Serious Crimes Ordinance* (OSCO) and restraint may only occur where the amount involved is over HKD 100 000 (USD 12 800). Some types of instrumentalities are subject to forfeiture. No provisions are in place for forfeiture of proceeds/instrumentalities of terrorist acts or TF⁴. Given the risk of money being laundered in Hong Kong (including proceeds of foreign predicate offences), the number of restraint orders is low. An enhanced focus on confiscation began in 2007 to increase the numbers of restraint and confiscation applications sought and granted and to ensure that Hong Kong administers an effective regime for confiscation of the proceeds of ML and TF.

³ Credit unions in Hong Kong are co-operative organisations in which the available deposit and lending mechanisms are limited. Hongkong Post provides postal remittance services and acts as an agent for Western Union.

⁴ Provisions for forfeiture of proceeds/instrumentalities of terrorist acts or TF have been enacted but are not yet in force.

8. It is an offence to make funds available to entities in accordance with United Nations Security Council Resolution 1267. Hong Kong relies on an offence of ‘making available’ property to terrorists and has not implemented an express freezing provision to fully implement this UN Resolution with respect to assets already under the control of designated entities. Similarly, Hong Kong has not implemented the freezing obligations imposed by United Nations Security Council Resolution 1373. In addition, Hong Kong does not have a system for examining and giving effect to actions initiated under freezing mechanisms of other jurisdictions⁵. No terrorist assets have been frozen in Hong Kong pursuant to these UN Resolutions.

9. The Joint Financial Intelligence Unit (JFIU) was established following the introduction of the *Drug Trafficking (Recovery of Proceeds) Ordinance* in 1989. The JFIU is a law enforcement unit housed within the Hong Kong Police Force (the Hong Kong Police) and staffed primarily by police officers, but also by Customs & Excise Department (C&ED) officers. It is Hong Kong’s centre for receiving and requesting, analysing and disseminating disclosures of STRs and other relevant information concerning suspected ML or TF activities. The JFIU has broad access to information and is able to seek additional information from reporting parties. It also has the full range of investigative powers granted to the Hong Kong Police and the C&ED. Information held by the JFIU is securely protected and disseminated only in accordance with the laws of Hong Kong. In 2006, the JFIU significantly enhanced its IT capacity for: online receipt of STRs; analysis of STRs; and, storage of information and intelligence contained in and developed from the STRs. Information is disseminated to domestic and international authorities when there are grounds to suspect ML or TF. The JFIU and the Narcotics Division of the Security Bureau provide outreach to financial institutions and DNFBPs to enhance awareness of STR reporting and other ML and TF compliance requirements and provides guidance regarding the manner of reporting. Overall, the action it has taken has been proactive and effective. In addition to its core functions, the JFIU has a mandate to register remittance agents and money changers (RAMCs).

10. Hong Kong has designated authorities to investigate ML and TF offences and has equipped them with necessary powers. The primary investigative authorities are the Hong Kong Police, the C&ED and the Independent Commission Against Corruption. The Hong Kong Police is the primary enforcement authority for ML and TF investigations. All three of these agencies have permanent special investigative groups dedicated to investigations of ML and TF and are mandated to investigate, seize, freeze and confiscate the proceeds of crime. Hong Kong enforcement authorities have access to a range of special investigative techniques when conducting ML or TF investigations and may compel production, search and seizure of documents. Hong Kong’s Department of Justice provides legal advice to the government, conducts criminal prosecutions, manages asset recovery and is the focal point for mutual legal assistance.

11. Hong Kong has not implemented a declaration or disclosure system to detect, seize or confiscate the physical cross-border transportation of currency or bearer negotiable instruments that are related to ML or TF. Law enforcement agencies can use their general powers to target travellers on an intelligence basis, though the number of ‘disclosures’ received in this way is extremely small.

Preventive Measures - Financial Institutions

12. The Hong Kong government has taken measures to actively encourage development and use of modern and secure techniques for financial transactions which are less vulnerable to money laundering. It is general government policy not to stand in the way of the development of electronic money and to develop a regulatory framework which provides a sound and secure basis for the continuous development of electronic money.

⁵ Provisions establishing a freezing mechanism to implement S/RES/1737(2001) and a mechanism to give effect to freezing mechanisms of other jurisdictions have been enacted but are not yet in force.

13. The application of Hong Kong's AML/CFT measures to the financial system and to DNFBPs is not based on a risk assessment in the manner contemplated in the revised *FATF Recommendations*. Most financial activities are conducted by institutions that are authorised and supervised by the three primary regulatory authorities: the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC) and the Office of the Commissioner of Insurance (OCI). All three regulatory authorities issue mandatory guidance which is considered to be other enforceable means, as well as other non-binding guidance. The guidance issued to the banking, securities and insurance institutions covers a broad range of AML/CFT matters. Other types of institutions which also provide financial services are subject to relatively limited AML/CFT obligations and oversight, despite the absence of any formal assessment to justify their exclusion from AML/CFT obligations. These are: remittance agents, money changers, money lenders (including financial factoring businesses), credit unions, the post office and financial leasing businesses⁶.

14. A number of important CDD requirements exist in the enforceable guidelines issued by the regulatory authorities rather than in law or regulation. Banking, securities and insurance entities must identify and verify the identity of customers, including any beneficial owners, before establishing a business relationship. Only basic CDD obligations are in place for money remitters and money exchange companies and there are no CDD obligations for money lenders, credit unions and financial leasing companies. The banking and insurance guidelines impose obligations on banking and insurance institutions to exercise enhanced due diligence with respect to politically exposed persons. These guidelines do not specify that senior management approval is required to continue a business relationship with a customer discovered to be a politically exposed person, though some other provisions in those guidelines can be considered to have a similar effect in practice.

15. The scope of permissible reliance on third-party introductions within the banking and securities sectors is broad in terms of the type of introducer from whom the introduction may be accepted, and the country of origin of the introducer. In the banking and securities sectors, reliance may be placed on introducers who are not regulated for AML/CFT purposes. There are no financial institution secrecy provisions that inhibit the implementation of the *FATF Recommendations* within the regulated sectors. Access to and sharing of information is permitted under the respective ordinances that govern the banking, securities and insurance sectors. However, access to information for the non-regulated sectors, including remittance agents, is limited in scope.

16. General record-keeping requirements are embedded in law/regulation. The mandatory guidelines issued by the regulatory authorities supplement this by requiring the banking, securities and insurance sectors to maintain all transaction records for at least six years, to facilitate the reconstruction of individual transactions and to make such records available to the regulatory authorities upon request. In the banking and insurance sectors, customer identification records, account files and business correspondence must be kept for more than six years. Record-keeping requirements for the remittance agents are incomplete and, as there is no regulator for that sector, the level of implementation of record-keeping requirements by this sector cannot be determined. Obligations imposed on financial institutions with respect to information which must be transmitted along with wire transfers are comprehensive. There are no requirements for remittance agents or the Hongkong Post to transmit full originator information in the message or form accompanying the wire transfer.

17. Financial institutions are obliged to pay attention to complex unusual large transactions, or unusual patterns of transactions, which have no apparent or visible economic or lawful purpose. The existing guidance for banks requires them to maintain management information systems for identification of unusual transactions and to review the reports generated by these systems. However

⁶ Insofar as money lenders, credit unions, the post office and financial leasing businesses are concerned, the impact of this on the ratings is minimal, in view of the relatively limited scale of the activities of these institutions.

it does not require banks to document their analyses of transactions that are regarded as unusual⁷. Hong Kong has a system for ensuring that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries or for ensuring that financial institutions are notified, where necessary, of the need to apply countermeasures. There are no requirements for remittance agents, money changers, money lenders, credit unions or financial leasing companies to pay attention to unusual transactions or to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the *FATF Recommendations*.

18. Hong Kong legislation provides clear and broad obligations for reporting suspicious transactions, with associated protection from civil or criminal liability when complying with the reporting obligation. Every legal and natural person in Hong Kong is obliged to report suspicious transactions and those who do report are protected from civil or criminal liability when complying with the reporting obligation. Financial institutions and their directors, officers and employees are prohibited from disclosing the fact that an STR has been submitted to the JFIU, but this prohibition does not apply in all cases where an STR is being considered but has not yet been submitted to the JFIU. The reporting obligation suffers from the limitations in the terrorist financing offence and from the incomplete coverage of one of the required types of predicate offences (environmental crimes). The JFIU actively provides guidance and feedback to the reporting entities, including statistics on the STRs received as well as information on the latest money laundering trends and typologies.

19. Internal control procedures, compliance and independent audit functions, employee screening and training obligations are in place in the banking, securities and insurance sectors, but not for remittance agents, money changers and money lenders. The banking, securities and insurance guidelines require domestically-incorporated institutions to apply the Hong Kong AML/CFT standards to their overseas branches and subsidiaries. Where this is not possible because of local laws or other impediments, institutions are required to report the fact to their respective regulatory authorities. While there is no direct explicit prohibition against establishing or operating a shell bank, licensing requirements for banks would in practice exclude a bank or other institution with no physical address from gaining a licence to operate. Financial institutions are not required to satisfy themselves that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks.

20. The HKMA and the SFC have a wide range of enforcement and sanction powers, though the sanctions available with respect to the insurance sector are limited in their scope and do not lend themselves readily to address the wide range of deficiencies that may be identified. In addition, the fit and proper test for insurance institutions applies to chief executives and managing directors but does not apply to other senior management. The current supervision and sanction system for financial institutions does not apply to remittance agents, money lenders, money changers, credit unions, the post office and financial leasing companies.

21. Since June 2000, all remittance agents and money changers have been required under OSCO to register with the JFIU within one month of commencing business. The authorities have been taking a robust line in dealing with the RAMC sector, pursuing investigations and prosecutions for unregistered activities and failure to keep records and actively engaging the industry in an outreach programme. That said, the provisions within OSCO that bring the remittance sector into the broader AML/CFT regime are quite basic in relation to the overall preventative measures, and do not provide for an oversight regime to access remitters' premises and to check compliance.

⁷ This has been addressed in the revised guidance for banks which came into force on 16 May 2008 (after the period of time considered by this evaluation).

Preventive Measures – Designated Non-Financial Businesses and Professions

22. All categories of designated non-financial businesses and professions (DNFBPs) as defined by the FATF, except land-based casinos, are found in Hong Kong. In addition, although the operation of casinos is illegal within the jurisdiction, Hong Kong is the home port for several cruise ships offering cruises into international waters principally to provide casino operations. To date, only limited steps have been taken by the authorities to bring any of the categories of DNFBPs into the AML/CFT legal framework with respect to CDD and related obligations. However, a number of professional codes of ethics and standards have some relevance to AML/CFT measures. With the exception of the provisions governing estate agents, which have statutory backing, these are however only in the nature of guidance because they are not underpinned by an explicit and enforceable AML obligation.

23. DNFBPs are subject to the same obligations for reporting suspicious transactions, with associated protection from civil or criminal liability when complying with the reporting obligation, as financial institutions. There is a very low level of reporting by some DNFBPs and complete lack of reporting from others. With the limited exception of the estate agency profession, there are no formal structures in place to monitor AML/CFT compliance within the DNFBP sectors. Some professional associations are however actively involved in raising awareness and encouraging appropriate practices to make their professions resistant to ML and TF. Hong Kong authorities have undertaken significant outreach to the DNFBP sectors to prepare them for eventual incorporation within the legal framework for AML/CFT. In addition, the authorities advise that they have considered applying a greater range of AML/CFT obligations to non-financial businesses and professions (other than DNFBPs) that are at risk of being misused for ML or TF.

Legal Persons and Arrangements & Non-Profit Organisations

24. Hong Kong adopts a four-pronged approach to prevent the unlawful use of legal persons and legal arrangements for ML and TF, namely: (a) central registration; (b) investigatory and other powers of law enforcement and financial regulatory authorities; (c) AML/CFT compliance monitoring of financial institutions; and (d) statutory disclosure obligations. These measures are not however adequate to ensure that there is sufficient, accurate and timely information held on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. Information on the companies register pertains only to legal ownership/control (as opposed to beneficial ownership), is not verified and is not necessarily reliable. Corporate and nominee directors are permitted, which further obscures beneficial ownership and control information. Share warrants to bearer can also be issued in Hong Kong and some additional specific measures are required to ensure that they are not misused for money laundering⁸.

25. As with many common law jurisdictions, trusts are a long-standing and popular part of the legal and economic landscape. Providers of trust services are not subject to or monitored for AML/CFT obligations. Hong Kong does not have a registry of trusts and it is not known how many trusts have been created in Hong Kong nor how many trustees there are. Some information on trusts is held by government agencies and financial institutions. While powers of investigative agencies to gain information are strong and broad, the fact that most trusts do not come to the attention of authorities and the absence of record-keeping or reporting requirements on trusts makes identifying the trusts or the existence of the trust difficult. Most importantly, there are no requirements that will ensure trust beneficial ownership information would be available to competent authorities on a timely basis.

⁸ The Companies Registry is currently assisting in a rewrite of the *Companies Ordinance* in which amendments to the provisions permitting corporate directors and share warrants to bearer will be considered. In addition, the implementation by mid-2008 of new incorporation forms for locally incorporated companies which require provision of company particulars, including details of the directors and secretaries, may help reduce the occurrence of shelf companies.

26. Reviews conducted by Hong Kong authorities of its non-profit sector in 2005 and again in 2006 concluded that there was no particular area of risk in the sector. The reviews also concluded that the present measures to minimise the risk of misuse of non-profit organisations (NPOs) for TF are effective and commensurate with the present risk level of the sector. The NPO sector in Hong Kong is highly diverse and the organisations within the sector vary greatly in size and structure. The exact size and financial scope of the NPO sector is not known, though steps have been taken recently to address this. There is no supervisory authority designated to supervise all NPOs and no requirement for NPOs to register as NPOs, though most NPOs apply for tax-exempt status with the Inland Revenue Department. Requirements to identify persons who own, control or direct the activities of NPOs vary depending on the legal form of the NPO and, for NPOs established as companies (the majority of NPOs), are incomplete. Only NPOs established as companies are required to maintain documents for at least five years. Authorities have recently begun to conduct outreach to this sector, establishing a government/NPO sector focus group in mid-2006 to exchange views on the prevention of TF in the sector and issued advisory guidelines in July 2007 to the sector, but it is too early to fully judge the effectiveness of these efforts.

National and International Co-operation

27. Hong Kong does not have a central AML/CFT policy committee and does not have a central AML/CFT strategy as such⁹. Instead, it relies on close working relations between the different policy and regulatory agencies tasked with relevant responsibilities. Staff of relevant competent authorities are clearly involved in co-operative efforts, with a good understanding of each other's role. Joint agency meetings and forums have produced useful guidance and effective operations across all sectors; policy, enforcement and regulatory. On a strategic level however, changes to the AML/CFT system appear to be reactive and there has been a reluctance to elevate matters to the Legislative Council where amendments to ordinances are required.

28. Hong Kong has implemented the provisions of the *Vienna* and *Palermo* Conventions but shortcomings exist in implementation of the *Terrorist Financing Convention* with respect to the TF offence and the freezing obligations. Shortcomings also exist in implementation of the relevant United Nations Security Council Resolutions, as noted previously.

29. The *Mutual Legal Assistance in Criminal Matters Ordinance* offers a wide range of assistance and is generally satisfactory. The power vested in the Central People's Government (of the PRC) to direct refusal of a mutual legal assistance request is potentially of concern, however it is sparingly exercised. The absence of a mechanism enabling Hong Kong to render comprehensive assistance to (and seek assistance from) the PRC and Macao presents a notable gap in an otherwise sound mutual legal assistance regime. Mutual legal assistance requests are rarely made by Hong Kong authorities for the purpose of proceeds recovery. On the TF front, due to the requirement of dual criminality, gaps in Hong Kong's domestic offences may have an impact on the extent and effectiveness of its capacity to assist others, though this has not presented a problem to date. Hong Kong does not appear to have considered establishing an asset recovery fund, though it does share confiscated assets with other countries from time to time.

30. Hong Kong has an extradition regime that is uncomplicated and not subject to unreasonable grounds for refusal. The discretion to refuse extradition of PRC nationals has, to date, never been exercised. In practice, extradition requests are actioned and concluded expeditiously. As with other forms of mutual legal assistance, however, it is the absence of a mechanism enabling Hong Kong to extradite to (and seek extradition from) other parts of the PRC, that presents the most significant deficit in Hong Kong's extradition arrangements. Due to limitations in the TF offence and the requirement for dual criminality, in order to render extradition in a comprehensive range of TF cases, Hong Kong should address the deficiencies noted previously with respect to the TF offence.

⁹ Since the evaluation, a central co-ordinating committee on AML/CFT, chaired by the Financial Secretary, has been established.

31. Outside the sphere of formal mutual legal assistance and extradition, Hong Kong authorities (enforcement and regulatory) provide a wide range of international co-operation to their foreign counterparts and have clear and effective gateways to facilitate the prompt and constructive exchange of information, both spontaneous and upon request. These arrangements appear to be working well.

Resources and Statistics

32. Hong Kong has generally dedicated appropriate financial, human, and technical resources to the various areas of its AML/CFT regime though increased resources in a few areas could lead to increased results. All competent authorities are required to maintain high professional standards, including standards concerning confidentiality, and receive adequate AML/CFT training.

33. Hong Kong generally maintains comprehensive statistics, enabling it to assess the effectiveness of its AML/CFT measures, though it does not conduct a regular review of its AML/CFT regime.

1. GENERAL

1.1 General Information on Hong Kong, China

1. At the south-eastern tip of China, the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter 'Hong Kong') covers Hong Kong Island, Lantau Island, the Kowloon Peninsula and the New Territories, including 262 outlying islands. Hong Kong is one of the most densely populated places in the world. Hong Kong's population was approximately 6.9 million in 2006 and the population density was 6 350 persons per square kilometre. People of Chinese descent comprise the vast majority of the population, with foreign nationals comprising 5%.

2. With its strategic location in the central part of East Asia and at the doorway to mainland China, Hong Kong is characterised by a high degree of internationalisation and serves as an international centre for trade, finance, business and communications. It operates one of the busiest container ports in terms of throughput, as well as one of the busiest airports in terms of number of passengers and volume of international cargo. Hong Kong maintains a free and open financial system characterised by a sophisticated banking system, low taxation, and an absence of currency or exchange control laws. It is the world's 15th largest banking centre in terms of external banking transactions, and the sixth largest foreign exchange market in terms of turnover. Its stock market is Asia's second largest in terms of market capitalisation. Emerging from an economic trough in 2003, the Hong Kong economy continued to grow in the first half of 2007, with Gross Domestic Product (GDP) leaping by 6.3% in real terms, following a robust 6.9% growth in 2006. External trade gathered momentum while domestic demand continued to strengthen.

3. The Hong Kong Government is committed to open and fair competition and small government, and upholds the principle of "Market leads, Government facilitates". The Government's principal role is to create the best possible environment for business through: maintaining a robust institutional framework; providing a business-friendly environment; maintaining a healthy fiscal and monetary regime; safeguarding and promoting Hong Kong's commercial and trade interests; and, providing essential services and facilities.

4. The Hong Kong Special Administrative Region of the People's Republic of China was established on 1 July 1997. Under the *Basic Law*, which is Hong Kong's constitutional document, Hong Kong enjoys a high degree of autonomy. The principle of "One Country, Two Systems" and the basic policies of "Hong Kong people ruling Hong Kong" and a high degree of autonomy are enshrined in the *Basic Law*. The *Basic Law* ensures that Hong Kong's capitalist system and way of life shall remain unchanged for 50 years. To fully realise the "One Country, Two Systems" principle, the *Basic Law* sets out the framework for the relationship between the Central Authorities and the Hong Kong Special Administrative Region (HKSAR); the fundamental rights and duties of Hong Kong residents; the political structure; the economic, financial and social systems of Hong Kong and the conduct of external affairs. Amongst other matters, the *Basic Law* provides that:

- Hong Kong exercises a high degree of autonomy and enjoys executive, legislative and independent judicial power, including that of final adjudication.
- Hong Kong's executive authorities and legislature shall be composed of permanent residents of Hong Kong.
- Laws previously in force shall be maintained, unless in contravention of the Basic Law.

- Only those national laws listed in Annex III to the Basic Law are applied to Hong Kong.
- Hong Kong may, using the name “Hong Kong, China”, maintain and develop international relations in appropriate fields, including with respect to economy, trade, finance, shipping, communications, tourism, culture and sports.
- Hong Kong remains a free port, a separate customs territory and an international financial centre with free flow of capital and its own currency. The Hong Kong government is responsible for monetary and financial policies, the free operation of financial business and financial markets, and, regulation and supervision of markets.
- Hong Kong formulates its own education, science, culture, sports, labour and social policies.
- Hong Kong has an independent taxation system and uses its financial revenues exclusively for its own purposes.
- Hong Kong residents enjoy a wide range of rights, including freedoms of: speech; conscience; religious belief; the press and publication; communication; movement; choice of occupation; association, assembly, procession and demonstration; and, trade unionism.
- Provisions of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and international labour conventions remain in force and are implemented through the laws of Hong Kong.

5. According to the design of the *Basic Law*, the political structure in Hong Kong is basically an executive-led system headed by the Chief Executive (CE). According to the *Basic Law*, the CE shall be accountable to the Central People’s Government and the HKSAR. The CE is the head of the HKSAR and leads the HKSAR Government. The CE is responsible for implementing the *Basic Law*, ensuring that the principle of ‘One Country, Two Systems’ is fully implemented in Hong Kong, and developing and implementing the systems and policies of the HKSAR, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judiciary systems, and the relevant policies.

6. Under the CE, the Chief Secretary for Administration (CS), the Financial Secretary (FS) and the Secretary for Justice (SJ) are the most senior government officials. There are 12 bureaus, each headed by a Director of Bureau. The CS, the FS, the SJ and the Directors of Bureau are politically appointed principal officials. The policy bureaus are supported by 61 departments and agencies, staffed mostly by civil servants. The civil service employs approximately 155 000 people, which is about 4% of the Hong Kong workforce. In addition to administering public services, its main tasks are to assist the CE and principal officials in policy formulation and implementation. The civil service is permanent, meritocratic, professional and politically neutral. All persons are required to undergo different levels of integrity checking before taking up government appointments.

7. The Executive Council assists the Chief Executive in policy-making. Article 56 of the *Basic Law* stipulates that, except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the CE shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation or dissolving the Legislative Council. The *Basic Law* also provides that if the CE does not accept a majority opinion of the Executive Council, s/he shall put the specific reasons on record. Article 55 of the *Basic Law* provides that the CE shall appoint members of the Executive Council from among the principal officials of the executive authorities, members of the Legislative Council and public figures. It provides further that members of the Executive Council shall be Chinese citizens who are permanent residents of Hong Kong with no right of abode in any foreign country and that their appointment or removal shall be decided by the CE.

8. The executive authorities and the Legislative Council work closely together. Bills and budgets involving public expenditure, political structure and operation of the government are put forward by the government, and passed by the Legislative Council. The powers and functions of the Legislative Council include: enacting, amending or repealing laws in accordance with the provisions of the *Basic Law* and legal procedures; examining and approving budgets introduced by the government; approving taxation and public expenditure; receiving and debating the policies of the CE; raising questions on the work of the government; debating issues concerning public interests; endorsing the appointment and removal of judges of the Court of Final Appeal and the Chief Judge of the High Court; and, receiving and handling complaints from Hong Kong residents. The Legislative Council has 60 members; 30 from geographical constituencies returned through direct elections, and 30 from functional constituencies.

9. Eighteen District Councils advise the government on district affairs and promote recreational and cultural activities and environmental improvements. More than 80% of the District Councils' members are returned by elections. The remaining are appointed members who are drawn from different sectors and strata of the community.

10. In keeping with the *Basic Law's* provisions on bilingualism, all legislation is enacted in Chinese and English, and both versions are accorded equal status. Thanks to the bilingual legislation programme begun in 1989, Hong Kong's statute book is now entirely bilingual. Where the two texts disclose a difference of meaning, the meaning which best reconciles the texts, having regard to the object and purposes of the particular ordinance, is followed.

11. The Secretary for Justice is responsible for prosecutions. It is for the Secretary and those who prosecute on the Secretary's behalf to decide whether or not a prosecution should be instituted in any case or class of cases. In making that decision, the Secretary is not subject to instructions or directions from the Executive. A number of principles and rights of defence, in accordance with Article 14 of the *International Covenant on Civil and Political Rights* (applied in Hong Kong by the *Hong Kong Bill of Rights Ordinance* Cap. 383), have been incorporated in the *Criminal Procedure Ordinance* Cap. 221, *Legal Aid in Criminal Cases Rules* Cap. 221D, or absorbed into the common law. While civil proceedings may involve the Government as complainant or respondent, they are more commonly instituted by individuals against other individuals. The burden of proof is easier to discharge in a civil case than in a criminal case, as it is on the balance of probabilities. The principal branches of the civil law include contract, tort, property, administrative, family and revenue law.

12. The independence of the Judiciary is enshrined in Article 85 *Basic Law*. The courts comprise the Court of Final Appeal, the High Court (the Court of Appeal and the Court of First Instance), the District Court, the Magistrates' Courts, the Lands Tribunal, the Labour Tribunal, the Small Claims Tribunal, the Obscene Articles Tribunal and the Coroner's Court.

13. The Court of Final Appeal (CFA), the highest appellate court, was established on 1 July 1997 pursuant to Article 19 *Basic Law* which provides that Hong Kong have independent judicial power, including that of final adjudication. It hears appeals on civil and criminal matters from the High Court. The CFA is headed by the Chief Justice and comprises three permanent Judges, a panel of non-permanent Hong Kong Judges and non-permanent Judges from other common law jurisdictions. In hearing and determining an appeal, the Court will consist of five Judges, and the Court may, as required, invite a non-permanent Judge from Hong Kong or from another common law jurisdiction to sit on the Court. The Chief Justice is the President of the Court. Where he is not available to hear an appeal, he designates a permanent Judge to sit in his place as President.

14. The High Court comprises the Court of Appeal and the Court of First Instance. The Court of Appeal hears appeals in civil and criminal matters from the Court of First Instance and the District Court, as well as appeals from the Lands Tribunal and other statutory tribunals. It also gives rulings on questions of law referred to it by the lower levels of courts. The Court of First Instance has unlimited jurisdiction. The more serious criminal offences such as murder, manslaughter, rape, armed

robbery, trafficking in large quantities of dangerous drugs, and complex commercial frauds, are tried by a Judge of the Court of First Instance with a jury of seven, or, when a Judge so orders, a jury of nine. The Court of First Instance also has an appellate jurisdiction, hearing appeals from decisions made by Masters¹⁰ and from the Magistrates' Courts, the Labour Tribunal, the Small Claims Tribunal, the Obscene Articles Tribunal and the Minor Employment Claims Adjudication Board of the Labour Department. The Court of First Instance also registers and enforces overseas judgments as well as arbitration awards made in the Mainland of China and awards made in other jurisdictions.

15. Trial in the District Court is by Judge alone and the maximum term of imprisonment that the court may impose is seven years. The District Court may hear civil claims of between HKD 50 000 and HKD 1 million, unless otherwise provided for by statute. In addition to general civil jurisdiction, it has exclusive jurisdiction over claims brought under the *Employees' Compensation Ordinance* Cap. 282, tax recovery claims under the *Inland Revenue Ordinance* Cap. 112 and distress of rent under the *Landlord and Tenant (Consolidation) Ordinance* Cap. 7. The District Court also has jurisdiction over family law matters. Its criminal jurisdiction includes all but the most serious indictable offences and summary offences transferred to it together with an indictable offence. The District Court also hears appeals from Tribunals and Statutory Bodies in accordance with certain ordinances, e.g. the *Stamp Duty Ordinance* Cap. 117, the *Pneumoconiosis (Compensation) Ordinance* Cap. 360 and the *Occupational Deafness (Compensation) Ordinance* Cap. 469.

16. All criminal prosecutions must commence in the Magistrates' Courts. The Secretary for Justice may transfer cases to the District Court or the Court of First Instance of the High Court depending on the seriousness of the offence. In general, Magistrates' Courts may impose a maximum of two years' imprisonment and a fine of HKD 100 000 (USD 12 820). Some provisions allow Magistrates to impose sentences of up to three years' imprisonment and fines up to HKD 5 million (USD 641 000). There are also four tribunals and one specialised court under the purview of the Judiciary. The Lands Tribunal deals with cases arising from tenancy disputes and matters in relation to building management. It also hears applications for compensation for land resumption and appeals against the assessment of rateable value/government rent/market value of land under the *Housing Ordinance*. The Labour Tribunal hears cases where the claim exceeds HKD 8 000 for at least one of the claimants or where there are more than ten claimants. The Small Claims Tribunal hears claims of up to HKD 50 000. The Obscene Articles Tribunal determines and classifies whether an article publicly displayed is obscene or indecent. The Coroner's Court conducts inquests to ascertain the causes of certain deaths.

17. Enforcement of decisions from criminal proceedings is primarily a matter for law enforcement agencies and the Department of Justice. As for civil proceedings, the enforcement of judicial decisions is essentially a matter for the judgment creditor. Nevertheless, the Bailiff's Office serves legal documents and assists parties in the enforcement of Court and Tribunal judgments and orders.

18. Judges are appointed by the CE on the recommendation of an independent commission. Article 92 *Basic Law* provides that judges in Hong Kong are chosen on the basis of their judicial and professional qualities. The Judicial Studies Board provides training programmes for Judges at all levels. In addition, Judges are subject to the *Prevention of Bribery Ordinance* Cap. 201. The Chief Executive may only remove a judge for inability to discharge his or her duties, or for misbehaviour, on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal. The *Basic Law* provides that the Chief Justice her/himself "may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive".

¹⁰ Who hear civil interlocutory matters and lower level civil matters.

1.2 General Situation of Money Laundering and Financing of Terrorism

Predicate Offences

19. Hong Kong authorities did not provide an estimate of the total amount of proceeds of crime in Hong Kong due to what are seen as the inherent difficulties in making such an estimate. The primary sources of laundered funds in Hong Kong are illegal gambling, fraud and financial crime, loan sharking and vice. The laundering of drug proceeds has declined in recent years and is increasingly derived from domestic drug trafficking. The availability of corporate services and the relative ease with which shell companies can be purchased and bank accounts opened (although this area has been tightened up) have contributed to the risk of Hong Kong being used for the structuring of the proceeds of financial crime, corruption, tax evasion and smuggling.

20. Illegal gambling and bookmaking: In 2001 the Government estimated that annual turnover of illegal football betting was HKD 20 billion (USD 2.5 billion). That figure is decreasing following the criminalisation of overseas bookmaking and betting with overseas bookmakers in 2002, and the introduction of regulated football betting through Hong Kong Jockey Club (HKJC) in late 2003. The majority of illegal bookmakers now operate outside Hong Kong, though many still utilise domestic bank accounts for settlement. These accounts are held in the names of the bookmakers, family members, companies and stooges. In addition, money launderers were found manipulating the betting accounts, mingling proceeds of crime with funds for gambling.

21. Financial crime: Use is made of bank accounts and nominee companies for structuring purposes. However, this is now more difficult due to the implementation of CDD and record-keeping requirements for financial institutions. Offshore syndicates increasingly abuse investor confidence, targeting victims worldwide to sell bogus investment schemes.

22. Vice: A number of organised vice syndicates operate in Hong Kong targeting the domestic market for prostitution services. These syndicates vary in size and level of sophistication, using stooge and nominee company accounts to receive and launder the proceeds of their activities, often using substantial cash payments and the purchase of cash cheques issued by offshore casinos.

23. Loan sharking: Stooge or nominee corporate accounts are often used for settlement purposes by loan shark syndicates operating offshore. A common scenario involves victims being induced to gamble more than they can afford in the VIP rooms at offshore casinos by mud-chip (*beta-ficha* or *dead chip*) syndicates, which often work with loan sharks. The victims are then escorted back to Hong Kong and held pending settlement. Family members are induced to make settlement by bank transfers, which are structured through a series of stooge accounts.

24. Drug trafficking: Hong Kong is no longer considered a drug transit centre, and drugs moving into Hong Kong are mainly for domestic consumption. The laundering of drug proceeds has also declined in recent years. As a result of long term targeting, in 2006 the Hong Kong Police restrained assets in excess of HKD 50 million (USD 6.4 million) in six separate cases. Four of these cases involved joint operations with neighbouring jurisdictions in which the main protagonists were arrested overseas and assets amounting to some HKD 45 million (USD 5.8 million) were restrained in Hong Kong.

25. Copyright cases: The number of intellectual property rights cases at retail level is declining due to enhanced enforcement action and promotional campaigns designed to enhance public awareness.

26. Import and export cases: In 2004 smugglers began to employ a tactic known as “ants moving home”, where they increased the frequency of smuggling but decreased the quantity of goods smuggled each time so as to minimise the risk of financial loss and penalty. With sustained enforcement action and closer interagency co-operation, this activity has declined since 2005.

Money laundering

27. Some factors and trends have been identified which have the potential to enhance the ML threat in Hong Kong.

- With the opening up of the Chinese market and economic growth in the region, there has been an upsurge in foreign funds entering Hong Kong. Potential abuse of the private banking system by non-residents about whom there is limited information is an area of increased attention.
- The increase in jurisdictions permitting casino operations around the region increases the risks posed by informal intermediaries/junket promoters operating within Hong Kong. The informal and multi-jurisdictional nature of this activity and the lack of supervision of casinos aboard vessels operating in international waters poses some difficulties for investigation.
- The potential for abuse of internet-based financial transactions and remittance platforms is a global phenomenon of some concern. For example, a pirated optical disc syndicate was found to have been using eBay and PayPal to sell products which infringed copyright.
- Money launderers continue to use legitimate business to mix proceeds of crime and licit assets, and purchase of real estate with proceeds of crime continues.

28. Between 2003 and 30 December 2007, 786 persons were prosecuted for ML offences, of whom 465 persons (over 59%) were convicted. The primary predicate activities behind these prosecutions were illegal gambling and financial crimes.

Common money laundering methods

29. Nominee accounts: It is common for syndicates to recruit third parties ('stooges') to open accounts to dissipate the proceeds of unsophisticated criminality. At the more sophisticated end of the spectrum, accounts opened by non-residents or shell company accounts are used, as are complex corporate structures, company secretarial firms and methods designed to cloak transactions and ultimate beneficiaries.

30. Alternative remittance/unregistered remittance activity: Accounts are increasingly being opened by non-residents and used as temporary repositories for large deposits of unverifiable origin arriving in Hong Kong through underground remittance agents. In addition, many Mainland entities hold Hong Kong accounts in the names of third parties for purposes unknown. The abuse of remittance agents in ML schemes is not uncommon, but has declined following the introduction of the registration and record-keeping regime in June 2000 and increased enforcement action in recent years.

31. Casino intermediaries: The risks posed by the informal sector, the multi-jurisdictional nature of their activities and the lack of supervision of casinos operating in international waters leaves Hong Kong exposed to casino-related ML risks despite having no domestic casino industry. Casino intermediaries use Hong Kong accounts for collection and settlement of offshore gambling activities, using a counter-balance means of settlement with their casino principals. Dealing in chips (colloquially known as 'mud-chips') is also closely connected to other forms of criminality, and is exploited by loan sharks, often with a triad element. On occasions this activity involves gamblers being escorted back to Hong Kong and held until settlement of the debt. High value casino cheques payable to cash are also in secondary circulation in Hong Kong. Anecdotal evidence suggests these originate from VIP rooms, which provide underground banking services between home jurisdictions, neighbouring jurisdictions and Hong Kong.

32. Corruption-related money laundering: No particular pattern has been identified in terms of corruption-related ML. Each case has its own distinct features. However, offshore shell companies operated by accountants, bank accounts of relatives/associates (including foreign bank accounts) and

nominee companies have been found to be used in the laundering of corrupt/crime proceeds. It has also been observed that bribes and/or misappropriated proceeds are sometimes disguised as ‘consultancy fees’, ‘construction fees’ or ‘renovation fees’. Some bribes are received in the form of valuable assets, financial instruments, or gambling chips which are easily convertible into cash.

33. Various types of financial institutions, DNFBPs or other businesses are used by launderers. Most ML will make some use of bank accounts, particularly in the placement and layering phases. Misuse of the real estate sector and retailers of high value items such as jewellery and watches is also starting to emerge, but these are primarily involved in the integration phase. A large proportion of corporate formation activities is performed by legal and accounting firms and corporate structures are often involved in more sophisticated ML activities.

34. The groups involved in ML range from unsophisticated street syndicates recruiting drug addicts and the unemployed to open and sell their bank accounts, through to sophisticated international syndicates which employ complex corporate structures for high value fund transfers.

Terrorist financing

35. The financing of terrorism was criminalised in August 2002 with the enactment of the *United Nations (Anti-Terrorism Measures) Ordinance* Cap. 575 (UNATMO). Whilst the ICAC, C&ED and Immigration Department are also authorised agencies to investigate terrorism under UNATMO, the Police are currently the only law enforcement agencies actively engaged in TF investigations.

36. Investigations have found no evidence of terrorist funds being channelled through Hong Kong, probably due to the fact that Hong Kong does not have domestic terrorist groups, and that there is no known terrorist infrastructure or support base in Hong Kong for support and fund raising purposes. The TF investigations conducted to date were initiated from disclosures from the private sector, requests from overseas law enforcement agencies and intelligence derived both locally and overseas. Disclosures from the financial institutions generally relate to sensitive countries or matches with names of entities designated on various terrorist or sanction watch lists.

1.3 Overview of the Financial Sector and DNFBPs

The Financial Sector

37. Banking institutions: Three types of institutions, namely banks, restricted licence banks (RLBs) and deposit-taking companies (DTCs), may take deposits from the public. They are authorised under the *Banking Ordinance* Cap. 155 (BO) and are collectively known as “authorised institutions” (AIs). The distinction between the three types of AIs lies in the activities they are permitted to conduct:

- Only banks may operate current and savings accounts, accept deposits of any size and maturity from the public and pay or collect cheques drawn by or paid in by customers.
- RLBs, many of which are engaged in wholesale and capital market activities, may only take deposits from the public of HKD 500 000 (USD 64 100) or above without restriction on maturity.
- DTCs may only take deposits of HKD 100 000 (USD 12 800) or more with an original maturity term of at least three months. DTCs are mostly owned by or otherwise associated with banks and engage in specialised activities such as consumer and trade finance and securities business.

38. As at 31 December 2007, there were 142 banks, 29 RLBs and 29 DTCs operating a network of 1 335 local branches. Sixty-eight AIs (23 of which are banks) were locally incorporated. The rest were branches of foreign banks. The five largest AIs accounted for 52% of the sector’s total deposits (HKD 5 869 billion, which is approximately USD750 billion) and 38% of the total assets of the banking sector (HKD 10 350 billion, which is approximately USD 1 300 billion). The number of banks in Hong Kong has increased slightly over the past five years as merger activities in the sector

slowed and foreign banks regained interest in having a presence in Hong Kong after the Asian financial crisis. To cope with increasing competition, banks continue to expand other lines of business and their share in the financial services sector has been rising. On the other hand, the number of RLBs and DTCs has decreased as many banks no longer consider it necessary to maintain an RLB or DTC subsidiary.

39. Securities and Futures: Hong Kong's stock market is the seventh largest in the world in terms of market capitalisation and the third largest in Asia, as at end December 2007. Securities trading is active with an average daily turnover of HKD 132 billion (USD 17 billion) for the quarter ended 31 December 2007. As at 31 December 2007, there were 1 416 licensed corporations (LCs) in Hong Kong, of which approximately 60% engage in securities dealing and futures trading activities. Any individual who carries on a regulated activity on behalf of a licensed corporation is also required to apply for a licence. As at 31 December 2007, there were 31 759 licensed individuals operating in the securities and futures market. Hong Kong is also a leading asset management centre in Asia. Under the *Securities and Futures Ordinance* (SFO), investment products must be authorised before they can be marketed to the public. As at 31 March 2008, the SFC had authorised 2 123 unit trusts and mutual funds. These had total net asset value of USD1 077 billion as at 31 December 2007.

40. Insurance: There were 178 authorised insurers in Hong Kong as at 31 December 2007, comprising; 47 long-term insurers, 112 general insurers and 19 composite insurers (authorised to carry on both long-term and general businesses). The classes of insurance business include:

- Long term business: Life and annuity, marriage and birth, linked long term, permanent health, tontines, capital redemption, and retirement scheme management.
- General business: Accident, sickness, land vehicles, railway rolling stock, aircraft, ships, goods in transit, fire and natural forces, property damage, motor vehicle liability, liability for ships, aircraft liability, general liability, credit, suretyship, financial loss and legal expenses.

41. Total premiums¹¹ in 2007 increased 28.2% to HKD 200.1 billion (USD 25.65 billion), comprising HKD 176 billion in long-term business and HKD 24.1 billion in general insurance premiums. Insurance business is commonly arranged for or introduced to insurers by insurance intermediaries (appointed insurance agents or authorised insurance brokers¹²). There is also a growing trend for insurers to include banking institutions as a distribution channel. No person can act as an insurance agent unless he is appointed as such by an authorised insurer and registered with the Insurance Agents Registration Board (IARB). As at 31 December 2007, there were 31 042 appointed insurance agents (of which 2 150 were agencies and 28 892 were individuals) and 508 authorised insurance brokers.

42. Money lenders, remittance agents and money changers: Under the *Money Lenders Ordinance* Cap. 163 (MLO), anyone wishing to conduct business as a money lender must apply for a licence. A money lender is any person, other than an authorised institution, whose business is (wholly or in part) that of making loans or who advertises or holds himself out in any way as conducting that business. As at 31 December 2007, there were 741 licensed money lenders. Remittance agents and money changers (RAMCs) provide international remittance and money exchange services. There are approximately 1 760 registered RAMCs in Hong Kong. The remittance sector is diverse, ranging from large corporate entities (at least one of which is said to have been responsible for remittances in excess of RMB 4.7 billion (USD 654 million), through to stand-alone professionals and corner-shop outlets.

¹¹ Figures for 2006 are provisional.

¹² An insurance agent refers to a person who holds himself out to advise on or arrange contracts of insurance in or from Hong Kong as an agent or subagent of one or more insurers. An insurance broker means a person who carries on the business of negotiating or arranging contracts of insurance in or from Hong Kong as the agent of the policy holder or potential policy holder or advising on matters related to insurance.

43. Credit unions and co-operatives: A credit union is a co-operative organisation formed under the 1968 *Credit Union Ordinance* Cap. 119 by a group of people who have a common bond of association and are willing to subscribe for shares in the union (s.15). As at 31 December 2007, there were 42 credit unions in Hong Kong. Over 98% of assets of credit unions belong to those formed by employees of government departments and large public and private corporations. They have a total membership of about 66 000 and a total share capital of HKD 4.9 billion. Credit unions may only provide loans to their members (s.40 and associated offence provision in s.75) and loans to any one member cannot exceed more than 10% of the aggregate amount of the share balance, the reserve fund and any other funds of the credit union (s.40). Transfers of shares in a credit union may only take place between members (s.13(3)). In addition, there is one thrift and loan co-operative society, formed under the *Co-operative Societies Ordinance* by the staff of the Agriculture, Fisheries and Conservation Department, which receives deposits and makes loans to members. The society currently has 371 members with total deposits of HKD 1.2 million.

44. Post Office: In addition to conventional postal services, Hongkong Post provides a postal remittance¹³ service under the *Post Office Trading Fund Ordinance* Cap. 430E. The procedures for postal remittances are contained in *Hongkong Post Departmental Rules*, section C60-64. The postal remittance service operated by the Hongkong Post is small, offering reciprocal postal remittance only to six countries (Canada, Indonesia, Japan, Mainland of China, Nepal and the Philippines). The total number of transactions has declined from over 10 000 in 2005 to approximately 6 000 in 2007, with the average transaction amount ranging from HKD 2 000 (outbound) to HKD 3 000 (inbound).

45. Financial factoring and financial leasing companies: There are only a small number of companies (nine as reported in the *World Factoring Yearbook* 2003) which provide financial leasing and financial factoring services in Hong Kong, all of which are either money lenders or authorised institutions (AIs). The operations of AIs are subject to legislation and guidelines promulgated by HKMA. Statistics from the Census and Statistics Department (C&SD) indicate that “financial leasing, personal loan, mortgage, instalment credit, factoring and bill discounting companies” as a whole represented only 1.91% of the total financial sector in 2006.

46. The types of financial institutions that are authorised to conduct the financial activities outlined in the Glossary of the *FATF 40 Recommendations* are summarised in the following table.

Table 1. Institutions conducting financial activities outlined in the Glossary of the FATF 40 Recommendations

TYPE OF FINANCIAL ACTIVITY (See the Glossary of the 40 Recommendations)	TYPE OF FINANCIAL INSTITUTION AUTHORISED TO PERFORM THIS ACTIVITY IN HONG KONG
A. Acceptance of deposits and other repayable funds from the public (including private banking).	(1) Authorised Institutions authorised by the Hong Kong Monetary Authority (AIs).
B. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	(1) AIs, including financial leasing & factoring companies. (2) Corporations licensed to carry on securities dealing or share margin financing activity under the SFO Cap. 571. (3) Money lenders registered under <i>Money Lenders Ordinance</i> Cap. 163, including financial leasing & factoring companies. (4) Regulated bodies providing loans to their members (namely those registered under the <i>Co-operative Societies Ordinance</i> Cap.33, the <i>Credit Unions Ordinance</i> Cap. 119 or the <i>Trade Unions</i>

¹³ Since 2004, Western Union has launched its e-remittance service in 16 post office premises. Such services are operated independently from Hongkong Post’s other activities. It therefore is a remittance agent in its own right (see further [Section 3](#) of this report).

TYPE OF FINANCIAL ACTIVITY (See the Glossary of the 40 Recommendations)	TYPE OF FINANCIAL INSTITUTION AUTHORISED TO PERFORM THIS ACTIVITY IN HONG KONG
	Ordinance Cap. 332). (5) Pawnbrokers licensed under the <i>Pawnbrokers Ordinance</i> Cap.166.
C. Financial leasing (other than financial leasing arrangements in relation to consumer products).	(1) AIs. (2) Money lenders registered under the <i>Money Lenders Ordinance</i> Cap. 163.
D. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds).	(1) AIs. (2) Remittance agents registered under <i>Organised and Serious Crimes Ordinance</i> Cap. 455. (3) The postal service.
E. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and banker's drafts, electronic money).	(1) AIs. (2) Money lenders registered under the <i>Money Lenders Ordinance</i> Cap. 163. (3) Money changers registered under <i>Organized and Serious Crimes Ordinance</i> Cap. 455 (traveller's cheques).
F. Financial guarantees and commitments.	AIs
G. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading.	(a) – (e): All AIs. In addition; (c): Corporations licensed to carry on futures trading activity under the SFO. (d): Corporations licensed to carry on securities dealing or futures trading activities under the SFO.
H. Participation in securities issues and the provision of financial services related to such issues.	(1) AIs which have registered under S.119 SFO as a 'registered institutions'. (2) Corporations licensed to carry on securities dealing, advising on securities or share margin financing activities under the SFO.
I. Individual and collective portfolio management.	(1) AIs which have registered under s.119 SFO as 'registered institutions'. (2) Corporations licensed to carry on asset management activity under the SFO.
J. Safekeeping and administration of cash or liquid securities on behalf of other persons.	(1) AIs. (2) Corporations licensed to carry on securities dealing or share margin financing activities under the SFO.
K. Otherwise investing, administering or managing funds or money on behalf of other persons.	(1) AIs which have registered under s.119 SFO as 'registered institutions'. (2) Corporations licensed to carry on asset management activity under the SFO.
L. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and insurance intermediaries (agents and brokers)).	(1) An insurer or reinsurer authorised to carry on long term insurance business under the ICO by the Insurance Authority (IA). (2) An insurance agent (carrying on or advising on long term insurance business) appointed by an authorised insurer in Hong Kong and registered with the IARB.

TYPE OF FINANCIAL ACTIVITY (See the Glossary of the 40 Recommendations)	TYPE OF FINANCIAL INSTITUTION AUTHORISED TO PERFORM THIS ACTIVITY IN HONG KONG
	(3) An insurance broker (carrying on or advising on long term insurance business) authorised by the IA or being a member of a body of insurance brokers approved by the IA.
M. Money and currency changing.	(1) AIs (2) Money changers registered under <i>Organised and Serious Crimes Ordinance</i> Cap. 455.

Designated Non-Financial Businesses and Professions

47. Casinos: Hong Kong does not have land-based casinos. In generally, betting activities are closely controlled. A number of cruise ships operate from Hong Kong, with the sole or primary purpose of providing casino gaming in international waters. These vessels sail under Panamanian and Bahamian flags and some are owned and operated by Hong Kong companies. There is no information to hand which suggests that internet casinos are operating from Hong Kong.

48. Estate agents: All individuals and companies conducting estate agency work must be licensed by the Estate Agents Authority (EAA). There are about 21 000 individual licensees and 1 360 corporate licensees running 3 890 estate agent businesses in Hong Kong.

49. Dealers in precious metals and stones: Dealers in precious metals and stones include manufacturers, distributors, retailers and salesmen. Businesses in each segment of the industry vary from single retailers to manufacturers employing hundreds of people. It is estimated that the industry involves in the order of 1 000 wholesalers and retailers and 500 manufacturers, employing some 2 500 persons. There are 12 trade associations in this industry established to: strengthen competitiveness and improve industry productivity; promote products; provide up-to-date information on the industry; and organise seminars, workshops and conferences on issues of common interest.

50. Solicitors and barristers: There are around 5 800 practising solicitors and 700 law firms in Hong Kong. A practising solicitor must be a member of the Law Society of Hong Kong, which is a self-regulatory organisation, and hold a current practising certificate. Over 13 000 ancillary staff members (including paralegals, legal executives, legal assistants, secretarial and support staff) are employed by law firms and are also subject to the supervision of the Law Society of Hong Kong. The majority of law firms are either sole proprietorships or partnerships with two to five partners. There are 26 firms with 11 or more partners. Litigation, conveyancing and probate matters are three types of legal services exclusively reserved to solicitors under the *Legal Practitioners Ordinance* Cap. 159 (LPO). Solicitors who have practised as such for not less than seven years and who have passed an examination prescribed by the Hong Kong Society of Notaries (HKSJ) may also apply for appointment as notaries public. Notaries in Hong Kong authenticate and witness documents. They are not involved in financial transactions or any activities which would bring them in the scope of the FATF Standards. Barristers are legal practitioners expert in advocacy and specialising in litigation. Generally, only barristers have the right of audience in Hong Kong's High Court, Court of Appeal and the Court of Final Appeal. Access to barristers by the general public is normally through solicitors. As at March 2007, there were 993 practising barristers, comprising 78 senior counsel and 915 juniors.

51. Accountants: Only members of the Hong Kong Institute of Certified Public Accountants (HKICPA) are entitled to call themselves 'Certified Public Accountant' in Hong Kong. In order to undertake audits, a person must be a member of, and obtain a practising certificate from, the HKICPA. As at 31 May 2007, the Institute had 26 402 individual members, of whom 3 596 were practising certificate holders. There are essentially three modes of practising, namely, practising in own name, as a registered firm or as a registered corporate practice.

Table 2. Profile of the accountancy profession in Hong Kong, 31 May 2007

Type of Accountancy Business	Number Registered
Own name practices	1 853 members
Registered firm	No. of firms
Sole proprietorship	973
2 - 5 partners	185
6 – 10 partners	7
11 or more partners	5
Total	1 170 firms
Corporate practices	No. of corporate practices
Sole practitioner	57
2 - 5 directors	157
6 – 10 directors	6
11 or more directors	2
Total	222 corporate practices

52. Trust and company services providers: The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body representing the majority of chartered secretaries. It has around 4 500 members, of whom approximately 1 800 are potentially within the trust and company services sector. Of these, about 600 work in law firms and accounting firms and would thus also be regulated by the Law Society of Hong Kong or HKICPA, as the case may be. Chartered secretaries provide advice which can span from legal advice on conflicts of interest, through accounting advice on financial reports, to the development of strategy and corporate planning. Members of the HKICS may, in addition to lawyers and professional accountants, work as company secretaries of companies listed in Hong Kong. Chartered secretaries can be employed as chairs, chief executives and non-executive directors, as well as executives and company secretaries. The types of activities or businesses which chartered secretaries working as trust and company services providers typically engage in include:

- Company formation and establishment of business.
- Ongoing compliance with legal, regulatory and listing requirements.
- Arranging for bank accounts to be opened and acting as bank account signatories.
- Acting as nominee shareholders and directors.
- Providing registered office facility.
- Liquidation and dissolution of companies and cessation of business.
- Trust services.
- Investor relations.

1.4 Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements

53. Companies: The four main types of companies in Hong Kong are: public companies limited by shares; private companies limited by shares; guarantee companies without share capital; and, unlimited companies with or without share capital. Companies are owned by one or more shareholders, which may be legal or natural persons. Private companies must have at least one director and one secretary, while public companies must have at least two directors and one secretary. Private companies may have corporate directors. There is no minimum share capital for incorporation in Hong Kong but share certificates must be issued. Companies incorporated in Hong Kong must be registered with the Companies Registry (CR) and the Business Registration Office in the IRD. As at 31 December 2007, there were 655 038 locally incorporated companies (comprising 645 986 private companies, 8 850 public (non-listed) companies and 202 locally incorporated listed companies) and 8 081 non-Hong Kong companies (comprising 1 039 listed overseas companies and 7 042 non-listed overseas companies) registered under Part XI of the *Companies Ordinance* Cap. 32 (CO).

54. Partnerships and sole proprietorships: As at 31 December 2007, there were 155 registered limited partnerships in Hong Kong. Limited partnerships must consist of no more than 20 partners of whom at least one must be a general partner liable for all debts and obligations of the firm. Limited partners may not take part in the management of the partnership business, and do not have power to bind the firm or draw out their contributions to the partnership. A body corporate may be a limited partner. The liability of a limited partner is limited to the amount contributed to the partnership as capital or property valued at a stated amount. Partnerships and sole proprietorships are not required by law to register with the CR but they must apply for business registration within one month of commencing business. As at end June 2007, there were approximately 33 000 partnerships and 208 000 sole proprietorships registered with the Business Registration Office.

55. Trusts: Trusts are recognised under the common law, the *Trustee Ordinance* Cap. 29 (TO) and the *Registered Trustees Incorporation Ordinance* Cap. 306 (RTIO). There is no statutory requirement that trusts should be registered with any government body. Trust companies may be registered with the CR under the *Trustee Ordinance* if they wish to carry out trust and probate work and apply for grants of probate. Such companies must be public companies. Registered trust corporations (RTCs) may be formed under the *Registered Trustees Incorporation Ordinance*. RTCs are formed by certain bodies, associations and communities of persons and of trustees of charities to deal with movable or immovable property. RTCs are required to register with the CR. As at 31 December 2007, there were 85 trustee corporations registered under the *Registered Trustees Incorporation Ordinance* and 52 trust companies registered under the *Trustee Ordinance*. Individuals and non-trust companies are free to act as trustees without supervision.

Hong Kong's Identity Registration System

56. Hong Kong has an established system for registration of persons which is administered by the Immigration Department. The Hong Kong identity card is a proof of identity that is commonly used by both the government and the private sector. The 1960 *Registration of Persons Ordinance* Cap. 177 (ROPO), requires all residents of or over the age of eleven to register for an identity card unless they are specifically exempted from this (e.g. the aged, the blind and the infirm). If an identity card is lost, destroyed, damaged or defaced, the holder should within 14 days apply for a new one. Possessing or having custody of a forged identity card or an identity card of another person is a serious offence punishable by a maximum penalty of 10 years' imprisonment and a fine of HKD 100 000 (USD 12 820).

57. Since 23 June 2003, the Immigration Department has issued identity cards in the form of smart cards, employing secure and fraud-resistant state-of-the-art technology. Personal particulars of the cardholder are engraved by laser on the card surface, templates of the holder's thumbprints and facial image are stored in the chip and protected by cryptographic techniques. It is a statutory requirement

under the *Immigration Ordinance* Cap. 115 for any person who has attained the age of 15 and is the holder of an identity card, or is required to apply to be registered under the ROPO, to carry his/her identity card or other proof of identity (e.g. valid travel document) at all times, and to produce it on demand for inspection by law enforcement officers. It is also a statutory requirement under the ROPO to use the personal name and surname on the identity card issued to him/her and to provide the number of the identity card in all dealings with the government.

1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

58. Hong Kong has a five-pronged strategy for combating ML and TF which brings together the efforts of a large number of government departments, regulators, and the private sector:

- Building an effective and dynamic legal framework: General obligations, e.g. criminalisation of ML/TF, power to freeze, restrain and confiscate crime proceeds and terrorist properties, and suspicious transaction reporting are provided for in legislation, which are universally applicable. The *Drug Trafficking (Recovery of Proceeds) Ordinance* Cap. 405 (DTROP), the *Organized and Serious Crimes Ordinance* Cap. 455 (OSCO) and the *United Nations (Anti-Terrorism Measures) Ordinance* Cap. 575 (UNATMO) are the primary pieces of legislation to combat ML and TF, and to trace, restrain and confiscate crime proceeds and terrorist property. Specific obligations are mainly provided for in enforceable statutory guidelines issued by the regulatory agencies which allow swift updating to address emerging threats and challenges.
- Establishing an effective and proportionate AML/CFT supervisory regime: The three financial regulators, namely the Hong Kong Monetary Authority, the Securities and Futures Commission and the Office of the Commissioner of Insurance have each issued supervisory guidelines/codes of practice on AML/CFT under the relevant governing ordinances. These ordinances provide the regulators with supervisory powers.
- Effective enforcement of AML/CFT laws: Law enforcement agencies use a combination of proactive intelligence-led and reactive financial investigations to combat ML and TF. They put specific emphasis on co-operation with domestic and overseas law enforcement and other operational agencies in financial investigations. Suspicious transaction reporting forms one of the primary sources of intelligence for AML/CFT purposes. The Joint Financial Intelligence Unit's (JFIU) has recently increased its analytical capability with the introduction of an electronic reporting and case management system. The JFIU has also been conducting outreach and training for the financial sector and DNFBPs. At present, the focus is on raising awareness amongst the DNFBPs.
- International initiatives: Hong Kong has been actively engaging in international co-operation to combat ML and TF, in multilateral fora and bilaterally. Hong Kong has a legal framework for mutual legal assistance and surrender of fugitive offenders with other jurisdictions. As at December 2007 Hong Kong had established 22 bilateral mutual legal assistance agreements and 17 surrender of fugitive offenders agreements with foreign jurisdictions.
- Public outreach, engagement and capacity building: Proactive outreach has involved: production of a self-learning training kit; public interest announcements on television and radio; leaflets and posters; guidelines; and, provision of technical advice to DNFBPs in the drawing up of sector specific guidelines on AML/CFT. Competent authorities engage relevant stakeholders when formulating AML/CFT strategies, policies and practices so as to create a sense of ownership. Focus groups, working groups and surveys are now common practice. Training seminars for financial institutions and DNFBPs have become an annual event since 2005. The seminars aim to keep the financial institutions and DNFBPs abreast of the latest AML/CFT development, to equip them with the necessary knowledge and skills, and to provide a forum whereby different stakeholders can discuss matters of common concern.

Seminars and workshops are also organised for non-profit organisations and relevant government officials.

59. The effectiveness of the AML/CFT regime is reviewed primarily through routine reviews and thematic reviews co-ordinated by the Security Bureau's Narcotics Division. Routine reviews are conducted at operational and strategic levels. Operational reviews are conducted by relevant competent authorities, normally on a monthly or quarterly basis, by examining statistics and any other relevant information. Strategies are formulated to address any issues identified. The financial regulators also conduct regular reviews of their AML/CFT supervisory frameworks. Use is made by the regulatory agencies of on-site examinations, offsite monitoring, self-assessment questionnaires and industry working groups to gauge the effectiveness of the regime and to ensure compliance. Thematic reviews are conducted when a particular concern about the effectiveness of the AML/CFT regime arises, when new trends or typologies are identified, or when routine review has revealed deficiencies in the regime. In 2005-2006 a review was conducted on the effectiveness of the reporting requirements. In 2006 another review was conducted on the effectiveness of the ML and TF offences. In 2007, reviews were undertaken on the potential AML/CFT threat arising from the development of mobile phone remittance and on regulation of remittance agents and money changers.

60. Hong Kong authorities have indicated that they intend to continue to take measures, including preparation of legislation as appropriate, after the mutual evaluation is completed to take into account comments and recommendations arising from the evaluation. The HKMA plans to issue further guidance from the Industry Working Group on Prevention of ML and TF. The HKMA will also continue to enhance its AML/CFT examinations to ensure that appropriate supervisory measures are in place. The SFC will continue to reinforce preventive measures of the industry by reviewing and revising its AML guidance notes in line with the latest international standards, conducting more inspections on AML/CFT measures, providing more guidance to the industry and promoting industry's understanding by way of seminars and on-line education. The OCI will continue to review and revise the *Insurance Guidelines* in line with developments in the international standards, will consider issuing more specific guidelines for insurance institutions and will enhance monitoring and education through strengthening the on-site inspection visits and enhancing its website.

b. The Institutional Framework for Combating Money Laundering and Terrorist Financing

Ministries

61. The Security Bureau is responsible for a wide-ranging policy portfolio, from maintenance of law and order, exercising effective and efficient immigration and customs control, to rehabilitating offenders and drug abusers, and providing swift and reliable emergency fire and rescue services. The security policies are implemented through the disciplined forces. They include the Hong Kong Police Force, the Fire Services Department, the Correctional Services Department, the Immigration Department, the Customs and Excise Department, the Auxiliary Medical Services, the Civil Aid Services and the Government Flying Service. The Narcotics Division is one of the divisions within the Security Bureau. It is responsible for setting overall policy on and co-ordinating the implementation of AML and CFT measures with the Department of Justice, Police Force, Customs and Excise Department, Financial Services and the Treasury Bureau, financial regulators and all sectors subject to AML/CFT obligations. The 'A' Division of the Security Bureau oversees counter-terrorism policy and legislation. The 'A' Division is also responsible for the policy concerning mutual legal assistance in criminal matters and surrender of fugitive offenders. The 'E' Division of the Security Bureau oversees policy and legislation on internal security and law and order issues.

62. The Financial Services and the Treasury Bureau is responsible for policy matters and the law concerning companies, trust companies and limited partnerships. It has two branches – the Treasury Branch, which oversees Government's revenue policy and administration, and the Financial Services

Branch. The policy responsibility of the Financial Services Branch is to maintain and enhance Hong Kong's status as a major international financial centre, and to ensure our markets remain open, fair and efficient through the provision of an appropriate economic and legal environment. While market regulatory functions are performed by independent statutory regulators, the Financial Services Branch facilitates and co-ordinates initiatives to upgrade overall market quality and to ensure that Hong Kong's regulatory regime meet the needs of modern commerce.

63. The Commerce and Economic Development Bureau (CEDB) is responsible for a wide portfolio, which includes: external commercial relations; investment promotion; intellectual property protection; industry and business support; tourism; consumer protection; competition; broadcasting and film-related issues; development of telecommunications, innovation and technology; and, control of obscene and indecent articles. Division 2 of the Commerce, Industry and Tourism Branch of CEDB is responsible for implementation of United Nations Security Council Resolutions under instruction from the Central People's Government of the PRC.

Criminal justice and operational agencies

64. There are three law enforcement agencies which handle ML cases related to predicate offences:

- The Hong Kong Police Force, which is empowered by the *Police Force Ordinance* and other ordinances to investigate all other crimes and within which the JFIU is housed.
- The Customs and Excise Department (C&ED), which investigates trafficking, manufacturing and possession of dangerous drugs; infringement of copyright; smuggling; infringement of trade mark rights and false trade description; and, offences relating to dutiable goods.
- The Independent Commission Against Corruption (ICAC), which investigates corruption and election complaints and related offences.

65. The Hong Kong Police Force is responsible for the prevention and detection of crime, including ML investigations related to drug trafficking and indictable offences, and TF investigations. The Police enforce Hong Kong's ML and TF legislation, and also play an active part in international co-operation. A dedicated financial investigations unit, responsible for TF, drug, and organised crime related ML, is housed within the Narcotics Bureau. The unit is also responsible for responding, under instruction of the Department of Justice, to mutual legal assistance requests made by overseas competent authorities under the *Mutual Legal Assistance in Criminal Matters Ordinance*. The Commercial Crime Bureau, which is responsible for investigation of complex financial crimes, investigates ML connected to complex fraud offences. These dedicated financial crime units are supplemented by criminal investigation units in Regions and Districts which investigate predicate offences and ML associated with predicate crimes being investigated.

66. The Joint Financial Intelligence Unit (JFIU) was established in 1989 following the introduction of *Drug Trafficking (Recovery of Proceeds) Ordinance* Cap. 405 (DTROP), which imposed an obligation to report the suspected transactions involving drug proceeds. Sworn Police and civilian officers from the Police and Customs and Excise Department staff the unit. The JFIU is part of the Hong Kong Police Force and is responsible for the receipt, analysis and dissemination of suspicious transaction reports. The JFIU is also responsible for the operation of a basic registration scheme for remittance agents and money changers.

67. The Customs & Excise Department (C&ED) is responsible for enforcement action against: smuggling; protection and collection of Government revenue on dutiable goods; detection and deterrence of narcotics trafficking and abuse of controlled drugs; protection of intellectual property rights; protection of consumer interests; and, facilitation of legitimate trade. The five investigation bureaux in the Intelligence and Investigation Branch are responsible for investigating offences relating to drug trafficking, smuggling, infringement of copyright and trademark rights. The Financial Investigation Group (FIG), in the Customs Drug Investigation Bureau, conducts investigations into

ML related to drug trafficking and organised crime and initiates applications for freezing and confiscation of proceeds of crime. As part of the JFIU, it is involved in investigations of STRs. At the international level, the C&ED works jointly with other overseas law enforcement agencies, gathering evidence on ML and tracing crime proceeds.

68. Established in February 1974, the Independent Commission Against Corruption (ICAC) is an independent law enforcement agency responsible for combating and preventing corruption, in the public and private sectors. ICAC investigates corruption offences under the *Prevention of Bribery Ordinance* Cap. 201 (POBO). These offences include bribery in the public and private sectors and abuse of office by civil servants. If, during an investigation the ICAC encounters other offences connected with or whose commission is facilitated by the POBO offence(s), then the ICAC may investigate those other offences. In respect of corruption offences, the ICAC has special powers of investigation enabling it to obtain access to the records of banks and financial institutions. The ICAC has powers to trace and freeze the proceeds of corruption and upon conviction to obtain restitution or confiscation of such proceeds. Measures were recently taken to enhance the ICAC's ability to confiscate bribes received in connection with certain public and private sector 'accepting' offences. ICAC has investigated ML related to the proceeds of corruption.

69. The Department of Justice (DOJ) controls all criminal prosecutions in Hong Kong, acts as the central authority for all international requests for legal co-operation in criminal matters and advises Government Bureaus on implementation of United Nations resolutions.

- In practice, many prosecutions at the summary level are handled by the court prosecutors from the DOJ with the assistance of the police or other investigative bodies. The Department's Prosecutions Division conducts more complex trials and appeals, provides legal advice to enforcement agencies, and exercises on behalf of the Secretary for Justice the discretion whether or not to institute criminal proceedings. The Commercial Crime Unit, including the Domestic Proceeds of Crime and Anti-terrorism (Asset Recovery) section, comprises about 25 prosecutors. The Asset Recovery Section specialises in domestic asset recovery, confiscation of crime proceeds and ML and TF cases. It is also responsible for formulating prosecution policy relating to the confiscation of the proceeds of crime.
- The International Law Division comprises the Treaties and Law Unit and the Mutual Legal Assistance Unit. The Treaties & Law Unit advises government policy bureaus on the preparation of primary and secondary legislation dealing with anti-terrorism measures and mutual legal assistance in criminal matters. The Unit also provides on-going advice to government bureaus. The Mutual Legal Assistance Unit co-ordinates requests for surrender of fugitive offenders, mutual legal assistance and transfer of sentenced persons. The Unit also assists foreign jurisdictions in the investigation and prosecution of criminal matters and processes all incoming and prepares all outgoing requests for mutual legal assistance and surrender of fugitive offenders.

70. The Inland Revenue Department (IRD) administers the taxation system of Hong Kong, including the granting of tax-exempt status to eligible non-profit organisations (NPOs) that are exclusively charitable in nature. Once tax-exempt status is granted, the IRD will, from time to time, call for accounts, annual reports or other documents to review the tax-exempt status and to examine whether the institution's objects are still charitable and its activities are compatible with its objects.

Financial sector bodies

71. The Hong Kong Monetary Authority (HKMA) is responsible under the *Banking Ordinance* (BO) for supervision of banks, restricted licence banks and deposit-taking companies, which are collectively referred to as authorised institutions (AIs). Its principal function is to "promote the general stability and effective working of the banking system". The HKMA is also mandated to ensure that banking is carried out with integrity, prudence, professionalism and in a manner which is

not detrimental or likely to be detrimental to the interests of depositors or potential depositors. The HKMA has issued two statutory guidelines on AML/CFT pursuant to s.7(3) BO. Failure to comply with the guidelines may call into doubt whether the AI continues to satisfy the authorisation (licensing) criteria for these institutions. The HKMA also issues circular letters to AIs from time to time, providing them with guidance on specific AML/CFT issues. The HKMA ensures compliance of AIs with its AML/CFT guidelines through on-site examinations and other supervisory contacts such as prudential interviews, meetings with the board of directors and meetings with the external auditors.

72. The Securities and Futures Commission (SFC) was established under the *Securities and Futures Ordinance* Cap 571 (SFO) primarily to: maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry; and, minimise crime and misconduct in the industry. The SFC is empowered to make rules requiring licensed persons to comply with the relevant practices and standards relating to their conduct in carrying on regulated activities. It also publishes codes and guidelines for the purpose of giving guidance relating to the practices and standards with which licensed persons are expected to comply in carrying on regulated activities. Licensed persons must comply with the relevant laws, codes and guidelines published by the SFC including those related to combating ML and TF, in particular the *Prevention of Money Laundering and Terrorist Financing Guidance Note (Securities Guidelines)*. Those AIs which are registered with the SFC because they conduct trading activities in securities and futures products, are required to observe the sector specific requirements in the *Securities Guidelines* which are not covered by the HKMA's guidelines.

73. The Office of the Commissioner of Insurance (OCI) regulates and supervises the insurance industry, promoting stability and protecting policyholders. The *Insurance Companies Ordinance* Cap. 41 (ICO) prescribes a regulatory framework for insurance business in Hong Kong. Its twin objectives are to ensure the financial soundness of all insurers authorised in Hong Kong and the fitness and properness of their management. A self-regulatory system for insurance intermediaries has also been in operation since June 1995. The OCI reviews the regulatory regime for the insurance industry from time to time in light of operational experience and market development. The OCI has issued a *Guidance Note on Prevention of Money Laundering and Terrorist Financing (Insurance Guidelines)* pursuant to s.4A ICO and issues circular letters to insurance institutions from time to time. To monitor insurers' compliance with AML/CFT measures, the OCI conducts regular on-site inspection visits. During these visits, officers check insurers' AML/CFT policies and procedures.

74. The Hong Kong Exchanges and Clearing Limited (HKEx) owns and operates the only stock exchange and futures exchange in Hong Kong and its related clearing houses. The Stock Exchange, a wholly-owned subsidiary of HKEx, is a recognised exchange company under the SFO. It operates and maintains a stock market in Hong Kong and is the primary regulator with respect to trading matters. The Futures Exchange, a wholly-owned subsidiary of HKEx, is a recognised exchange company under the SFO. It operates and maintains the futures market in Hong Kong and is the primary regulator of Futures Exchange participants with respect to trading matters.

75. The Companies Registry is responsible for administration of a register of local and non-Hong Kong companies. It also ensures compliance with the statutory filing requirements and maintains a register of company names (but not business names). While there is no central registry in Hong Kong for non-company trusts or other similar legal arrangements, the Companies Registry maintains a register of trust companies registered under Part VIII of the *Trustee Ordinance* Cap. 29, and a register of limited partnerships under the *Limited Partnership Ordinance* Cap. 37.

Professional bodies

76. The Law Society of Hong Kong is a professional association for practising solicitors. It was incorporated in 1907 as a company limited by guarantee. The Law Society is a self-regulatory organisation. Solicitors are required to comply with the *Hong Kong Solicitors' Guide to Professional Conduct* (SGPC) which includes statutory rules and principles relating to legal practice and ethical

issues. The Law Society is empowered to investigate and prosecute solicitors and their staff for alleged misconduct. Since 1997, the Law Society has issued three circulars drawing members' attention to AML legislation and practical guidelines have been provided to members on issues of customer due diligence and identification of clients. In December 2007 the Society issued an updated Circular and Practice Direction on AML/CFT to its members which will come into effect on 1 July 2008. The Law Society has two monitoring accountants and they visit law firms on a regular basis to advise solicitors on accounting practices. In June 2007, the Law Society and the Narcotics Division organised an AML seminar for members.

77. The Hong Kong Institute of Certified Public Accountants (HKICPA) operates under the *Professional Accountants Ordinance* (PAO) and is the only body authorised by law to register and grant practising certificates to certified public accountants in Hong Kong. HKICPA has wide-ranging responsibilities, including: assuring the quality of entry into the profession; promulgating financial reporting; auditing and ethical standards; and, regulating and disciplining members. HKICPA requires its members to comply with the *Code of Ethics for Professional Accountants* (PACE). In addition, members in public practice are required to observe, maintain and apply professional standards such as the *Hong Kong Standard on Quality Control* (HKSQC1) and *Hong Kong Standards on Auditing* (HKSA). HKICPA issued a *Legal Bulletin* in July 2006, which has a specific focus on AML/CFT requirements. The HKICPA also runs continuing professional development seminars for members that include topics relating to AML/CFT, as well as participating in seminars and forums run by government agencies. In addition, AML/CFT-related information, such as updates on United Nations sanctions, and lists of terrorists and terrorist associates, are promulgated through electronic circulars to members.

78. The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to formulation and effective implementation of good corporate governance policies as well as the advancement of the profession of Chartered Secretary. Members of the Institute must comply with the industry *Code of Professional Conduct*. There are presently no AML/CFT requirements for chartered secretaries, though HKICS members must observe the customer due diligence requirements in the *HKMA Supplement to the Guideline on Prevention of Money Laundering* when they act as intermediaries of financial institutions which are subject to HKMA regulation. Further, when HKICS' members handle offshore corporations, they have to ensure that these companies are in compliance with relevant overseas AML legislation. In 2007, HKICS established an internal AML Working Group to study the impact of the *FATF Recommendations* and any AML obligations to be introduced in Hong Kong on its members who work in the trust and company services providers sector. In an effort to increase members' awareness of ML risks, HKICS has invited speakers from government agencies and experts to speak at AML seminars in the past year and has published relevant articles in the official monthly publication. In July and August 2007, HKICS surveyed its members which are trust and company services providers to assess their AML awareness and compliance.

79. The Estate Agents Authority (EAA) is an independent and self-financing statutory body established in November 1997 under the *Estate Agents Ordinance* Cap. 511 (EAO) to: regulate and control the practices of the Hong Kong estate agency trade; promote the integrity and competence of estate agents; and, enhance the status of the estate agency trade. An individual or a company carrying on estate agency work in Hong Kong must hold a valid licence. Licensed estate agents and agency companies must comply with the EAO, the *EAA Code of Ethics* and other guidelines issued by EAA from time to time. The EAA issued a *Preventive Measures on Money Laundering* practice circular in January 2004. The EAA carries out compliance checks, complaints investigations and disciplinary actions ranging from reprimand to revocation of licence. EAA on-site inspections have found that, in general, estate agents are aware of the importance of preventing ML and TF and have observed the CDD and record keeping requirements of the Practice Circular. AML/CFT seminars conducted by enforcement authorities are well received by the estate agents.

c. Approach Concerning Risk

80. Hong Kong has not conducted an AML/CFT risk assessment. The financial regulators do however employ a risk-based approach to their supervision activities.

81. AIs are encouraged to maintain risk sensitive AML/CFT systems. They are required to adopt more extensive CDD measures for high risk customers and more sophisticated transaction monitoring systems for high risk operations. AIs are also permitted to adopt simplified CDD for low risk customers. The HKMA, in consultation with the Industry Working Group, will develop more detailed guidance on how AIs should calibrate their AML/CFT system on a risk sensitive basis. The same philosophy is followed by the HKMA in combating ML and TF. The HKMA allocates supervisory resources having regard to each institution's level of inherent risks as well as the effectiveness of its system to counter ML and TF. For example, while all AIs are subject to tier-1 examinations on AML/CFT controls, those assessed to have a higher level of perceived AML/CFT risk are subject to the more in-depth tier-2 examinations. Moreover, thematic examinations focused on specific high risk operations such as private banking and correspondent banking are undertaken from time to time.

82. Under the *Securities Guidelines*, LCs are required to adopt risk-based CDD by using specific criteria based on the type of customer (for example, politically exposed persons – PEPs), business relationship, transaction and origin of customer etc, in order to identify customers posing a higher risk of ML and TF. On the other hand, customers judged to be of lower risk (for example, companies listed on a stock exchange in a FATF member or an equivalent jurisdiction and their subsidiaries) would be eligible for simplified CDD measures. LCs should be able to justify their assessments to the SFC and demonstrate that it was a reasonable assessment. On an ongoing basis, SFC staff assess and monitor likely AML risks based on referrals from the JFIU, past inspection findings, compliance/disciplinary history and any other sources of intelligence. Based on this assessment, the SFC decides in each case whether it should conduct *i)* a high-principle review through onsite inspection or prudential visit; *ii)* an in-depth onsite inspection; or *iii)* a thematic inspection.

83. Under the OCI's July 2005 *Guidance Note on Prevention of Money Laundering and Terrorist Financing (Insurance Guidelines)*, authorised insurers, insurance agents and insurance brokers carrying on or advising on long-term insurance business are required to adopt a risk-based approach to CDD. The CDD measures applied should be commensurate with the risk level of the customers as determined during the customer acceptance process. Enhanced CDD should be applied to higher risk customers such as those conducting non-face-to-face transactions and PEPs. Conversely, it is acceptable for insurance institutions to apply simplified CDD for lower risk customers such as those companies which are listed in Hong Kong or on a recognised stock exchange. The guiding principle is that insurance institutions should be able to justify that they have taken reasonable steps to satisfy themselves as to the true identity of their customers and/or beneficial owners. This requires institutions to document their assessments and the reasons behind each assessment. The OCI adopts a risk-based approach to monitoring and regulation, including on-site inspections. When deficiencies or non-compliance are identified in an authorised insurer, OCI staff take follow-up action and ensure the deficiencies are rectified.

d. Progress Since the Last Mutual Evaluation

84. Hong Kong was last subject to an FATF mutual evaluation in 1998. The recommendations made and action taken since that time are described below.

The JFIU's effectiveness, guidance, training and feedback (paras 89, 107, 108 and 113)

85. The JFIU has taken steps to improve the quality and quantity of suspicious transactions reports (STRs) in recent years: introducing online reporting; conducting qualitative and quantitative analysis for targeted outreach; enhanced outreach across the reporting sectors; and, improving feedback. Since 1999, the JFIU has chaired the Working Group on Suspicious Transactions Reporting, established to

improve the quality and quantity of reports by providing a forum for the law enforcement, regulators and the various reporting sectors to discuss issues relating to STRs. In addition, the JFIU is a member of the HKMA's Industry Working Group on ML. These efforts have resulted in a steady increase in reporting. In 2007, 15 457 STRs were received by the JFIU.

86. In terms of feedback, JFIU provides specific information for reporting entities in relation to the final designation of each report and publishes quarterly reports, which contain a breakdown of relevant statistics, recent trends and typologies, sanitised cases for training purposes and other matters of interest. The JFIU's website contains guidance on suspicious transaction identification and reporting, and the advisory *AML/CFT Guideline* for the remittance and money exchange sector.

The money laundering offence and related legislative programme (paras 96, 97 and 118)

87. The *Drug Trafficking and Organised Crimes (Amendment) Bill* 2000 was introduced to the Legislative Council in 2000. This bill, amongst other things, proposed lowering the mental threshold for the ML offences under *Organized and Serious Crimes Ordinance* (OSCO) and *Drug Trafficking (Recovery of Proceeds) Ordinance* (DTROP) to "reasonable grounds to suspect" and proposed an increase of the maximum penalty for ML from 14 years to 20 years. The proposal met with opposition in the Legislative Council and was ultimately withdrawn.

88. Authorities have for some time discussed the need to incorporate key elements of the CDD process (*i.e.* the asterisked items within the assessment methodology) into law or regulation. In Hong Kong, it is the usual practice to regulate through administrative means on the basis that this provides greater flexibility, since a legislative process in Hong Kong is lengthy and requires extensive public consultation. When the *FATF Recommendations* were revised in 2003, it was considered that the quickest way to put them into effect in Hong Kong was through the administrative powers of the three major financial regulators. This was considered to have the benefit of building up experience in complying with the new requirements and to help reduce possible objections when legislation is introduced in due course. The authorities consider that, since the three major financial sectors are supervised by three different regulators with different powers and regulatory regimes, it is a complex exercise to devise a mechanism acceptable to all three sectors that can comply with FATF requirements and suits Hong Kong circumstances.

89. In July 2002, the AML provisions in DTROP and OSCO were strengthened by the *Drug Trafficking and Organised Crimes (Amendment) Ordinance* 2002. Restraint or charging orders may now be made in relation to the property of a person who has been arrested for a drug trafficking offence or a specified offence, and released on bail or refused bail. The holder of any realisable property which is subject to a restraint or charging order, is required to provide documents or information on the value of the property to an authorised officer to facilitate the application and making of a confiscation order. A penal provision for breaching a restraint or charging order was introduced to deter people from knowingly dealing with any restrained property. A rebuttable assumption now exists that all the property held by a convicted defendant for the previous six years were the proceeds of drug trafficking. The defendant may rebut this assumption on the balance of probabilities. Finally, the court is now able to fix a period within which a defendant is to pay an OSCO or DTROP confiscation order.

Unregulated remittance centres and money changers (paras 100 and 122)

90. In 2000 OSCO introduced a registration scheme for money changers and remittance agents. They are also required to identify customers and keep records of transactions of HKD 20 000 (USD 2 560) or above. In January 2007 amendments to s.24C and Schedule 6 of OSCO came into effect, lowering the threshold for identity verification and record-keeping in transactions undertaken by remittance agents and money changers to HKD 8 000 or above. It is an offence for a remittance agent or money changer to fail to verify customers' identity or keep records of transactions. Failure to comply with these requirements is subject to a maximum sentence of three months' imprisonment and

a fine of HKD 100 000 (USD 12 820). The Police and the C&ED investigate unlicensed operators that are disclosed through investigations or suspicious transaction reports. There have been 88 successful prosecutions as at 31 December 2007 for contravention of the registration requirement. In January 2005, one unregistered operator was fined HKD 100 000 for failing to register and for failing to keep appropriate records. This is the largest cumulative sanction imposed to date.

Cross-border measures (para 102)

91. Hong Kong has not implemented a declaration or disclosure system, to detect, seize or confiscate the physical cross-border transportation of currency or bearer negotiable instruments (BNI) that are related to ML or TF but has opted to rely on existing ordinances. The *Drug Trafficking (Recovery of Proceeds) Ordinance*, Cap. 405 (DTROP), the *Organized and Serious Crimes Ordinance*, Cap. 455 (OSCO) and the *United Nations (Anti-Terrorism Measures) Ordinance* Cap. 575. (UNATMO), provide general powers for the seizure, detention, restraint and confiscation of currency/BNI which is suspected or found to be proceeds of crime or terrorist property. There is no provision allowing for seizure of funds/instruments which are not reasonably suspected to be tainted. Similarly, no provisions exist to seize and detain currency/BNI on the grounds of a failure to disclose or misrepresentation by the party concerned. While neither a declaration nor disclosure system is in effect, some disclosures are provided voluntarily by persons passing through border points.

Improving awareness in the banking sector (paras 110, 111 and 113)

92. The Hong Kong Association of Banks (HKAB) has played a more active role in the fight against ML and TF. It has produced a video and a booklet that can be used by member banks for training their staff on identifying and reporting suspicious transactions to law enforcement agencies. HKAB has also developed a leaflet to explain to bank customers the need for AML and CFT and how they may help in fighting such crimes. To enhance the AML/CFT awareness, the HKMA collaborates with the JFIU to provide seminars on AML/CFT issues and developments, including with respect to STR reporting. In 2007, the JFIU received 15 457 STRs, 83% of which were from AIs. The HKMA has published two enforceable guidelines for AIs relating to the FATF standards: the 1997 *Guideline on Prevention of Money Laundering (Bank Guidelines)*; and, the 2006 *Supplement to the Guideline on Prevention of Money Laundering (Bank Supplement)*. Annex 5 to the *Bank Guidelines* provides examples of what might constitute suspicious transactions. The JFIU has since 2005 been posting Quarterly Suspicious Transaction Report Analysis on its website providing statistics, qualitative analysis of STR and case studies to help reporting entities improve the quality of their STRs.

SFC to encourage suspicious transaction reporting (paras 92, 113 and 121)

93. The SFC has been working to raise the industry's AML/CFT awareness and compliance, notably publishing revised *Securities Guidelines* in 2005 which contain AML/CFT requirements including: customer acceptance; customer due diligence; record keeping; retention of records; recognition and reporting of suspicious transactions; and, staff screening and training. A list of potentially suspicious or unusual activities which shows the types of transactions that could be a cause of scrutiny is also provided in Appendix C(ii) of the *Securities Guidelines*. In May 2006, the SFC issued a set of frequently asked questions and answers to help Licensed Corporations (LCs) implement the *Securities Guidelines*. To enhance the LCs' knowledge and skills on AML/CFT, the SFC has organised/participated in 17 AML seminars since January 2004, informing the industry of key indicators of ML and TF activities. In particular, LCs have been reminded, through regular AML circulars and on-site inspections, of their STR reporting obligation and have been advised to examine the JFIU's quarterly suspicious transactions analysis reports and reports on ML typologies such as those issued by FATF and the Egmont Group of FIUs. An AML self-assessment program has also been launched. The number of suspicious transactions reported in the securities and futures sector has increased in recent years, from 22 reports in 1997, to 76 in 2004, to 220 in 2007.

Insurance Authority to concentrate on risk areas and encourage STRs (paras 92, 112, 113 and 121)

94. A dedicated AML/CFT team was established in the Office of the Commissioner of Insurance (OCI) in 2000. In addition, the scope of on-site inspections for AML/CFT purposes was broadened after release of the *Guidance Note on Prevention of Money Laundering and Terrorist Financing (Insurance Guidelines)* in 2005. For insurers which are exposed to higher AML/CFT risks (e.g. single premium business), the frequency of AML/CFT visits has been enhanced from once every three years to once every two years under normal circumstances. The OCI issues circulars notifying insurance institutions of suspected terrorists gazetted under local legislation or internationally, and encouraging them to be alert to suspicious transactions and report any suspicious cases promptly to the JFIU. In addition, a clause was inserted in the *Code of Conduct for Insurers* issued by The Hong Kong Federation of Insurers reminding insurers of their obligation to take all reasonable steps to prevent the insurance industry from being exploited by money launderers. Seminars are arranged by the OCI, industry bodies, the Narcotics Division, Security Bureau and JFIU for the insurance practitioners to enhance their understanding and awareness of prevention of ML and TF. A special corner on “Circulars on AML Matters” was set up on the OCI website and AML news and articles are published in the OCI’s newsletter. In 1997, only one suspicious transaction report came from this industry. The number of reports has increased progressively, to 144 in 2004 and 311 in 2007.

International co-operation (paragraphs 114 to 116)

95. Hong Kong has signed 22 bilateral mutual legal assistance agreements which provide for the usual range of legal assistance including taking of witness evidence, search warrants, production orders, transfer of persons to assist in investigations and prosecutions, and restraint and confiscation of proceeds of crime. Hong Kong handles a significant number of requests from each of these jurisdictions through the Mutual Legal Assistance Unit of the Department of Justice. In addition, under the *Mutual Legal Assistance in Criminal Matters Ordinance* Cap. 525 (MLAO), Hong Kong is able to offer like assistance to other jurisdictions without an operational agreement based on reciprocity undertakings. The MLAO and the agreements which have been made the subject of subsidiary legislation under the MLAO seem to be working well.

96. Legislative amendments to DTROP and OSCO in 2004 now allow the JFIU to disseminate information derived from STRs to overseas counterparts and non-counterparts for the purposes of combating crime, without the need for any reciprocity undertaking. UNATMO contains similar provisions for the purpose of preventing and suppressing TF. In addition, the JFIU has recently signed Memoranda of Understanding with five FIUs.

Regulation of shell companies (paragraph 123)

97. Issues relating to shell companies such as bearer shares, corporate directors and secretaries and the non-disclosure of beneficial ownership of shares will be considered in the context of a future revision of the *Companies Ordinance*. The exercise to rewrite the *Companies Ordinance* will be in two phases. Phase I will focus on the core company provisions affecting the daily operation of 600 000 live companies, while Phase II will deal with winding-up provisions. A White Bill for Phase I is expected to be released for public consultation in mid-2009. In the meantime, access to company information at the Companies Registry (CR) has been improved to enhance transparency. Since February 2005, members of the public have been able to obtain company information (e.g. date of incorporation, particulars of the directors and secretaries, registered office address) online, using the CR’s Cyber Search Centre¹⁴. They can also apply, at specified fees, for a report on company particulars which includes its registered office address, share capital structure and the names of directors and secretaries and/or the image records of registered documents such as annual returns which contain details of the shareholding of the company.

¹⁴ www.icris.cr.gov.hk.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 & R.2)

2.1.1 Description and Analysis

98. The offence of ML was created in 1989 under s.25 *Drug Trafficking (Recovery of Proceeds) Ordinance* (DTROP) Cap. 405. Section 25 provides that it is an offence for a person to deal in property “knowing or having reasonable grounds to believe” that the property “in whole or in part directly or indirectly represents any person’s proceeds of drug trafficking”. In 1994, s.25 of the *Organized and Serious Crimes Ordinance (OSCO) Cap. 455* replicated the mental and physical elements of this offence but extended the range of predicate offences to all indictable offences (which is expressly defined to include any extraterritorial conduct that, if committed in Hong Kong, would amount to an indictable offence in Hong Kong).

99. Under sections 2 of both DTROP and OSCO, “dealing” includes:

- Receipt or acquisition.
- Concealment.
- Disposal or conversion.
- Movement into or out of Hong Kong.
- Use as security.

100. A person who deals with the proceeds of his own crime can be prosecuted with both the predicate offence and the ML offence: *HKSAR v. LOK Kar-win & others* [1999] 4 HKC 783. The maximum penalty for ML is 14 years’ imprisonment and a fine of HKD 5 000 000 (USD 641 000).

101. Sections 25A of both DTROP and OSCO impose a duty upon any person to report his or her knowledge or suspicion that property may be related to drug trafficking or an indictable offence. These provisions effectively give rise to a universal obligation to report suspicious transactions and, as such, are key to Hong Kong’s AML framework. Under s.25A(2) OSCO and DTROP, the making of an STR triggers defences to prosecution for ML under s.25: a person may transact (deal with) suspected proceeds, whether before or after making the STR, where an STR is made:

- (a) before the transaction and the transaction subsequently occurs with the consent of an ‘authorized officer’; or
- (b) An STR was made -
 - (i) after the transaction;
 - (ii) on the person’s initiative;
 - (iii) as soon as it is reasonable for the person to make it.

102. Section 25 itself extends this defence even to situations where no STR has been made – whether before or after the transaction - provided an accused can show:

- (a) he intended to disclose his knowledge/suspicions to an authorized officer;
- (b) there is reasonable excuse for his failure to do so.

Recommendation 1

103. The 1988 United Nations (UN) *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (the *Vienna Convention*) was implemented in Hong Kong prior to reversion to Chinese sovereignty in 1997. By virtue of Article 153 of the *Basic Law*, it remains implemented in Hong Kong. The 2000 UN *Convention Against Transnational Organized Crime* (the *Palermo Convention*) was signed by the People's Republic of China on 12 December 2000 and ratified on 23 September 2003. It was applied to Hong Kong on 27 September 2006.

104. Under both DTROP and OSCO, a broad range of acts are included in the physical element of the ML offence. In addition to criminalising acquisition, and use of property derived from offences, the ML offences in Hong Kong expressly criminalise 'knowing receipt' of proceeds of crime, without the need for further 'dealing' of any kind. Thus, possession is criminalised as long as the person knew the property derived from certain criminal offences. Article 3 of the *Vienna Convention* and Article 6 of the *Palermo Convention* require the criminalisation of the "acquisition, possession or use of property". The conventions also require, in all cases, knowledge "at the time of receipt" that such property was derived from certain specified offences (see Article 3(1)(c)(i) of the *Vienna Convention* and Article 6(1)(b)(i) of the *Palermo Convention*). The ML offences in Hong Kong thus comply with both the *Vienna Convention* and the *Palermo Convention* as to acquisition, possession or use of property knowing it was derived from certain offences is criminalised.

105. The offences of ML extend to any property that constitutes criminal proceeds, regardless of value. The offences therefore have expansive and inclusive reach. Under s.2 OSCO and DTROP, property is defined as including both movable and immovable property within the meaning of s.3 of the *Interpretation and General Clauses Ordinance* Cap. 1 (IGCO). That provision in turn defines "property" as including:

- Money; goods; choses in action (rights to recover assets); and land.
- Obligations; easements; and, every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in the point above.

106. The ML offences place no burden on the prosecution to prove the commission of or conviction for any predicate offence. The prosecution must simply establish that the defendant had knowledge or reasonable grounds to believe that the property concerned represented the proceeds of an indictable offence. This much is clear from a plain reading of the ML offences as framed in s.25 DTROP and OSCO and is supported by case law: *HKSAR v. LI Ching* [1997] 4 HKC 108 and *Oei Hengky Wiryo v. HKSAR* [2007] 1 HKLRD 568.

107. As noted above, the ML offences are subject to defences. A person may engage in a ML transaction even without consent of an authorised officer, provided an STR is made on his/her initiative as soon as practicable following the transaction. A defence is available even where no STR has been made, provided there is a reasonable excuse for this failure and provided the person intends to disclose his/her knowledge/suspicion to an authorised officer. These defences appear intended to provide some protection to front-line and compliance staff within AIs. They also operate to avoid any tipping-off inherent in a denial of service based on a staff member's knowledge or reasonable belief as to the origin of the funds in question. The defences also remove any deterrent to STR reporting where, post-transaction, a person forms such a reasonable belief but is concerned at the prospect of criminal prosecution based on that objective standard. Officials advised the evaluation team that they are aware of no instances of attempted manipulation of such defences in a ML prosecution.

Predicate offences

108. As noted above, the money laundering offence under both OSCO and DTROP is committed once a person ‘deals’ with suspected criminal proceeds – a concept that ranges from receipt to various uses. The ML offence under OSCO is committed once a person deals with property believed to be "proceeds of an indictable offence". The ML offence under DTROP is committed once a person deals with suspected “proceeds of drug trafficking”. Thus drug trafficking offences and indictable offences are predicate offences for ML.

109. Indictable offences are regarded as more serious offences. Under s.14A of the *Criminal Procedure Ordinance* Cap. 221, ‘indictable offence’ (可公訴罪行) means any offence other than an offence that is triable only summarily. As such, they cover a broad range of offences including: *i*) common law offences such as murder, kidnapping, false imprisonment, conspiracy to pervert the course of public justice; and, *ii*) statutory offences that are specified to be indictable offences, a number of which are set out in Schedules (1) and (2) of OSCO. The ML offence under OSCO is therefore the broader of the two ML offences in that its predicate offences comprise all indictable offences under Hong Kong law, including drug trafficking offences. Predicate offences under OSCO cover a range of offences in each of the following designated categories of offences. The primary offences in each category are shown in the table below.

Table 3. Categories of predicate offences in Hong Kong law

Categories of Offences in the 40 Recommendations	Hong Kong’s Predicate Offences (illustrative)
Participation in an organised criminal group and racketeering	Conspiracy to commit offences under s.159A of the <i>Crimes Ordinance</i> Cap. 200 (CrO); membership of “unlawful societies” under s.18 of the <i>Societies Ordinance</i> Cap. 151; prohibition of “quasi-military organisations” under s.5 of the <i>Public Order Ordinance</i> Cap. 245.
Terrorism, including TF	Offences in relation to unlawful seizure of aircraft and unlawful acts against the safety of civil aviation under s.8-s.12 and s.15 of the <i>Aviation Security Ordinance</i> Cap. 494; offences in relation to hostage taking under s.3-s.4 of the <i>Internationally Protected Persons and Taking of Hostages Ordinance</i> Cap. 468; offences in relation to the unlawful seizure and unlawful acts in relation to ships and fixed platforms under s.11C-s.11I UNATMO; offences in relation to bombing of prescribed objects under s.11A-s.11B of the <i>United Nations (Anti-Terrorism Measures) Ordinance</i> Cap. 575 (UNATMO); offences in relation to financing of terrorists and supply of weapons to terrorists under s.7-s.9 UNATMO.
Trafficking in human beings and migrant smuggling	Caught via a combination of conventional criminal offences such as kidnapping and criminal intimidation, in conjunction with a range of possible immigration related offences such as: assisting passage to Hong Kong of unauthorised entrants under s.37D of the <i>Immigration Ordinance</i> Cap. 115; offence by crew of ship carrying unauthorised entrants to Hong Kong under s.37C of the <i>Immigration Ordinance</i> ; trafficking in persons to and from Hong Kong for the purpose of prostitution under s.129 CrO.
Sexual exploitation, including sexual exploitation of children	Trafficking in persons to or from Hong Kong for the purpose of prostitution under s.129 CrO; control of person for unlawful sexual intercourse or prostitution under s.130 CrO; causing or encouraging prostitution of, intercourse with, or indecent assault on girl or boy under 16 under s.135 CrO; sexual offences against children under 16 committed in other countries by a HK resident or incorporate having a place of business in HK under s.153P-s.153R CrO.
Illicit trafficking in narcotic drugs and psychotropic substances	Trafficking in dangerous drugs under s.4 of the <i>Dangerous Drugs Ordinance</i> Cap. 134; manufacture of dangerous drugs under s.6 of the <i>Dangerous Drugs Ordinance</i> ; possession of dangerous drugs under s.8 of the <i>Dangerous Drugs Ordinance</i> .
Illicit arms trafficking	Dealing in arms and ammunition without a licence under s.14 of the <i>Firearms</i>

Categories of Offences in the 40 Recommendations	Hong Kong's Predicate Offences (illustrative)
	and Ammunition Ordinance Cap. 238; giving of arms and ammunition to an unlicensed person under s.15(1) of the Firearms and Ammunition Ordinance; importing or exporting a scheduled strategic commodity (e.g. automatic weapons) without a licence under s.6A of the Import and Export Ordinance Cap. 60.
Illicit trafficking in stolen and other goods	Handling stolen goods under s.24 of the <i>Theft Ordinance</i> Cap. 210; importing or exporting goods without a licence under s.6 of the <i>Import and Export Ordinance</i> ; importing or exporting un-manifested cargo under s.18 of the <i>Import and Export Ordinance</i> .
Corruption and bribery	Bribery (of a public servant) under s.4 of the <i>Prevention of Bribery Ordinance</i> Cap. 201 (POBO); bribery (of public servants in regard to contracts) under s.5 of the <i>Prevention of Bribery Ordinance</i> ; bribery (for procuring withdrawal of tenders) under s.6 POBO; bribery (in relation to auctions) under s.7 POBO; bribery by persons having dealings with public servants under s.8 POBO; corrupt transactions with agents (private sector) under s.9 POBO; and, maintaining an incommensurate standard of living or possession of unexplained property under s.10 POBO.
Fraud	Fraud under s.16A of the <i>Theft Ordinance</i> ; conspiracy to defraud at common law.
Counterfeiting currency	Offences in relation to the counterfeiting of notes and coins under s.98-s.105 of the <i>Crimes Ordinance</i> .
Counterfeiting and piracy of products	Making or dealing with infringing articles under s.118 of the <i>Copyright Ordinance</i> Cap. 528; offences in respect of infringement of trade mark rights under s.9 of the <i>Trade Descriptions Ordinance</i> Cap. 362; importing or exporting goods bearing false trade mark under s.12 of the <i>Trade Descriptions Ordinance</i> .
Environmental crime	Failure to comply with regulations under s.37 of the <i>Merchant Shipping (Prevention of Pollution by Sewerage) Regulation</i> Cap. 413A; failure to comply with regulations under s.30 of the <i>Merchant Shipping (Prevention of Pollution by Sewerage) Regulation</i> Cap. 413K; prohibition of catching or treating whales under s.3 of the <i>Whaling Industry (Regulation) Ordinance</i> Cap. 496; carrying out a designated project without an environmental permit as required under the <i>Environmental Impact Assessment Ordinance</i> Cap. 499.
Murder, grievous bodily injury	Murder under s.2 of the <i>Offences Against the Person Ordinance</i> Cap. 212; grievous bodily harm under s.17 and s.19 of the <i>Offences Against the Person Ordinance</i> .
Kidnapping, illegal restraint and hostage-taking	False imprisonment at common law; kidnapping at common law; forcible detention of a person with intent to procure a ransom under s.42 of the <i>Offences Against the Person Ordinance</i> .
Robbery or theft	Theft under s.9 of the <i>Theft Ordinance</i> ; robbery under s.10 of the <i>Theft Ordinance</i> .
Smuggling	Offences relating to the import or export of prohibited items under s.6, s.14, s.18 and s.35 of the <i>Import and Export Ordinance</i> .
Extortion	Blackmail under s.23 of the <i>Theft Ordinance</i> ; forcible detention of a person with intent to procure a ransom under s.42 of the <i>Offences Against the Person Ordinance</i> , criminal intimidation under s.24 CrO.
Forgery	Forgery and related offences under s.71-s.76 of the CrO.
Piracy	Piratical acts under s.20-s.22 CrO.
Insider trading and market manipulation	Insider dealing under s.291 of the <i>Securities and Futures Ordinance</i> (SFO) Cap. 571; market misconduct offences under s.295-s.299 SFO, offence of market manipulation under s.299 SFO.

110. Certain offences relating to weapons of mass destruction are also predicate offences for ML under the *Weapons of Mass Destruction (Control of Provision of Services) Ordinance* Cap. 526.

111. Whilst predicate offences in Hong Kong generally cover a broad ambit of offences within each of the designated categories of offences, there are deficits with respect to environmental crimes. Hong Kong has environmental offences in a variety of ordinances in addition to those noted in the table above for protection of flora and fauna (including endangered species), to guard against pollution and for protection of the environment. However, they are all summary offences and, as such, do not constitute predicate offences for the offence of money laundering.

112. By virtue of s.25(4) OSCO, conduct amounting to the commission of a predicate offence can occur in another country. This is so when the conduct would have constituted an indictable offence if it had occurred in Hong Kong. Under this provision, it is not necessary that the conduct constituted an offence in that other country.

113. Under s.2 DTROP, drug trafficking is defined as “doing or being concerned in” a drug trafficking offence or an offence punishable under a “corresponding law”, “whether in Hong Kong or elsewhere”. Under DTROP, therefore, conduct amounting to the commission of a predicate offence can occur in another country where it violates a corresponding law of that country. It is unclear to what extent this provision encompasses acts that do not violate a corresponding law but would have constituted a drug trafficking offence if committed in Hong Kong. In such circumstances OSCO, at least, would apply as there is no prohibition on using it with respect to drug trafficking offences.

114. The ML offences under OSCO and DTROP apply both to persons who commit the predicate offence and to others, *i.e.* to both self- and third party laundering, as they provide that a person commits the ML offence if s/he knew or had reasonable grounds to believe that the property represented any person's proceeds of drug trafficking (for DTROP) or any person's proceeds of an indictable offence (for OSCO). See also *Hong Kong v LOK Kar-win & others* [1999] 4 HKC 783.

Ancillary offences

115. Pursuant to provisions of general application, a broad range of ancillary offences attaches to criminal offences in Hong Kong, including the money laundering offences. Section 159A of the *Crimes Ordinance* provides for a general statutory offence of conspiracy which attaches to any offence triable in Hong Kong. Section 159G then supplies a general offence of attempt, which attaches to any offence which, if it were completed, would be triable in Hong Kong, other than aiding, abetting, counselling or procuring the commission of an offence. Section 89 of the *Criminal Procedure Ordinance* codifies the common law offences of aiding, abetting, counselling and procuring the commission of offences by providing that “Any person who aids, abets, counsels or procures the commission by another person of any offence shall be guilty of the like offence.”

Additional elements

116. As mentioned previously, under s.25(4) OSCO, conduct occurring in another country can constitute a predicate offence for the ML offence under OSCO whether or not it amounts to offence against the laws of that country. The position is less clear under DTROP, although OSCO can apply where the alleged predicate offence relates to drug trafficking.

Recommendation 2

117. The mental element required in s.25 DTROP and OSCO is knowledge or reasonable grounds to believe that the property in question represented the proceeds of drug trafficking or of an indictable offence in general. ‘Knowledge’ is a purely subjective threshold that requires proof that the defendant actually knew that the property represented the proceeds of crime. The threshold of ‘reasonable

grounds to believe' posits a test that is in part objective and in part subjective. The prosecution must prove that there were circumstances that would indicate to a reasonable person that the property was illegally derived. The prosecution must then prove that the defendant was actually aware of those circumstances. This posits a relatively low threshold of criminal negligence.

118. The laws of Hong Kong do not discriminate between direct and indirect (or circumstantial) evidence. Accordingly, proof that a defendant actually knew *i*) that property represented the proceeds of crime, or *ii*) of circumstances that would indicate this to a reasonable person, can derive entirely from objective factual circumstances.

Liability of legal persons

119. The ML offences apply to natural and legal persons. Under s.3 ICGO, 'person' is defined as including "any public body and any body of persons, corporate or unincorporate". Section 3 also provides that this definition "shall apply notwithstanding that the word "person" occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation." Accordingly, the ML offences extend to legal persons as well as to natural persons.

120. Corporate liability falls to be determined according to common law principles enunciated in *Tesco Supermarkets Ltd v Natrass* [1971] 2 All ER 12, where it was held that a failure to exercise due diligence could be ascribed to a company only where the failure was that of a director or senior manager in actual control of the company's operations who could be identified with the controlling mind and will of the company.

121. There have been no prosecutions of legal persons in Hong Kong for ML. The evaluation team was advised that this is because, in ML cases involving legal persons to date, the legal entity either has not benefited from the ML activity (or was a victim of it) or was a shell company of no real value. Prosecutions to date have therefore focused upon individuals within the company who perpetrate the ML activity. There have been cases where, following prosecution of company officers, restraining orders have been imposed upon the assets of the companies. Hong Kong corporations convicted of offences are commonly fined (administrative fines are not available). They may also be wound-up by the Court upon petition from the Financial Secretary on the ground that this is in the public interest (s.179(1)(d) of the *Companies Ordinance* Cap.32).

122. Criminal prosecution for ML does not preclude parallel civil or administrative action, or vice versa. Regulators and prosecutors enjoy an independence of function that enables each to exercise their powers independently whilst acknowledging the relevance of action taken by one upon the exercise of discretion by the other.

Sanctions

123. The maximum penalty for the ML offences under s.25 OSCO and DTROP, is 14 years' imprisonment and a fine of HKD 5 million (USD641 000). After life imprisonment, terms of 20 years and 14 years are the highest maximum sentences available under the *Crimes Ordinance*. These penalties therefore effectively place ML in a more serious category of indictable offences by rendering it commensurate with crimes such as incest, explosives related offences and certain fraud and forgery related offences.

Statistics¹⁵ and Effectiveness

124. Between 2003 and 2007, 786 persons were prosecuted in Hong Kong for ML offences, of which 465 (over 59%) were convicted. Subject to the caveat that a prosecution mounted in a given

¹⁵ As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

year might not be concluded that year, the following table supplies a year-by-year breakdown of ML prosecutions over this period.

Table 4. Money laundering prosecutions and convictions, 2003-2007

YEAR	PROSECUTIONS		CONVICTIONS	
	PERSONS	CASES	PERSONS	CASES
2003	103	(74)	68	(41)
2004	134	(90)	46	(35)
2005	123	(82)	82	(50)
2006	116	(97)	90	(60)
2007	310	(252)	179	(143)
TOTAL	786	(595)	465	(329)

125. To date, sentences have ranged from community service orders to 10 years' imprisonment. The vast majority of cases result in a custodial sentences of less than five years' imprisonment. Below is the breakdown of sentences between 2003 and 2007.

Table 5. Money laundering sentences, 2003-2007

YEAR	NON-CUSTODIAL [#]	BELOW 2 YEARS	2-5 YEARS	OVER 5 YEARS
2003	15	25	26	2
2004	12	28	6	0
2005	29	31	22	0
2006	25	43	19	3
2007	59	101	17	2
TOTAL	140	228	90	7

[#] Includes suspended sentences

126. Hong Kong continues to prosecute a significant number of ML cases and to thereby secure a significant number of convictions. The physical and mental thresholds of the ML offences do not present undue obstacles to effective prosecution. 'Dealing' is broadly defined. The mental elements are not an impediment. Nor is there any requirement that the property in question actually be the proceeds of crime. The vast majority of offences in Hong Kong are indictable and, therefore, predicate offences. Conduct amounting to the commission of predicate offences can occur in other countries. Ancillary liability for ML also enables Police to successfully prosecute persons who transfer control of their accounts for use by third party launderers (stooges).

127. During the on-site visit, the evaluation team was provided with a more detailed breakdown of those sentences between two and five years which shows that the majority of these sentences lie in a band between two and three years. As far as discernible from various case examples supplied to the evaluation team, the starting point in cases that can (very loosely) be grouped as 'more serious' sits at four to six years imprisonment, with significant reductions subsequently and frequently made for guilty pleas and other mitigating factors. The highest sentence for ML to date was imprisonment of 10 years for ML associated with drug trafficking from which the estimated proceeds of crime were HKD 60 million. The DoJ acknowledge that the sentences for money laundering offences are generally in line with those passed in Hong Kong for "mid-tier" frauds.

128. The evaluation team was also informed of a slight but discernible upward trend in severity of sentence. The Court of Appeal's comments in the benchmark decision of *HKSAR v CHEN Chen Chu CA 433/2006 p.64-65* are relevant in this context:

“...the seriousness and prevalence of money laundering offences are such that it may be necessary for the courts to take a more robust view about them. In appropriate cases where the aggravating factors are such as those identified above and the sums involved are large, more robust sentences may well be called for than in some of the cases cited to us where relatively modest terms of imprisonment appear to have been imposed. In money laundering cases where the underlying offences are drug trafficking, human smuggling and other serious trans-national crime, sentences of 10 years’ imprisonment or above may well be justified if a defendant knowingly engages in them”.

129. ML is, purely by prosecutorial election, routinely prosecuted in the District Court, which by law may not impose sentences in excess of seven years. In one case example supplied to the evaluation team involving a serious predicate offence (theft from a major bank), two third-party launderers faced trial in the District Court for channelling through a group of companies approximately HKD 5.6 billion, of which less than 10% could be attributed to legitimate business transactions. Each received extensive remuneration amounting to multiple millions of Hong Kong dollars and was sentenced to 6.5 years’ imprisonment after full trial. This stands in contrast to a sentence of five years, following a starting point of eight years, that was imposed upon a defendant who pleaded guilty in the High Court to laundering approximately HKD 36 million (USD 4.6 million) for a 5% commission.

130. In the usual course, starting points in excess of six years can be reasonably expected only where proceedings are brought in the High Court (Court of First Instance), which can pass sentences up to 14 years: the maximum available. Prosecution of more serious cases in the Court of First Instance, rather than the District Court, would entail factual determination by jury, rather than judge alone. The evaluation team was advised by the Hong Kong Bar Association that conviction rates in the Court of First Instance are comparable to those in the District Court, including in cases of financial crime.

131. Sentences for stooge offending, which is routinely prosecuted as a deterrence, range from community service orders to 12 months’ imprisonment. Such cases commonly involve low level criminals who, for nominal remuneration, aid street crime syndicates engaged in activities such as telephone deceptions and loan-sharking.

2.1.2 Recommendations and Comments

132. Hong Kong has a money laundering offence that largely meets the requirements of Recommendations 1 and 2. The offence is well prosecuted with a satisfactory conviction rate. Sentences, however, are generally low. The Hong Kong Court of Appeal has recently established a benchmark of ten years imprisonment where the predicate offences are serious. In order to more consistently achieve sentences that reflect the seriousness of the crime, the sentencing range and the maximum available sentence of 14 years’ imprisonment – and to afford appropriate opportunity for the continued development of guideline judgments that comprehend the maximum sentencing range – Hong Kong should more consistently prosecute more serious ML cases in the High Court.

133. Predicate offences cover a range of offences from each of the designated categories of offences. However, Hong Kong should consider rendering a greater range of environmental crimes as indictable – and therefore predicate – offences.

134. Although there have been no prosecutions of legal persons, criminal liability is extended to legal persons. Corporations holding assets have also been subject to confiscation orders when their officers have been convicted of offences. The absence of any prosecutions of legal persons for ML in Hong Kong might attest to other factors bearing upon the exercise of prosecutorial discretion, Hong Kong should consider additional provisions for the imputation of criminal knowledge to legal entities. As acknowledged by some other jurisdictions, the thresholds provided at common law (as set in *Tesco Supermarkets Ltd v. Nattress* [1972] A.C. 153) are not conducive to prosecutions of corporations.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of Factors Underlying Rating
R.1	LC	<ul style="list-style-type: none"> The predicate offences do not adequately cover one of the 20 designated categories of offences, specifically; environmental crimes.
R.2	C	<ul style="list-style-type: none"> This Recommendation is fully observed.

2.2 Criminalisation of Terrorist Financing (SR II)

2.2.1 Description and Analysis

135. The *United Nations (Anti-Terrorism Measures) Ordinance* Cap. 575 (UNATMO) was enacted in 2002 as the vehicle through which Hong Kong seeks to criminalise terrorism and terrorist financing (TF) in accordance with the mandatory elements of United Nations Security Council Resolution 1373 of 2001 (S/RES/1373(2001)) and SR II, SR III and SR IV. The *United Nations (Anti-Terrorism Measures) (Amendment) Ordinance* 2004 expanded UNATMO's scope in order to implement freezes of the non-fund property of terrorists and terrorist organisations as required under S/RES/1373(2001) and SR III; the *International Convention for the Suppression of Terrorist Bombings*; and, the *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* and its related *Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf*. With the application of the *UN International Convention for the Suppression of the Financing of Terrorism (TF Convention)* to Hong Kong in May 2006, Hong Kong has relied on UNATMO and other existing ordinances to give effect to the principal obligations under that convention.

136. Not all UNATMO provisions are in force. The only provision currently in force relevant to criminalisation of TF is s.7 UNATMO, which criminalises the provision or collection of funds with knowledge or intention that they be applied toward the commission of a terrorist act. Other UNATMO provisions of critical relevance have not come into effect, notably s.8 which, if in force, would criminalise making funds and financial services available to terrorists and terrorist associates.

137. Section 3 of the *United Nations Sanctions (Afghanistan) Regulation* (UNSAAR) is the principal provision relevant to the freezing of funds or other assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee (the 1267 Committee) in accordance with S/RES/1267(1999). However, the section is also of relevance in the context of TF in that it makes it an offence for a person to "make available, directly or indirectly, any funds or other financial assets or economic resources for the benefit of a relevant person or a relevant undertaking". A 'relevant person' or 'relevant undertaking' is a person/undertaking designated by the Chief Executive in accordance with s.10 UNSAR on the basis of a listing by the 1267 Committee.

Offence of terrorist financing under UNATMO

138. Section 7 UNATMO criminalises the provision or collection of funds but does not proscribe the financing of individual terrorists or terrorist organisations. The scope of the section is impacted by the *mens rea* element, which requires knowledge or intent that the funds be "used, in whole or in part, to commit one or more terrorist acts". As there have not yet been any TF prosecutions, it remains to be seen whether the courts will interpret this as requiring proof that the defendant envisaged a particular terrorist act or acts or whether contemplation of any sort of terrorist act/s will suffice.

139. ‘Terrorist act’ is defined in s.2 UNATMO as a “use or threat of action” that is *i*) accompanied by an intention to cause or to use (further) action with a specified effect *ii*) for a specified purpose. ‘Specified effects’ comprise:

- “(i) causing serious violence against a person;
- (ii) causing serious damage to property;
- (iii) endangering another person’s life;
- (iv) creating a serious risk to the health or safety of the public or a section of the public;
- (v) seriously interfering with or seriously disrupting an electronic system; or
- (vi) seriously interfering with or seriously disrupting an essential service, facility or system, whether public or private.”

140. The ‘specified purposes’ of these actions comprise compelling the government or intimidating the public or a section of the public in order to advance a political, religious or ideological cause. Where the intended effects are specified effects under (iv) to (vi) above, the definition expressly excludes the use or threat of action in the course of any “advocacy, protest, dissent or industrial action”. The evaluation team was advised that these exclusions were included for the purposes of safeguarding the “civil right to protest, especially in the context of industrial action by certain professional groups”. Although they do not apply to acts causing either serious violence against a person, serious damage to property or acts endangering a person’s life, they remain significant exceptions in that they do extend to action/threat of action with the effect of creating a serious risk to the health or safety of the public or a section of the public, seriously interfering with or seriously disrupting an electronic system or seriously interfering with or seriously disrupting an essential service, facility or system. Extending this ‘civil protest’ exclusion beyond “industrial action” raises issues. It is not clear where the line is drawn between ‘advocacy’, ‘protest’ and ‘dissent’ and other acts intended to coerce the Government in order to advance ‘a political or ideological cause’.

141. Section 7 proscribes the provision or collection of ‘funds’. Funds is defined as “including funds mentioned in Schedule 1” of the ordinance. Schedule 1 lists a range of financial instruments from cash and gold bullion to securities, letters of credit and bills of lading. It also includes “documents evidencing an interest in funds or financial resources, and any other instrument of export financing”. Although the definition is an inclusive one and would cover the provision or collection of all types of financial assets, the section does not extend to “assets of every kind, whether tangible or intangible, movable or immovable” as stipulated in the *TF Convention*. Under s.7, the collection or provision of funds with the intention or knowledge that they be used to commit one or more terrorist acts constitutes an offence “whether or not the funds are actually so used”.

142. As noted previously with respect to the ML offences, a broad range of ancillary offences exists, including with respect to the TF offence. Section 159G of the *Crimes Ordinance* provides a general offence of attempt, which attaches to any offence which, if it were completed, would be triable in Hong Kong (other than aiding, abetting, counselling or procuring the commission of an offence). Section 159A provides the offence of conspiracy, available for any offence triable in Hong Kong. Section 89 of the *Criminal Procedure Ordinance* provides offences of aiding, abetting, counselling and procuring the commission of offences. Thus the reach of s.7 extends to the types of conduct enumerated in Article 2(5) of the *TF Convention*.

143. As with the ML offence, the TF offence is subject to a statutory defence. Under s.12(2), a person does not commit the TF offence if he discloses to an “authorised officer” his suspicions that the funds collected/provided is terrorist property, provided:

- “(a) the disclosure is made before the person does that act and the person does that act with the consent of an authorized officer; or
- (b) the disclosure is made -
 - (i) after the person does that act;

- (ii) on the person's initiative; and
- (iii) as soon as it is practicable for the person to make it.”

144. This defence parallels one of the ML statutory defences. As with the ML statutory defences, legitimate policy considerations underpin the availability of this defence. Hong Kong officials advise that they are not aware of any attempts at such manipulation.

145. The range of specified effects listed in the definition of ‘terrorist act’ (for example, “creating a serious risk to the health or safety of the public or a section of the public”) are, between them, broad enough to cover a range of factual settings that might be expected to be associated with offences created by the treaties listed in the Annex to the *TF Convention*. In this way, where the requirements of s.7 UNATMO are otherwise met, that section comprehends the financing of these offences.

Offence of terrorist financing under UNSAR

146. As noted, s.3 UNSAR offers an alternative avenue for prosecuting TF where the entity concerned is listed by the 1267 Committee and subsequently designated by Hong Kong under s.10 UNSAR. Section 3 makes it an offence for a person to “make available, directly or indirectly, any funds or other financial assets or economic resources for the benefit of a relevant person or a relevant undertaking”. Section 3 UNSAR implements the definition of funds from S/RES/1267(1999) – “funds and other financial assets or economic resources” – and as such does not cover “assets of every kind, whether tangible or intangible, movable or immovable” as stipulated in the *TF Convention*.

Terrorist financing as a predicate offence for money laundering

147. Section 7 UNATMO establishes an indictable offence of terrorist financing which is therefore a predicate offence for ML under OSCO. Section 3 UNATMO gives extra-territorial reach to the TF offence in s.7 through application of the ‘nationality principle’. The TF offence applies to “any person within the HKSAR” and to any person outside the HKSAR who is *i*) a Hong Kong permanent resident or *ii*) a body incorporated or constituted under the law of the HKSAR. Further, s.2 UNATMO provides that any reference in the definition of “terrorist act” to an action, person or property “shall include an action, person or property outside the HKSAR”. The combined effect of these provisions is that Hong Kong permanent residents and registered entities can be prosecuted wherever financing under s.7 occurs and wherever the actual/intended terrorist act occurs or will occur. In addition, non-residents can be prosecuted for TF if in Hong Kong.

148. As mentioned in Section 2.1 of this report, the laws of Hong Kong do not discriminate between direct and indirect (or circumstantial) evidence. Accordingly, knowledge or intention that funds are to be applied toward the commission of one or more terrorist acts can be inferred from objective factual circumstances.

Liability of legal persons

149. As with ML, the definition of “person” under s.7 extends to natural and legal persons by virtue of s.3 of the *Interpretation and General Clauses Ordinance*.

Possibility of parallel criminal, civil or administrative proceedings

150. Criminal prosecution for TF does not preclude parallel civil or administrative action, or vice versa. As noted, regulators and prosecutors enjoy an independence of function that enables each to exercise their powers independently whilst acknowledging the relevance of action taken by one upon the exercise of discretion by the other.

Sanctions

151. The maximum penalty under s.7 is 14 years' imprisonment and a fine. There is no statutory limit on the amount of fine.

Statistics¹⁶ and Effectiveness

152. Investigations to date have stemmed from disclosures from reporting entities (mostly from financial institutions), requests from overseas law enforcement agencies and domestic intelligence. Disclosures made by financial institutions are generally based on transactions with particular countries or "name-hits", viz. a customer/third party name match to either designated terrorist entities or entities otherwise listed as terrorist entities. Police are yet to find evidence of TF in Hong Kong or the channelling of funds via Hong Kong to terrorist entities.

153. The following table shows numbers of TF cases investigated between 2003 and 2006. The majority of these investigations derived from 'name hit' disclosures from financial institutions. None of these investigations led to persons in Hong Kong being identified as being engaged in TF activity.

Table 6. Number of terrorist financing investigations, 2003 – 2007

	2003	2004	2005	2006	2007	TOTAL
Number of TF Investigations	76	35	16	20	29	176

154. From a prosecutorial/investigative perspective there is nothing inherently problematic in the framing of s.7. The lack of any evidence of TF to date might simply attest the absence of any domestic terrorist entities. Having said that, Hong Kong authorities concede that the sheer number of transactions conducted through Hong Kong's financial sector is such that incidents of TF are possible. The police rightly note that there remains a need for ongoing vigilance.

2.2.2 Recommendations and Comments

155. Section 7 is limited to funds (albeit inclusively defined). Section 7 is supplemented by s.9, which relates to weapons. Moreover, s.7 proscribes only provision or collection that is intended to support the commission of terrorist acts; it does not extend to financing that is intended to support terrorists/terrorist organisations more generally.

156. It is recommended that Hong Kong review UNATMO with a view to expressly criminalising the provision of all assets, and not simply funds. The evaluation team also recommends that the Hong Kong authorities: *i*) broaden the scope of terrorist act to cover the intended coercion of an international organisation and *ii*) prescribe more clearly the extent of the 'civil protest' exceptions to certain classes of terrorist acts.

157. UNATMO s.8, which is not yet in force, is intended to cover the existing gap relating to financing of terrorists and entities owned or controlled by terrorists (called 'terrorist associates'). Enactment of this section would go a long way to redressing some of the coverage issues in Hong Kong's TF legislation. However, it is doubtful to what extent it would cover collection of funds. There may also be practical difficulties in prosecutions for financing of terrorist organisations as the prosecution must prove that the terrorist organisation is owned or controlled, directly or indirectly, by

¹⁶ As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

a terrorist or terrorists. Such difficulties are all the more acute given the inadmissibility in Hong Kong of communications interception product and the existence of a rule against hearsay¹⁷.

158. The evaluation team was advised that s.8 UNATMO is not yet in force because High Court rules and an administrative code of practice (that will ultimately require approval by the Legislative Council) are being promulgated. UNATMO was enacted in 2002 and development of the rules commenced back in 2004. These delays are inordinate – particularly given that such rules will partly mirror those already in place under OSCO and DTROP. It is strongly recommended that the authorities prioritise work required to give effect to s.8 and other sections of UNATMO which are still not in force and examine the initial concerns with s.8 noted in the paragraph above.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of Factors Underlying Rating
SR II	PC	<ul style="list-style-type: none"> • The TF offence does not encompass provision/collection of assets other than “funds”. • The TF offence under UNATMO does not cover provision/collection for an individual terrorist or terrorist organisation and the offence under UNSAR extends only to those individuals and entities designated by the 1267 Committee. • Terrorist acts as defined in UNATMO do not extend to intended coercion of an international organisation. • The ‘civil protest’ exemptions to certain classes of terrorist acts as defined in UNATMO are potentially of broad application.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

Confiscation under OSCO, DTROP and POBO

159. The principal confiscation provisions and the nature and scope of orders under each are:

- OSCO s.8: post-conviction penalty representing the value of benefits of ‘specified offences’.
- DTROP s.3: post-conviction penalty representing the value of benefits of ‘drug trafficking offences’.
- DTROP s.24D: civil forfeiture of ‘cash border seizures’ in excess of HKD 125 000 that represent the proceeds of, or are connected to, drug trafficking.
- POBO s.12AA: post-conviction confiscation order representing the value of unexplained pecuniary resources or property.

160. Restitution of unlawfully obtained property is also available under s.84 of the *Criminal Procedure Ordinance* (upon conviction for an indictable offence) and s.30 of the *Theft Ordinance* (in respect of stolen goods). Restitution orders may also be made by a court in respect of corruptly accepted advantages under s.12 POBO.

161. No provisions are in place for forfeiture of proceeds/instrumentalities of terrorist acts or TF.

162. The OSCO supplies a fairly comprehensive criminal forfeiture regime where the amount involved is in excess of HKD 100 000 (USD12 800) (s.8(4)). Hong Kong officials noted that this

¹⁷ This will be easier in cases where the terrorist and terrorist associates are specified under s.4 and s.5 UNATMO (not yet in force).

threshold was set because respondents are entitled to reasonable legal and living expenses and that restraint of less than HKD 100 000 is likely to result in dissipation of the restrained amount on these grounds. Although aggrieved parties can commence civil proceedings to recover amounts under the threshold, the evaluation team is concerned that these policy assumptions are not universally valid – as where, for example, an accused person has sufficient other (unrestrained) assets to fund litigation and living expenses. In such circumstances, the mandatory threshold might well preclude an appropriate exercise of prosecutorial discretion to undertake restraint and forfeiture action.

163. Although termed ‘confiscation orders’, orders under s.8 OSCO are effectively pecuniary penalty orders that attach to the convicted person rather than to specific property derived from criminal endeavour. As such, they are enforceable in the same way as fines. DTROP s.3 offers a parallel, alternative avenue for restraint and forfeiture where the predicate offence is a “drug trafficking offence”. Any orders made under s.8 OSCO or s.3 DTROP relating to property can apply to property “whether it is situated in Hong Kong or elsewhere”.

164. Confiscation under OSCO requires conviction of a ‘specified offence’ (指明的罪行), viz an offence listed in Schedule 1 or 2 of the ordinance or the offences of conspiracy, incitement, attempt, aiding/abetting/counselling/procuring commission of any of the offences listed in those schedules (s.2). In December 2007, the list of ‘specified offences’ was expanded with the enactment of the *Organized and Serious Crimes Ordinance (Amendment of Schedule 2) Order 2007*. This order adds the offences on soliciting or accepting bribes under s.4(2), s.5(2), s.6(2) and s.9(1) POBO to OSCO Schedule 2. While the range of scheduled offences is broad, it does not extend to all predicate offences for ML. Nor do the schedules extend to terrorism related offences. Section 13 of UNATMO provides for civil forfeiture of property of a ‘terrorist or terrorist associate’ that represents proceeds of a ‘terrorist act’ or that is intended to be/was used in such an act. Section 13 is not however in force.

165. The OSCO schedules of offences cover a range of crimes of violence, drug offences, dishonesty offences, sexual crimes, immigration and customs offences, intellectual property infringements, offences of bribery, gambling offences, weapons and ammunition related offences (including weapons of mass destruction and chemical weapons), money laundering and common law crimes such as murder, manslaughter, kidnapping and conspiracy to pervert the course of justice. DTROP s.3 offers an alternative avenue for restraint and confiscation following conviction for a drug trafficking offence. Schedule 1 to DTROP sets out a list of qualifying drug trafficking offences.

166. Confiscation procedures under s.8 OSCO and s.3 DTROP are identical. The sentencing court must propose the sentence and then determine whether the specified offence/drug trafficking offence has benefited the defendant by more than HKD 100 000 (USD 12 820). If so, then the court will determine the amount to be recovered and will order the defendant to pay either that amount or such proportion as it thinks fit. The amount to be recovered is stipulated to be the amount that the court has determined to be the value of the defendant’s proceeds. Section 2(6) of OSCO and s.4(1) DTROP define proceeds as constituting:

- Any payment or other rewards received at any time in connection with the commission of an offence/drug trafficking.
- Any property derived or realised, directly or indirectly from the payments or other rewards.
- Any pecuniary advantage obtained in connection with the commission of that offence/drug trafficking.

167. The value of proceeds of the offence/drug trafficking is the aggregate value of these payments or other rewards, derived property and pecuniary advantages.

168. The court may also enquire whether the defendant has benefited from organised crime/drug trafficking. ‘Organized crime’ (有組織罪行) is defined under OSCO as a Schedule 1 offence that:

- “(a) is connected with the activities of a particular triad society;
- (b) is related to the activities of 2 or more persons associated together solely or partly for the purpose of committing 2 or more acts, each of which is a Schedule 1 offence and involves substantial planning and organization; or
- (c) is committed by 2 or more persons, involves substantial planning and organization and involves-
 - (i) loss of the life of any person, or a substantial risk of such a loss;
 - (ii) serious bodily or psychological harm to any person, or a substantial risk of such harm; or
 - (iii) serious loss of liberty of any person.”

169. ‘Drug trafficking’ (販毒) is defined in s.2 DTROP as “doing or being concerned in”, whether in Hong Kong or elsewhere, any act constituting a drug trafficking offence or a corresponding offence of another country. It includes dealing, whether in Hong Kong or elsewhere, with any property that wholly or partly represents any person's proceeds of drug trafficking.

170. A positive determination that a person has benefited from ‘organized crime’ or ‘drug trafficking’ triggers a critical legal assumption that all property received by the convicted person within the preceding six years represents the benefit of organised crime/drug trafficking (s.9(2)(a)(ii) OSCO and s.4(3) DTROP). The value of all such property will therefore be considered as the amount to be recovered unless the person can demonstrate that the assumption is not correct.

171. In making any confiscation order, the court will fix a period of imprisonment (to be served consecutively to any head sentence) in default of payment. OSCO and DTROP prescribe identical maximum terms of imprisonment which vary according to the amount unpaid.

172. Confiscation orders are deemed to be an aspect of sentencing and are appealable as such. In order to effect enforcement, the Court of First Instance may appoint and empower a receiver to realise any realisable property in such manner as the Court may direct (s.17 OSCO and s.12 DTROP). Both prosecution and defence may apply to the court for variation of the order if circumstances change.

173. OSCO s.8(7A) and s.3(1) DTROP provide that confiscation orders may be concluded where a respondent has absconded or died and detail special procedures for orders to be made in these circumstances.

Restitution/confiscation under the Prevention of Bribery Ordinance

174. The *Prevention of Bribery Ordinance* (POBO) has its own pecuniary penalty provisions that are invoked to effect restitution. Orders are enforced in the same manner as a civil judgment of the court. Under s.12(1) and s.12(2) POBO, upon entering a conviction for all Part II offences (various offences of bribery, including the offence of engaging in ‘corrupt transactions with agents’) the court ‘shall’ order – as part of the ‘penalty’ – that the amount of the advantage received (or a portion thereof) be paid to ‘any public body or any person’ as the court may direct.

175. Where the conviction is one of “possession of unexplained pecuniary resources or property” under s.10(1)(b), in addition to any punishment the court may impose, the court ‘may’ also order the value of the unexplained pecuniary resources or property to be paid to the government (s.12(3)) and may ‘confiscate’ any pecuniary resources or property in the defendant’s control up to the value of the unexplained pecuniary resources or property (s.12AA).

176. Department of Justice officials advised the evaluation team that these provisions do not permit the recovery of ‘derivative proceeds’, *i.e.* property or pecuniary advantage derived from proceeds of offences against POBO except in relation to unexplained property under s.10(1)(b).

177. While not constituting civil forfeiture per se, POBO does indirectly, and in the very limited setting of a s.10(1)(b) offence, effect a reverse onus of proof in the context of forfeiture. Restitutionary orders automatically follow conviction under s.10(1)(b), which places an onus upon a defendant to establish ‘satisfactory origin’ in answer to a charge of “possessing unexplained pecuniary resources or property”. Pecuniary penalties, supported by asset forfeiture to the value of the “unexplained pecuniary resources or property”, are also available.

Confiscation of instrumentalities

178. Section 102 of the *Criminal Procedure Ordinance* (CPO) governs the disposal of property that is or comes into the possession of the Hong Kong Police or the Customs and Excise Service. As such, it would cover instrumentalities that might, for example, be seized in the course of investigation. Instrumentalities actually used in the commission of an offence are covered by s.102(1)(c), which concerns property that “has been used in the commission of an offence”. Orders available under s.102 are orders for delivery (restitution), sale, retention, destruction and forfeiture. Orders for forfeiture *cannot be made in relation* to immovable property or any aircraft, motor vehicle or ship. Such property might, however, be subject to other orders and, thereby, either returned to the owner, sold (with proceeds vested in the government) or retained by the authorities.

179. Section 103 extends the availability of these orders to ‘intended’ instrumentalities, namely to “any instruments, materials or things which there is a reason to believe are provided or prepared, or being prepared with a view to the commission of any indictable offence.”

180. Aside from these general powers, instrumentalities used or intended to be used in the commission of certain offences can be confiscated in the following circumstances:

- *Dangerous Drugs Ordinance* s.38: vessels – only *i*) where they exceed 250 gross tons *ii*) where they are carrying an “excessive amount” of drugs (*i.e.* 3 kilograms of opium or cannabis resin or half a kilogram of anything else) and *iii*) where forfeiture is necessary to secure payment of an unpaid financial penalty.
- *Dangerous Drugs Ordinance* s.56: money and other property used in or in connection with a drug offence, but not vessels over 250 tonnes, aircraft or trains.
- CrO s.78 and s.106: forged and counterfeit “instruments”, *i.e.* documents (including electronic documents), seal and die.
- CrO s.10, s.54, s.55 and s.153: seditious publications, explosive substances, and vessels used as vice establishments.
- *Gambling Ordinance*, Cap. 148 s.26: money, gambling equipment and other property, not being immovable property, used in connection with or derived from unlawful gambling or an unlawful lottery.

181. No provisions are in place for forfeiture of proceeds/instrumentalities of terrorist acts or TF. Section 13 UNATMO, which would go some way towards such forfeiture, is one of the many key provisions of this ordinance that remain inoperative.

Provisional measures

182. OSCO and DTROP permit applications for orders of provisional restraint of any ‘realisable property’. These applications may be made ex parte to a judge in chambers (s.15(4)(b) OSCO and s.10(4)(b) DTROP). Restraint orders prohibit any person from dealing with the restrained property. Knowing contravention is an indictable offence punishable by a fine of HKD 500 000 (USD 64 000) or to the value of the realisable property the subject of the restraint order concerned which has been dealt with in contravention of that order, whichever is the greater, and imprisonment for five years.

183. ‘Realisable property’ (可變現財產) is defined in both ordinances (s.12(1) OSCO and s.7(1) DTROP) as property, whether acquired through legal or illegal means, that is held by the defendant or held by a person to whom the defendant has directly or indirectly made a gift or subject to the effective control of the defendant. “Effective control” extends well beyond legal or equitable interests and includes, for example, consideration of family, domestic or business relationships between the respondent and the holder of the property.

184. Under s.14(1) OSCO and s.9(1) DTROP, restraint may be obtained where criminal proceedings have been instituted, but not yet concluded, in Hong Kong against the defendant for a specified/drug trafficking offence and the court is satisfied that there is reasonable cause to believe that the defendant has benefited from that specified/drug trafficking offence. Restraint is also available where a confiscation order has already been made but there is on foot an application for variation to the value of that order (s.14(1) OSCO and s.9(1) DTROP). Criminal proceedings are deemed to have been instituted with either the issue of an arrest warrant, arrest and bailment, the charging of a person or the laying of an indictment (s.2(15) OSCO and s.2(11) DTROP).

185. An ‘authorized officer’ (獲授權人) may seize any restrained property in order to prevent its removal from Hong Kong (s.15(9) OSCO and s.10(9) DTROP). A receiver may be appointed to take possession of and manage restrained property pending the determination of an application for confiscation (s.17 OSCO and s.12 DTROP).

186. The court has a discretion to allow legal and living expenses to be paid out of restrained property. This is an aspect of a general judicial discretion afforded under Order 117, r.5 of the Rules of the High Court. Generally the burden is on the defendant to show that he has no other assets from which to pay these expenses. Application for variation or discharge of an order may be made by any affected person (s.15(6) OSCO and s.10(6) DTROP).

187. Where realisable property constitutes a beneficial interest in land, stock/securities/units within a unit trust or trust property, restraint may be effected pursuant to s.16 OSCO or s.11 DTROP by way of ‘charging orders’. These orders have the effect of, and are enforceable as, equitable charges. As with restraint orders, knowing contravention is an indictable offence punishable by a fine of HKD 500 000 (about USD 64 000) or to the value of the realisable property the subject of the charging order concerned which has been dealt with in contravention of that order, whichever is the greater, and imprisonment for five years.

188. The POBO also permits restraint of property that is in the possession of, or under the control of, a ‘suspected person’ or a third party holder (s.14C). Contravention is only a summary offence punishable by a fine of up to either HKD 50 000 or the value of the property dealt with (whichever is greater) and one year imprisonment.

Powers to identify and trace property

189. The following court orders are available under OSCO to facilitate *i*) investigation into organised crime or *ii*) identification and tracing of proceeds of organised crime/specified offences:

- Witness orders (s.3), requiring persons to answer question, produce material or otherwise furnish relevant information (including requirements to attend at a specified time and place for this purpose).
- Production orders (s.4), requiring persons to produce or grant access to material.
- Search warrants (s.5), providing authority to search private premises.

190. Witness orders are available simply for investigations into the commission of organised crime (s.3(4)). They are available where *i*) there are reasonable grounds for suspecting that a person has material/information that is relevant to the investigation and that is not legally privileged and *ii*) an order would be in the public interest.

191. Production orders are available also in proceeds investigations (s.4(4)). In this context, they are available where there are reasonable grounds for suspecting that *i*) a person has benefited from an organised crime or specified offence, *ii*) the material/information is relevant and not legally privileged and *iii*) an order would be in the public interest. Production orders may compel a person to *i*) grant to law enforcement officers entry onto premises and *ii*) where the information is illegible, to produce the information in visible and legible form. Where application is brought by the Secretary for Justice, production orders can extend to material that is located outside Hong Kong (s.4(1)).

192. Failure to comply with a witness order or production order constitutes simply a summary offence that is punishable by a level six fine (currently HKD 100 000) and one year imprisonment (s.3(13) and s.4(13)). Knowing provision of false information pursuant to a witness order is punishable on indictment by three years' imprisonment and a fine of HKD 500 000 or by one year imprisonment and a level six fine if tried summarily (s.3(14)).

193. The privilege against self incrimination and obligations of secrecy cannot be invoked to excuse non-compliance with witness orders and production orders (s.3(11) and s.4(12)). In the case of witness orders, however, information gained can be used in criminal proceedings only for the purposes of *i*) supporting charges of providing false information or *ii*) impeaching credibility. No such restrictions on use apply to information gained pursuant to production orders.

194. Search warrants are also available for both investigations into organised crime and proceeds investigations. They are available where there are reasonable grounds to believe that a witness order or production order has not been complied with or, in various circumstances, where the absence of a warrant would prejudice the investigation (*e.g.* entry would otherwise be refused and immediate entry is required). Obstruction of a search warrant carries a penalty of a fine of HKD 250 000 (about USD 32 000) and two years' imprisonment upon indictment or, on summary conviction, to a level five fine (currently HKD 50 000) and imprisonment for six months (s.5(6)).

195. Production orders and search warrants can also be issued pursuant to s.20 and s.21 DTROP in order to facilitate investigations into "drug trafficking", which is defined to include dealing in trafficking proceeds. DTROP production orders can remain valid for three months, thus imposing ongoing obligations of disclosure (*e.g.* an ongoing obligation upon a financial institution to disclose all transactions through a specified account).

196. There is no offence of failing to comply with a DTROP production order. The evaluation team was advised that there have been no such cases of non-compliance but that breach of such an order would probably be contempt of court with an indefinite maximum sentence. Presumably, contravention of an order by outright failure to make material available would constitute contempt of court. Obstruction of a s.21 search warrant is punishable upon indictment by a fine of HKD 250 000 and two years' imprisonment. Where a s.20 order or s.21 warrant has been issued, it is also an offence to knowingly make a disclosure that is likely to 'prejudice the investigation' (s.24). This is an indictable offence punishable by three years' imprisonment.

197. General powers of investigation are also available in proceeds investigations (*e.g.* search warrants are also available under s.50(7) of the *Police Force Ordinance*).

198. In summary, the investigative powers underpinning the confiscation regime are comprehensive, although the deterrent effect of a one year imprisonment penalty for failing to comply with witness and production orders under OSCO is somewhat limited, particularly in the context of organised crime related investigations, and it would be desirable to strengthen it.

Rights of bona fide third parties

199. Under OSCO and DTROP, third party interests are protected in three ways:

- Section 15(6) and s.16(7) OSCO and s.10(6) and s.11(7) DTROP enable any person affected by a restraint or charging order to apply for a discharge or variation of that order.
- Powers to realise ‘realisable property’ can be conferred by the court only after any person with an interest in the realisable property has been given an opportunity to be heard (s.17(8) OSCO and s.12(8) DTROP).
- Any left-over proceeds of realisation can be redistributed, in such sums as the court thinks fit, to persons who held an interest in the realised property (s.18(2) OSCO and s.13(2) DTROP).

200. Under POBO, assets under the control of the defendant but held by another person cannot be confiscated without notice to that other person (s.12AA(3)).

Power to void actions

201. OSCO and DTROP provide offences for knowingly dealing in any realisable property in contravention of a restraint order (s.15(16) OSCO and s.10(16) DTROP) but do not confer powers enabling the avoidance of any legal agreements underpinning such dealings.

Additional elements

202. There is no legal provision specifically enabling the confiscation of property of organisations that are found to be primarily criminal in nature. Confiscation orders in the context of Hong Kong do not attach to property per se. Rather, they are *in personam* orders for payment of a sum equivalent to the assessed value of the proceeds of crime. Any assets under the ‘effective control’ of a convicted person stand to be realised in satisfaction of the order. It is possible that this could extend to assets of organisations that are primarily criminal in nature.

203. Scope for civil forfeiture exists under various pieces of legislation. This scope is greatly limited in terms of the circumstances, including predicate offences, that trigger forfeiture and the property that may be forfeit. For example, DTROP allows for forfeiture of ‘seized property’ (經扣押的財產). ‘Seized property’ is defined in s.24A as property seized pursuant to border interception and search powers contained in the *Dangerous Drugs Ordinance* on the basis that the property is suspected to be ‘specified property’ (指明財產). ‘Specified property’ is defined in the same section property that is *i*) either proceeds of, or has been/is intended to be, used in ‘drug trafficking’ and *ii*) listed in Schedule 4 of the ordinance. Schedule 4 lists simply money in excess of HKD 125 000. Under s.24D, any such money may be forfeited where a court is indeed satisfied (on the balance of probabilities) that it represents the proceeds of, or is sufficiently connected to, drug trafficking. Civil restraint and forfeiture under DTROP is therefore very limited.

Statistics¹⁸ and Effectiveness

204. The total assets under restraint or confiscated by Police and C&ED (other than pursuant to mutual legal assistance requests) since the enactment of DTROP in 1989 and OSCO in 1994 are detailed in the table below.

¹⁸ As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

Table 7. Restraint and confiscation orders under DTROP and OSCO, 2004-2007

	RESTRAINT ORDERS (MILLIONS)		CONFISCATION ORDERS (MILLIONS)		
	NO. OF ORDERS	AMOUNT	NO. OF ORDERS	AMOUNT CONFISCATED	COLLECTED BY GOVERNMENT
2004	6	HKD 68.82 (USD 8.82)	4	HKD 15.41 (USD 1.98)	HKD 4.51 (USD 0.58)
2005	9	HKD 163.28 (USD 20.93)	5	HKD 20.24 USD 2.59	HKD 20.44 USD 2.62)
2006	3	HKD 49.72 (USD 6.37)	7	HKD 6.38 (USD 0.82)	HKD 25.10 (USD 3.22)
2007	11	HKD 723.75 (USD 92.78)	5	HKD 20.67 (USD 2.65)	HKD 2.89 (USD 0.37)
TOTAL	29	HKD 1 005.57 (USD 128.92)	21	HKD 62.70 (USD 8.04)	HKD 52.94 (USD 6.79)

205. The value of assets seized and forfeited by Police and C&ED since the enactment of DTROP in 1989 using the civil forfeiture mechanisms for seizures at the border (s.24B and s.24D DTROP) are shown in the table below.

Table 8. Assets under seized or forfeited pursuant to s.24B, s.24C and s.24D DTROP, 1989-2007

	POLICE (HKD MILLIONS)	C&ED (HKD MILLIONS)	TOTAL (HKD MILLIONS)
Property seized under s.24B and s.24C	0 (USD 0)	0.83 M (USD 0.11)	0.83 M (USD 0.11)
Property forfeited under s.24D	1.90 (USD 0.24)	0 (USD 0)	1.90 (USD 0.24)

206. Values of assets restrained under s.14C POBO then realised pursuant to restitution orders or civil settlements are detailed below. These peaked in 2006 due to one particularly large case.

Table 9. Assets restrained under s.14C of the *Prevention of Bribery Ordinance*, 2004-2007

	2004	2005	2006	2007*	TOTAL*
Assets 'restrained' under s.14C	HKD 197.19M (USD 25.38M)	HKD 6.1M (USD 0.78M)	HKD 355.51M (USD 45.60M)	HKD 28.63M (USD 3.64M)	HKD 587.43M (USD 75.4M)
Assets subject of restitution orders, arising from s.14C restraint	0	HKD 5.3M (USD 0.65M)	HKD 140.6M (USD 18.0M)	0	HKD 145.9M (USD 18.65M)
Assets restrained and paid to the government through civil settlement	0	0	HKD 140M (USD 18.0M)	0	(HKD 140M) (USD 18M)

207. The numbers of restraint and confiscation/restitution orders made since 2004 are shown in the table below.

Table 10. Restraint and confiscation/restitution orders issued under DTROP, OSCO and POBO, 2004-2007

LEA	2004	2005	2006	2007*
POLICE AND C&ED				
Restraint Orders	6	9	3	11
Confiscation Orders	4	5	7	5
ICAC				
Restraint Orders	23	3	5	4
Restitution Orders	24	14	30	36

208. A number of factors have a bearing on restraint and confiscation. These include the availability of assets, the need to account for living and legal expenses and the availability of restitutionary remedies to victims. The evaluation team was advised that the last of these factors is of particular relevance in Hong Kong as Hong Kong authorities would not initiate restraint or confiscation proceedings in respect of proceeds (particularly proceeds of commercial crimes) where the victims are contemplating civil avenues of recovery.

209. Notwithstanding these allowances, the numbers of restraint and confiscation applications sought and granted each year under DTROP and OSCO are low. This is of some significance. The evaluation team was advised that Hong Kong increasingly plays host to transnational criminals whose enterprises are conducted off-shore – and that the jurisdiction is thereby increasingly becoming a destination for proceeds of crime. More aggressive restraint action has resulted in ten new restraint applications being filed in the period from January to November 2007. The evaluation team was advised that, as at November, some 20 to 30 files both of asset recovery and other criminal advices remained on foot. The Asset Recovery Section recently became a dedicated unit providing legal services related to asset recovery. In addition, an internal case tracking system capable of tracing cases beyond interlocutory phases and through to trial and appellate phases has been implemented. In terms of restraint proceedings instituted pursuant to legal assistance requests from other jurisdictions, the evaluation team was advised that, at the time of the on-site visit, 15 such cases were on foot.

2.3.2 Recommendations and Comments

210. The availability of restraint and forfeiture under OSCO is however limited by the threshold of HKD 100 000. While the confiscation provisions under OSCO are available for a broad range of ‘specified offences’, the set of specified offences does not extend to all predicate offences for ML. In addition, neither s.102 nor s.103 CPO affords powers enabling the confiscation of instrumentalities that do not come into the physical possession of a court, the Hong Kong Police or the Customs and Excise Department. It is recommended that these limitations to the confiscation system be rectified.

211. The evaluation team further recommends that s.13 UNATMO be brought into effect as soon as possible. This will provide for forfeiture of proceeds/instrumentalities of terrorist acts or TF. The enhanced focus on confiscation that began in 2007 should continue so as to increase the numbers of restraint and confiscation applications sought and granted and to ensure that Hong Kong administers an effective regime for confiscation of the proceeds of ML and TF.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of Factors Underlying Rating
R.3	PC	<ul style="list-style-type: none"> • OSCO restraint and forfeiture is limited to cases where benefits exceed HKD 100 000. • Confiscation powers under OSCO are not available for all predicate offences. • No mechanisms exist for confiscation of the proceeds of TF. • Powers to confiscate instrumentalities do not extend to property that does not come into the possession of a court or police or customs agencies. • Effectiveness: Given the risk of money being laundered in Hong Kong (including the proceeds of foreign predicate offences), the number of restraint and confiscation applications made each year are low.

2.4 Freezing of funds used for terrorist financing (SR III)

2.4.1 Description and Analysis

212. Section 3 of the *United Nations Sanctions (Afghanistan) Regulation (UNSAR)* is the principal provision relevant to the freezing of funds or other assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee (the 1267 Committee) in accordance with S/RES/1267(1999). Section 3 makes it an offence for a person to “make available, directly or indirectly, any funds or other financial assets or economic resources for the benefit of a relevant person or a relevant undertaking”. A ‘relevant person’ or ‘relevant undertaking’ is a person/undertaking designated by the Chief Executive in accordance with s.10 UNSAR on the basis of a listing by the 1267 Committee.

213. Section 6 UNATMO is also of potential application to S/RES/1267(1999) and S/RES/1373(2001). However, s.6 is not yet in force.

S/RES/1267(1999)

214. Paragraph 4(b) of S/RES/1267(1999) requires States to *i)* freeze assets (funds and other financial resources) of the Taliban or any entity owned or controlled by the Taliban and *ii)* ensure that neither these nor other assets are made available for the benefit of these entities. The obligation is intended to both deny access to existing assets (*i.e.* to effect a freeze) and deprive access to new ones (*i.e.* to prevent additional financing/ resourcing). Paragraph 2(a) of S/RES/1390(2002) reiterates these separate limbs of the obligation. S/RES/1373(2001) separates these aspects into completely separate paragraphs (1(c) and 1(d)).

215. UNSAR expressly addresses the second of these limbs. It does not effect a freeze *per se*. Section 3 of UNSAR prohibits a person, without the written permission of the Chief Executive, from ‘making available’, ‘directly or indirectly’, any funds or other financial assets or economic resources ‘for the benefit of’ Usama Bin Laden or any member or associate of the Taliban or Al-Qaida as designated by the Chief Executive. It could be argued that the notion of ‘making available’ is broad enough to cover, for example, dispositions of property ‘owned’ by a designated entity but under the control (in the possession) of a third party. On this basis, S/RES/1267(1999) could prohibit a bank from releasing funds from an account operated by a designated entity. Where the asset is already under the direct control (in the possession) of the designated entity, s.3 is of practical relevance in that it limits the scope of ‘dealings’ available to the entity. For example, third parties might be precluded from entering into sale or purchase arrangements with the entity as, by doing so, they might be ‘making available’ (in the exchange) ‘funds or other financial assets or economic resources’. The purchase of services by a designated entity may not however fall within such an interpretation.

216. Less clear is whether the concept of ‘making available’ extends to transactions that effect no change on the accessibility to the designated entity of the asset in question. This might occur where one form of third party possession is simply changed to another form of third party possession. An example of such a transaction would be where funds are simply transferred by a financial institution from one account of a designated entity to another. Notwithstanding the fact that, in such circumstances, the funds are not released ‘directly’ to the designated entity, it is likely that a court would view them as having been ‘made available’ for the purpose of effecting the transfer. Such an interpretation would be not only sensitive to modern commercial realities but also supported by the fact that s.3 covers dispositions that ‘indirectly’ make assets available.

217. The wording of s.3 UNSAR follows that used in the financial sanction provision in S/RES/1333(2000) (and S/RES/1390(2002)). Section 3 requires proof that the defendant has a level of knowledge that the funds or other financial assets or economic resources are ‘for the benefit of’ a designated entity. Both S/RES/1267(1999) and S/RES/1373(2001) are framed in terms that proscribe dispositions that ‘benefit’ terrorist entities.

218. Section 3 does not cover assets per se but covers ‘funds and other financial assets or economic resources’. The definition of ‘funds’ is identical to that under UNATMO, *i.e.* an inclusive definition that covers a range of financial instruments from cash and gold bullion to securities, letters of credit and bills of lading, as well as ‘documents evidencing an interest in funds or financial resources, and any other instrument of export financing’. This scope accords with S/RES/1267 (1999) and S/RES/1373(2001).

S/RES/1373(2001)

219. The most significant deficit of Hong Kong’s counter terrorism freezing regime is that it does not implement the freezing obligations imposed by S/RES/1373(2001). Although s.6 UNATMO is intended to fill this gap, it is not in force.

Freezing mechanisms of other jurisdictions

220. For the same reasons, Hong Kong has no mechanism to give effect to freezing actions of other jurisdictions. Sections 5 and 6 UNATMO have been enacted to fill this gap but neither are currently in force¹⁹.

Jointly held property and derivative property

221. Since s.5 and s.6 UNATMO are not currently in force, Hong Kong currently has no freezing mechanisms. In the context of 1267 Committee listees, s.3 UNSAR does not specify the types of “funds or other financial assets or economic resources” that it applies to. It applies so long as the funds or other financial assets or economic resources can be shown to be ‘for the benefit of’ the entity. There are thus no provisions dealing with funds or assets wholly or jointly owned or controlled by designated entities. Similarly, there are no provisions which deal with funds or other assets derived or generated from funds or other assets under the control of designated entities.

¹⁹ Once in force, s.6 would confer the Secretary for Security administrative power to freeze suspected terrorist property for a period of up to two years, during which government authorities may apply to the court for an order to forfeit the property. This administrative freezing mechanism will enable the Secretary to take freezing action upon receiving intelligence of suspected terrorist property in Hong Kong. Section 5 would provide an additional mechanism whereby the Chief Executive can apply to the court for a person/entity/property other than one designated by a Security Council or UN Convention committee to be specified as terrorist/terrorist associate/terrorist property. Specification under s.5 is not a pre-requisite for exercising the freezing powers under s.6 but creates a statutory presumption in subsequent legal proceedings.

Communication with and guidance for the financial sector

222. The power to designate persons under UNSAR has been delegated by the Chief Executive to the Secretary for Commerce and Economic Development. The Commerce and Economic Development Bureau (CEDB) is thereby responsible for overseeing the implementation of UNSCRs in Hong Kong. The CEDB monitors the 1267 Committee consolidated list and co-ordinates designation and gazettal without notice to the designated persons/entities. Notification to the financial sector occurs via circulars issued by the regulatory authorities²⁰ *i.e.* the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC) and the Office of the Commissioner of Insurance (OCI). In addition, the JFIU advises remittance agents and money changers of amendments to the list of designated persons/entities. These amendments are also highlighted on the JFIU website.

223. Industry feedback to the evaluation team disclosed no problems with these arrangements. Many financial institutions also have access to third party databases. There also appeared to be a clear understanding within the financial sector of the ramifications of a 'name-hit': in such situations, the financial institution will make a disclosure of the property to the JFIU. Such disclosures are mandated under s.12, which requires the reporting of any knowledge or suspicions that property may be terrorist property. Pending investigation, JFIU will likely request the financial institution not to deal with the property. This would occur via the use of a 'no-consent' letter. Although 'no-consent' letters have no statutory basis, the evaluation team was advised that they trigger financial institution powers under customer contracts to suspend services for law enforcement related purposes.

224. As s.3 UNSAR does not effect a freeze, no guidance has been provided to financial institutions and others which may be holding targeted funds or other assets. Currently, the circulars issued by the three regulatory authorities advise institutions to notify the JFIU of any transactions or relationships with designated persons or entities. Hong Kong officials advised the evaluation team that guidance in relation to freezing obligations will be provided by regulators and relevant authorities after s.6 of UNATMO comes into force.

De-listing, unfreezing, access to frozen funds and challenges to freezing orders

225. Hong Kong authorities have advised that 'name-hit' disclosures under s.12 often generate false positives and that, in such circumstances, the 'no-consent' letter will be retracted, thereby enabling continued service to the customer. When an entity is de-listed by the 1267 Committee, a revised list will be published pursuant to s.10 UNSAR²¹. In theory, judicial review is also available to a person wrongfully designated by the Chief Executive pursuant to UNSAR. There is not however a mechanism for persons to challenge actions taken by institutions implementing freezing obligations, other than commencing civil action against the institution.

226. Section 3 of UNSAR provides that the Chief Executive may provide permission in writing to persons allowing them to make funds available to Usama bin Laden, a member of Al-Qaida, a member of the Taliban or an individual associated with these entities, in accordance with United Nations Security Council Resolution 1390. Section 7 provides that permission must be granted in

²⁰ <http://www.info.gov.hk/hkma/eng/guide/index.htm>,
<http://www.sfc.hk/sfcRegulatoryHandbook/EN/sfcRegulatoryHandbookTBServlet?DEPT=ISD&TYPE=CIRCULAR&SHOWCT=1>,
<http://www.oci.gov.hk/framework/index04.html>.

²¹ Such a mechanism will be available with respect to freezes effected under s.6 UNATMO, once that provision comes into force. Section 17(4) UNATMO will, when it comes into force, allow a person affected by a freezing notice to apply for revocation or variation of the notice.

accordance with a resolution of the United Nations Security Council. The Chief Executive is yet to entertain an application for ‘permission’²².

Freezing, seizing and confiscation in other circumstances

227. Section 13 UNATMO will provide for forfeiture of proceeds/instrumentalities of terrorist acts or TF, but is not yet in force.

Protection of bona fide third parties

228. As UNSAR is designed to implement the freezing of funds or other assets of persons designated by the 1267 Committee in accordance with S/RES/1267(1999), it contains no mechanism for challenges to designations or consequent freezing action²³. Judicial review is however available to a person wrongfully designated by the Chief Executive pursuant to UNSAR.

Monitoring compliance

229. UNATMO contains a number of provisions to ensure due compliance with obligations imposed under the law, subject to criminal penalty in case of default. Under s.12 UNATMO, where a person knows or suspects that any property is terrorist property, he is required to disclose the relevant information to an authorised officer. A person who fails to do so commits an offence and the maximum penalty upon conviction is seven years’ imprisonment with an unlimited fine.

Additional elements

230. The Hong Kong government maintains close contact with consulates and exchanges information with international counterparts to ensure freezing of terrorist funds and assets in accordance with UN resolutions. The Police also engage overseas counterparts, exchanging information on terrorist activities and TF. To date, the Police have not received any intelligence to indicate local TF activities in Hong Kong.

Statistics²⁴ and Effectiveness

231. To date, no terrorist property has been frozen under UNSAR. Hong Kong has not detected any connections locally with terrorists, terrorist groups or acts of terrorism. Hong Kong has no known domestic terrorist groups and there is no known terrorist infrastructure or support base in Hong Kong. Still there appears to be a focus within the Police on cultivation of intelligence and active engagement in TF investigations.

2.4.2 Recommendations and Comments

232. Without implementing a freezing regime per se, via s.3 UNSAR Hong Kong has largely implemented the obligations under S/RES/1267(1999) by restricting the availability of funds and other financial resources to relevant entities. In order to fully implement S/RES/1267(1999), the evaluation team recommends that Hong Kong implement an express provision to freeze assets (funds and other economic resources) of relevant entities.

²² The Secretary for Security will also be afforded broad discretion to grant a licence to deal with property frozen under s.6 UNATMO, when that provision comes into operation. Access will be able to be granted to enable payment of reasonable living and legal expenses and to meet obligations under the *Employment Ordinance* (s.15(1)(b) UNATMO).

²³ Cf s.17(4) UNATMO (supra). Section 18 UNATMO will also afford avenues for compensation via the courts in cases of wrongful restraint or freezing action.

²⁴ As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

233. Hong Kong has not implemented the freezing obligations imposed by S/RES/1373(2001). Section 6 UNATMO is intended to implement S/RES/1373(2001) but this provision is not yet in force. Although, s.3 UNSAR might cover all those entities the Government currently cares to list, reliance upon that provision would not constitute full compliance were there to be a change in circumstance. Nor does it enable Hong Kong to give effect to freezing actions of other jurisdictions. The Government has recognised this via the enactment of s.6 UNATMO. The evaluation team recommends that this and other relevant provisions of UNATMO designed to implement S/RES/1373(2001) (such as s.5) be promptly brought into effect.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of Factors Underlying Rating
SR III	PC	<ul style="list-style-type: none"> • Obligations under S/RES/1267(1999) with respect to assets under the direct control of designated entities have not been implemented. • The freezing requirements of S/RES/1373(2001) have not been implemented. • Hong Kong does not have a system for examining and giving effect to actions initiated under freezing mechanisms of other jurisdictions. • There are no provisions concerning jointly held property or property derived from funds or assets owned or controlled by designated entities. • Guidance is not provided to institutions and other natural or legal persons concerning obligations under freezing mechanisms. • There are no mechanisms enabling challenges to freezing actions or enabling access to frozen funds or assets. • There are no provisions with respect to confiscation of funds or other assets of designated entities.

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and Analysis

Independent national centre for receiving, analysing and disseminating STRs

234. Hong Kong has established the Joint Financial Intelligence Unit (JFIU) as its centre for receiving, analysing and disseminating information concerning suspected ML or TF. The JFIU is staffed primarily by Police, but also by Customs & Excise Department (C&ED) officers, and is the sole unit in Hong Kong which receives suspicious transaction reports (STRs) direct from reporting bodies and persons. It was established following the introduction of DTROP in 1989. The JFIU is a law enforcement FIU and has the full range of investigative powers granted to the Hong Kong Police and the C&ED.

235. Under sections 25A OSCO and DTROP and s.12 UNATMO, there is a legal obligation on any person in Hong Kong to submit STRs to an “authorised officer” (獲授權人):

- (a) Any police officer.
- (b) Any member of the C&ED.
- (c) Any other person authorised in writing by the Secretary for Justice.
- (d) A member of the Immigration Service (UNATMO only).
- (e) An officer of the Independent Commission Against Corruption (ICAC) (UNATMO only).

236. In practice, the Secretary for Justice, Hong Kong Police, C&ED, ICAC and Immigration Service have agreed that all such reports should be submitted to the JFIU. A person must disclose such knowledge or suspicion, together with any matter on which this knowledge or suspicion is based to an authorised officer as soon as it is reasonably practicable to do so, failing which he commits an offence which carries a maximum penalty of three months' imprisonment and a fine of HKD 50 000 (USD 6 410). No other forms of reporting (*e.g.* large cash transactions or wire transfers) are required.

237. In addition to its core functions, the JFIU has a mandate to register remittance agents and money changers (RAMCs). This mandate is presently being reviewed by the government to determine which government agency will assume the responsibility for registration and also supervision of RAMCs²⁵.

238. The organisation chart of the JFIU can be found in Annex 5 to this report. The JFIU is under the command of a Superintendent of Police and comprises:

- A 12 person team responsible for the administration of the Suspicious Transaction Report and Management System (STREAMS), including vetting and data refinement. This team includes one C&ED Inspector and a Police Inspector who manage distinct parts of the work flow.
- Three intelligence development teams of four persons each who analyse STRs and produce intelligence product for dissemination to other investigative units.
- A support team of three persons responsible for domestic and international requests for intelligence and information, policy matters, maintaining the RAMC register, and training.

Analysis of STRs

239. The JFIU receives approximately 14 000 STRs per year. Prior to 2006, reports were primarily received in hard copy and there was limited technology to assist in the analysis process. In 2006, funding was secured and the STREAMS system was created. STREAMS was designed to provide: a secure, encrypted system for the electronic receipt of STRs; electronic analytical tools for initial analysis of the STRs; and, a database for storage of information and intelligence contained in and developed from the STRs. Since 2006, all 58 168 STRs received prior to its implementation have been entered into STREAMS. As at 31 October 2007, the database contains 113 789 STRs. Approximately 70-75% of the STRs received by the JFIU are submitted through the STREAMS system, the remainder are input into STREAMS upon receipt. The JFIU anticipates that this percentage will increase over the next few years as a result of outreach efforts.

240. The JFIU utilises a three-tiered approach to STR analysis. The first tier commences upon the receipt of an STR. STREAMS automatically allocates a rating to each STR in accordance with parameters preset by the STR Review Committee (chaired by the Superintendent in charge of the Hong Kong Police Financial Investigations Division, who is the head of the FIU). These parameters for rating include: key words; persons of interest to the FIU; names on the UN terrorist list; subjects of investigation by the JFIU or Hong Kong Police; and, matches to law enforcement databases. The initial rating dictates how the analytical process will proceed from that point forward. STRs which receive a rating of 50 or more (out of a possible 100) are designated 'High Risk', and the remaining are designated 'Low Risk'. Low risk STRs are generally not further analysed but remain in the database and could surface in subsequent investigations. Where an STR is rated as low risk, the JFIU contacts the reporting entity to advise them of this determination. In order to have accurate scoring, the STR Review Committee periodically reviews the rating parameters.

241. Second tier analysis commences when an STR is rated as high risk. These STRs are assigned to an analyst and a more focused approach is taken to determine whether the STR is in fact high risk.

²⁵ In April 2008 (outside of the period of time considered in this report) a senior multi-agency committee agreed that the C&ED will in the near future assume the role of regulator for the RAMC sector.

The information in the STR and any related STRs are subjected to rigorous scrutiny and research, including examination of open source and other databases at the JFIU disposal (outlined below under Access to Information). If the high risk rating is confirmed, the results of the analysis are forwarded to the FIU's Chief Inspector (the CIP).

242. The reporting entity may be contacted at this point and advised that the STR has been rated as high risk. Additionally, the JFIU may inform the reporting entity that it consents to the transaction. This consent ensures the protection of the reporting entity from any liability for conducting the transaction. Conversely, the JFIU may advise the reporting entity that it does not consent to the transaction. If the reporting entity were to conduct the transaction in question after a 'no consent' advice is received, dealing with the property could amount to money laundering. Once the disclosing party considers that dealing with the property would be a criminal offence, he or she cannot be compelled to conduct an illegal act and cannot be held liable in any way for refusing to deal with the subject of the STR. Where 'no consent' advice is provided to a reporting entity, the issue of consent is kept under active review. Should circumstances change, consent would be immediately issued. Ultimately, an investigation involving no consent will result in either an application for a restraint order or subsequent granting of consent.

243. In practice, as STRs must be reported to the JFIU as soon as practicable, the majority of reports are post-transaction and a 'no consent' advice would not stop the transaction in question. In addition, the majority of STRs relate to account activity rather than to specific transactions, and 'no consent' orders in these cases would relate to activity on an account rather than to a single transaction.

244. Third tier analysis occurs where the Chief Inspector considers the matter should be pursued. At that point, further analysis is conducted to support the dissemination. In practice, the Chief Inspector makes a recommendation for dissemination to the head of the FIU and the final decision on dissemination is made by the head of the FIU, which is in accordance with Hong Kong Police requirements that only executive level officers may make such decisions.

245. In addition, the JFIU analysts also conduct strategic analysis. There is increasing appetite for sector-specific typologies and indicators from all reporting sectors, regulators and associations and the JFIU strives to fulfil this appetite where possible.

246. Overall, the analytical process used by the JFIU is effective and timely. It also provides for the JFIU to seek additional information from reporting entities should it be required. There is presently no backlog in processing STRs, however the current staffing level of the JFIU may not be sufficient to accommodate any increase in workload.

Guidance for reporting entities

247. The JFIU provides guidelines on Hong Kong's AML/CFT laws on its website²⁶. These guidelines set out basic information on the identification of suspicious transactions, the required format for the filing of STRs and content of an STR and how an STR can be made to JFIU. A reporting template is also available on the website. The JFIU accepts reports by mail, email, fax, or telephone in urgent cases. On 19 November 2006, the JFIU launched a web-based electronic reporting system, STREAMS, which allows registered reporting institutions to make electronic reports. The system provides for more effective receipt and analysis of reports, automated acknowledgment, and electronic feedback. By 30 June 2007, all major financial institutions in Hong Kong had subscribed to STREAMS. Upon subscribing to the STREAMS system, subscribers are provided face-to-face system training and an electronic version of the user manual. Thereafter, any queries on use of STREAMS may be addressed to the JFIU by telephone or email.

²⁶ www.jfiu.gov.hk.

248. The JFIU, jointly with the Security Bureau's Narcotics Division (ND), regularly organises training seminars on ML and TF for reporting entities. Suspicious transaction reporting is the core topic of these seminars. Participants are kept abreast of any new practices and procedures concerning suspicious transaction reporting. The ND and the JFIU have also produced an *AML Training Kit* (comprising an interactive self-learning CD-ROM and a booklet) for RAMCs, money lenders, estate agents, precious stones dealers and precious metals dealers. One section of the kit deals with suspicious transaction reporting, means of reporting and information required in STRs. Copies of the training kits have been distributed to the financial sector, RAMCs and DNFBPs through regulators and trade associations. Hotline numbers have also been provided to reporting entities, regulators and associations, allowing for immediate contact with the JFIU whenever questions rise with respect to reporting or other matters. Throughout interviews during the onsite visit, it was evident that the JFIU is well known and respected by all reporting sectors, regulators and associations in Hong Kong and that its participation in outreach, training and provision of information sessions appeared to be ubiquitous, particularly in light of the size of the JFIU.

249. In consultation with the JFIU and ND, the HKMA, SFC, OCI, Hong Kong Institute of Certified Public Accountants, Estate Agents Authority, and the Hong Kong Law Society have also issued guidelines on STR reporting to sectors under their respective purviews. A number of individual reporting entities also advised that they have developed entity or industry association guidelines in consultation with the JFIU. Inasmuch as the extent of outreach has been extensive, a number of entities and regulators indicated a desire for additional information in relation to industry specific indicators and typologies to assist them in reporting and for educational or training initiatives.

Access to information

250. The JFIU experiences no difficulties in obtaining information from other government agencies. It has direct access to Police and C&ED databases. All STRs received are automatically screened against Police and C&ED intelligence and criminal records databases via the STREAMS. Additionally, the JFIU has direct access to the databases maintained by the: Transport Department (vehicle and driver licensing); Companies Registry (limited liability corporation records); and, Inland Revenue Department (sole proprietorships, partnership records, lists of charitable institutions).

251. The JFIU can request checks of the databases maintained by the following agencies/departments. It is not necessary to get a court order for information from:

- ICAC (intelligence sharing on ML activity).
- Immigration Department (registration of persons/Hong Kong identity cards and travel documents; marriage, births and deaths register; travel movement records).
- SFC (Registered dealers and brokers).
- OCI (Insurers and insurance brokers).
- The Insurance Agents Registration Board (registered appointed insurance agents).
- The Hong Kong Confederation of Insurance Brokers and Professional Insurance Brokers Association (authorised insurance brokers).
- HKMA (Financial institution registration).
- Housing Authority (Public tenancy information).

252. Where there is regular liaison with an organisation such as ICAC, SFC or the HKMA, there are established liaison points and protocols for information requests. All other information requests use established protocols between the Police and the relevant government departments.

253. As law enforcement officers, JFIU personnel may obtain information retained by private entities by means of production orders and search warrants issued by the courts.

Obtaining information from reporting entities

254. Sections 25A DTROP and OSCO and s.12 UNATMO require that when making a report, a person shall “disclose that knowledge or suspicion, together with any matter on which that knowledge or suspicion is based to an authorised officer”. If an STR contains insufficient data, the JFIU contacts the reporting party directly to obtain any further information necessary to assess the suspicion surrounding the report. Where necessary the reporting entity may then file an additional report. In addition, the JFIU may use its police powers to request information from reporting entities that have not submitted a report on a particular person or entity. In essence, they may query the reporting entity for information in relation to any person of interest or other type of information required.

Dissemination

255. Sections 25A(9) DTROP and OSCO and s.12(6) UNATMO allow an ‘authorised officer’ (*i.e.* members of JFIU) to disseminate reports to the Police, C&ED, ICAC, Immigration Department, the Department of Justice or an appropriate overseas authority to combat crime. Sections 25A(10) DTROP and OSCO and s.12(7) UNATMO preserve any other right to disclose information that may exist in addition to the above provisions.

256. Risk-rating decisions in relation to risk ratings, which cases should be pursued, and which cases should be disseminated are effectively made by the JFIU Chief Inspector (in effect the deputy head of the JFIU). The Chief Inspector makes dissemination recommendations to the head of the JFIU. Hong Kong Police procedures require that final decisions on dissemination be made by an executive level officer, in this case by the Superintendent in charge of the JFIU. The Chief Inspector’s recommendation is in most cases accepted by the head of the JFIU. Variations to the proposed course of action only occur in circumstances where the head of the JFIU, by virtue of his position and rank, is in possession of additional information in relation to the subjects of the disclosure.

257. The average time frame from receipt of an STR, analysis and eventual disclosure is less than 7 days for non-urgent cases. Urgent cases are referred within 24 hours and often within a few hours. There is no threshold to be met prior to making a disclosure, as this is a dynamic decision made on a case-by-case basis. The majority of disclosures made to date have been considered important due to: links to other STR information; analysis strongly indicating ML activity by the subject(s) of the report; or, the presence of classic ML methodologies or indicators in the activity in question.

Table 11. Referrals to other law enforcement agencies, 2004-2007

	2004	2005	2006	2007
Police	701	929	1421	2 187
C&ED	495	312	202	193
ICAC	33	18	31	34
Immigration Department	0	1	3	1

Independence and autonomy

258. The JFIU is staffed by police officers, one Customs and Excise officer and civilian staff. It is a unit within the Hong Kong Police and subject to the rules and regulations that govern the police, however it is treated as a separate unit and acts independently from other police units in order to preserve its autonomy and independence as an FIU.

259. The head of the JFIU is also the officer in charge of the Narcotics Bureau's Financial Investigations Division (FID). There are a number of advantages to having an executive level officer in charge of both units:

- This structure provides for fluid resourcing between the two units. FID resources are often tasked to assist the JFIU in conducting information sessions, outreach and presentations. The amount of outreach conducted would not be possible without this co-operation.
- There is a very close working arrangement between the JFIU and FID, particularly with respect to sharing of information.
- It offers some assurance that each case disclosed by the JFIU will be assigned a higher priority for investigation than might be the case if the JFIU and FID were separately managed.
- The co-ordination of international requests for assistance is strong as the head of the FIU is aware of any requests made to both the FID and the JFIU in relation to the same matter. Having the head of the JFIU in charge of both units and responsible for international requests made to both units eliminates any potential confusion.

260. The JFIU is housed in a separate, secure area of the FID within the Police Headquarters complex. For all intents and purposes, the JFIU is considered a separate and distinct unit. As the JFIU falls under the Hong Kong Police, it does not have an independent or devolved budget. Day-to-day operating costs are met from the budgets of Police and C&ED. As such, the JFIU's financing is stable and the unit has no difficulty in obtaining additional resources if required, as was the case for the development costs for STREAMS. Under the Government's *Financial Circular No. 4/94*, the Commissioner of Police has the authority to redeploy non-directorate grade posts for a period not exceeding 12 months on each occasion. This flexibility in resourcing allows for the immediate and rapid expansion of the unit to cope with any unexpected resource demands, should it be required. Redeployment of resources to assist the JFIU has occurred in the past.

Protection of information

261. Since it was implemented in 2006, all information received by the JFIU is retained on the STREAMS database. STREAMS was designed to provide a secure encrypted system for the receipt of electronic STRs; an efficient programme for initial analysis of the STRs; and, a database for storage of information and intelligence contained in and developed from the STRs. STREAMS is a stand-alone database subject to physical and security measures in accordance with the Government's information security regulations, baseline IT security policy, interoperability framework and the Police's internal information security policies and guidelines.

262. Access to and use of data is password protected and may only be accessed from secure designated terminals within the Police Headquarters complex. Information received is handled securely in accordance with the prevailing Standing Orders and IT Security Policy and Guidelines. Information is stored in a closed network system that complies with the government's security regulations on information systems. Only authorised officers, who are subject to stringent data access control and audit checks, can access stored information. Unauthorised access or disclosure of such information amounts to criminal offences under the laws of Hong Kong.

Public reports

263. Each quarter the JFIU circulates the *Quarterly Report on Suspicious Transaction Reports* to regulators, professional institutes and other reporting entities. This report contains a breakdown of STR-related statistics and provides an update as to the current and emerging trends and typologies. The report is also published in the secure area of the JFIU website which can be accessed by financial institutions, DNFBPs and other reporting entities that have obtained a STREAMS account or

password. The JFIU is not required to publish an individual Annual Report as it is a unit within the Hong Kong Police, and is mentioned in the Hong Kong Police Annual Report.

264. During the on-site visit many entities commented on the value of the information received from the JFIU. Many reporting entity sectors, associations and regulators expressed an appetite for more sector-specific indicators and typologies for their sectors to assist them in preparing guidelines and other training material for their membership or those that they regulate.

The JFIU and the Egmont Group of FIUs

265. The JFIU has been a member of Egmont Group of financial intelligence units since 1996 and the head of JFIU attends all annual plenary meetings of the Egmont Group. The Egmont *Statement of Purpose* and its *Principles for Information Exchange between FIUs* in broad terms, requires, that international co-operation between FIUs should be encouraged and based upon a foundation of mutual trust. Reviews of the various ordinances, policies and statistics, interviews with the JFIU and partners and discussions with foreign authorities indicate that the JFIU appears to adhere to the Egmont Group's *Statement of Purpose* and its *Principles for Information Exchange Between Financial Intelligence Units for Money Laundering Cases*. There is nothing in Hong Kong's laws which inhibits the exchange of information. The JFIU's exchanges of information may occur spontaneously as well as on request. The JFIU seeks information from other domestic authorities to assist requests received. In addition, it has closely observed procedures which ensure that information is kept confidential and is only used in ways permitted by the FIU from which it was received.

266. Sections 25A(9) OSCO and DTROP and s.12(6) UNATMO allow the JFIU to exchange information with other FIUs and overseas law enforcement agencies without the need for any formal reciprocal arrangements. The JFIU is therefore not required to enter into memoranda of understanding (MOU) before it shares information. However, when requested by a strategic partner FIU, the JFIU will enter into an MOU. The JFIU has signed five MOUs, with the FIUs of Australia, Canada, Japan, Republic of Korea and Singapore.

Table 12. Number of international requests for assistance received and sent by JFIU

	REQUEST TO JFIU		REQUESTS FROM JFIU	
	GRANTED	REFUSED	GRANTED	REFUSED
2003	139	11	195	1
2004	245	8	145	2
2005	218	9	86	3
2006	160	12	59	1
2007	234	3	139	1
TOTAL	996	43	624	8

267. Where an incoming request contains insufficient information to satisfy the JFIU as to the nature of the investigation or enquiry, the requesting jurisdiction will be requested to provide further information. If such information is not forthcoming, the request will be refused. The main reason for refusal of the JFIU's requests relates to administrative/independent FIUs in jurisdictions where an operational MOU must be in place before intelligence can be exchanged. Under DTROP, OSCO and UNATMO, the JFIU is not fettered in this respect.

Resources (FIU)²⁷

²⁷ As related to R.30; see s.7.1 for the compliance rating for this Recommendation.

268. The JFIU presently comprises 29 persons. In 2004 the JFIU's staffing was substantially expanded from 10 to 22 persons, with the addition of one Chief Inspector, three Senior Inspectors, three Sergeants and five Constables and an associated annual budget increase of HKD 6.5 million (USD 840 000). In 2005 the unit was further expanded with the redeployment of an additional Senior Inspector and six Constables, bringing the JFIU to its current staffing, shown below.

Table 13. JFIU staffing profile

TOTAL STRENGTH	SUPERINTENDENT (ALSO HEADS THE FID)	CHIEF INSPECTOR	SENIOR INSPECTOR/INSPECTOR	POLICE OFFICERS	CIVILIANS
29*	1	1	6	15	6

* This includes one Inspector and two civilians seconded from C&ED.

269. This establishment comprises three analyst teams, one team responsible for operation of STREAMS outreach, a support team responsible for handling external requests (Egmont, overseas FIUs, etc.) and a team for the administration of the STREAMS system. Whenever the need arises, the Police have the capacity and flexibility to allocate additional resources to areas in need, to supplement existing manpower. Under the government's *Financial Circular No. 4/94*, the Commissioner of Police has the authority to redeploy non-directorate grade posts for a period not exceeding 12 months on each occasion.

270. Whilst the JFIU does not have an independent budget, all the posts within the unit are permanent. Day-to-day operating costs are met from the budgets of Police and C&ED. As such, the JFIU's financing is stable and the unit has no difficulty in obtaining additional resources if required. For example, in 2005, an additional HKD 3.9 million (USD 500 000) was gained in order to launch STREAMS and an annual recurrent budget of HKD 433 000 (USD 55 000) was allocated for system administration.

Professional standards

271. All JFIU personnel are subject to the applicable Police (and C&ED) disciplinary codes (e.g. *Police Force Ordinance* (PFO) Cap. 232, the *Public Service (Disciplinary) Regulations* (PSDR), the *Police Force Discipline Regulations* (PDR) Cap. 232A, *Police General Orders* (PGO) (Chapter 6 "Conduct and Discipline" and Formation Commander's Standing Orders), *Customs and Excise Service (Discipline) Rules* Cap. 342, *Customs and Excise Service Standing Orders*, and *Code on Conduct and Discipline*). Civil Service regulations and the other applicable laws, any breaches of which will result in either disciplinary or criminal prosecution depending on the circumstances of the case. Conduct prohibited by PGO includes: undesirable association; unauthorised loans; pecuniary embarrassment; conflict of interest; abuse of police position; unauthorised investigations; and, acceptance of offers of entertainment.

272. JFIU personnel are subject to a vetting process prior to taking up their post. This vetting is subject to review every three years. Persons who fail the vetting are transferred out of JFIU immediately. The vetting is post-specific and is in addition to, and in greater depth than, the initial vetting process a Police or C&ED officer undergoes on recruitment.

273. Access to STREAMS is restricted to designated terminals and is controlled by individual passwords. The database has a full audit log and is subject to random audit checks by the CIP JFIU on a monthly basis. Transaction logs are forwarded to the respective unit commanders for verification of propriety, and justifications of system use. The STREAMS Security Order, a copy of which is given to all STREAMS users and uploaded on to the system, governs these security and audit procedures. Failure to comply with this order is a disciplinary or criminal offence under s.161CrO depending upon the type of breach. To date there have been no instances of leaks of information from the STR system nor have there been breaches of the STREAMS Security Order.

274. Allegations of criminal conduct by Police officers are investigated either by an appropriate investigative unit or the Police Internal Investigations Office, depending on the nature and seriousness of the cases. Cases of suspected corruption are referred to the ICAC for investigation.

Staff training

275. Normally, before police officers are eligible for selection and transfer to JFIU, they must have completed the eight-week Standard Criminal Investigation Course I at the Police College’s Detective Training School and must have worked in detective duties in a district or regional crime formation. A key requirement for JFIU staff is some prior experience of accounting, banking or the investigation of fraud or ML offences. A number of JFIU staff have gained legal, accounting or banking qualifications prior to or during their posting to the JFIU.

276. Prior to or shortly following their transfer to JFIU, officers undergo specialist training including the FID’s Financial Investigations Course, which covers: basic ML methods and trends; ML and TF laws; STR laws, practices and procedures; financial intelligence analysis and ML investigation; and, prosecution, assets tracing, restraint and confiscation. They also attend the SCIC course on operation of the Police intelligence system and the STREAMS course. More senior officers also attend the Criminal Intelligence Bureau’s advanced intelligence analysis course and junior officers may also attend this training when vacancies arise. From time to time JFIU officers also attend overseas financial investigation courses (such as those offered in Bangkok, Malaysia, UK, New Zealand and Canada) and courses organised by the Commercial Crimes Bureau. Internal training within JFIU is also held, on a six-weekly basis, to ensure teams are aware of the latest ML trends and typologies.

Statistics (FIU)²⁸ and Effectiveness

277. Between 1989 and 2003, the JFIU received 58 168 STRs. In addition, the STRs received from 2004 to 2007 are detailed in the table below.

Table 14. STRs received, 2004 – 2007

YEAR	2004	2005	2006	2007
STRs RECEIVED	14 029	13 505	14 557	15 457

Table 15. No. of STRs classified as high-risk, 2006-2007

Year	No. of STRs received	No. classified as high-risk
2006	14 557	1 768
2007	15 457	1 836

278. A breakdown of annual STR or intelligence reports disseminated is provided below.

²⁸ As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

Table 16. Intelligence reports disseminated by the JFIU, 2004 – 2007

	YEAR	2004	2005	2006	2007
LAW ENFORCEMENT	Police	701	929	1421	2 187
	C&ED	495	312	202	193
	ICAC	33	18	31	34
	Immigration	0	1	3	1
STATUTORY	Inland Revenue	1	7	12	27
	Securities & Futures Commission	20	29	47	53
	Official Receivers Office	0	0	1	3
OVERSEAS	FIU	145	86	47	62
	TOTAL	1 395	1 382	1 768	2 560

279. The limited geographic boundaries of Hong Kong and the proximity and relatively small number of other stakeholders in their AML/CFT regime provide efficiencies not enjoyed in larger more complex jurisdictions. In spite of their limited size, the JFIU has developed an efficient system to receive and analyze a large number of STRs and promptly disseminate a comprehensive analytical product to a variety of recipients. The JFIU receives approximately 14 000 STRs and disseminates approximately 2 000 each year. The quality of their analytical product is enhanced by access to a large number of open source and commercial databases, their ability to seek additional information from reporting entities and their Police powers. The recipients of JFIU disseminations praise the product received and its value to their investigations. Unfortunately, statistics on the number of investigations which began from or involved use of STR information are not maintained.

280. The JFIU, with the assistance of the FID, are ubiquitous in their outreach and education efforts to reporting entities, regulators and industry associations. They are respected by these parties and are asked for advice, direction and guidance in matters relating to reporting, typologies and indicators of ML and TF activity.

2.5.2 Recommendations and Comments

281. The JFIU is Hong Kong's centre for receiving and requesting, analysing and disseminating disclosures of STRs and other relevant information concerning suspected ML or TF activities. The JFIU is a part of the Hong Kong Police and it has operational independence and autonomy to conduct its duties free from undue influence or interference. Its outreach efforts, particularly in recent years, have been extensive, providing awareness of STR reporting and other ML and TF compliance requirements across all sectors. In addition, the JFIU provides guidance regarding the manner of reporting. The JFIU has unfettered access to information, including the ability to seek additional information from reporting parties, to assist in the analysis of STRs. Information held by the FIU is securely protected and disseminated only in accordance with the laws of Hong Kong. The JFIU disseminates financial information to domestic and international authorities for investigation or action when there are grounds to suspect ML or TF. Statistics in this regard show a reasonable level of disclosures when compared to the number of STRs received by the JFIU.

282. The JFIU's analytical product is well received by investigative units and has added to or led to the successful prosecution of many cases since its formation, however, in order to better judge the effectiveness of the JFIU, it is recommended that, going forward, the JFIU makes a concerted effort to compile statistics on the utility of their disseminations, including:

- Number of disseminations that initiated/contributed to an investigation.

- Number of investigations resulting in a prosecution/conviction which benefited from JFIU disseminations.
- Number of search warrants or production orders that used information provided by the JFIU.
- Number of seizures, restraint orders, forfeitures, fines, etc., that were generated as a result of information provided by the JFIU.

283. The JFIU periodically releases reports that include statistics, typologies and trends as well as information regarding its activities. Many sectors have expressed an appetite for more sector specific indicators and typologies for their sectors to assist them in preparing guidelines and other training material for their membership or those that they regulate. It is recommended that the JFIU produce sector-specific indicators and typologies where possible to assist the various sectors in their training and overall awareness in this area.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of Factors Underlying Rating
R.26	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.

2.6 Law enforcement, prosecution and other competent authorities – the framework for investigation and prosecution of offences and for confiscation and freezing (R.27 & 28)

2.6.1 Description and Analysis

Recommendation 27

Overview

284. Hong Kong Police: The Hong Kong Police Force (the Hong Kong Police) is the primary enforcement authority for ML and TF investigations. As at 1 May 2007, the Hong Kong Police had 27 063 sworn officers and 4 749 civilian staff. The Hong Kong Auxiliary Police Force, which is a reserve to assist in times of natural disaster or civil emergency and which often performs crowd control duties at public events and festivals, had 3 847 auxiliary police officers as at 31 March 2007. The Hong Kong Police aims to: preserve life and property; prevent and detect crime; and, keep the peace. In times of emergency the Hong Kong Police has paramilitary capabilities.

285. The Hong Kong Police is headed by the Commissioner of Police, assisted by two Deputy Commissioners. The Police Headquarters is made up of five departments: Operations; Crime and Security; Personnel and Training; Management Services; and, Finance, Administration and Planning. For day-to-day policing, the Hong Kong Police is organised into six regions: Hong Kong Island; Kowloon East; Kowloon West; New Territories North; New Territories South; and, Marine. The Regions are largely autonomous in their day-to-day operation and management matters, and each has its own headquarters which comprises administration and operation wings, as well as traffic and criminal investigation units. Each region is divided into districts and divisions and, in a few cases, subdivisions. In addition, responsibility for law and order on the railway systems, which run through several police districts, is vested in the Railway District. There are currently 23 districts.

286. The Marine Region, with a fleet of 145 launches and craft, patrols Hong Kong waters, including the busy harbour and 261 outlying islands. This involves the control of some 13 000 local craft, pleasure boats and ferries and a maritime population of 3 100. Shore patrols are regularly mounted to maintain contact with inhabitants of small islands and isolated communities. In addition to normal policing functions, the Marine Police fleet is responsible for law and order within Hong Kong

waters with particular emphasis on countering illegal immigration and smuggling at sea. The Marine Region is also one of the main participants in the Hong Kong search and rescue organisation, conducting such operations within and outside Hong Kong waters.

287. The Crime and Security Department is responsible for investigation and security policy. The Security Wing provides VIP protection and security co-ordination, including counter-terrorism, and related training. The Crime Wing's operational bureaus and specialised units include:

- The *Organised Crime and Triad Bureau* (OCTB) investigates major organised and serious crime involving all types of activities such as theft/smuggling of vehicles, human smuggling, firearms, vice, debt collection, syndicated gambling and extortion. It also investigates triad societies and their hierarchies with particular emphasis on their involvement in organised crime.
- The *Criminal Intelligence Bureau* (CIB) is the Hong Kong Police's central co-ordinating body for information on crime and criminality which, after analysis, is disseminated to investigation units. In addition, the CIB works closely with the OCTB and other bureaus in tackling triad and organised crime syndicates. To strengthen the criminal intelligence capability within the Police, the CIB also organises related training courses and seminars for investigators.
- The *Commercial Crime Bureau* (CCB) investigates serious commercial and business fraud; IT crimes; forgery of monetary instruments, identity documents and payment cards; and, counterfeiting of currency and coins. It liaises with international law enforcement agencies on exchange of intelligence and actions requests for investigation received from other jurisdictions alleging criminal conduct in relation to commercial transactions.
- The *Narcotics Bureau* (NB) investigates serious drug cases and gathers intelligence in relation to major drug activities. It also conducts investigations in partnership with overseas law enforcement agencies whenever there is a Hong Kong connection to international drug trafficking. NB is also responsible for financial investigations arising out of DTROP, OSCO and UNATMO. The JFIU is housed within the NB.
- The *Liaison Bureau* (LB) co-ordinates inquiries from overseas police organisations and local consular officials. It also represents the Police in the International Criminal Police Organisation (ICPO) as a sub-bureau of the China National Central Bureau. International requests for assistance are directed by the LB to the appropriate investigative unit for action. The investigative unit then deals directly with the jurisdiction requesting assistance.
- The *Support Group* is made up of units, which provide technical and professional services to support investigations, including the Criminal Records Bureau, the Identification Bureau, the Forensic Firearms Examination Bureau, the Witness Protection Unit and the Child Protection Policy Unit. The Crime Prevention Bureau, which is within the Support Group, provides security advisory services to the government, to industry, and to the public in general. The Group also conducts liaison for the Government Laboratory.

288. Customs & Excise Department (C&ED): The C&ED is responsible for the protection of Hong Kong against smuggling; the protection and collection of Government revenue on dutiable goods; the detection and deterrence of narcotics trafficking and abuse of controlled drugs; the protection of intellectual property rights; the protection of consumer interests; the protection and facilitation of legitimate trade and upholding Hong Kong's trading integrity. It is headed by the Commissioner of Customs and Excise. As at 1 August 2007, C&ED had 5 571 staff. The C&ED has five branches:

- The *Boundary and Ports Branch* is responsible for matters relating to import and export controls under the purview of the SB and the housekeeping of the Airport Command, Control Points Command, and the Ports and Maritime Command.

- The *Excise and Operation Support Branch* is responsible for matters relating to dutiable commodities; international customs liaison and co-operation; staff training; and administrative support to the Office of Dutiable Commodities Administration, the Customs Liaison Bureau, the Office of Management Services, the Office of Training and Development, the Special Duties Team and the Complaints Investigation Group.
- The *Intelligence and Investigation Branch* is responsible for matters relating to narcotic drugs and anti-smuggling activities and issues relating to intellectual property; formulation of policies and strategies regarding the application of intelligence and risk management in C&ED operations; and administrative support to the C&ED Drug Investigation Bureau, the Intellectual Property Investigation Bureau, the Intelligence Bureau, the Revenue and General Investigation Bureau and the Special Task Force.
- The *Trade Controls Branch* is responsible for matters in relation to trade controls and consumer protection under the schedule of the CEDB, and comprises the General Investigation and Systems Bureau, the trade Inspection and Verification Bureau, the Trade Investigation Bureau, the Mainland and Hong Kong Closer Economic Partnership Arrangement and Transshipment Controls Bureau, and the Consumer Protection and Prosecution Bureau.
- The *Administration and Development Branch* is responsible for staff management; project planning and equipment procurement; provision of think tank and executive support services to the directorate; service quality and management audit; departmental administration; financial management; information technology development; internal audit.

289. Independent Commission Against Corruption (ICAC): The ICAC was established in 1974 pursuant to s.3 of the *ICAC Ordinance* (ICACO) Cap. 204. Under s.5 ICACO, the ICAC Commissioner must not be subject to the direction or control of any person other than the Chief Executive of Hong Kong, thereby separating the agency from the rest of the Hong Kong Government and guaranteeing its independence. The ICAC has adopted a three-pronged strategy to combat corruption: enforcement (Operations Department), prevention (Corruption Prevention Department) and education (Community Relations Department). As at 31 July 2007, the ICAC had 1 332 staff of whom 830 were investigating officers in the Operations Department.

290. The largest department is the Operations Department, headed by the Deputy Commissioner. The Operations Department of the ICAC is responsible for investigating corruption in the public and private sectors and for investigating ML when it is connected with or facilitated by corruption. The Operations Department comprises four investigation branches:

- Investigation Branch One: corruption investigations in the public sector and public bodies, and investigations into election complaints.
- Investigation Branch Two: corruption investigations in the private sector.
- Investigation Branch Three: intelligence gathering, surveillance, undercover operations, informant handling and witness protection.
- Investigation Branch Four: policy formulation, legal research, inspection and audit, computer forensics and financial investigation, secretariat support to the Operations Review Committee (an independent oversight body). Two Financial Investigation Sections in this Branch assist front line investigators in tracing funds and identifying proceeds of crime.
- In addition, there is an Internal Investigation and Monitoring Group which deals with corruption and non-criminal complaints against ICAC officers.

Responsibility for investigation of money laundering and terrorist financing

291. The Commissioner of Police is responsible for the prevention and detection of crime, for ML investigations related to drug trafficking and indictable offences, and for TF investigations. The Hong Kong Police enforces Hong Kong's AML (DTROP and OSCO) and CFT (UNATMO) legislation. It also plays a key role in international co-operation. The Financial Investigations Division (FID) is responsible for investigation of drug and organised crime related ML and TF. The FID also provides investigative support to other units such as OCTB and CIB, and, as needs arise, dedicated multi-unit task forces will be created. The fraud and intelligence units within the CCB are also responsible for the investigation of ML pertaining to complex frauds. These dedicated financial crime units are supplemented by criminal investigation teams in regions and districts, which are also responsible for investigation of all predicate offences. Criminal investigation teams conduct ML investigations as part of their investigations into predicate offences.

292. The Commissioner of Customs and Excise is responsible for ML investigations related to drug trafficking and certain indictable offences under DTROP and OSCO, including infringement of copyrights and trade marks and smuggling. The Drug Investigation Bureau's Financial Investigation Group is responsible for the investigation of ML related to drug trafficking and organised crime.

293. The ICAC investigates ML when it is connected with a corruption offence or when its commission is facilitated by corruption. In 1999, the ICAC established a dedicated Financial Investigation Section and a second Financial Investigation Section followed in 2006. These sections are staffed with professional accountants who provide investigation support to frontline investigation sections including: asset tracing; financial profiles; analysis and interpretation of financial data; interviewing of professionals in the financial sector; and, search and seizure of accounting records. Officers of the Financial Investigations Sections also give expert evidence in court.

294. During the on-site visit it was apparent that, as is common in many jurisdictions, investigative units in Hong Kong enforcement agencies whose primary mandate is something other than investigation of ML, TF or proceeds of crime cases, tend to place limited emphasis on the financial aspects of investigations as compared to that focussed on investigating the predicate criminal activity. Units not specifically tasked with the investigation of ML or TF need some encouragement to actively pursue these types of investigative strategies wherever possible.

Ability to postpone/waive arrests and seizure of money

295. As a matter of policy, decisions relating to the timing of arrests of suspects in criminal investigations are subject to the operational control of the law enforcement agency (LEA), and in appropriate cases, in consultation with the Department of Justice. Arrest and other overt actions can be reasonably delayed for operational reasons, there is no legal requirement in Hong Kong law for arrests to be made on the crossing of evidential thresholds. Similarly, seizures of money or other financial instruments or assets believed to be the proceeds of crime may be delayed in order to gather more evidence and further an investigation.

Additional elements

296. The Hong Kong Police, C&ED, ICAC and Immigration Department can use a wide range of investigative techniques to investigate serious offences, including:

- Controlled deliveries in accordance with the *Interception of Communications and Surveillance Ordinance (ICSO)* Cap. 589 (where the operation involves the use of a surveillance device by an agency in circumstances where the target has a reasonable expectation of privacy) or in accordance with internal authorisation procedures.
- Consensual monitoring in accordance with the ICSO.

- Undercover operations in accordance with a number of confidential standing orders.
- Interception of communications and other covert surveillance in accordance with the ICSO.

297. During the on-site visit, Hong Kong authorities advised that these special investigative techniques can and have been used on numerous occasions in ML investigations, though statistics are not available on the level or nature of the techniques used. In addition, informants and agents may be used with care. A review of the Hong Kong Police's confidential policies and procedures and relevant laws in relation to the use of specialised investigative techniques has provided assurance that adequate safeguards are in place both domestically and internationally.

298. The Hong Kong Police establishes ad-hoc multi-disciplinary task forces as needed, often with a financial investigation team attached to assist. From 2001 to 2004, a joint Hong Kong Police/ICAC task force was set up to investigate ML and corruption allegations in relation to a number of financial institutions connected to offshore commercial fraud. The matter is currently before the courts.

299. The JFIU, NB FID, C&ED, ICAC and other competent authorities meet on a regular interagency basis and ML and TF methods, techniques and trends are reviewed. Periodically strategic perspectives are the result of the interagency meetings and these are disseminated to the appropriate staff of the JFIU, LEAs and other competent authorities. In addition, the JFIU and ND FIB meet regularly with the STR Working Group which is composed of representatives of all reporting sectors and other competent authorities to discuss trends, typologies and best practices.

Recommendation 28

Powers to obtain records

300. The PFO, DTROP, and OSCO provide enforcement agencies with a range of powers to compel production, search and seizure of documents. In addition, s.67 PFO provides that the Commissioner of Police may, by notice in writing, require any bank or deposit-taking company (DTC) to disclose to the Police whether any specified person holds or has held a bank account or safety deposit box. Detailed information about account activity may be obtained under a magistrates' search warrant issued under the provisions of s.50(7) PFO, or by means of a production order issued under either s.20 DTROP or s.4 OSCO.

301. DTROP: Section 20 DTROP permits the District Court or Court of First Instance to issue a production order requiring a person in possession or control of material to produce the material requested under the order to an authorised officer within a specified period (usually seven days) for the purpose of an investigation into drug trafficking. The material must not however be subject to legal privilege. Production orders are generally used to obtain information from banks about a person's account balance and transactions. They differ from search warrants in that they can be used to monitor account activity in the future as well as the past. Orders under s.23 DTROP are used to obtain information held by public bodies such as the Inland Revenue Department.

302. Section 21 DTROP permits the District Court or Court of First Instance to issue search warrants for a drug trafficking investigation, allowing officers to enter and search a premises, and seize and retain related material, other than items subject to legal privilege. Where possible, production orders should be used. Where that is not possible however, a search warrant will be issued where: "(c) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking and:

- (i) there are reasonable grounds that there is on the premises material likely to be of substantial value to the investigation but the material cannot be particularised; and
- (ii) that it is not practicable to communicate with any person entitled to grant entry to the premises; or entry to the premises will not be granted unless a warrant is produced; or the investigation

may be seriously prejudiced unless the authorised officer could get immediate access to the premises.”

303. OSCO: Section 3 permits the Secretary for Justice to apply to the Court of First Instance for a witness order to compel a person to provide information to the Hong Kong Police, C&ED or other officers authorised by the Secretary for Justice conducting an investigation into an organised crime. A person so ordered must attend before a Hong Kong Police, C&ED or other authorised officer at a specified date and time to answer questions or produce material relevant to the investigation. The person so ordered must answer questions even if those questions would incriminate him, although the statement cannot generally be used against its maker.

304. Section 4 permits the Court of First Instance to make a production order requiring a person in possession or control of material, in Hong Kong or overseas, to produce that material to Hong Kong Police, C&ED or other authorised officers for investigations into an organised crime; the proceeds of an organised crime; or the proceeds of a specified offence. Section 5 permits the Court of First Instance or District Court to issue search warrants for investigations into an organised crime; the proceeds of an organised crime; or the proceeds of a specified offence. The powers are similar to those granted under s.21 DTROP.

305. Prevention of Bribery Ordinance (POBO): Section 13 POBO provides that where the ICAC Commissioner is satisfied that there is reasonable cause to believe an offence under the POBO may have been committed and that certain records are likely to be relevant for the purposes of the investigation, he may authorise any officer to investigate and inspect accounts, books, documents or other articles relating to a person or persons identified. The authorisation can also require a person to produce any of the items. The investigating officer may require disclosure of all or any information relating to such items and to take copies of such accounts, books, documents or any relevant entry therein and photographs of any other article. The s.13 power is commonly used in the early stages of an investigation, particularly to access bank records, trace the flow of funds and determine the source of a suspect's wealth. If this power is to be used against a suspect, the Commissioner must first obtain the permission of the Court of First Instance.

306. Under sections 13A-13C POBO, the ICAC may be granted access to records of the Inland Revenue Department, which would otherwise be inaccessible because of the secrecy provision that protects the records of tax-payers. To do so, an application has to be made to a judge of the Court of First Instance for the issue of a production order to the Commissioner of Inland Revenue.

307. Section 14 POBO provides for the power to compulsorily obtain specified information. It encompasses those who are suspects in a POBO investigation; any person other than a suspect; person in charge of a public body and manager of a bank. These powers can be exercised only with the permission of the Court of First Instance.

308. Section 17 POBO empowers an ICAC officer to obtain a search warrant from a magistrate or the Court of First Instance, in the course of an investigation of a POBO offence. Section 10B ICACO empowers an ICAC officer to obtain a search warrant from a magistrate in the course of an investigation of offences connected with or facilitated by corruption, such as ML offences, or for any offence specified in s.10(5) ICACO. ICAC officers may seize evidence in the course of executing either of these warrants (s.10C(1)(c)). In addition, ICAC officers are empowered under s.10C(1)(a) to search any person who is suspected of an offence referred to in s.10, which includes corruption offences under POBO and offences connected with or facilitated by those corruption offences as referred to in s.10(2)(a) and s.10(5). They are also empowered (s.10C(1)(b)) to search the premises or place in which any person was arrested or in which a person who evades arrest may be located.

Witness statements

309. All law enforcement officers can take witness statements for use in ML investigations, in accordance with the Secretary for Security's *Rules and Directions for the Questioning of Suspects and the Taking of Statements*. Admissibility of these statements is subject to case law. Moreover, s.3 of OSCO permits the Secretary for Justice to apply to the Court of First Instance for a witness order, an order which compels a person to provide information to the Police, C&ED or other authorised officers conducting an investigation into organised crime. A person so ordered must attend before a Hong Kong Police, C&ED or other authorised officer at a specified date and time to answer questions or produce material relevant to the investigation. A *Code of Practice for the Questioning of Person and the Production of Material under section 3 of the Organised and Serious Crimes Ordinance* was issued by the Secretary for Security under s.3(19) OSCO to govern the exercise of the powers conferred and discharge of the duties imposed on parties concerned. The person so ordered must answer questions even if those questions would incriminate him, though statements taken cannot be used against the maker. This ability exists only under the OSCO, without a corresponding provision in DTROP or UNATMO. Failure to give information or providing misleading information is an offence (s.3(14) OSCO).

Resources (Law Enforcement and Prosecution Authorities Only)²⁹

Structure, funding and staff

310. Hong Kong Police: Under s.4 PFO, the Commissioner of Police has the sole authority over the management and operation of the Police Force. The Hong Kong Police's budget allocation for 2007-08 is HKD 11.45 billion (USD 1.47 billion) and as at 1 May 2007, it had a total of 27 063 officers. The primary ML investigation unit is the FID. The fraud and intelligence units of the Commercial Crimes Bureau are also responsible for conducting ML investigations in relation to incidences of complex commercial crimes. The staffing of these units is shown in the table below.

Table 17. Staffing of the Financial Investigations Department and Commercial Crimes Bureau, 30 June 2007

	SP	CIP	SIP	JPO	Total
FID, NB	1	2	9	39	51
CCB – Fraud Division	2	8	33	132	175
CCB – Intelligence Division	1	1	5	19	26

311. These financial crime units are supplemented by criminal investigation teams in regions and districts which also have the responsibility for the investigation of all predicate offences and do conduct ML investigations in parallel to appropriate predicate crime investigation investigations. The Commissioner of Police can redeploy non-directorate grade posts for a period not exceeding 12 months, providing the flexibility to allocate additional resources to areas in need. Similarly, units, including the FID, are able to draw upon manpower from the detective cadre to meet operational requirements, establish task-forces and special investigation teams as and when the need arises.

312. C&ED: The C&ED's budget allocation for 2007–08 is HKD 2.13 billion (USD 272.7 million) and as at 1 August 2007, it had a total of 5 571 officers. The Financial Investigation Group (FIG) has primary responsibility for investigation of ML related to drug trafficking and organised crime. The FIG's staffing profile is provided in the table below.

²⁹ As related to R.30; see s.7.1 for the compliance rating for this Recommendation.

Table 18. Staffing numbers in the C&ED Financial Investigations Group, December 2007

	S	AS	SI	I	CCO	SCO	CusO	GENERAL GRADE STAFF*	TOTAL
FIG	1	2	4	6	2	3	7	5	30

* General Grade Staff includes one treasury accountant, one accounting officer and three confidential assistants.

S = Superintendent; AS = Assistant Superintendent; SI = Senior Inspector; I = Inspector; CCO = Chief Customs Officer; SCO = Senior Customs Officer; CusO = Customs Officer.

313. **ICAC:** As at 31 July 2007, the ICAC had a total of 1 332 officers, 830 of whom were in the Operations Department. Each of the two Financial Investigation sections within that department has 10 investigative officers and is headed by a Chief Investigator. The ICAC's budget allocation for 2007-08 is HKD 700.1 million (USD 89.74 million).

314. **DOJ:** The DOJ provides legal advice to the government. The prosecutions division of the DOJ has over 100 lawyers who undertake a wide variety of criminal prosecutions. At present there are five prosecutors (one directorate officer and four senior government counsel) assigned to the DOJ's Asset Recovery Section. In addition to their asset recovery work, they undertake ML advices of a difficult nature or closely related to difficult restraints and confiscations.

315. Until July 2007, staff within the Asset Recovery Section were encumbered with a range of responsibilities, including the preparation of advice relating to ML and commercial crime cases, preparing related briefs for trial counsel, running trials on occasion and attending to other related work – such as preparing and arguing appeals. The DOJ has acknowledged a need for increased awareness within the Prosecutions Division and law enforcement of the availability, scope and significance of restraint and confiscation orders. Such increased awareness may result in pursuit of more asset recovery actions. More aggressive restraint action has been targeted as a priority in this context, with the result that in 2007, up to the time of the evaluation team's on-site visit, ten new restraint applications had been filed. Authorities advise that since the transformation of the section into a dedicated asset recovery unit, it has been able to manage its workload and it has been able to provide lectures and workshops to law enforcement agencies on asset recovery. This outreach will be a continuing process and may result in generation of a greater volume of asset recovery work which may make a review of the Section's staffing position necessary.

316. A need for internal, systemic improvements has also been identified by DOJ. The evaluation team was advised that, at the time of the on-site visit, some 20-30 files, including commercial crime matters, remained on foot. This backlog has been resolved through three strategies implemented in the second half of 2007: devolvement of commercial crime work to other areas; implementation of an internal commercial crime registry; and, enhanced communication with Appeals Section.

Professional standards, ethical and professional requirements

317. **Hong Kong Police:** Professional standards within the Hong Kong Police are governed by provisions of the PFO, the PSDR, the PDR and PGO (Chapter 6 on conduct and discipline). Conduct prohibited by Chapter 6 includes: undesirable association; unauthorised loans; pecuniary embarrassment; conflict of interest; abuse of police position; unauthorised investigations; and, acceptance of offers of entertainment. The PDR regulates police officers conduct and provides for the manner in which complaints are recorded, investigated, tried and provides for the penalties. This is in addition to other laws, breaches of which result in either disciplinary or criminal prosecution depending on the circumstances of the case.

318. The Hong Kong Police has a four-pronged approach to ensure professional standards:

- **Prevention and Education:** Anti-corruption strategies and strategies for the management of officers with unmanageable debts are in place. There have been mandatory workshops to promote the Police values since 1996. Professional standards, anti-corruption and good financial management are core modules of basic training for new recruits and of ongoing

training. Special anti-corruption training is provided to those in more vulnerable areas, such as the Special Duties and Anti-Triad Squads.

- **Early Intervention:** Indicators were developed to assist supervisors to identify problems. Senior officers are reminded of their responsibility to make use of their leadership to ensure honesty and integrity of officers under their commands. In case officers fall into financial difficulty, advice and assistance are offered to the officer.
- **Regulation and Sanction:** A zero tolerance policy is in place for officers who are involved in corruption, malpractice, or become indebted due to *i)* financial imprudence, *ii)* gambling or other reprehensible causes, and *iii)* borrowing money. Allegations of criminal conduct are investigated either by an appropriate investigative unit or the Internal Investigations Office, depending on the nature and seriousness of the case. Suspected corruption cases are referred to the ICAC. The Commissioner of Police may institute disciplinary proceedings arising out of any incident or as a result of criminal charges. In addition, police officers may be subject to prosecution for the common law offence of 'misconduct in public office'. All officers are vetted during recruitment and thereafter subject to the sensitivity of their particular posting. Officers found to have illegally accessed or misused information are severely dealt with.
- **Review:** Senior management proactively monitor police honesty, integrity and professionalism by reviewing: statistics, internal and external reports; public surveys (held every three years) on police performance; and, feedback from the District Fight Crime Committees, District Councils, Kai Fong Association and others. Responses are formulated for any emerging trends.

319. **C&ED:** The professional standards of C&ED members are governed by the *Customs and Excise Service (Discipline) Rules* Cap. 342 (CESDR), the *Customs and Excise Service Standing Orders* (CESSO), and other applicable government regulations and order. Any violation of these may constitute a breach of discipline and result in disciplinary action being taken. The *C&ED Code on Conduct and Discipline* was first issued in 1999. The standards and requirements of personal conduct on acceptance of advantages, conflict of interest, indebtedness, misuse of official position, misuse of proprietary information and relations with the public are stipulated in the code. Any illegal or unethical acts which violate the code may result in disciplinary action. It is the personal responsibility of staff, including contract staff, to understand and comply with the code. Supervisors, in their day-to-day supervision, are expected to ensure that all their subordinates understand and comply with the standards and requirements of the code.

320. Emphasis is put on the Mission and Vision of the C&ED. C&ED has an Integrity Steering Committee chaired by the Deputy Commissioner to formulate and review departmental integrity strategy and develop and monitor implementation of the Integrity Action Plan. Three relevant working groups have been established within the executive: the Working Group on Code on Conduct and Discipline; the Working Group on Promotion of Healthy Lifestyle and Staff Integrity; and the Working Group on International Best Practices of Integrity. C&ED members, like other civil servants, are subject to integrity checking as part of recruitment, promotion and posting mechanisms. Integrity checking serves to uphold the public confidence in the Civil Service. Officers posted into FIG of C&ED, in addition to the departmental vetting, have to pass the ICAC vetting.

321. **ICAC:** Almost all ICAC officers are recruited on renewable contract terms. Before they are employed, they are subject to stringent vetting. The ICAC monitors the professional standards of its officers through a constant process of assessment of their performance. The Commissioner of the ICAC may (subject to procedural requirements), if he is satisfied that it is in the interest of the Commission, terminate the appointment of any officer. These measures ensure that a high level of integrity is maintained amongst ICAC officers. Pursuant to the *Commission Standing Orders*, a very high standard of conduct and discipline is expected from all officers of the ICAC. They are required to: maintain a high standard of confidentiality; uphold the principles of honesty and integrity, fairness and impartiality; and, avoid any conflict of interest. The standards of conduct expected of officers are

such that no part of their private and social life should give reason for doubt or suspicion as to their probity. Any lapses in integrity are subject to disciplinary action.

322. The ICAC's Internal Investigation and Monitoring Group investigates breaches of discipline, allegations of corruption and non-criminal complaints against ICAC staff. The work of this Group comes under the scrutiny of an independent committee, the ICAC Complaints Committee, whose members are drawn from all sectors of the community and appointed by the Chief Executive of Hong Kong. All completed investigations on corruption related criminal matters are reported to the Operations Review Committee. Non-criminal complaints are reported to the ICAC Complaints Committee. Criminal complaints unrelated to corruption are referred to the appropriate authority, usually the Hong Kong Police, for investigation. As part of its efforts to maintain the ethical standards of its officers, ICAC ensures that as part of their training, officers receive information on ethics awareness and are reminded of the integrity that the ICAC expects of them.

323. DOJ: Article 63 of the *Basic Law* empowers the Department of Justice to control all criminal prosecutions, free from any interference. Prosecutors play a crucial role in the administration of criminal justice, occupying a powerful and privileged position with considerable resources at their disposal. Prosecutors are ministers of justice and shall at all times:

- Maintain the honour and dignity of their profession.
- Conduct themselves professionally and fairly, in accordance with the law, and ethically.
- Exercise the highest standards of integrity and care.
- Keep themselves well-informed and abreast of relevant legal developments.
- Strive to be, and to be seen to be consistent, independent and impartial.
- Safeguard an accused person's right to a fair trial.
- Serve and protect the public interest; respect and uphold human dignity and human rights.

324. Prosecutors are apprised of the need to comply with the *Statement of Prosecution Policy and Practice*, which contains the *Code of Conduct* expected of the prosecutors. In the event that a prosecutor was involved in misconduct, a range of disciplinary sanctions exists, including dismissal.

Training of staff

325. Hong Kong Police: All officers, before they are eligible for selection and transfer to the FID, must have completed the basic Standard Criminal Investigation Course II and have worked for some time in detective duties in a district or regional crime team. Since June 2007 this course has included a one-week financial investigations component. Prior to or following their transfer to FID, officers undergo further specialist investigative training. These courses include the more advanced Standard Criminal Investigation, Commercial Crime Investigation, Basic Technical Crime Investigation and Specialist Financial Investigation Courses. In 2004, the DOJ's Prosecutions Division provided short courses to FID personnel on investigative techniques and asset forfeiture under OSCO. A similar series of courses was held in 2007 for officers from FID, CCB and detectives in regions and districts. In recent years officers from the NID and other Hong Kong enforcement agencies have attended financial investigations courses provided by the US Drug Enforcement Agency and the FBI's TF Operations Section, as well as attending courses in Canada, New Zealand, Beijing, the United Kingdom and Thailand in relation to ML, TF and asset forfeiture. The FID has also hosted a joint Advanced Financial Crime Investigation and Asset Forfeiture Course with the US DOJ.

326. The FID has provided an annual financial investigation course for domestic and international law enforcement officers and regulators since 1988. Topics covered include FATF Recommendations, ML/TF laws, FIU and STR laws, practices and procedures, latest ML trends and typologies, financial

investigative techniques, intelligence analysis, basic forensic accounting, asset identification, restraint and confiscation, and international co-operation. All staff seconded to the Police and C&ED financial investigation units attend this course.

Table 19. The number of officers attending the FID financial investigations course since 1988

	POLICE	C&ED	ICAC	REGULATORS	OVERSEAS	TOTAL
No. of participants	604	51	10	19	263	947

327. **C&ED:** Officers are provided with financial courses organised by local training institutes, basic investigation courses, narcotics investigation courses organised by the Training Development Group of C&ED, and financial investigation courses, commercial crime investigation courses, and standard investigation courses organised by the Hong Kong Police. Officers of FIG attend the financial investigation course organised by the Hong Kong Police. Since 2004, FIG officers have also attended specialist training programmes including the: US DEA Advanced ML Seminar; Federal Bureau of Investigation Seminar on ML and Asset Forfeiture; Know Your Client and Detection of ML course organised by Hong Kong Securities Institute; Asset Recovery Course organised by the H.M. Customs held in the UK; and, the Complex Financial Investigation Course organised by International Law Enforcement Academy in Thailand

328. **ICAC:** In respect of professional training, all ICAC officers received initial training on law, rules of evidence and work procedures and practices. Their professional standards are maintained and enhanced through continuing professional development courses and workshops, such as financial investigation and other specialised courses, including courses on ML and asset recovery, where officers learn about the most recent developments in the law and in investigative techniques. The ICAC also regularly sends selected officers to attend courses run by local and overseas law enforcement agencies. ICAC officers regularly attend fraud and financial investigation courses organised by overseas law enforcement agencies, including the UK Metropolitan Police, Royal Canadian Mounted Police, Singapore Police Force and International Law Enforcement Academy. In 2006, two ICAC officers attended a financial investigation course at the UK Asset Recovery Agency.

Additional elements

329. The Judicial Studies Board provides and co-ordinates participation in training programmes for Judges at all levels. In the past five years from 2002 to 2006, on average 70 training activities are held each year. Specifically, in 2002, Judges attended a Transnational Organised Crime Conference, a seminar on the law of ML and proceeds of crime in Hong Kong, and a conference on the impact of anti-terrorism measures in Hong Kong and the region. Educational programmes concerning ML and TF offences and the seizure, freezing and confiscation of property that is the proceeds of crime or is used to finance terrorism are currently being planned for judges, prosecutors and courts.

Statistics³⁰ and Effectiveness

330. The Hong Kong Police has in excess of 27 000 officers. The FID has 51 investigators dedicated to investigations of ML, TF and other financial crimes. The Commercial Crime Bureau's Fraud and Intelligence branches comprise a total of 201 financial investigators who can also conduct ML investigations, particularly in relation to commercial crime or fraud, and are often attached to assist investigative teams which are conducting ongoing and complex investigations of predicate criminal activity. In addition, a number of regional investigative teams and other specialist investigative units have received training in financial investigations and do occasionally become involved in ML investigations.

³⁰ As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

331. The C&ED has in excess of 5 000 customs officers deployed at all border points, the airport and the container terminals. It has a dedicated 30-person Financial Intelligence Group which conducts money laundering investigations and works closely with the JFIU, Hong Kong Police, ICAC and other stakeholders. The ICAC has 830 investigative officers, 22 of whom focus exclusively on investigations of money laundering related to corruption, including assisting frontline investigation sections in investigating ML-related corruption cases, and who work closely with the JFIU, Hong Kong Police, C&ED and other stakeholders. All of the law enforcement agencies' units that are exclusively dedicated to ML and TF investigations receive relevant and ongoing training.

332. There have been 6 561 STRs disseminated from the JFIU to the Hong Kong Police, C&ED, ICAC and Immigration since 2004. Details of the number of ML investigations conducted by the Hong Kong Police and C&ED are provided below. With respect to TF, 176 investigations have been conducted to date, based on referrals of potential matches with the S/RES/1267(1999) list of designated entities, however none resulted in a prosecutions.

Table 20. ML investigations conducted by the Hong Kong Police and C&ED, 2003-2007

	Hong Kong Police	C&ED	Total
2003	132	111	243
2004	145	81	226
2005	143	91	234
2006	146	70	216
2007	177	72	191

333. As can be seen from Table 4 in [Section 2.1](#) previously, over 400 ML prosecutions involving over 500 persons have been conducted since 2003, resulting in 219 convictions involving 320 persons. The number of ML prosecutions and convictions over the past five years is reasonably high compared to other jurisdictions, particularly when the size of Hong Kong's population is considered, and speaks to the effectiveness of the law enforcement investigative action, in particular the strong role taken by the Hong Kong Police.

2.6.2 Recommendations and Comments

334. Three permanent special investigative groups are dedicated to investigations of ML or TF, with a specific mandate to investigate, seize, freeze and confiscate the proceeds of crime; the FID, C&ED FIG and the ICAC Financial Investigation Sections. While the specialist units are well trained, skilled and committed to investigations of ML, TF and related criminal activity, units not specifically tasked with the investigation of ML or TF need some encouragement to actively pursue these types of investigations on a regular basis. It is recommended that the senior executive of the Hong Kong Police support and encourage substantive investigation units to more actively pursue ML investigations as a matter of course when investigating any profit motivated criminal activity. Maintenance of more comprehensive statistics on ML investigations may assist in that regard.

335. Hong Kong enforcement and prosecution authorities have access to and use a wide range of special investigative techniques when conducting ML or TF investigations. The only area of concern that surfaced during the on-site visit, was that under the current law, intercepted communications may only be used for intelligence purposes and are not admissible in court as evidence. Due to the high evidentiary value of this type of evidence during court proceedings, it is recommended that Hong Kong consider a change to its present laws regarding the interception of private communications being admissible as evidence during court proceedings.

336. The number and value of confiscations relating to ML prosecutions, in comparison to the number of successful prosecutions, is low. It is recommended that HK authorities place more emphasis in their investigation on the tracing, seizure and confiscation of the proceeds of crime. An increase in the outreach by the DOJ asset recovery section may enhance effectiveness in this area.

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of Factors Underlying Overall Rating
R.27	C	<ul style="list-style-type: none"> This Recommendation is fully observed.
R.28	C	<ul style="list-style-type: none"> This Recommendation is fully observed.

2.7 Cross-border declaration or disclosure (SR IX)

2.7.1 Description and Analysis

337. Hong Kong does not have foreign exchange control policies nor does it impose any restriction on currency flows into and out of the territory. In 2007 more than 150 million people crossed Hong Kong's borders. The movement of currency/BNI into Hong Kong, particularly from mainland China, is prolific. For example, a number of newspaper articles in November 2007 (the time of the on-site visit) highlighted the amount of money flowing out of mainland China and being injected into the HK financial system, particularly the securities market.

338. The Hong Kong Police and the Customs and Excise Department (C&ED) act on intelligence about suspected tainted funds being moved across Hong Kong's borders. Such intelligence derives from many sources, including suspicious transaction reports (STRs) referred to the Police or the C&ED for follow-up at the border. Since 2003 there have been 50 investigations in relation to cross-border movement of currency, 30 of which resulted from STRs.

Disclosure/declaration system

339. Hong Kong has not implemented a declaration or disclosure system to detect, seize or confiscate the physical cross-border transportation of currency/BNI that are related to ML or TF but has opted instead to rely on existing ordinances. Law enforcement agencies use these general powers to target travellers on an intelligence basis.

340. The *Customs and Excise Service Ordinance*, Cap. 342 (CESO), the *Import and Export Ordinance* Cap. 60 (IEO), s.54(2) of the *Police Force Ordinance* Cap. 232 (PFO) provide a general power to stop, search, and question individuals suspected of carrying drug/crime proceeds and terrorist property into or out of Hong Kong. Under s.17A(1) CESO, a customs officer can stop and search any person whom he may reasonably suspect of having committed an offence against CESO or another specified ordinance, which includes OSCO and DTROP. Moreover, under s.17BA(1) CESO, a customs officer can request permission to examine any baggage and personal belongings. During the examination and search, the control point officer can ask whether the person carries any currency/BNI. If HKD 100 000 (USD 12 820) is found, the person is asked to disclose the amount of currency he is carrying with him and this information is recorded on an *Information on Import/Export of Currency* form (Form CED 223). It should be noted that during the evaluation process, C&ED indicated that many disclosures made in relation to the cross-border movement of currency/BNI were received from a number of Hong Kong banks in relation to couriers acting on their behalf transporting currency/BNI through border points.

341. Under s.54(2) PFO, a Police Officer who reasonably suspects a person in any public place of having committed any offence (including ML or TF); being about to commit any offence; or intending

to commit any offence, may: stop the person and demand proof of identity for inspection; detain him for a reasonable period whilst he makes enquiries about whether he is suspected of any offence; search the person for anything that is likely to be of value to the investigation of any offence the person has committed, or is reasonably suspected of having, being about to, or intending to commit.

342. In addition, DTROP, OSCO and UNATMO provide the general framework for seizure, detention, restraint and confiscation of currency and BNI, which is suspected or found to be proceeds of crime, or terrorist property. The common laws provide for power of seizure of currency and instruments including BNI if they are proceeds of crime or evidence of crime. There is no legislative provision to seize funds/instruments which are not reasonably suspected to be tainted.

343. The focus of the C&ED in relation to cross-border detection of currency/BNI is on inbound passengers and goods. This is however limited by the volume of travellers. No statistics are available with respect to detection of currency/BNI at security points. The C&ED has specialised teams at the airport and border points with equipment such as mobile x-ray equipment to detect the presence of secreted contraband, explosives or currency, however neither currency nor BNI have ever been detected through the use of this technology.

False declarations/disclosures

344. When a person is stopped by a customs control point officer under s.17A(1) CESO/IEO, the officer will ask the person about the origin and intended use of any currency/BNI. Similarly, where a police officer has targeted an individual for interception upon suspicion of involvement in criminal activity, the individual will be questioned as to the legitimacy of any currency or instruments found in his possession, its origin and intended use. False disclosures are rare. Authorities believe this is because questioning occurs during a search of the person or baggage. Thus, knowing that the currency can be found in any event, the person being searched normally makes a truthful disclosure.

345. There is no offence under Hong Kong law in relation to false disclosure or misrepresentation in relation to currency/BNI at border crossings. No powers exist for authorities to request and obtain further information from the carrier when a false disclosure or failure to disclose is detected. No provisions exist for seizure and detention of currency and instruments on the grounds of a failure to disclose or misrepresentation by the party concerned.

Stop or restrain powers

346. Section 24B DTROP allows a police officer or a customs officer to seize any property (including currency amounting to not less than HKD 125 000 (USD 16 000)) being imported into or exported out of Hong Kong that is the proceeds of drug trafficking, has been used in drug trafficking, or is intended to be used in drug trafficking. Under s.24C DTROP, seized property can be detained for ten working days in the case of property being imported into Hong Kong, or seven working days for property being exported from Hong Kong. A court may, on application, order continued detention of the property for up to a total period of two years. Section 24D DTROP allows a Court to order the forfeiture of the property, if it is satisfied that the property seized under s.24B is drug proceeds.

347. If there is evidence that the currency/BNI are proceeds of an indictable offence or that a ML offence has been committed in respect of the currency/BNI, the currency/BNI can be seized under the common law until the investigation concludes or until a court order is made regarding the disposal of the currency/BNI. Anyone carrying currency/BNI into or out of Hong Kong knowing or having reasonable grounds to believe that the currency or instruments are proceeds of an indictable offence, commits the substantive ML offence contrary to s.25 OSCO.

National and international information sharing and co-operation

348. The C&ED was able to provide information on one seizure and confiscation of currency at the border in 2004. No other information is available on persons carrying currency/BNI across the border. As Hong Kong has not established an offence of false disclosure, no records are kept with respect to false disclosures, the amount of currency/BNIs involved in them and the identities of the persons who made the false disclosures.

349. Information about cross-border transportation of currency is forwarded to the JFIU for analysis and indexing with cross-reference to criminal databases. The information contains the identification data and the amount of currency disclosed or detected. The JFIU acts as the centralised agency for the collation, analysis and dissemination of information/intelligence relating to cross-border transportation of currency and instruments. The sources of information/intelligence can be disclosures by the couriers themselves, financial institutions, etc. If a law enforcement agent wants to know if a particular person has been previously involved in cross-border transportation of currency, it can check with the JFIU.

350. As with all AML/CFT policy issues, the Narcotics Division co-ordinates action with respect to cross-border movement of currency/BNI. Meetings have been held with the Police, C&ED, and JFIU on how to enhance the system. At the operational level, the JFIU co-ordinates and disseminates information and intelligence relating to cross-border transportation of currency/BNI. Information is forwarded to C&ED or the Hong Kong Police, as appropriate, for investigation. There are also established mechanisms for the Immigration Department to assist in Police or Customs operations at control points, particularly by identifying suspects within the arriving or departing passengers.

351. Hong Kong is able to assist overseas jurisdictions at the operational and intelligence level, as well through mutual legal assistance in criminal matters. The JFIU, Police and C&ED exchange intelligence/information about cross-border transportation of cash/BNI with their overseas counterparts, using the Egmont Group, Interpol and World Customs Organisation networks. There have been joint investigations between local LEAs and their overseas counterparts in interdicting cross-border transportation of currency relating to ML. While on occasions the co-operation has resulted in successful seizures and prosecutions, there appears not to be a close working relationship with mainland China border authorities in relation to the cross-border movement of currency/BNI.

Sanctions

352. There is no offence under Hong Kong law in relation to false disclosure or misrepresentation in relation to currency/BNI at border crossings. Any person, who carries out transportation of currency or BNI across the Hong Kong border for the purposes of financing a terrorist act, commits an offence under s.7 UNATMO. It is immaterial whether the terrorist act takes place in Hong Kong or not or whether it will be carried out at all. The maximum penalty for the TF offence is 14 years' imprisonment and a fine. There is no statutory limit on the amount of fine. Any person who carries out a physical cross-border transportation of currency/BNI that are related to ML may be found to have committed the offence of ML under s.25 OSCO or DTROP, as transportation can constitute 'dealing' with proceeds – but only when conducted with the requisite intent. The maximum penalty for the ML offence is 14 years' imprisonment and a fine.

Seizing, freezing and confiscation of assets of designated entities

353. Hong Kong has not fully implemented the obligations under S/RES/1267(1999) and has not implemented the obligations imposed by S/RES/1373(2001). Section 3 UNSAR does however prohibit a person from, without the written permission of the Chief Executive, from "making available, directly or indirectly, any funds or other financial assets or economic resources for the benefit of an entity designated under S/RES/1267(1999). This provision is applicable to persons who are carrying out a physical cross-border transportation of currency. The consolidated list, established and

maintained by the 1267 Committee, is circulated to and within C&ED. It is also uploaded to the C&ED intelligence system.

Gold and precious stones

354. The import and export of gold, precious metals and precious stones are governed by the IEO and associated regulations, which do not contain provisions on international information sharing in situations where unusual cross-border movements of gold, precious metals or precious stones are detected. While international information sharing and co-operation by C&ED seems generally effective, as there is no disclosure or declaration system in relation to cross-border movement of currency or BNI, sharing of information with foreign jurisdictions in such matters is rare.

Information protection

355. The use of the information collected by C&ED is governed by the Data Protection Principles of the *Personal Data (Privacy) Ordinance* Cap 486. Any information on cross-border movements of currency or BNI, as well as information pertaining to investigations, is forwarded to the C&ED Financial Investigations Group (FIG) in sealed envelopes where it is entered into the FIG database, which is only accessible by FIG officers. The information is passed from the FIG by hand in a sealed envelope to the Hong Kong Police Narcotics Bureau Financial Investigations Division for checking against the JFIU database, the Hong Kong Police database and RAMC records.

Additional elements

356. Information about cross-border transportation or cash disclosure is forwarded to the JFIU for analysis. The information contains the identification details of the subjects and circumstances. Where the cross-border transportation is related to a ML or TF investigation, all the details including personal particulars, amount of the currency/BNI, and full circumstances of the case, are indexed in the LEA's intelligence database. This information can be cross-referenced to the LEA's database and can be retrieved for future analysis. If an agency wants to know if a particular person has been previously involved in cross-border transportation of currency/BNI, it can check with the JFIU.

Statistics (Customs)³¹ and Effectiveness

357. Since 2003 there have been 50 investigations in relation to cross-border movement of currency, 30 of which resulted from STRs. Of those, two resulted in prosecutions.

Table 21. Investigations into cross-border transportation of currency prompted by STRs, 2004-2007

	2004		2005		2006		2007	
	Total	From STRs	Total	From STRs	Total	From STRs	Total	From STRs
Investigations	22	6	8	7	9	9	7	6

Note: Includes suspected cross-border transportation of tainted funds and unregistered cross-border remittance business.

358. During examinations of baggage and personal belongings by C&ED officers, persons may be asked whether they are carrying any currency/BNI. If currency of HKD 100 000 (USD 12 820) is found, the person will be asked to disclose the amount of currency he is carrying. The total number of disclosures received in this way and the amount of currency/BNI they relate to is noted below.

³¹ As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

Table 22. Disclosures received of cross-border movement of current and BNI, 2004-2007

	2004	2005	2006	2007
No. of disclosures	45	115	82	107
Total <u>Amount</u> Involved (HKD) / (USD)	327.92M 42.04M	261.21M 33.29M	225.73M 28.94M	376.1M 48.21M

359. Authorities agreed that persons are not often asked whether they are carrying currency/BNI, and the statistics confirm this. The number of ‘disclosures’ received in this way is extremely small, particularly considering the number of people and the amount of currency/BNI crossing Hong Kong’s border. There has been one seizure of currency/BNI to date. This was a seizure in 2004 of HKD 0.83 million in currency as a result of a request for assistance received from a foreign authority in relation to particular traveller identified in the request.

2.7.2 Recommendations and Comments

360. There is considerable evidence that the movement of currency into Hong Kong, particularly from mainland China, is prolific. It is recommended that a threat assessment be conducted in relation to this type of activity and its impact on the economy of Hong Kong and that a plan be formulated to detect and curb the flow of illicit funds that in all likelihood are co-mingled with the legitimate flow. The effectiveness of the existing mechanisms to detect the cross-border movement of currency/BNI is poor. While more than 150 million persons cross Hong Kong’s borders each year, there has only been one seizure of currency.

361. It is recommended that Hong Kong implement a declaration or disclosure system to detect, seize or confiscate the physical cross-border transportation of currency or BNI that are related to ML or TF. It is recommended that an offence for making a false/misleading declaration or disclosure be made an offence within this system. Reliance on existing inter-agency co-ordination processes will be necessary in order to formulate and implement such a system. It is further recommended that the Immigration Department be better integrated into co-ordination mechanisms to ensure all relevant parties are part of the multi-agency process. Once this system is in place, extensive programmes will be needed to train C&ED and other enforcement officers and to raise the awareness of those working for land, sea and air carriers. In addition, particular emphasis will be required on training security screening personnel on the detection of currency or BNI.

362. Passengers can currently be targeted for search on the basis of intelligence. It is recommended that C&ED develop a ‘constant random’ methodology for inspecting passengers in addition to targeted searches. It is recommended that Hong Kong establish separate laws to enable officers to specifically stop and seize currency or BNI where there is a suspicion of ML or TF or any predicate offence. Technology is in place at many border points which would enable detection of cross-border movement of currency/BNIs but this is significantly underutilised produces a very small number of detections and information. The C&ED should implement a rigorous process of using x-ray and other inspection equipment commensurate with the significant daily traffic in and out of Hong Kong. In addition, records from this screening activity should be maintained.

363. While authorities appear to co-operate well with many counterparts, there appears to be limited working relationship with mainland China border authorities in relation to the cross-border movement of currency/BNI. It is recommended that Hong Kong authorities establish a systematic and close working relationship with authorities from mainland China in an effort to deal with the risks associated with cross-border movement of currency and BNI.

364. As neither a declaration nor disclosure system is in effect, statistics in this area are limited to those made voluntarily. It is recommended that relevant authorities improve the information collected and analysed with respect to cross-border movement of currency/BNI. Such statistics could include:

- Number of persons targeted through intelligence for inspection.
- Number of disclosures or declarations made at the time of inspection.
- Number of false or misleading statements provided at time of inspection.
- Amounts of currency/BNI interdicted at border.
- Amounts of currency/BNI seized and or confiscated through interdiction efforts.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of Factors Underlying Rating
SR IX	NC	<ul style="list-style-type: none"> • There is neither a disclosure nor a declaration system for detection, seizure or confiscation of cross-border movement of currency or BNI. • Authorities are not empowered to ask for further information where a false/misleading disclosure/declaration had been made. • There is no offence for making a false/misleading declaration or disclosure and authorities are not empowered to seize or confiscate property resulting from a false/misleading disclosure or declaration. • The only specific authority to seize currency or BNI at the border is in relation to property that is related to drug trafficking. • The Immigration Department is not involved in domestic co-ordination mechanisms in this area. • There appears to be no co-ordination or action taken jointly with mainland China border authorities in relation to the cross-border movement of currency or BNI. • There are no sanctions in cross-border movement of currency or BNI related to ML or TF other than the TF offence itself. • Limited statistics are maintained on cross-border movement of currency or BNI.

3. PREVENTIVE MEASURES: FINANCIAL INSTITUTIONS

365. As noted previously, the AML and CFT regime of Hong Kong is underpinned by: the *Drug Trafficking (Recovery of Proceeds) Ordinance* Cap. 405 (DTRP); the *Organized and Serious Crimes Ordinance* Cap. 455 (OSCO), and the *United Nations (Anti-Terrorism Measures) Ordinance* Cap. 575(UNATMO). These three ordinances apply to all persons and entities in Hong Kong, including financial institutions, without exception.

366. Hong Kong adopts a functional approach to the supervision of financial institutions. Institutions engaged in banking or deposit-taking activities (termed authorised institutions, or AIs) are regulated by the Hong Kong Monetary Authority (HKMA). The Securities and Futures Commission (SFC) oversees the securities and futures market and regulates firms engaged in regulated activities (licensed corporations or "LCs"). Insurance institutions (IIs) are regulated by the Office of the Commissioner of Insurance (OCI). Apart from these core institutions, there are other financial institutions including remittance agents and money changers (RAMCs), credit unions, money lenders, the Hong Kong post, financial leasing and financial factoring companies.

Law, regulation and other enforceable means

367. While the primary legislation provides for the offence of money laundering and imposes obligations in respect of suspicious transaction reporting, it is entirely silent on the wider responsibilities of financial institutions in respect of customer due diligence, record-keeping, etc (with the exception of some limited provisions applicable solely to the RAMC sector under OSCO). Nor are these issues addressed in secondary legislation or other instruments that might constitute regulation. As a result, the regulatory authorities have published "guidelines" for their respective sectors to address the concepts required under the FATF standards. Specifically, these are the HKMA's *Guideline on Prevention of Money Laundering (Bank Guidelines)*, issued in 1997, and the 2006 *Supplement to the Guideline on Prevention of Money Laundering (Bank Supplement)*; the SFC's *Prevention of Money Laundering and Terrorist Financing Guidance Note (Securities Guidelines, 2006)*; and the OCI's *Guidance Note on Prevention of Money Laundering and Terrorist Financing (Insurance Guidelines, 2005)*. The HKMA issued a revised version of the *Bank Supplement* in November 2007, but this was not due to come into effect until May 2008 and thus has not been taken into account for this analysis. In addition, the SFC's *Code of Conduct* for the securities sector contains elements that are relevant to AML/CFT. Although not technically a regulator, the JFIU has also issued a *Guideline for Remittance Agents & Money Changers (JFIU Guidelines, 2007)*.

368. In order to determine whether these guidelines represent "other enforceable means" (OEM) in line with the FATF definition, a number of specific questions have been considered as follows:

- Do the regulators have the statutory authority to issue such instruments, and for what purpose?
The regulators have set out their supervisory policies and requirements in both statutory and non-statutory guidelines. The HKMA's statutory guidelines are issued pursuant to s.7(3) of the *Banking Ordinance*, which provides for publication of such guidelines to indicate the manner in which the HKMA proposes to exercise its functions under the law. These functions are broadly defined so as to ensure that institutions subject to its supervision operate in a prudent and honest fashion. The SFC publishes codes and guidelines under s.399 of the *Securities and Futures Ordinance*, which provides that it may do so in furtherance of its regulatory objectives. These include the minimisation of crime and misconduct in the industry. The

codes and guidelines are not subsidiary legislation, but are admissible in a court of law. The OCI *Insurance Guidelines* are issued under s.4A of the *Insurance Companies Ordinance*, which provides that the OCI may indicate the manner in which it intends to exercise its functions. These include the promotion of proper standards of conduct and sound business practices.

- Does the guidance address the FATF standard in specific terms and is the language "mandatory"? The three regulatory guidelines are similar in style and often contain identical provisions. For the most part they reflect the detailed language and terminology used in the *FATF Recommendations* and the *Methodology*, in some areas using terms such as “shall” and “must” which clearly indicate the provisions are mandatory and in the majority of the provisions providing that "institutions should" do specified things. In some limited instances, these guidance documents have provisions containing more advisory or encouraging language (for example the use of the qualifier “wherever practicable” in the *Securities Guidelines*), but where this occurs, the text is not considered to constitute OEM.
- Is there an "audit trail" between non-compliance with specific provisions of the guidance and any resulting regulatory or enforcement action? Each of the regulators has provided case studies indicating the manner in which identification of non-compliance with the guidelines has factored into disciplinary or regulatory action. There have not so far been any cases of criminal sanctions against a licensed financial institution for AML/CFT failings. However, a failure to implement individual, discrete provisions within the guidelines may, in certain circumstance, lead to direct enforcement action, particularly when the deficiency is so fundamental in itself to bring into question the integrity of the institution or management. In addition, such deficiencies are routinely cited as the basis for the regulators demanding remedial action to be taken by licensed institutions, and failure to address the deficiencies can lead to an escalation of regulatory measures, leading ultimately to a judgement that an institution or individual is not fit and proper. An example of a legal authority for such progression is in Figure 1 below. Whether the sanctions themselves are proportionate, effective and dissuasive is considered under R.17, where the evaluation team concludes that a range of sanctions is available for the banking and securities sectors and the scope of sanctions available for insurance is limited.
- Is there any evidence of case law to support the guidelines' enforceability? Generally, although the guidelines do not carry the force of law, they do have a persuasive status vis-à-vis the courts. For instance, s.399(6) SFO states that “if any provision set out in the code or guideline appears to the court to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question”. In addition, the authorities have produced evidence of a court judgement in which the judge indicated that there would be an expectation that institutions would abide by guidance published by the regulators.
- What is the perception of the financial institutions with respect to the guidelines' enforceability? From the discussions with the industry bodies and the limited sample of financial institutions, it was apparent that they regard the guidelines as *de facto* regulation, which they breach at their peril. Within the main financial community, which appears to have a generally good compliance culture, there was "buy-in" to the concept that any instructions issued by the regulators could be enforced by one means or another.
- Is there an appeals process against a decision of the regulators? A decision to exercise formal powers under the *Banking Ordinance* may be appealed to the Chief Executive in Council, and an appellant may also apply to the court for judicial review. Under s.215 SFO, decisions imposing sanctions are ‘specified decisions’. Under s.217 SFO, a person aggrieved by a specified decision may apply to the Securities and Futures Appeal Tribunal (SFAT) for a review of the decision. The SFAT is an independent tribunal chaired by a High Court judge who sits with two lay members. Under s.229 SFO, any person aggrieved by the SFAT’s decision may appeal to the Court of Appeal on a point of law. In the case of the OCI, the aggrieved person may appeal to the Financial Secretary against IA’s decision under s.14(6)

ICO, but only if non-compliance with requirements forms the ground for a director or controller being found not 'fit and proper'.

369. In light of these factors, the statutory guidelines issued by the HKMA, SFC and OCI are considered OEM in circumstances where the language is in mandatory terms. However, the same does not apply to the JFIU guidance issued to the RAMC sector. While in many respects this contains the same principles and language as the regulators' guidelines, there is no clear legal basis for the issue of guidance to this sector, which is only subject to very specific AML/CFT obligations under the criminal law and does not fall under a more general supervisory regime. The JFIU guidance acknowledges this fact itself, with most of its provisions cast as advisory. Therefore, in the following analysis, only the clear statutory obligations imposed on the RAMCs have been taken into account.

370. The financial regulators also publish non-statutory guidelines, which have no basis in law, and are issued largely in the form of circular letters to supervised institutions. These, therefore, have been discounted as representing OEM, although the authorities will interpret non-compliance with the contents of the circulars ultimately as a factor within their fit and proper evaluations.

371. In June 2006 the HKMA established an Industry Working Group on ML/TF (IWG), comprising 20 AIs of varying sizes and business focus (plus the JFIU), to be a consultative body for initiatives to improve compliance within the sector. The IWG, through its three sub-groups, is increasingly being tasked to develop industry guidance to address issues that are emerging from the routine supervisory process. Three projects were underway at the time of the onsite visit, dealing with residential address proof, offshore company accounts and PEPs. When finalised, these documents will be published by the HKMA under the name of the IWG and will constitute non-statutory guidance.

Scope Issues

372. Table 1 in Section 1 of this report, which matches the thirteen types of financial activity defined by the FATF against the corresponding institutions operating in Hong Kong, indicates that the majority of activities are conducted by institutions that are authorised and supervised by the three primary regulators, and are, therefore, subject to the corresponding guidelines. However, there are other types of institution not captured in this way: remittance agents, money lenders (including factoring), credit unions and the post office. These sectors are subject to their respective legislation, which designates government departments as the bodies responsible for administering the provisions. There are approximately 42 credit unions (plus one thrift cooperative) which are supervised by the Agriculture, Fisheries and Conservation Department; and approximately 750 licensed money lenders for which the Registrar of Companies performs the functions of the Registrar of Money Lenders pursuant to the *Money Lenders Ordinance* with the Hong Kong Police involved in vetting the bona fides of applicants for money lender licences. In addition, there is a small number of businesses engaged in financial leasing, some of which may be AIs or licensed money lenders, although they are not required to be so in order to conduct a leasing business.

373. While the universal STR obligations contained within the OSCO and DTROP apply to all such institutions, a limited number of additional AML/CFT obligations apply to remittance agents and money changers, but no additional measures have been extended to the credit unions, the money lenders, financial leasing businesses or the post office. The authorities have not undertaken a formal risk assessment to determine the level of ML/TF risk for these sectors, although their belief is that the risk is low because of the nature and relatively small scale of the respective activities in Hong Kong, and the type of restrictions imposed by the governing legislation for each sector. The evaluation team considers that, as there has been no formal risk assessment by the authorities, it is not possible to conclude that there is a proven low risk that justifies the exclusion of these activities from the scope of most of the AML/CFT preventive measures. Therefore, where relevant, the ratings boxes throughout this section reflect this scope limitation, although it is acknowledged that the impact on the overall rating is minimal, in view of the relatively limited scale of the activities.

Figure 1. Example of the basis for sanctions taken by the regulators for breach of guidance

<u>Use of SFC powers to enforce guidelines and codes</u>
<p><i>SFO Part V – Licensing and Registration</i></p> <p>All persons carrying out regulated activities must be licensed or registered. The SFC must refuse the application unless the applicant satisfies the SFC that he is Fit and Proper. The relevant provisions are s.116 (licensed corporations (“LCs”)), s.120 (representatives of LCs) s.126 (responsible officers of LCs). Under s.132, substantial shareholders of LCs (10% shareholders) will not be approved unless the LC will remain a fit and proper person. Under s.129, the SFC can take into account a number of specified factors, and “any other matter” that it considers relevant, in considering whether a person is fit and proper.</p> <p><i>Part VII Business Conduct and Part XVI Miscellaneous</i></p> <p>Under s.169 the SFC may publish Codes to give guidance relating to the practices and standards with which intermediaries and their representatives are ordinarily expected to comply in carrying on the regulated activities. Under s.399, the SFC may publish codes and guidelines for providing guidance in relation to how it intends to perform its functions. Section 169(4) and 399(6) provide that a failure on the part of any person to comply with the provisions set out in any such code or guideline shall not by itself render him liable to any judicial or other proceedings. However, the term “proceedings” is confined to proceedings before courts or tribunals and does not affect disciplinary action taken by the SFC.</p> <p><i>Part IX Discipline</i></p> <p>Under s.193(1) a person is guilty of “misconduct” if he performs an act or omission relating to the carrying on of any regulated activity for which he is licensed or registered which, in the opinion of the Commission, is likely to be prejudicial to the interest of the investing public. Under s.193(4), the SFC is required to take into account any applicable code of conduct published under s.169 or any code or guideline published under s.399 in considering whether a person is guilty of misconduct. Accordingly, a material breach of a code or guideline published by the SFC may justify disciplinary action under either “misconduct” or by calling into question a person’s “fitness and properness”.</p> <p>Where a regulated person is guilty of misconduct, or where the SFC is of the opinion that he is not a fit and proper person to be or to remain a regulated person, the SFC may, under s.193(1), revoke or suspend his licence, withdraw his approval as a responsible officer, issue a public or private reprimand or prohibit him from doing various licensed activities. Under s.194(2), the SFC may, separately or in addition, impose a fine not exceeding the greater of (i) HKD10 000 000 (USD1.28 million); or (ii) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct or the conduct which leads the SFC to form the opinion. Under s.387, the civil standard of proof applies to establishing s.193 misconduct.</p> <p>Accordingly, where a person is in breach of the <i>Code of Conduct</i> for persons licensed by or registered with the SFC which contains KYC and CDD requirements, or the Prevention of Money Laundering and Terrorist Financing Guidance Note, the SFC may suspend or revoke his licence, impose various lesser penalties on him and/or impose substantial fines on him.</p>

3.1 Risk of money laundering or terrorist financing

374. Hong Kong has not conducted a risk assessment to distinguish which sector would be subject to low or little risk of ML or TF. As such, all institutions subject to the legal and regulatory provisions governing AML/CFT are required to adopt the specified standards, although the institutions themselves may apply a risk-based approach to the application of the standards generally, and, in certain circumstances must do so in high risk scenarios.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

Recommendation 5

Anonymous accounts

375. Each of the guidelines issued by the banking, securities and insurance regulators contains a specific prohibition on the maintenance of anonymous accounts or accounts in fictitious names (paragraph 5.1 of the *Bank Guidelines*, paragraph 6.1.7 of the *Securities Guidelines* and paragraph 6.1.1 of the *Insurance Guidelines*). Paragraph 3.5 of the *Bank Supplement* further requires that, where an AI allows confidential numbered accounts, the same CDD process as required under the *Bank Guidelines* and the *Bank Supplement* should apply. In addition, the identity of the account holder should be known to a sufficient number of staff to operate proper due diligence, and such accounts should in no circumstances be used to hide the customer identity from the AI's compliance function or from the HKMA. The authorities have indicated that it is not the practice within the securities industry in Hong Kong to maintain numbered accounts. Within the RAMC sector, anonymous transactions of or above HKD 8 000 (around USD 1 000) are prohibited under s.24C OSCO, which requires RAMCs to verify the name and identity of all face-to-face clients (by reference to valid identity documents) of transactions of or above this threshold.

When CDD is required

376. Paragraph 5.1 of the *Bank Guidelines* provides that AIs should obtain satisfactory evidence of the identity and legal existence of persons applying to do business with them. Paragraph 5.26 states that, where an occasional transaction to be undertaken by an AI for a non-account holder involves a large sum of cash or is otherwise unusual, the AI should ask the customer to produce positive evidence of identity (*i.e.* identity documents issued by official or other reputable sources such as passports or identity cards). The term "large sum of cash" is not further defined in general. Paragraphs 3.13 and 5.27 of the *Bank Guidelines* require AIs to conduct CDD when they undertake any remittance or money changing transactions (including for non-account holders) with a value equal to or more than HKD 20 000 (equivalent to around USD 3 000). By letter of 20 December 2006, the HKMA advised banks that it 'would expect' institutions to lower the remittance threshold to HKD 8 000 in line with the revision to the OSCO threshold for RAMCs, but this change has not yet been incorporated into the *Bank Guidelines*, including those issued in November 2007. However, this instruction can be considered to have mandatory effect because paragraph 3.13 also states that, although AIs are exempted from the requirements of the OSCO, they should adopt similar procedures in order to comply with overall government AML/CFT policy. Therefore, the amendment to the OSCO, which reduced the threshold from HKD 20 000 to HKD 8 000, applies equally to the AIs³².

377. Paragraphs 12.3(b) and 12.3(d) of the *Bank Supplement* requires AIs to undertake reviews of existing records when there is a material change in the way the customer's account is operated and when they are aware that they lack sufficient information about the customer.

378. Paragraph 6.1.9 of the *Securities Guidelines* provides that in general, an LC should identify and verify the identity of a customer, including the beneficial owner, before establishing a business relationship. When the LC is unable to perform the CDD process satisfactorily at the account opening stage, it should not commence the business relationship or perform the transaction and should consider whether a STR should be made. Under paragraph 5.1 of the *Code of Conduct*, LCs are also required to take all reasonable steps to establish the true and full identity of each of its clients, and of each client's financial situation, investment experience and investment objectives. CDD must be

³² As a result, in the remainder of this report, the threshold applicable to AIs will be specified as being HKD 8 000, even though the actual text of the current HKMA guidelines continues to refer to the higher figure.

conducted in all transactions regardless of the amount of the transaction or whether the transaction is occasional. Paragraph 6.1.12 of the *Securities Guidelines* requires an LC to consider conducting periodic and/or ad hoc reviews of existing customer records to consider re-classifying a customer as high or low risk. That paragraph states that an appropriate time to conduct an ad hoc review is when: there is a transaction that is unusual or not in line with the customer's normal trading pattern based on the LC's knowledge of the customer; there is a material change in the way that the account is operated; the LC is not satisfied that it has sufficient information about the customer; or, there are doubts about the veracity or adequacy of previously obtained identification data.

379. Paragraph 6.1.8 of the *Insurance Guidelines* provides that in general, IIs are required to identify and verify the identities of customers and beneficial owners before establishing a business relationship with them. If an II is unable to satisfy itself in this regard, it should not commence a business relationship or perform the transaction and should consider making a STR (paragraph 6.1.11). No threshold is set, below which CDD is not required, and this was a conscious decision taken during the consultation period. Paragraph 6.7.2(d) sets out fifteen examples of where due diligence should again be considered after the establishment of a contract. These include a number of ML indicators, but explicitly address circumstances where the II is aware that it lacks sufficient information about the customer, and where there is suspicion of ML and TF. They also include transactions when there is payment/surrender by a wire transfer from/to foreign parties. Paragraph 6.7.3 specifies that occurrence of the listed transactions does not necessarily imply that full CDD needs to be undertaken again, unless doubts arise about the veracity of the information already held.

380. RAMCs are required under s.24C OSCO to obtain and record the name and identity of all persons undertaking transactions of or above HKD 8 000. However, s.24C(2)(b) restricts the requirement to verify the customer's identity to circumstances where the customer appears in person.

Identification and verification

381. Paragraph 5.1 of the *Bank Guidelines* provides that AIs should obtain satisfactory evidence of the identity and legal existence of persons applying to do business, on the basis of reliable documents and other resources. Paragraph 3.2(b) of the *Bank Supplement* elaborates that the CDD measures should include verifying the customer's identity using reliable, independent source documents, data or information. Specific guidelines on the type of source documents and other information that may be relevant in relation to different types of customers (*e.g.* personal customers, corporate customers, unincorporated businesses, trusts and nominees, and professional intermediaries) are set out in various sections of the *Bank Guidelines* and the *Bank Supplement*. For example, if the customer is an individual, the AI should obtain his/her true name and/or name(s) used, identity card/passport number, current permanent address, date of birth, nationality and occupation. With respect to remittances ordered by non-accountholders, paragraph 5.27 of the *Bank Guideline*, read in conjunction with Annex 8, only requires verification of the customer's identity when the amount remitted is HKD 8 000 or more, and the remitter appears in person.

382. Paragraph 6.1.2 of the *Securities Guidelines* provides that an LC should identify and verify each customer's identity using reliable source documents, data or information. The type of information and documentation that should be obtained in respect of different types of customers (*e.g.* individual customers, corporate customers, listed companies, financial or professional intermediaries) is set out in paragraphs 6.3 to 6.11. Paragraph 5.1 of the *Code of Conduct* also requires LCs to take all reasonable steps to establish the true and full identity of their clients, while paragraph 5.4 requires LCs to be satisfied on reasonable grounds about the identity, address and contact details of the persons originating the instructions and of the beneficial owners of accounts.

383. Paragraph 6.1.1(a) of the *Insurance Guidelines* requires IIs to identify the customer and verify the customer's identity using reliable, independent source documents, data or information. The information that should be obtained in respect of different types of customers (*i.e.* individuals,

corporations, unincorporated businesses, trust accounts and higher risk customers are specified in paragraphs 6.2 to 6.6).

384. As indicated above, RAMCs are required under s.24C OSCO to obtain the name and identity card number, address and telephone number of the customer for all transactions of or above HKD 8 000, but are only required to verify such information in respect of face-to-face customers (by reference to valid identity documents).

Verification for legal persons or arrangements

385. Paragraph 5.1 of the *Bank Guidelines* requires AIs to obtain satisfactory evidence of the identity and legal existence of persons applying to do business with the AI. This paragraph also requires AIs to establish that an applicant claiming to act on behalf of another person is authorised to do so. Paragraphs 5.9 – 5.11 of the *Bank Guidelines* and paragraph 4.5 of the *Bank Supplement* set out the information that AIs should obtain in relation to corporate accounts. Such information includes the Certificate of Incorporation and the Business Registration Certificate; the Memorandum and Articles of Association; the resolution of the board of directors to open an account and confer authority on those who will operate it; a company search report³³ from the Company Registry (which will show the names of the directors and the shareholders of the company); and necessary documents for verifying the identity of the principal shareholders, at least two directors (including the managing director) and all the account signatories.

386. Paragraph 6.4 of the *Securities Guidelines* provides that an LC should obtain the following information for a corporate customer:

- Certificate of Incorporation and, where applicable, Business Registration Certificate or other similar documents.
- Board resolution evidencing the approval of the opening of the account and conferring authority on those who will operate it.
- Information about the nature of the customer's business and its ownership and control structure for identifying which individual(s) ultimately own(s) or control(s) the customer.
- Specimen signatures of account signatories.
- Copies of identification documents (ID) for at least two authorised persons to act on behalf of the corporate customer.
- Copies of ID for at least two directors (including the managing director).
- Copies of ID for substantial shareholders and, where applicable, principal beneficial owners.

387. For partnerships and other unincorporated businesses, LCs are required under paragraph 6.7 of the *Securities Guidelines* to obtain satisfactory evidence such as the identity of at least two partners, the identity of at least two authorised signatories and a mandate from the partnership authorising the opening of an account and conferring authority on those who will operate it in the case of a formal partnership arrangement.

388. Under paragraph 6.3.1 of the *Insurance Guidelines* an II is required to obtain the following information with respect to a corporate customer registered in Hong Kong:

³³ The Company Registry's Cyber Search Centre (www.icris.cr.gov.hk) can be used to conduct searches on the current data of registered companies and image records of registered documents kept by the Registrar. Information available includes the date of incorporation, company status, company name change history and the date of dissolution (if applicable). The company's registered address, share capital (for local companies), particulars of directors and secretary, particulars of receiver and manager (if applicable) and particulars of liquidators (if applicable) are also available.

- Certificate of incorporation and business registration certificate.
- Memorandum and articles of association (if the II considers this necessary having regard to the risk of the particular transaction).
- Resolution of the board of directors to enter into insurance contracts or other evidence conferring authority to those persons who will operate the insurance policy as well as the identification information of those persons.
- A company search report from the Companies Registry (if there is a suspicion about the legitimacy of the legal entity).

389. For corporate customers not registered in Hong Kong, IIs are required to obtain comparable documents to those stated above, preferably certified by qualified persons such as lawyers or accountants in the country of registration.

390. For partnerships and other unincorporated businesses, IIs are required under paragraph 6.4.1 of the *Insurance Guidelines* to obtain satisfactory evidence of the identity of at least two partners and all authorised signatories designated to sign insurance contracts. In the case of a formal partnership arrangement, IIs are also required to obtain evidence of a mandate from the partnership authorising the opening of an account and conferring authority on those who will operate it.

391. For the obligations imposed on the three core sectors with respect to trusts, see the section below on legal arrangements.

392. There are no specific, enforceable provisions relating to legal persons and arrangements imposed on RAMCs. However, paragraph 7.5 of the *JFIU Guideline* advises remittance agents and money changers, in addition to verifying and recording the identity of any individual purportedly representing the corporate customer, to obtain information similar to that listed above.

Identification of the beneficial owner

393. The sector guidance papers published by the financial regulators contain near identical requirements for institutions to identify and verify the beneficial ownership and control of the customer (*Bank Supplement 3.2, Securities Guidelines 6.1.2, Insurance Guidelines 6.1.1*). In each case the term beneficial owner is defined as the individual who ultimately owns or controls the direct customer, and/or the person on whose behalf a transaction is being conducted. In the *Insurance Guidelines* ‘beneficial owner’ refers to the beneficiary of the contract as well as to the owner/controller of the policy.

394. Under paragraph 5.4 of the *SFC Code of Conduct*, LCs are also required to be satisfied on reasonable grounds about the identity, address and contact details of the person or entity ultimately responsible for originating the instruction in relation to a transaction; and the person or entity that stands to gain the commercial or economic benefit of the transaction and/or bear its commercial or economic risk. In the case of the insurance sector, this concept of beneficial ownership also extends to the beneficiary of the policy.

395. The *Securities Guidelines* have specific provisions relating to the acceptance of omnibus accounts maintained by professional intermediaries in order that they may engage in securities, futures or leveraged foreign exchange transactions on behalf of their own clients. The guideline provides that the LC is not required to identify and verify the underlying customer, but may treat the intermediary as its customer, on condition that enhanced CDD is undertaken. However, the enhanced CDD obligation is subject to certain exceptions, including cases where the intermediary is authorised by a banking, insurance or securities regulator in Hong Kong or another FATF jurisdiction; is a trust company that is a subsidiary of an entity so regulated; or is a professional intermediary which is subject to an AML/CFT regulatory regime. In such cases, a simplified CDD procedure is permitted.

396. There are no enforceable provisions relating to beneficial ownership imposed on the RAMCs. However, in relation to a transaction of HKD 8 000 or more, paragraph 7.1(b) of the *JFIU Guideline* advises RAMCs to follow similar procedures to those described above.

Customers acting on behalf of others

397. Paragraph 5.17 of the *Bank Guidelines* provides that AIs should always establish, by confirmation from an applicant for business, whether the applicant is acting on behalf of another person as trustee, nominee or agent. In addition, AIs are required under paragraph 3.3 of the *Bank Supplement* to obtain information about the individual's name, residential address, date of birth and nationality, and verify such information.

398. Paragraph 6.1.8 of the *Securities Guidelines* provides that when establishing a business relationship, an LC should ask whether the customers are acting for their own accounts or for the account of another party for the purpose of identifying the beneficial owner of the account. Paragraph 6.1.2(c) also provides that an LC should identify the person on whose behalf a transaction is being conducted and obtain copies of ID of such person for verification purposes. In addition, under the *Client Identity Rule Policy*, which was gazetted under s.399 SFO, LCs have the duty to find out whether a client is acting as principal or agent. If the client is acting as an agent, the LC should establish the identity of the principal and seek to obtain the required information. If this information can be provided, it should be recorded before the transaction or within two business days. If it cannot be provided, the LC can enter into an arrangement that the information will be provided to the regulators upon request.

399. The *Insurance Guidelines* do not contain a provision equivalent to those in the banking and securities guidelines (*i.e.* requiring institutions positively to ask for confirmation of whether the customer is acting on behalf of another person). Instead, reliance is placed on the general principle (paragraph 6.1.1) requiring IIs to establish the identity of the beneficial owner.

400. With respect to the RAMCs, paragraph 7.2 of the *JFIU Guideline* advises that, where any customer undertakes a transaction on behalf of a third party, in addition to recording and verifying the identity of the customer, the RAMC should also record and retain the identity and full particulars of the instructing third party.

Identification of beneficial owners of legal persons and legal arrangements

401. Where the customer is a corporate entity not listed on a recognised exchange, AIs are required (paragraphs 4.5 and 4.6 of the *Bank Supplement*) to look behind the company to identify the beneficial owners and those who have control over the funds, and to verify their identity. The *Bank Supplement* indicates that, where there are intermediate layers in the ownership chain, the AI is not required to verify the identity of each entity within the chain, but should seek to identify and verify the "individuals who are the ultimate principal beneficial owners of the direct customer". It also requires AIs to have procedures for dealing with corporate customers with nominee shareholders or share warrants to bearer. Paragraph 4.7 specifies that AIs should understand the ownership structure of non-listed companies and establish the source of funds. In cases where the customer is a company listed on a recognised exchange, the AI is permitted to regard the company itself as the entity whose identity must be established. However, AIs are advised (paragraph 4.3) that where the listed entity is effectively controlled by an individual or small group of individuals, they should consider whether to verify the identity of those individuals.

402. As regards trusts, AIs are required to obtain satisfactory evidence of the identity of the trustees, protectors, settlors/grantors and beneficiaries, and understand the details of the nature of the trust and the relationship between the various parties (paragraphs 5.2 – 5.3 of the *Bank Supplement*). Similar guidance in relation to accounts held by other types of legal persons (*e.g.* clubs, societies and charities,

unincorporated businesses, and client accounts) is also provided in the *Bank Guideline* and the *Bank Supplement*.

403. Paragraph 6.1.2(c) of the *Securities Guidelines* requires LCs to identify and verify the beneficial ownership and control of each customer. This applies to corporate customers, trust accounts, partnerships and unincorporated businesses. For a corporate customer not listed on a recognised stock exchange, an LC is required under paragraph 6.4.1 of the *Securities Guidelines* to obtain information about the nature of the business of the corporate customer and its ownership and control structure with the purpose of identifying which individuals ultimately control the customer. An LC is also required to obtain copies of ID of:

- At least two authorised persons to act on behalf of the corporate customer.
- At least two directors (including the managing director).
- The substantial shareholders³⁴ and, where applicable, ultimate principal beneficial owners.

404. Under paragraph 6.2 of the *Securities Guidelines*, simplified CDD may be applied to a corporate customer which is listed on a stock exchange in a FATF member jurisdiction or on a specified stock exchange as defined under the SFO or any of its subsidiaries, but if such a company is effectively controlled by an individual or a small group of individuals, an LC is still required to consider whether it is necessary to verify the identity of such individual(s).

405. Paragraph 6.4.5 of the *Securities Guidelines*, advises (but does not require) LCs to apply enhanced due diligence in the case of an offshore investment vehicle owned by individuals and incorporated in a jurisdiction where company searches or certificates of incumbency (or equivalent) are not available or do not provide meaningful information about its directors and substantial shareholders. The LC is advised to perform additional CDD on a risk-sensitive basis, including:

- Obtain self-declarations in writing about the identity of, and the relationship with, the directors and substantial shareholders from the ultimate beneficial owners.
- Obtain comprehensive customer profile information; *e.g.* purpose and reasons for opening the account, business or employment background, source of funds and anticipated account activity.
- Conduct face-to-face meeting with the customer before acceptance of such business.
- Obtain approval of senior management for acceptance of the customer.
- Assign designated staff to serve the customer and require staff to bear responsibility for CDD and ongoing monitoring to identify any unusual or suspicious transactions on a timely basis.
- Hold regular face-to-face meetings with the customer throughout the business relationship.

406. An LC is required under paragraph 6.8 of the *Securities Guidelines* to understand the relationship among the relevant parties in handling a trust or nominee account. There should be

³⁴ A person is regarded as a substantial shareholder if he, either alone or with any of his associates:

(a) has an interest in shares in the corporation: (i) the nominal value of which is more than 10% of the issued share capital of the corporation; or (ii) which entitles the person, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at the corporation's general meetings; or

(b) holds shares in any other corporation which entitles him, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of 35% or more of the voting power at general meetings of the other corporation, or of a further corporation, which is itself entitled, either alone or with any of its associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the corporation.

satisfactory evidence of the identity of the trustees and the persons on whose behalf they are acting. An LC should take reasonable measures to understand the nature of the trust. The guidelines provide that documents and information relevant to conducting CDD include the identity of trustees or person exercising effective control over the trust; identity of beneficiaries and copy of the trust deed.

407. Paragraph 6.1.1(b) of the *Insurance Guidelines* requires IIs to understand the ownership and control structure of legal persons and arrangements. Paragraph 6.3.5 requires that where the corporate customer is neither of low risk nor a regulated financial institution, an II should look behind the company to identify the beneficial owners and those who have control over the funds. This is defined to include all the principal shareholders (a person entitled to exercise or control the exercise of 10% or more of the voting rights of a company), at least two directors (including the managing director) of the company and all authorised signatories designated to sign insurance contracts. Further, in the case of a non-listed company, paragraph 6.3.6 requires an II to follow the chain of ownership to the individuals who are the ultimate principal beneficial owners of the customer and to verify the identity of these individuals, although there is an explicit exemption from having to check the details of the intermediate companies in the chain.

408. Where the customer is a trust, paragraph 6.5.1 of the *Insurance Guidelines* requires IIs to understand "the substance and form of the entity" and to verify the identity of the trustees, any other person exercising effective control over the trust property, the settlers and the beneficiaries.

Purpose and nature of the business relationship

409. The *Bank Guidelines* and the current *Bank Supplement*³⁵ do not explicitly require AIs to obtain information on the purpose and intended nature of the business relationship from the customer. However, they have in many places emphasised the importance for AIs to know their customers, including their nature of business, risk profile and the types of transactions to be conducted over their accounts (e.g. paragraph 4.1 of the *Bank Guidelines* and paragraphs 2.3, 2.4 and 3.2 of the *Bank Supplement*). Under paragraph 6.1.6 of the *Securities Guidelines*, an LC is required to obtain appropriate information on the purpose and intended nature of the business relationship on a risk-sensitive basis such that ongoing due diligence on the customer may be conducted at a level commensurate with the customer's risk profile. Similarly, paragraph 6.1.1(c) of the *Insurance Guidelines* requires IIs to obtain information on the purpose and intended nature of the business relationship between the customer and the II.

Ongoing due diligence

410. Paragraph 3.2(e) of the *Bank Supplement* requires AIs to undertake on-going due diligence and scrutiny throughout the course of the business relationship to ensure that the transactions being conducted are consistent with the AI's knowledge of the customer, its business and risk profile, including, where necessary, identifying the source of funds. Paragraphs 12.2–12.3 require AIs to undertake periodic reviews of existing records of customers to ensure that they remain up-to-date and relevant. Paragraph 12.4 further states that AIs should consider collecting additional information from those customers who are considered to be of higher risk.

411. Paragraph 6.1.2 of the *Securities Guidelines* requires LCs to conduct ongoing due diligence on terms identical to those for the banking sector. LCs are required to take reasonable steps to ensure that the records of existing customers remain up-to-date and relevant (paragraph 6.1.11). To achieve this, LCs are required to consider undertaking periodic and/or ad hoc reviews of existing customer records, and also encouraged to consider whether to require additional information in line with their current standards from those existing customers (paragraph 6.1.13).

³⁵ In November 2007 the HKMA amended the *Bank Supplement* to include an explicit requirement that AIs should obtain information on the purpose and intended nature of the business relationship from the customer. This amendment does not however come into effect until May 2008.

412. Paragraph 6.7.1 of the *Insurance Guidelines* requires IIs to perform on-going due diligence on the business relationship. It goes on to state that, in general, IIs should pay attention to all requested changes to the policy and/or exercise of rights under the terms of the contract. They should assess if the change/transaction does not fit the profile of the customer and/or beneficial owner or is for some other reason unusual or suspicious and they should undertake enhanced due diligence with respect to higher risk categories. Paragraph 7.2.3 requires IIs to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.

413. There are no enforceable provisions relating to ongoing due diligence for RAMCs, but paragraph 7.1(c) of the *JFIU Guideline* advises RAMCs to conduct on-going due diligence and scrutiny of transactions and accounts throughout the course of the business relationship to ensure that transactions being conducted are consistent with the RAMCs' knowledge of the customer, his activity and risk profile, including, where necessary, identifying the source of funds. In addition, paragraph 11.1 advises RAMCs to take steps to ensure that the records of existing customers remain up-to-date and are in line with the RAMC's current requirements for new customers.

Enhanced due diligence

414. Paragraph 2.2 of the *Bank Supplement* provides that AIs should develop customer acceptance policies and procedures that aim to identify the types of customer that are likely to pose a higher than average risk of ML. This paragraph further requires AIs to adopt a more extensive CDD process (which should include on-going due diligence and scrutiny) for high risk customers. Paragraph 2.3 states that in determining the risk profile of a particular customer or type of customer, an AI should take into account factors such as the following:

- Origin of the customer (*e.g.* place of birth, residency), the place where the customer's business is established, the location of the counterparties with which the customer conducts transactions and does business, and whether the customer is otherwise connected with jurisdictions which are assessed to be of higher ML and TF risk.
- Background or profile of the customer such as being, or linked to, a politically exposed person (PEP) or otherwise being an individual with high net worth whose source of funds to be credited to an account (both initially and thereafter) is unclear.
- Nature of the customer's business, which may be particularly susceptible to ML risk, such as money changers or casinos that handle large amounts of cash.
- For a corporate customer, unduly complex structure of ownership for no good reason.
- Any other information that may suggest that the customer is of higher risk (*e.g.* knowledge that the customer has been refused a banking relationship by another institution).

415. In addition, specific guidance is provided in various sections of the *Bank Guidelines* and the *Bank Supplement* in relation to different types of high risk customers including PEPs, non-local individual customers, private banking customers, trusts, and companies with nominee shareholders or capital issued in the form of share warrants to bearer.

416. Paragraph 6.2.1 of the *Securities Guidelines* provides that LCs should apply CDD measures on a risk sensitive basis and should adopt an enhanced CDD process for higher risk categories of customers, business relationships or transactions on a case-by-case basis, depending on customers' background and transaction types and specific circumstances. Paragraph 5.2, which specifies the requirements for a customer acceptance policy, sets out the factors to be considered in determining the risk profile of a customer. These include:

- The background or profile of a customer (such as being or linked to a PEP).
- Nature of the customer's business (which may be susceptible to ML risk like money changers or casinos).
- Origin of the customer (such as those countries known to the LC to lack proper standards in the prevention of ML or CDD process).
- Means of payment (such as cash or third party cheque).
- Risks associated with non face-to-face business relationships.

417. Paragraph 6.2.7 provides examples of the high risk categories of customers, specifically:

- Complex legal arrangements such as unregistered or unregulated investment vehicles.
- Companies that have nominee shareholders or a significant portion of capital in the form of share warrants to bearer.
- Persons (including corporations and other financial institutions) from or in countries which do not or insufficiently apply the *FATF Recommendations*.
- PEPs as well as persons or companies clearly related to them.

418. Paragraph 6.1.2 of the *Insurance Guidelines* stipulates that IIs should adopt a risk-based approach depending on the type of customer and/or beneficial owner, business relationship or transaction. Enhanced due diligence is called for with respect to higher risk categories. Paragraph 6.6.1 sets out some examples of higher risk customers and/or beneficial owners:

- Customers of non-face-to-face transactions.
- Politically exposed persons.
- Customers in connection with countries and territories which have inadequate rules and practices that impede international co-operation in the fight against ML.
- Customers and/or beneficial owners who are assessed to be of higher risk-based on the factors underpinning the II's customer acceptance policy, including the nature of the insurance policy that is susceptible to ML risk (*e.g.* single premium policies), frequency and scale of activities, origin and background of the customer and/or beneficial owner, nature of the customer's and/or beneficial owner's business, means and type of payment and the source of funds/wealth, etc.

419. The *Insurance Guidelines* contains examples of additional measures for enhanced CDD, including obtaining senior management approval for establishing business relationship, obtaining comprehensive customer profile information, assigning designated staff to serve the customer, requisition of additional information and certification by appropriate authorities and professionals of documents presented (paragraph 6.6.2). As is the case with the banking and securities guidelines, special attention is required in respect of companies that have nominee shareholders or a significant proportion of capital in the form of share warrants to bearer.

420. There are no enforceable measures imposed on RAMCs in relation to enhanced due diligence, although the *JFIU Guideline* alerts institutions to the risk of dealing with PEPs.

Reduced/simplified CDD

421. While the general requirement under the *Bank Guidelines* and *Bank Supplement* is that AIs should undertake the full range of CDD measures, they are permitted to apply a simplified CDD process for low risk customers. Specifically, the Interpretative Notes to the *Bank Supplement* state that

AIs may apply a simplified CDD process in respect of a customer or a particular type of customers where (a) there is no suspicion of ML, and (b)(i) the risk of ML is assessed to be low; or (ii) there is adequate public disclosure in relation to the customer. Various sections of the *Bank Supplement* provide detailed guidance in relation to different types of potentially low risk customers such as domestic retail customers, companies listed on a recognised stock exchange³⁶, state-owned enterprises in a non-NCCT jurisdiction, and supervised financial institutions from a jurisdiction that is a FATF member or that applies standards of prevention of ML equivalent to those of the FATF. For instance, paragraph 4.2 provides that for companies listed on a recognised stock exchange, it will generally be sufficient for an AI to obtain company registration documents (*i.e.* certificate of incorporation, business registration certification, memorandum and articles of association, resolution of the board of directors to open an account and a search of the company's information at the Company Registry) without the need to make further enquiries about the identity of the principal shareholders, individual directors or account signatories.

422. The general CDD rule under the *Securities Guidelines* requires customers of LCs to be subjected to a series of due diligence measures. However, paragraph 6.2.3 of the *Securities Guidelines* recognises a limited number of situations in which the lower level of risk may justify simplified CDD for LCs:

- Financial institutions that are authorised and supervised by the SFC, HKMA or OCI or by an equivalent authority in a jurisdiction that is a FATF member or in an equivalent jurisdiction.
- Public companies that are subject to regulatory disclosure requirements. This includes companies that are listed on a stock exchange in a FATF member jurisdiction or on a specified stock exchange as defined under the SFO and their subsidiaries.
- Government or government-related organisations in jurisdictions where the risk of ML is assessed by the LC to be low and where the LC has no doubt about the ownership of the organisation.
- Pension, superannuation or similar schemes that provide retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme.

423. By way of example of the simplified due diligence process, paragraph 6.5.2 provides for similar procedures to those mentioned in the banking sector guidelines with respect to a customer that is a company listed on a stock exchange in a FATF member jurisdiction or on a recognised stock exchange as defined under the SFO.

424. Paragraph 6.1.3 of the *Insurance Guidelines* provides that simplified CDD may be applied to a customer where there is no suspicion of ML and TF and the risk is assessed to be low (or there is adequate public disclosure in relation to the customers or there are adequate checks and controls elsewhere in jurisdictional systems). Examples similar to those provided in the banking and securities guidelines are included under paragraphs 6.3.2 and 6.3.4, but the list is extended slightly to cover relationships more specific to the insurance sector.

425. The customer identification requirements imposed on the RAMCs are absolute and cannot be varied. The identity of face-to-face customers conducting transactions of HKD 8 000 or above must be verified (s.24C OSCO).

³⁶ Recognised stock exchanges are defined in the *Bank Supplement* to include all those in FATF countries, together with designated exchanges in Korea, Thailand and Malaysia.

Timing of verification

426. Paragraph 3.6 of the *Bank Supplement* states that AIs should not in general establish a business relationship with a new customer until due diligence is satisfactorily completed (*i.e.* the identity of the customer and the beneficial owner has been verified). It goes on to state that it may be acceptable for AIs to allow an account to be opened pending completion of the verification of identity, provided that the necessary evidence of identity is promptly obtained, and provided that, generally, the AI does not allow funds to be paid out of the account to a third party before the identity of the customer is satisfactorily verified. The interpretative note to this paragraph provides a limited exception to the third-party payment rule, where: (a) there is no suspicion of ML; (b) the risk of ML is assessed to be low; (c) the transaction is approved by senior management; (d) the name of the recipient does not match with watch lists such as those for terrorist suspects and PEPs; and (e) the verification process is completed within one month from the date the relationship was established.

427. Paragraph 6.1.9 of the *Securities Guidelines* provides that in general, an LC should identify and verify the identity of a customer, including the beneficial owner, before establishing a business relationship. However, the following paragraph provides that, for transactions that need to be performed very rapidly due to market conditions or where it is essential not to interrupt the normal conduct of business, it would be permissible for verification to be completed after the establishment of the business relationship, provided that the verification occurs as soon as reasonably practicable. The *Securities Guidelines* further specify that, in such circumstances, an LC would need to adopt clear and appropriate policies and procedures concerning the conditions and timeframe under which a customer is permitted to establish a business relationship prior to verification. These procedures should include a set of measures such as limitation of the number, types and/or amount of transactions that can be performed, a restriction on the payment of funds to third parties, and the monitoring of large or complex transactions that fall outside the expected norms for that type of relationship.

428. Paragraph 6.1.8 of the *Insurance Guidelines* stipulates that in principle, identification and verification of customers and beneficial owners should take place when the business relationship with those persons is established (*i.e.* before, or at the moment when, the insurance contract is concluded). An exception to this principle is provided where the ML/FT risks are effectively managed, and where identification and verification occur at or before the time of payout or the time when the beneficiary intends to exercise vested rights under the policy. Paragraph 6.1.10 provides that, where a customer and/or beneficial owner is permitted to utilize the business relationship prior to verification, IIs should adopt appropriate risk management procedures, including measures such as a limitation of the number, types and/or amount of transactions that can be performed and the monitoring of large or complex transactions outside the expected norms for that type of relationship.

429. For all transactions of HKD 8 000 or more, RAMCs must, at the time of the transaction, verify a face-to-face customer's identity, by reference to their Hong Kong Identity Card or passport (s.24C OSCO). Delayed verification is not allowed.

When CDD cannot be completed successfully – new customers

430. Paragraph 3.6 of the *Bank Supplement* requires AIs in general not to establish a business relationship with a new customer until the due diligence process is satisfactorily completed. Paragraph 3.4 further states that the unwillingness of the customer, for no good reason, to provide the information requested and to co-operate with the AI's CDD process may itself be a factor that should trigger suspicion and therefore may need to be reported to the JFIU. Paragraph 3.7 specifies that, if an account has been opened but the process of verification of identity cannot be successfully completed, the AI should close the account, return the funds to the source from which they were received, and consider making a report to the JFIU.

431. Identical provisions appear in both the *Securities Guidelines* and the *Insurance Guidelines*, stating that when an institution is unable to perform the CDD process satisfactorily at the account opening stage, it should not commence the business relationship or perform the transaction and should

consider whether a suspicious transaction report should be made. In addition, if an institution is unable to perform the CDD process satisfactorily within a reasonably practicable timeframe after commencing the business relationship, it should, if possible, discontinue the business relationship and consider whether a suspicious transaction report should be made.

Existing customers

432. Paragraphs 12.2 and 12.3 of the *Bank Supplement* require AIs to undertake periodic reviews of existing records of customers to ensure that they remain up-to-date and relevant, and that they comply with the AI's current standards. Such reviews should be conducted upon the occurrence of certain trigger events such as:

- When a significant transaction is to take place.
- When there is a material change in the way the account is operated.
- When the AI's customer documentation standards change substantially.
- When the AI is aware that it lacks sufficient information about the customer.

433. Paragraph 12.4 also states that, even where there is no trigger event, AIs should consider requiring additional information from those existing customers who are considered to be of high risk.

434. Paragraphs 6.1.11 and 6.1.12 of the *Securities Guidelines* provide that an LC should take reasonable steps to ensure that the records of existing customers remain up-to-date and relevant. To achieve this, an LC is required to consider undertaking periodic and/or ad hoc reviews of existing customer records. The frequency for conducting these reviews should be determined based on the LC's understanding of the customer and the type of relationship and transaction. The guidelines provide examples of events that might trigger a review, including when there is a transaction that is unusual or not in line with the customer's normal trading pattern based on the LC's knowledge of the customer; when there is a material change in the way that the account is operated; when the LC is not satisfied that it has sufficient information about the customer; or when there are doubts about the veracity or adequacy of previously obtained identification data.

435. IIs are required under paragraph 7.2.3 of the *Insurance Guidelines* to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships. According to paragraph 6.7.2, such reviews should be conducted upon the occurrence of certain trigger events, and examples of fifteen such events are provided, including when there are unusual or significant changes to the funding or the beneficiaries of policies, and when the II becomes aware that it lacks sufficient information on the customer. In addition, even when there is no trigger event, IIs are required to consider whether to obtain additional information in line with current standards for those existing customers who are considered to be higher risk.

436. Paragraph 11.1 of the *JFIU Guideline* advises remittance agents and money changers to take steps to ensure that the records of existing customers remain up-to-date and relevant. Where necessary, additional evidence of the identity of existing customers should be obtained to ensure that these comply with the businesses' current standards.

Recommendation 6

437. The HKMA, SFC and OCI have all incorporated provisions in their respective supervisory guidelines to deal with politically exposed persons (PEPs). While these are all broadly similar (and identical in certain areas), there are certain variations in the provisions. These include the definition of what constitutes a PEP. In the case of the *Insurance Guidelines*, the definition adopted is the same as that used by the FATF, thereby limiting it to foreign individuals, although IIs are encouraged under

paragraph 6.6.5.7 to extend the relevant requirements to individuals who hold prominent public functions in Hong Kong. The *Bank Supplement* defines it in very similar terms, but does not draw any distinction between domestic and foreign PEPs; and the glossary to the *Securities Guidelines* equally draws no distinction between foreign and domestic, although the provisions within the body of the text imply that only foreign PEPs are covered (e.g. paragraph 6.9.3).

438. All three guidelines require institutions to gather sufficient information from a new customer, and check publicly available information to establish whether or not the customer is a PEP. In cases where this is established, institutions are required to undertake enhanced due diligence, to ascertain the source of funds and to place the decision to open the account at senior management level. However, only the *Securities Guidelines* (paragraph 6.9.6) contain an explicit provision requiring senior management approval to continue a business relationship with an existing customer who is subsequently found to be, or becomes, a PEP. Some provisions in the *Insurance Guidelines* (paragraphs 6.6.1, 6.6.2 and 6.6.5.4) can work together to achieve a similar effect in practice, but no similar requirements can be derived clearly from the the *Bank Supplement*.

439. The *Insurance Guidelines* (paragraph 6.6.5.1) make explicit reference to the need to undertake enhanced ongoing due diligence in the case of PEPs. The other guidelines rely on the more general requirement that institutions should have policies and procedures to recognise the different risks within their customer base, and to apply enhanced procedures in the case of higher risk customers, which are expressly considered to include PEPs.

440. There are no enforceable provisions applied to the RAMCs with respect to their potential dealings with PEPs. However, the *JFIU Guideline* contains advice to the sector that broadly matches the requirements contained in the regulators' guidelines.

Additional elements

441. The *United Nations Convention Against Corruption* (UNCAC) came into force in China in February 2006 and became applicable to HK at the same time. The requirements of the UNCAC have been implemented in legislation and administrative measures. Amendments have been made to the OSCO to include POBO Part II offences in the 2nd Schedule to allow ICAC to have access to the powers of confiscation of crime proceeds generated from corruption related offences. The related *OSCO Order* came into effect on 7 December 2007. To be compliant with the extradition and MLA obligations of UNCAC, the *Fugitive Offenders (Corruption) Order* and the *MLA Order* also came into operation, on 21 December 2007 and 22 February 2008 respectively.

Recommendation 7

442. In Hong Kong, only AIs maintain correspondent banking or similar relationships with overseas financial institutions, for which due diligence requirements are set out in Section 11 of the *Bank Supplement*. AIs are expected to gather sufficient information to understand the business of their respondent banks, including details about the respondent bank's management, major business activities, where it is located, its ML prevention efforts, the system of banking regulation and supervision in the respondent bank's country, and the purpose of the account. Paragraph 11.3 requires AIs to obtain approval from senior management before establishing new correspondent banking relationships, and to document the respective responsibilities of each institution.

443. Paragraph 11.8 states that an AI should establish whether the customers of the respondent bank will be allowed to use the correspondent banking service directly (i.e. via a payable-through account) and, if so, it should take steps to require verification of the identity of each such customer, using the procedures set out in Section 6 of the *Bank Supplement*. These provide that an AI may rely on an intermediary (e.g. a respondent bank) to perform CDD measures only if:

- The CDD procedures of the intermediary are not less rigorous than those of the AI.

- The AI is satisfied that the systems put in place by the intermediary to verify the identity of its customers are reliable.
- The AI is permitted to verify the due diligence undertaken by the intermediary at any stage.
- All relevant identification data and documents relating to the customers' identity are obtained.

Recommendation 8

Measures to prevent misuse of technological developments in ML or TF schemes

444. The banking sector: The HKMA issued a non-statutory *Guideline on the Supervision of E-banking* in February 2004. This requires AIs to: *i*) make use of reliable and effective authentication techniques to validate the identity and authority of their e-banking customers; *ii*) apply appropriate restrictions on fund transfers to third parties (*e.g.* restricting transfers to pre-registered third party accounts or requiring two-factor authentication for transfers to third-party); and *iii*) establish effective monitoring mechanisms to detect, in a timely manner, suspicious on-line transactions and unusual activities. While the primary purpose of these controls is to prevent fraud, they are also considered by the authorities as means to protect e-banking platforms from being abused by launderers.

445. The securities sector: The SFC has issued a *Guidance Note on Internet Regulation* (first published in March 1999 and reviewed most recently in October 2007) that requires LCs to put in place appropriate measures for conducting businesses over the Internet. This states that the fundamental principles of regulation are not premised on the use of a particular medium of communication or delivery, and regulated activities should be uniformly controlled irrespective of whether such activities are done via conventional means or by electronic means. In particular, paragraph 6.2.7 provides that an LC has a duty to establish the true and full identity of its clients when opening accounts and paragraph 6.2.1 requires an LC to ensure that it has sufficient, verifiable information about these clients when communicating with or accepting orders from them.

446. The insurance sector: In January 2001, the OCI issued a *Guidance Note on the Use of Internet for Insurance Activities*, which draws the attention of IIs to the special points they need to be aware of when engaging in such activities. Paragraph 16(b)(i) requires an insurer to have a prudent underwriting policy to process insurance applications submitted via the Internet. In particular, the insurer needs to take practicable measures to ascertain the true identity of its customers and to comply with the requirements laid down in the *Insurance Guidelines*.

447. Remittance agents and money changers: There are no specific enforceable measures governing internet and mobile phone remittance services. The JFIU has however undertaken research to assess the ML/TF risks posed by such services. In response to this, it has required off-shore internet remittance service providers to register with the JFIU and has issued reminders to them and to mobile phone services providers of the obligations of customer identification, record keeping and suspicious transaction reporting.

Procedures re risks associated with non-face to face business relationships/transactions

448. The banking sector: Section 8 of the *Bank Supplement* addresses the procedures for dealing with non-face-to-face customers. It requires AIs, whenever possible (and particularly in the case of high risk customers), to conduct a face-to-face interview with a new customer to ascertain his/her identity and background information. It further provides that, where a face-to-face interview is not conducted, AIs should apply equally effective customer identification procedures and on-going monitoring standards as for face-to-face customers. Examples of specific measures that AIs can use to mitigate the risk posed by non-face-to-face customers include:

- Certification of identity documents presented by suitable certifiers.

- Requisition of additional documents to complement those required for face-to-face customers.
- Completion of on-line questionnaires for account opening applications that require a wide range of information capable of independent verification.
- Independent contact with the customer by the AI.
- Third party introduction through an intermediary which satisfies the criteria in paragraphs 6.3 and 6.4 of the *Bank Supplement*.
- Requiring the first payment from the account to be through an account in the customer's name with another AI or foreign bank which the AI is satisfied has similar CDD standards to its own.
- More frequent update of the information on non-face-to-face customers.
- Refusal of business relationship without face-to-face contact for higher risk customers.

449. With respect to remittances ordered by non-account holders, paragraph 5.27 of the *Bank Guidelines*, read in conjunction with Annex 8, only requires verification of the customer's identity when the amount remitted is HKD 8 000 or more, and the remitter appears in person.

450. The securities sector: Section 6.10 of the *Securities Guidelines* cross-refers to the obligations under paragraph 5.1 of the *Code of Conduct* in relation to non-face-to-face customers. This requires that the signing of the client agreement and the sighting of the identity documents of the customer should be certified by a person licensed by the SFC, a Justice of the Peace or a professional person such as a certified public accountant or lawyer. Certification services available from the Hong Kong Post may also be employed. It also provides an alternative by allowing the identity of the customer (other than corporate entities) to be verified by encashing a cheque issued by the new client in accordance with the following procedural steps:

- The new client sends to the LC a signed physical copy of the client agreement together with a copy of the client's identity document for verification of the client's signature and identity.
- The LC should obtain and encash a cheque issued by the new client and drawn on the client's account with a licensed bank in Hong Kong.
- The signature on the cheque issued by the client and the signature on the Client Agreement must be the same.
- The client is informed of this account opening procedure and the conditions imposed, in particular the condition that the new account will not be activated until the cheque is cleared.
- Proper records are kept by the LC to demonstrate that client identification procedures have been followed satisfactorily.

451. Under paragraph 6.10.3 of the *Securities Guidelines*, where certifiers are in a jurisdiction that is not a FATF member or an equivalent jurisdiction, LCs are also required to take additional due diligence measures to mitigate the risk:

- Independent contact with the customer by the LC.
- Request additional documents to complement those required for face-to-face customers.
- More frequent information updates on non-face-to-face customers.
- Completion of on-line questionnaires for account opening applications that require a range of information capable of independent verification.
- Refusal of business relationship without face-to-face contact for high risk customers.

452. The insurance sector: Paragraph 6.6.4 of the *Insurance Guidelines* provides that, where a face-to-face interview is not conducted, an II should apply equally effective customer identification procedures and on-going monitoring as for face-to-face customers. The *Insurance Guidelines* provides examples of measures that IIs can use to mitigate the relevant risk, specifically:

- Certification of identity documents presented by suitable certifiers *e.g.* lawyers.
- Requisition of additional documents to complement those required for face-to-face customers.
- Completion of on-line questionnaires for new applications that require a wide range of information capable of independent verification.
- Independent contact with the customer by IIs.
- Third party introduction through an intermediary.
- Requiring the payment for insurance premiums through a bank account in the customer's name.
- More frequent update of the information on customers of non-face-to-face transactions.

453. More generally, non-face-to-face customers are required to be classified as higher risk customers to whom IIs should apply enhanced due diligence. Again, the *Insurance Guidelines* provides examples of additional general measures that can be taken in this regard, including obtaining senior management approval for establishing business relationship, obtaining comprehensive customer profile information, assigning designated staff to serve the customer, requisition of additional documents to complement those which are otherwise required, and certification by appropriate authorities and professionals of documents presented.

454. Remittance agents and money changers: Section 24C(2)(a) OSCO requires the same identification details to be recorded in non-face-to-face transactions. However, there are no requirements for RAMCs to verify the customer's identity in such circumstances. The *JFIU Guideline* advises RAMCs to apply equally effective customer identification procedures and record keeping in non-face-to-face transactions as for face-to-face transactions and to take measures to mitigate the risk posed by non-face-to-face customers.

Effectiveness of CDD Measures

455. From discussions with the industry bodies and the limited sample of financial institutions met by the evaluation team, there appeared to be a high degree of awareness of the CDD obligations. This was particularly the case over the need to establish the ultimate beneficial ownership of funds, and the institutions indicated a consistent appreciation of the necessity (and challenges) in drilling down to the natural person who exercises control over non-listed companies. This appears to be a particular challenge in Hong Kong for two main reasons: first, there is widespread use within the jurisdiction of offshore companies to hold financial and real assets (Hong Kong remains the single largest market for the sale of British Virgin Islands (BVI) international business companies); and second, there is continuous substantial growth in the provision of financial services to natural and legal persons in the Chinese mainland, where the ability to establish the beneficial ownership with reasonable certainty often remains problematic for the institutions. This latter point may well be of particular concern in the securities sector, in view of reports that much of the growth in the Hong Kong market has been fuelled by mainland investors. The position is further complicated by the fact that many of the offshore companies (established by local service providers) will have mainland residents as their beneficial owners, thereby creating two levels of complexity for the financial institutions, which may be further compounded by the fact that the company registry of choice (the BVI) still permits the issue of bearer shares (as does Hong Kong itself, in the form of share warrants to bearer). These challenges will be ongoing and likely to increase in the medium term, as more funds migrate from the mainland.

456. Nonetheless, there is no doubt that the institutions are alert to the issues, although generally they felt that greater guidance/assistance could be provided by the regulators with respect to the identification of customers from the mainland. In the case of the use of offshore companies, the HKMA has been working in conjunction with its Industry Working Group on AML/CFT (IWG) to prepare a non-statutory guidance paper on CDD for offshore company accounts. In addition, the HKMA commenced a thematic review in 2007 on high-risk customers and transaction monitoring. At the time of the onsite visit, this review had not been completed, but the HKMA indicated that the preliminary findings were satisfactory, although they highlighted that institutions were less proficient at identifying high-risk customers from transaction monitoring than from the initial CDD process.

457. The HKMA supervisory programme has highlighted two other areas where particular attention has had to be applied in the past two years. An industry self-assessment exercise undertaken by the HKMA in 2005 revealed that a number of institutions were encountering some difficulties in dealing with PEPs and high risk personal accounts. In response to this, the IWG was asked to produce a frequently asked questions paper on PEPs in order to provide further guidance. This paper was published in late-2007. The second area of focus resulted from a thematic review of correspondent banking undertaken by the HKMA in a sample of 12 banks in 2006, which revealed that, generally, institutions were not putting adequate resources and emphasis into the oversight of such business. The HKMA's response was to require its supervisory case officers to pursue the matter directly with the sampled institutions to achieve an appropriate resolution, and to factor the findings more generally into the supervisory programme for all other banks. The HKMA management is now satisfied that the industry is taking seriously the need for particular attention to this matter, and the issue has also been raised in the IWG to determine whether further guidance might need to be developed.

458. The SFC launched an AML/CFT self-assessment exercise in 2007, the results of which indicated that more guidance needed to be provided to the industry on how to identify PEPs. As a result, the SFC published a circular in October 2007 highlighting the good market practices identified from the AML/CFT self-assessment exercise which include, inter alia, how LCs could identify PEPs and the enhanced due diligence to be applied on PEPs. The SFC has also published a list of common PEP databases available in the market on its AML/CFT website for the industry's reference, and in order to provide further guidance to the industry, a set of Frequently Asked Questions on identification and handling of PEPs and high risk customers was issued in April 2008. This co-operative relationship with the industry to create additional guidance is a very positive development that might be expected to improve overall standards of compliance over time.

459. The SFC treatment of omnibus accounts gives rise to some questions, since it provides for simplified due diligence on the intermediary in a relatively broad set of circumstances (domestic and foreign financial institutions and regulated non-financial intermediaries), and does not require identification of the underlying beneficial owner of the funds. Interpretive Note 11 to the *FATF Recommendations*, on the other hand, indicates that due diligence must be undertaken on the beneficial owner of the funds, although this may be simplified provided that the intermediary is subject to an appropriate AML regime.

460. It is not possible to determine the effectiveness of the limited CDD obligations in place for the RAMCs as there is no oversight of that sector.

3.2.2 Recommendations and Comments

Recommendations 5-8

461. While the guidelines issued by the respective regulators are generally quite comprehensive, there are several steps that the authorities will need to undertake in order to improve compliance with the standard. One of these has already been addressed through the revision of the *Bank Supplement* issued in November 2007 (specifically, the requirement for AIs to obtain information on the purpose and reason for opening an account). However, because this revision does not come into force until

May 2008, it falls outside the cut-off date for consideration in the ratings of compliance. In other respects, the authorities should consider the following actions:

- Incorporate the key elements of the CDD process into law or regulation (*i.e.* the asterisked items within the assessment methodology). It is understood that this has been under discussion for some time within the regulatory community.
- Undertake a formal risk assessment to determine whether there is justification for excluding credit unions, money lenders, financial leasing companies and the post office from CDD requirements.
- Extend the currently limited CDD obligations that apply to the RAMC sector to bring them into line with the overall requirements.
- Within the existing framework, amend the provisions to require RAMCs to verify the identity of non-face-to-face customers, using techniques that are at least as effective as those used for face-to-face customers.
- Clarify within the banking and insurance guidelines that senior management approval should be required to continue a business relationship with a PEP if the customer's status is discovered in the course of an ongoing relationship.
- Review the treatment of omnibus accounts in the *Securities Guidelines*, to ensure that the beneficial owner of the underlying funds must be identified.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of Factors Underlying Rating
R.5	PC	<ul style="list-style-type: none"> • Key CDD obligations are not set out in law or regulation. • Only basic CDD obligations are in place for money remitters and money exchange companies and, due to the absence of a supervisor for these entities, it is not possible to determine the extent of implementation of the existing CDD obligations. • The threshold for CDD on occasional customers in the banking sector (other than in relation to remittances and money changing) is not clearly specified. • Pending implementation of the new HKMA Guidelines, there are no obligations on banks to obtain information on the purpose and nature of the account. • Scope limitation: no formal assessment has been undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from CDD requirements.
R.6	PC	<ul style="list-style-type: none"> • The banking and insurance guidelines do not specify explicitly that senior management approval is required to continue a business relationship with a customer subsequently discovered to be a PEP. • There are no enforceable provisions regarding the identification and verification of PEPs for remittance agents and money remitters. • Scope limitation: no formal assessment undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from CDD requirements.
R.7	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.

	Rating	Summary of Factors Underlying Rating
R.8	LC	<ul style="list-style-type: none"> • Remittance agents are not required to have policies in place or take measures to prevent the misuse of technological developments in ML and TF schemes. • There is no requirement for remittance agents and money changers (or for AIs undertaking remittance transactions for non-account holders) to verify a customer's identity or to take alternative measures when conducting non-face-to-face transactions. • Scope limitation: no formal assessment undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from CDD requirements.

3.3 Third parties and Introduced Business (R.9)

3.3.1 Description and Analysis

462. The banking sector: AIs are permitted to rely on intermediaries to perform CDD procedures, and the standards to be observed are set out in Section 6 of the *Bank Supplement*. Specifically, AIs are required to assess whether the intermediaries they use are fit and proper and are exercising adequate due diligence procedures. They should satisfy themselves that: the CDD procedures of the intermediary are as rigorous as their own; the systems used by the intermediary to verify the identity of customers are reliable; and they will be permitted to verify the due diligence undertaken by the intermediary at any stage. The *Bank Supplement* specifies that, while an AI may rely on an intermediary to perform CDD procedures, the ultimate responsibility for knowing the customer always remains with the AI.

463. Paragraph 6.6 requires AIs to obtain an intermediary certificate duly signed by the intermediary, together with all relevant identification data and other documentation pertaining to the customer's identity. In completing the intermediary certificate (a specified form is provided in the Annex to the *Bank Supplement*), an intermediary is required to verify the customer's identity based on reliable documents, understand the business activities of the customer, and obtain information about the source of funds of the customer. However, an interpretative note to the supplement allows AIs not immediately to obtain copies of documentation pertaining to the introduced customer's identity, provided that they have taken adequate steps to satisfy themselves that the intermediary will provide these copies upon request without delay. In all cases, relevant identification data must be obtained.

464. With respect to the regulatory status of the intermediary, the *Bank Supplement* merely advises AIs to rely, to the extent possible, only on those intermediaries that are incorporated in, or operating from, a jurisdiction that is a member of the FATF or that applies AML standards equivalent to those of the FATF, and which are regulated by the HKMA, SFC or OCI or by an authority that performs functions equivalent to these; or if not so regulated, able to demonstrate that they have adequate procedures to prevent money laundering. This clearly provides scope for reliance on unregulated intermediaries. It also makes an assumption that all FATF member jurisdictions effectively implement all *FATF Recommendations*. Equivalent jurisdictions are defined in the interpretative notes to include all FATF members, all members of the EU (including Gibraltar), Netherlands Antilles, Aruba, Isle of Man, Guernsey and Jersey. The authorities indicated that the non-EU jurisdictions have been included on the basis that these jurisdictions have indicated a willingness to implement measures broadly in line with EU requirements.

465. The securities sector: Paragraph 6.11 of the *Securities Guidelines* sets out the requirements for LCs where they seek to rely on introducers to conduct CDD, although it is stated that the ultimate responsibility for knowing the customer always remains with the LCs. The *Securities Guidelines* require that LCs should, as soon as reasonably practicable, obtain the necessary information on (a) the identification and verification of the identity of the customer and the beneficial ownership and control,

and (b) the purpose and intended nature of the business relationship. In addition, LCs should, as soon as reasonably practicable, obtain copies of documentation pertaining to the customer's identity as required under the *Code of Conduct* (i.e. a copy of the identity card, relevant sections of passport, business registration certificate, corporation documents and any other official document which uniquely identifies the client). They must take adequate steps to satisfy themselves that copies of other relevant documentation will be made available from the third-party introducer upon request without delay (e.g. by establishing their respective responsibilities in writing).

466. The *Securities Guidelines* provide that LCs must satisfy themselves that it is reasonable to rely on an introducer to apply CDD measures that are as rigorous as those that the LC would have applied itself. For these purposes however, LCs are simply advised to establish clear policies in order to determine whether the third-party introducer in question possesses an acceptable level of reliability. Paragraph 6.11.4(d) stipulates that LCs relying upon an introducer should ensure the introducer is regulated and supervised for, and has measures in place to ensure, compliance with CDD and record keeping requirements in line with FATF standards; but the next paragraph contains provisions that mirror those of the *Bank Supplement* in terms of the possible reliance on entities that are not regulated by the SFC, HKMA, OCI or their equivalents, but which "are able to demonstrate that they have adequate procedures to prevent money laundering and terrorist financing". Paragraph 6.11.7 qualifies this by stating that LCs should generally not rely on introducers that are based in jurisdictions considered as high risk (e.g. jurisdictions that are inadequately-regulated with respect to CDD), but continues to provide an exception if the introducer can demonstrate the adequacy of its controls.

467. Jurisdictions deemed to have AML/CFT standards equivalent to those of the FATF are listed in the same way as in the *Bank Supplement*. In addition, paragraph 6.2.6 of the *Securities Guidelines* provides that in assessing whether a country sufficiently applies FATF standards, LCs should:

- Carry out their own country assessment of the standards of prevention of ML and TF. This could be based on the firm's knowledge and experience of the country concerned or from market intelligence.
- Pay particular attention to assessments that have been undertaken by standard setting bodies such as the FATF and by international financial institutions such as the IMF.
- Maintain appropriate ongoing vigilance concerning ML/TF risks and take into account information that is reasonably available to them about the standards of AML/CFT systems and controls that operate in the country with which any of their customers are associated.

468. The insurance sector: The provisions of paragraph 6.8 of the *Insurance Guidelines* relate only to reliance on "insurance intermediaries", which are defined to include only agents and brokers conducting business in Hong Kong, and which are, according to paragraph 1.1, subject themselves to the guidelines³⁷. Nonetheless, whilst insurers are permitted to rely on such entities, the *Insurance Guidelines* specifies that ultimate responsibility for knowing the customers and/or beneficial owners always remains with the insurers. In terms of procedures, the insurers are required to immediately obtain "the necessary information concerning the relevant identification data and other documentation pertaining to the identity of the customer and/or beneficial owner" from the insurance intermediaries. The insurers are required to satisfy themselves as to the adequacy of intermediaries' CDD procedures,

³⁷ The ICO provides legal backing for the insurance intermediaries' self-regulatory system. Insurance agents must be registered with the Insurance Agents Registration Board (IARB) set up by the Hong Kong Federation of Insurers (HKFI). The HKFI *Code of Practice for the Administration of Insurance Agents* (the code) provides that insurance agents have to comply with the code and/or HKFI rules and other matters the IARB considers relevant in the circumstances. The IARB can require insurers to take disciplinary action against their appointed insurance agents for a breach of the code. When soliciting business, insurance agents have to follow the *Insurance Guidelines*. Insurance brokers are required to be a member of an insurance broker body approved by the OCI or authorised directly by the OCI and must be subject to the regulation of the broker body or OCI (as the case may be), including re compliance with the *Insurance Guidelines*.

and to undertake their own verification procedures if they have any doubts about the ability of the insurance intermediaries to perform appropriate due diligence.

469. Remittance agents and money changers: There are no enforceable provisions regarding the use of intermediaries by RAMCs. However, the *JFIU Guidelines* advise that where a customer does not appear in person, a RAMC may rely on intermediaries to perform customer due diligence procedures, but the ultimate responsibility for knowing the customer always remains with the RAMCs. In such circumstances, RAMCs are expected to ensure that any intermediary is fit and proper and employ appropriate CDD measures based on the following considerations:

- The CDD procedures of the intermediary should be as rigorous as those which the business would have conducted itself for the customer.
- The business must reach agreement with the intermediary that it will be permitted to verify the due diligence undertaken by the intermediary at any stage.
- The business must satisfy itself as to the reliability of the systems put in place by the intermediary to verify the identity of the customer.

Effectiveness

470. The authorities report that, for both the banking and securities sectors, reliance on intermediaries for the introduction of business has been declining, particularly since the introduction of the respective guidelines. This perception was confirmed by one industry body, which cited the onerous task of establishing jurisdictional equivalence as a major disincentive. However, other comments from the private sector indicated that reliance on third parties was often necessary, particularly in relation to customers conducting their business through offshore companies, where the beneficial owners are very frequently residents of the mainland. This impression was further reinforced by the indication that banks have been increasingly seeking to have TCSPs sign intermediary agreements that would put the responsibility on the service providers to provide assurances about the beneficial ownership of the client companies.

471. If this picture is correct, it may be of particular concern that the banking (and possibly the securities) guidelines provide an option that does not fully comply with the FATF standards, namely the ability to rely on an intermediary that is not regulated for AML/CFT purposes. The authorities argue that the objective has been to impose on the institutions the responsibility for assessing fully the risks inherent in accepting introduced business from any source, rather than prescribing the limitations. However, the authorities have provided blanket categories of jurisdictions that they consider apply standards equivalent to those of the FATF (all members of the FATF and the EU plus selected offshore jurisdictions). This appears to lack any objective qualitative assessment, particularly given the information available on jurisdictions' compliance levels through the evaluation process. To some extent this may be offset by the guidance to institutions on the sources of information available from which to make their own decisions, but this appears to be aimed primarily at jurisdictions that fall outside the list of equivalents.

472. Reliance on insurance intermediaries (defined in footnote 14 of the *Insurance Guidelines* as appointed insurance agents or authorised insurance brokers carrying on or advising on long term insurance business in Hong Kong) is very common in the insurance sector. The insurers whose distribution channel is mainly by way of an agency force will rely on their appointed insurance agents to perform a substantial part of CDD measures, including identifying and verifying the identity of customers and obtaining and certifying the copies of their ID. Pursuant to s.67 ICO, the Hong Kong Federation of Insurers (HKFI) has issued the *Code of Practice for the Administration of Insurance Agents*. Paragraph 23 thereof requires a principal to ensure, amongst other things, that its insurance agents comply with the *Code of Practice*. In addition, paragraph 39 of the HKFI's *Code of Conduct for Insurers* also requires insurers to establish procedures to monitor insurance agents' ongoing compliance with the law and HKFI codes, including the *Code of Practice*. The OCI does not conduct

inspections of the agents, but seeks to monitor the agents' compliance with their obligations through the insurers. There is no evidence to suggest that this process does not work relatively effectively, but it applies only to agents and not to brokers. The OCI has recently engaged the two brokers' associations (Hong Kong Confederation of Insurance Brokers and Professional Insurance Brokers Association) to conduct inspections of their members (from June 2007) to check compliance with their own guidance which has been modelled on that of the OCI. However, this process does not provide for enforcement measures beyond those covered by the organisations' own *Articles of Association*. So far, the organisations have inspected 40 brokers and have not found any irregularities.

3.3.2 Recommendations and Comments

473. The scope of permissible reliance on third-party introductions within the banking and securities sectors is too broad, in terms both of the type of introducer from whom the introduction may be accepted, and the country of origin. Therefore, the authorities should consider the following:

- Within the banking and securities sectors, limit the eligibility of introducers to those that are regulated and supervised for AML/CFT purposes.
- Determine on an objective qualitative basis the jurisdictions that are considered adequately to apply the FATF standards.
- Extend relevant provisions to remittance agents, money changers and money lenders, credit unions and leasing companies.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of Factors Underlying Rating
R.9	PC	<ul style="list-style-type: none"> • In the banking and securities sectors, reliance may be placed on introducers who are not regulated for AML/CFT purposes. • Financial institutions may rely on intermediaries incorporated in or operating from "equivalent" jurisdictions but the list of equivalent jurisdictions is not derived from an objective, qualitative assessment. • Scope limitation: no formal assessment undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from the preventive measures.

3.4 Financial Institution Secrecy or Confidentiality (R.4)

3.4.1 Description and Analysis

Access to information

474. The *Banking Ordinance* Cap. 155 (BO), the *Securities and Futures Ordinance* Cap. 571 (SFO), the *Insurance Companies Ordinance* Cap. 41 (ICO) and the *Money Lenders Ordinance* Cap. 163 (MLO) contain provisions on official secrecy that mandate the preservation of secrecy of customers' information and matters relating to the affairs of the customers in these respective sectors. However, the BO (s.56), SFO (s.180) and ICO (s.34) empower the relevant regulatory authority to have access to the books and records of the financial institutions. In addition, all the regulatory authorities have the power to require institutions to submit information which the regulators and supervisors/registrars may reasonably require for the exercise of functions under their regulatory and supervisory/registration regime. Section 28 MLO similarly empowers the Registrar of Money

Lenders³⁸ to have access to money lenders' books but in practice the Registrar of Money Lenders plays no active role in inspecting the records kept by money lenders, and does not monitor compliance with the requirements of the MLO.

475. Remittance agents and money changers: Section 24E(1) OSCO provides that an authorised officer may enter any premises where the activities of the remittance agents are being carried on and may demand the production of and inspect the remittance agent's record relating to any remittance transaction carried out by the remittance agent or relating to his activities as remittance agent, and may take notes, copies or extracts thereof. This power is however limited in scope. It may only be exercised when the authorised officer has a reasonable suspicion that the remittance agent has committed an offence under Part IVA. In addition, in accordance with s. 24E(6) OSCO, the Hong Kong Police or C&ED or other authorised officer is required to obtain a each warrant for access to books, etc, if a RAMC is in a domestic premises. Such search warrants may be obtained from a Magistrate within a short time frame.

476. Law enforcement agencies also have a range of powers available under OSCO, DTROP, the MLAO and other ordinances to obtain information from banks, including by production order and search warrant (see earlier discussion of this in Section 2).

Information sharing

477. The sharing of information to domestic or overseas agencies is subject to the provisions of the *Personal Data (Privacy) Ordinance* Cap. 486 (PDPO). The data protection principles outlined in that ordinance are subject to exceptions, as outlined in Part VIII. Section 58 PDPO, provides that personal data is exempt for data protection if the data is to be used by law enforcement agencies for the prevention of crime, or the apprehension, prosecution or detention of offenders. Disclosure of personal data to a financial regulator (HKMA, SFC and OCI) in exercising its functions is also exempted (s.58(3) PDPO).

478. Information obtained under certain OSCO investigative powers may also be shared where it appears to the Secretary for Justice to be likely to assist any corresponding person or body to discharge its functions. "Corresponding body or person" means any person or body which has a law enforcement function outside Hong Kong corresponding to the Hong Kong Police Force, C&ED, Immigration Department and ICAC (s.6(4) OSCO). Should actual documents or records be required for court purposes, law enforcement authorities may assist through the mutual legal assistance in criminal matters procedures contained in the MLAO (for example, by production of bank records for use in foreign criminal investigations and prosecutions).

479. As discussed under Recommendation 40 below, the banking, securities and insurance regulators have comprehensive legal authority to share information with their foreign counterparts.

3.4.2 Recommendations and Comments

480. There are no financial institution secrecy provisions that inhibit the implementation of the *FATF Recommendations* within the regulated sectors. Access to and sharing of information is permitted under the respective ordinances that govern the banking, securities and insurance sectors. However, access to information for the non-regulated sectors, including remittance agents and money lenders, is limited in scope. While these limitations do not derive from financial secrecy provisions, it is recommended that, the current review of the system of oversight of remittance agents and money changers result in provision of full powers to access information being granted to the agency which becomes designated as the supervisor for these entities.

³⁸ The Registrar of Money Lenders is in fact the Registrar of Companies.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of Factors Underlying Rating
R.4	C	<ul style="list-style-type: none">This Recommendation is fully observed.

3.5 Record keeping and wire transfer rules (R.10 & SR VII)

3.5.1 Description and Analysis

Recommendation 10

Maintaining necessary records for at least five years

481. The banking sector: Paragraph 7.4 of the *Bank Guidelines* requires AIs to maintain account and transaction records for at least six years following the closure of the account or following the completion of the transaction as the case may be. In cases where the records relate to on-going investigations, or transactions which have been the subject of a disclosure, they should be retained until it is confirmed that the case has been closed.

482. The securities sector: LCs are required under Chapter 8 of the *Securities Guidelines* to maintain the following records:

- All necessary records on transactions, both domestic and international, should be maintained for at least seven years.
- Customer identification records (for example copies or records of official ID like passports, identity cards, driving licenses), account files and business correspondence, should be kept, wherever practicable, for at least five years after the account is closed.
- Records relating to an ongoing investigation or subject of an STR should be retained until the relevant case is closed.

483. The inclusion of the phrase ‘wherever practicable’ in relation to customer identification records, etc, suggests that this might not be a mandatory requirement, provided that institutions could provide satisfactory arguments as to why retention was not practicable, although the SFC has indicated that it has not encountered a situation where an LC does not consider the requirement as absolute.

484. In addition, LCs are required under s.3 of the *Securities and Futures (Keeping of Records) Rules* to keep sufficient records to explain the operation of their business and account for their client assets, such as accounting records and documents evidencing authorities provided by clients. Under s.10 of these rules, such records, subject to a few exceptions, shall be retained for not less than seven years. Failure by an LC, without reasonable excuse, to observe this requirement is an offence punishable by a fine and/or imprisonment.

485. The insurance sector: Under s.16 ICO, insurers are required to keep proper books of account which sufficiently exhibit and explain all transactions entered into by the insurers in the course of their business. Insurers should preserve such books of account for seven years from the end of the financial year to which the last entry made or matter recorded therein relates. Pursuant to paragraph 7.2.1 of the *Insurance Guidelines*, IIs are required to keep records on the risk profile of each customer and/or beneficial owner and the data obtained through the CDD process (e.g. name, address, the nature and date of the transaction, the type and amount of currency involved, and the type and identifying number of any account involved in the transaction), the copies of official ID (such as passports, identity cards) and the account files and business correspondence, for at least six years after

the end of the business relationship. Paragraph 7.2.2 further requires IIs to maintain, for at least six years after the business relationship has ended, all necessary records on transactions, both domestic and international, and be able to comply swiftly with information requests from competent authorities.

486. Remittance agents and money changers: Section 24C OSCO sets out the requirement for remittance agents and money changers to keep record of all transactions of HKD 8 000 or above for not less than six years after the date of the transaction notwithstanding that the RAMC may have ceased his business subsequent to the transaction. A person failing to comply will be liable on conviction to a fine of HKD 100 000 and to imprisonment for three months. This provision also applies to both forms of remittance through Hongkong Post.

Reconstruction of individual transactions

487. The banking sector: Paragraph 7.2 of the *Bank Guidelines* states that the records kept by AIs should enable investigative authorities to ensure a satisfactory audit trail for transactions and to be able to establish a financial profile of the suspect account. To this end, the following information needs to be maintained:

- The beneficial owner of the account (for accounts opened on behalf of a third party).
- The volume of funds flowing through the account.
- The origin of the funds; the form in which the funds were offered or withdrawn; the identity of the person undertaking the transaction; the destination of the funds; and the form of instruction and authority.

488. The securities sector: Chapter 7 of the *Securities Guidelines* provides that LCs should maintain records which are sufficient to permit reconstruction of individual transactions (including the amounts and types of currencies involved, if any) so as to provide, if necessary, evidence for prosecution of criminal behaviour. LCs are also required to retain, where necessary, the following information for the accounts of their customers and make it accessible to enforcement authorities:

- The beneficial owner of the account.
- The volume of the funds flowing through the account.
- For individual transactions: the origin of the funds; the form in which the funds were offered or withdrawn, e.g. cash, cheques, etc.; the identity of the person undertaking the transaction; the destination of the funds; the form of instruction and authority.

489. The insurance sector: Paragraph 7.2.2 of the *Insurance Guidelines* requires IIs to maintain sufficient records to permit reconstruction of individual transactions (including the amount and types of any currency involved) so as to provide, if necessary, evidence for prosecution of criminal activity. Examples of the necessary components of transaction records such as customer's name and address, nature and date of the transaction, etc. are specified in paragraph 7.2.1.

490. Remittance agents and money changers: Section 24C OSCO requires RAMCs to keep records for not less than six years from the date of the transaction of all transactions of HKD 8 000 or above, notwithstanding that the RAMC may have ceased his business subsequent to the transaction. Detailed particulars of the remittance transaction that are to be recorded by remittance agent are provided in Schedule 6 to that ordinance and these include: the customer's name; Hong Kong Identity Card or passport number; address and telephone number; the nature and date of the transaction; the type and amount of currency involved; and, the type and identifying number of any account involved in the transaction. Paragraph 8 of the *JFIU Guideline* contains recommendations along the same lines.

491. The scope of this obligation is limited, in that it does not apply to any transaction of less than HKD 8 000. Unless the remittance agents are required to keep records of transactions pursuant to any other laws such as the *Inland Revenue Ordinance*, it would appear that the record keeping obligations in place for that sector are incomplete. There is no requirement that remittance agents obtain and keep verification data for non-face-to-face transactions (see Section 3.2 of this report).

Availability of records and information to authorities

492. Paragraph 7.3 of the *Bank Guidelines* requires AIs to be able, at all stages of a transaction, to retrieve relevant information without undue delay. Paragraph 7.4 of the *Securities Guidelines* provides that LCs should ensure that all customer and transaction records and information are available on a timely basis to the competent investigating authorities. Paragraph 7.1.3 of the *Insurance Guidelines* requires IIs to be able, at all stages in a transaction, to retrieve relevant information to the extent that it is available without undue delay. Paragraph 7.2.2 further requires IIs to maintain all necessary records on transactions, both domestic and international, and be able to comply swiftly with information requests from competent authorities.

493. Remittance agents are obliged to retain records of any transaction of HKD 8 000 or more for six years from the date of the transaction. Section 24E OSCO provides that these records must be produced upon the demand by an authorised officer in situations where that authorised officer has a reasonable suspicion that a remittance agent has committed an offence under Part IVA. In accordance with s.24E(6), the Police/C&ED or other authorised officer is required to obtain a search warrant for access to books and records if the RAMC is in a domestic premises. In practice, a search warrant is gained whenever officers wish to access any remittance agents' premises and obtain records from them. This requirement that the JFIU have a reasonable suspicion that an offence has been committed before it may demand records from a remittance agent limits the availability of information to the competent authorities on a timely basis, even if the Magistrates issue these search warrants promptly, as the Police and C&ED advise is the case.

Special Recommendation VII

Originator information

494. Only AIs and remittance agents are permitted to undertake remittance transactions for customers. In doing so, the AIs are required to follow the requirements in the *Bank Guidelines* and the *Bank Supplement*, whereas the remittance agents are required to observe the relevant provisions in OSCO. In addition, Hongkong Post provides two forms of remittance services: overseas postal remittances (solely between post offices); and, remittances using Western Union networks (*Post Office Trading Fund Ordinance* Cap. 430E), but is not subject to regulatory oversight.

495. The banking sector: For remittances involving existing accounts, AIs should have obtained and maintained relevant information about the originator (*i.e.* full originator information) and verified his or her identity when the account was opened (see Section 3.2.1 above). With respect to remittances ordered by non-accountholders, paragraph 5.27 and Annex 8 of the *Bank Guidelines*, read in conjunction with section 9 of the *Bank Supplement*, only requires verification of the customer's identity when the amount remitted is HKD 8 000 or more, and the remitter appears in person.

496. Remittance agents and money changers: Schedule 6 to the OSCO specifies the information which must be obtained by remittance agents for transactions above HKD 8 000: the customer's name; Hong Kong Identity Card or passport number; address and telephone number; the nature and date of the transaction; the type and amount of currency involved; and, the type and identifying number of any account involved in the transaction. However, verification of a customer's identity is only required when the customer is present in person and the transaction is of HKD 8 000 or more (s.24C).

497. Post office: Both the postal remittance service and the e-remittance service performed by Western Union through Hongkong Post observe the OSCO requirements with respect to wire transfers. The OSCO's requirements with respect to wire transfers are limited to a requirement to obtain and maintain most, but not all, of the required originator information (see details noted above). In practice the internal requirements in place for these remittance systems require marking all senders' identification records on the application forms for all remittances, not simply those above the mandated HKD 8 000 threshold. That practice is not however mandatory and neither of the remittance systems through the Hongkong Post are subject to regulatory oversight for the purposes of AML/CFT.

Full originator information in the message or payment form accompanying the wire transfer

498. The banking sector: Paragraph 9.2 of the *Bank Supplement* requires an ordering AI in all remittance transactions of HKD 8 000 (around USD 1 000) or more to include the following information in the remittance message:

- The name of the originating customer.
- The number of his or her account if such an account exists.
- The address of the originating customer or, failing this, the customer's date of birth or the number of a government-issued identity document the customer holds.

499. For remittances of less than HKD 8 000, the ordering AI may choose not to include all the above information in the remittance message, but the relevant information about the originator should still be recorded and retained by the AI and such information should be made available within three business days upon request from either the beneficiary financial institutions or appropriate authorities. However, Interpretative Note No.32c to the *Bank Supplement* encourages AIs to include, as far as practicable, the relevant originator information in the remittance messages of all remittance transactions. Although it is not explicitly stated in the HKMA's AML/CFT guidelines, the HKMA will allow AIs to make use of the flexibility concerning bundling of wire transfers in a batch file. Authorities advise that bundling of wire transfers is uncommon in Hong Kong.

500. Remittance agents and money changers: There is no requirement for remittance agents (including the Hongkong Post) to transmit full originator information in the message or form accompanying the wire transfer. The *JFIU Guideline* (which is not enforceable) goes further than the OSCO in some respects, as paragraph 9.1 recommends that remittance agents include in the message the following information for transactions of HKD 8 000, or the foreign currency equivalent, or more:

- The name of the originating customer.
- The customer's account number where one exists or a unique transaction number.
- The address of the originating customer or, alternatively, the customer's Hong Kong identity card number or passport number, or date and place of birth.

Domestic wire transfers

501. For domestic wire transfers, AIs are permitted to include only the originator's name and account number in the remittance message, provided that full originator information can be made available to the beneficiary AI and to the authorities within three business days upon request (see Interpretative Note No. 32b to the *Bank Supplement*). In the case of remittance agents, the advice in paragraph 9.1 of the *JFIU Guideline* that remittance agents transmit the originator's information (name, account numbers and address or Hong Kong Identity Card/Passport number) applies to all remittance transactions, international and domestic, of HKD 8 000 (USD 1 000) or above. However, as noted previously, this guideline is only in the nature of guidance and does not impose any requirements on the sector.

Transmission of originator information by intermediaries and beneficiary institutions

502. The banking sector: Paragraph 9.6 of the *Bank Supplement* requires an AI acting as an intermediary in a chain of remittances to ensure that information about the originating customer as required under paragraph 9.2 of the *Bank Supplement* remains with the remittance message throughout the payment chain.

503. Remittance agents and money changers: Remittance agents are not required to ensure that information about the originating customer remains with the remittance message throughout the payment chain. Paragraph 9.5 of the *JFIU Guideline* advises remittance agents acting as an intermediary in a chain of remittance to ensure that the information in paragraph 9.1 of the same guideline remains with the remittance message throughout the payment chain.

504. While there is no express provision in the *Bank Guidelines*, the *Bank Supplement* or OSCO that requires receiving institutions to keep for five years records of all the information received from the ordering institution when technical limitations have prevented full originator information accompanying a cross-border wire transfer from being transmitted with a related domestic wire transfer, authorities in Hong Kong have advised that AIs do not encounter any technical problems in forwarding originator information domestically.

Risk-based procedures in beneficiary institutions

505. The banking sector: Paragraph 9.7 of the *Bank Supplement* requires AIs handling incoming remittances for a beneficiary to conduct enhanced scrutiny of, and monitor for, remittance messages that do not contain complete originator information. This can be done through risk-based methods taking into account factors that may arouse suspicion. Paragraph 9.8 further requires AIs to assess whether an unusual remittance transaction should be reported to the JFIU and consider restricting or terminating business with a remitting bank that fails to meet the SR VII standards.

506. Remittance agents and money changers: There is no requirement that remittance agents adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. Paragraph 9.7 of the *JFIU Guideline* recommends that the absence of complete originator information may be considered as a factor in assessing whether a remittance is suspicious and should be reported to JFIU.

Monitoring compliance

507. The banking sector: The HKMA monitors compliance with the *Bank Supplement*, including provisions implementing SR VII, through its on-going supervisory contacts with AIs, primarily on-site examinations and off-site reviews. At the time of the on-site visit, thematic examinations focused on wire transfers were being carried out on 12 AIs with completion anticipated in December 2007.

508. Remittance agents and money changers: While the Hong Kong Police and C&ED have the power to inspect RAMCs when they suspect an offence has been committed under Part IVA of OSCO, it is not their role to monitor the RAMCs' compliance with AML/CFT measures³⁹.

Sanctions

509. The banking sector: The HKMA follows the same standards in determining the supervisory measures to be imposed on an AI which fails to comply with any provisions of the *Bank Supplement* (including those implementing SR VII).

³⁹ In April 2008 an inter-agency decision was taken to make the Commissioner for Customs and Excise the regulator for RAMCs in the near future.

510. Remittance agents and money changers: Remittance agents are only required under OSCO to record the originator's particulars (name, Hong Kong Identity Card/passport number, and address) for remittance transactions of HKD 8 000 (USD 1 000) or more. Failure to do so is an offence. There is no agency which oversees and monitors RAMCs' compliance with OSCO. As noted in Section 3.11 of this report, only criminal sanctions are available for remittance agents and money changers and these are not effective, proportionate and disuasive.

Statistics⁴⁰ and Effectiveness

511. The HKMA reported that it had not encountered any widespread issues with respect to the record-keeping obligations. As regards the treatment of wire transfers, the HKMA indicated that it has approached the issue in a sequenced manner, focussing its attention initially on ensuring compliance with the outward transfer requirements. No cases of non-compliance with wire transfer requirements have been detected.

512. The SFC reported that based on recent observations no major deficiencies were noted in relation to the compliance with the record-keeping requirements. The results of the AML/CFT self-assessment exercise conducted in the second quarter of 2007 indicated that 97% of the respondents were in compliance with the record keeping requirements.

513. In general, the OCI reported that compliance with record-keeping requirements has been found to have improved over the past three years. Those insurers who were found to have imposed thresholds for keeping of ID, have gradually removed the threshold with a view to making this obligatory for all transactions. The OCI has taken 32 administrative sanctions against 22 insurers for non compliance with the record keeping requirement between 2004 and 2007. In most of these cases the IIs had not kept copies of customers' ID where premium/claim amounts were below a self-imposed threshold which is not specified in the *Insurance Guidelines*, or where policies were issued prior to the promulgation of the *Insurance Guidelines*.

514. Since June 2000, 104 prosecutions have been initiated against the RAMCs for failing to keep appropriate records. The maximum penalty imposed on an RAMC for failure to comply with record keeping requirements was a sentence of one-month imprisonment, suspension for operating business one-year and a fine of HKD 100 000 (USD 13 000). The maximum penalty available pursuant to s.24C OSCO is a fine of HKD 100 000 and imprisonment for three months.

3.5.2 Recommendations and Comments

Recommendation 10

515. There are a number of provisions in the companies, taxation and regulatory laws that touch on the issue of record-keeping. However, these are cast in general terms and do not, for the most part, specify the very precise records that the FATF requires should be mandated by law or regulation. Therefore, it is recommended that the authorities address this matter through legislative amendments.

516. Within the scope of the current guidelines that represent 'other enforceable means' institutions in the banking, securities and insurance sectors are required to maintain all transaction records for at least six years (or more in some cases), regardless of whether the account or business relationship is on-going or has been terminated, to facilitate the reconstruction of individual transactions and to make such records available to the regulators upon request in accordance with the requirement set out in the existing laws and guidelines issued by the relevant supervisory and regulatory bodies respectively. In the banking and insurance sector, customer identification records, account files and business correspondence must be kept for more than six years. In the securities sector, identification records,

⁴⁰ As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

account files and business correspondence must only be maintained for a minimum of five years, 'wherever practicable', though the SFC reported that it had never encountered an institution which regarded this obligation as other than absolute. It is recommended that the *Securities Guidelines* be amended to, at a minimum, remove the phrase 'wherever practicable' from paragraph 8.1.

517. As for remittance agents, while there is a legal requirement to keep records transactions for at least six years, as there is no regulator for that sector, the only information pertaining to the level of compliance with record keeping requirements is the relatively high number of prosecutions against RAMCs for failing to keep appropriate records. This suggests that the observance of record keeping requirements by RAMCs may be poor. In addition, the record keeping requirements for this sector are incomplete: records must only be kept for transaction of HKD 8 000 or more and there is no requirement that remittance agents keep verification data for non-face-to-face transactions. It is recommended that Hong Kong addresses these concerns to strengthen record keeping in this sector.

Special Recommendation VII

518. The *Bank Guidelines* and the *Bank Supplement* largely meet the technical requirement as set out in SR VII (obtaining and verifying originator information; maintaining full originator information for cross-border transfers; accompanying domestic wire transfer with more limited originator information and making full originator information available within three days; sets out specific procedures for identifying and handling wire transfers not accompanied by full originator information; compliance monitoring and sanctions). However, for remittances ordered by non-accountholders, AIs are only required to conduct verification of the customer's identity when the amount remitted is HKD 8 000 or more and the remitter appears in person. There is no express provision that requires receiving AIs or RAMCs to keep for five years records of all the information received from the ordering institution when technical limitations have prevented full originator information accompanying a cross-border wire transfer from being transmitted with a related domestic wire transfer. However, the authorities believe that there are no such limitations.

519. There are no requirements for remittance agents with respect to wire transfers other than a requirement to obtain and maintain most, but not all, of the required originator information. The *JFIU Guideline*, which is advisory in nature, does recommend a number of processes of relevance but even they are incomplete. It is recommended that all existing requirements with respect to wire transfers be extended to the remittance sector.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of Factors Underlying Rating
R.10	PC	<ul style="list-style-type: none"> • Only general record-keeping requirements are embedded in law or regulation. • In the securities sector the obligation to maintain identification records, account files and business correspondence for a minimum of five years is recommended but not mandatory. • The record keeping requirements for remittance agents are incomplete: records must only be kept for transaction of HKD 8 000 or more and there is no requirement that remittance agents or money changers verify data obtained and kept for non-face-to-face transactions. • The level of implementation of record keeping requirements by remittance agents and money changers cannot be determined. • Competent authorities may only demand that remittance agents and money changers provide them with records and information where they have a reasonable suspicion that an offence has been committed and this may limit the timely provision of information to competent authorities by remittance agents. • Scope limitation: no formal assessment has been undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from the preventive measures and corresponding regulatory regime.
SR VII	PC	<ul style="list-style-type: none"> • For remittances ordered by non-accountholders, institutions are only required to conduct verification of the customer's identity for amounts of HKD 8 000 or more when the remitter appears in person. • There is no requirement for remittance agents or the post office to transmit full originator information in the message or form accompanying the wire transfer. • There is no mechanism for monitoring compliance by remittance agents.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Recommendation 11

520. The banking sector: Section 13 of the *Bank Supplement* provides that AIs should have effective management information systems (MIS) to provide timely information on a regular basis to enable managers and compliance officers to detect patterns of unusual or suspicious activities. The MIS should produce reports that are capable of identifying transactions that are unusual in terms of amount, type of transaction or other risk factors such as high account activity. The supplement further states that the objective of the MIS should be to help provide a comprehensive picture of the customer's transactions and overall relationship with the AI. There are no specific provisions requiring AIs to examine the background and purpose of any identified unusual transactions, and to record their findings in writing. However, this deficiency will be addressed when the revised *Bank Supplement*, issued in November 2007, comes into effect in May 2008. In general, AIs are required (under section 7 of the *Bank Guidelines*) to retain transaction records for at least six years.

521. The securities sector: Paragraph 6.2.8 of the *Securities Guidelines* provides that LCs should pay special attention to all complex, unusual large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose, in particular with customers from countries which do not or insufficiently apply the *FATF Recommendations*. LCs are advised (paragraph 9.2) that it may be necessary to put in place proper systems or procedures, such as

development of transaction reports, which can facilitate detection of unusual or suspicious activities. A list of transactions that could prompt such scrutiny is also provided in Appendix C(ii) of the *Securities Guidelines*. According to paragraph 6.2.8, LCs should, as far as possible, examine the background and purpose of the suspicious transactions, establish their findings in writing, and keep their findings available to help competent authorities. Such transactions records are required (chapter 8) to be retained for at least seven years, or until the case has been closed (if the records relate to an ongoing investigation or were the subject of an STR).

522. The insurance sector: Paragraph 6.1.6 of the *Insurance Guidelines* requires IIs to pay special attention to all complex, unusual large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose: to examine the background and purpose of such transactions; and to record in writing the findings, which should be available to the competent authorities. In this context, ‘transactions’ are defined to include inquiries and applications for an insurance policy, premium payments, and requests for changes in benefits, beneficiaries and duration. A list of suspicious transaction indicators is contained in the annex to the guidelines. Paragraph 7.2.2 requires IIs to maintain transaction records for at least six years after the business relationship ends.

523. Remittance agents and money changers: While the RAMCs are covered by the universal suspicious transaction reporting obligation, there are no enforceable requirements relating to monitoring for complex, unusual or economically inexplicable transactions. The *JFIU Guideline* offers advice by mirroring the language of the *Bank Supplement* on the maintenance of MIS procedures, and the annex contains a list of generic suspicious transaction indicators. The *JFIU Guideline* also advises RAMCs that the compliance officer should document any decision not to report an apparently suspicious transaction.

524. There are also no relevant provisions governing money lenders, credit unions, the post office and financial leasing companies.

Recommendation 21

525. The banking, securities and insurance guidelines all require the respective institutions to give special attention, within their risk mitigation programmes, to business relations and transactions involving persons from or in countries that do not adequately apply the *FATF Recommendations*. Such persons are required to be subject to enhanced due diligence. From time to time, all three regulators have issued circulars to the respective institutions alerting them to actions taken by the UN, FATF or individual governments with respect to countries deemed to pose a ML or TF threat.

526. However, there has been no structured process for alerting institutions to less high profile cases that have not been generated from international initiatives. This has, in part, been addressed for the securities sector by providing guidance to institutions as to the factors they should consider when determining whether a jurisdiction adequately applies *FATF Recommendations*. Paragraph 6.2.6 of the *Securities Guidelines* states that LCs should carry out an assessment based on their own experience, market intelligence, international bodies’ evaluations, and any other information that is reasonably available to them. The revised *Bank Supplement* that comes into force in May 2008 also contains similar guidance, although this is not contained within the current version of the document beyond specific reference to Non-Co-operative Countries and Territories (NCCTs)⁴¹.

⁴¹ As there are no longer any jurisdictions on the NCCT list, the HKMA issued a revision of the supplement in November 2007 (effective from May 2008) reinforcing the Recommendation 21 principle, and clarifying the basis on which AIs should determine whether a jurisdiction does not or insufficiently applies the *FATF Recommendations* or otherwise poses a higher risk to the institution. The revision offers a number of factors that institutions should take into account when determining whether a jurisdiction does not adequately apply the FATF standards. These include cases where the jurisdiction is subject to sanctions, where there is evidence from credible sources that the jurisdiction lacks adequate AML/CFT measures, and when there is similar

527. More generally, when institutions identify that a transaction or customer is related to a jurisdiction that inadequately applies the FATF standards, they are required by the various guidelines to take certain action. Under the *Bank Supplement* and the *Insurance Guidelines*, institutions are required to ascertain and document the business rationale of such customers for opening an account or applying for banking or insurance services, and satisfy themselves of the legitimacy of the source of the customers' funds. The *Securities Guidelines* specifies that such customers must be classified as high risk and should be subject generally to enhanced CDD. In all cases (by reference to the language of Recommendation 21), where institutions identify transactions that have no apparent economic or lawful purpose, they are required to examine the background and purpose of the transactions and to record the findings in writing so that they are available to the competent authorities.

528. There are no enforceable provisions relating to any of the Recommendation 21 issues that are applicable to the RAMCs, nor does the *JFIU Guidance* address them. There are also no relevant provisions governing credit unions and financial leasing companies.

Ability to apply counter-measures

529. The guidelines issued by all three regulatory authorities contain similar provisions in relation to potential countermeasures, specifically against jurisdictions on the NCCT list. These provisions indicate that the authorities may require more stringent CDD and enhanced surveillance and reporting of particular transactions. By way of example, in response to FATF advice on the application of additional counter-measures against Nauru, the SFC in its circular of 1 April 2003, specifically mentioned a number of counter-measures to be applied with respect to business linked to Nauru. These included enhanced CDD procedures, restriction on business introduced through certain intermediaries, increased monitoring and involvement by management in decision-making, and enhanced employee training.

530. The guidelines do not generally broaden the scope explicitly to cover other situations where counter-measures may be considered appropriate, but the authorities have, in practice, extended the coverage. When the ND (as the central co-ordinator) is aware of a jurisdiction which is considered by international AML/CFT bodies such as the FATF or other jurisdictions not to implement adequately the *FATF Recommendations*, it informs the financial regulators (as well as the FSTB) accordingly, and the financial regulators will in turn issue circular letters to notify their institutions of the same. Similarly, if a financial regulator is aware of any adverse developments relating to a particular jurisdiction, it will report back to the Narcotics Division, which will consider how to handle the situation in consultation with the financial regulators and the FSTB.

3.6.2 Recommendations and Comments

Recommendations 11 and 21

531. There is a reasonable level of compliance with Recommendation 11 in the core financial sector, the exception being that the *Bank Supplement* that remains in force until May 2008 does not provide that institutions should document the analyses of transactions that are regarded as unusual. This issue will be addressed with the coming into force of the new guideline. There are no relevant provisions for remittance agents, money changers, credit unions and financial leasing companies.

evidence that there is a high level of corruption or criminal activity. 'Credible sources' are generally defined to include governmental and international agencies and bodies.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of Factors Underlying Rating
R.11	PC	<ul style="list-style-type: none"> Banking institutions are not currently required to record in writing their findings and analysis of the background and purpose of complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. There are no requirements for remittance agents and money changers to pay special attention to complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. Scope limitation: no formal assessment undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from the preventive measures.
R.21	LC	<ul style="list-style-type: none"> There are no requirements for remittance agents or money changers to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the <i>FATF Recommendations</i>. Scope limitation: no formal assessment undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from preventive measures.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR IV)

3.7.1 Description and Analysis

Recommendation 13 and Special Recommendation IV

532. The legal obligations for all persons, including financial institutions, to report suspicious transactions are laid down in s.25A(1) DTROP, s.25A(1) OSCO and s.12(1) UNATMO. DTROP concerns drug proceeds, OSCO the proceeds of indictable offences and organised crime, and UNATMO concerns terrorism and TF. Hong Kong has very broad reporting requirements under all three ordinances, requiring ‘a person who knows or suspects’ property is tainted, to report that suspicion and the information upon which the suspicion is founded to an ‘authorised officer’ (*i.e.* the JFIU). This obligation applies irrespective of the circumstances in which the knowledge upon which the suspicion is founded came into the person’s possession, and would, therefore, include circumstances where a transaction was attempted but not completed.

533. The guidelines published by the HKMA, SFC and OCI provide additional clarification of the reporting obligation. They specify that, wherever possible, reports should be made before the transaction is completed, and that institutions should await consent from the JFIU (generally within three days) before proceeding. If the transaction was completed before the suspicion arose, or if delay is impossible or unreasonable, institutions are required to file as soon as is reasonable.

534. The obligation to submit suspicious transaction reports (STRs) applies to ML, TF and a wide range of predicate offences. However as environmental crimes are not completely captured as predicate offences for ML, this in turn has the potential to limit the scope of the STR obligation. Similarly, limitations in the TF offence, noted in Section 2 of this report, have an impact on the breadth of the STR obligation. Hong Kong’s experience to date, as explained by the Hong Kong authorities, has shown that reporting entities report STRs irrespective of the underlying suspected criminality so long as they have a suspicion that ‘tainted property’ is involved.

535. Pursuant to sections 25A(7) DTROP and OSCO and s.12(5) UNATMO, a person who fails to comply with the reporting obligation commits an offence and is liable for a maximum penalty of three months’ imprisonment and a fine of HKD 50 000 (USD 6 410). There have been two prosecutions for

failure to comply with the reporting requirement which resulted in fines of HKD 10 000 (USD 1 280) and HKD 26 000 (USD 3 330) respectively.

536. In addition to the standard procedure for filing STRs, the JFIU has instituted a process whereby the banks are notified, in confidence, of the names of persons who are about to be charged with a criminal offence, with a request that they review their files to determine whether they hold relevant accounts for which STRs might now be filed.

STR reporting should occur regardless of the amount of the transaction

537. Hong Kong's reporting obligations require a person to report suspicions of ML or TF, irrespective of the amount involved. The reporting obligations of sections 25A(1) DTROP and OSCO and s.12(1) UNATMO apply to 'any property'. These provisions establish a reporting obligation whenever a suspicion arises, without reference to transactions *per se*. Thus, the obligation to report applies whether or not a transaction was actually conducted.

538. The reporting obligations under s.25A DTROP and OSCO apply where a person knows or suspects that any property (a) in whole or in part directly or indirectly represents any person's proceeds of; (b) was used in connection with; or (c) is intended to be used in connection with, an indictable offence or drug trafficking. In respect of s.12(1) UNATMO, the obligation is to report knowledge or suspicion of terrorist property, irrespective of the circumstances. These obligations therefore cover attempted transactions.

STR reporting should apply regardless of whether tax matters may be involved

539. The reporting obligation under OSCO extends to the proceeds of any indictable offence. Tax evasion (s.82 of the *Inland Revenue Ordinance* Cap.112) is an indictable offence in Hong Kong and a predicate crime for ML. The requirement to report STRs therefore extends to tax matters.

Table 23. STRs disseminated to the Inland Revenue Department, 2005-2007

Year	2005	2006	2007
STR Disseminations to Inland Revenue Dept.	7	12	27

Special Recommendation IV

540. The mandatory reporting obligation in s.12 UNATMO requires a person to submit an STR where s/he 'knows or suspects that any property is terrorist property'. Failure to comply with this obligation is a criminal offence. Under s.2 UNATMO, 'terrorist property' (恐怖分子財產) means:

- “(a) the property of a terrorist or terrorist associate; or
- (b) any other property consisting of funds that-
 - (i) is intended to be used to finance or otherwise assist the commission of a terrorist act; or
 - (ii) was used to finance or otherwise assist the commission of a terrorist act;”

541. Similarly, the definitions of 'terrorist' and 'terrorist associate' require a link to a terrorist act. Thus the STR obligation in s.12 does not extend to submission of reports when a person suspects that funds are linked to or related to or to be used for terrorism, by terrorist organisations or individual terrorists unless there is a link to a terrorist act.

542. The UNATMO requires a person to submit an STR irrespective of the amount involved, whether a transaction was actually conducted, or whether it involves tax matters. The reporting in s.12(1) UNATMO applies to 'any property'. This provision establishes a reporting obligation whenever a suspicion arises, without reference to transactions *per se*. Thus, the obligation to report

applies whether or not a transaction was actually conducted. In respect of s.12(1), the obligation is to report knowledge or suspicion of terrorist property, irrespective of the circumstances. These obligations therefore cover attempted transactions.

543. The JFIU has advised that all STRs submitted which relate to TF represent potential name matches to terrorist lists. However, The JFIU has received STRs where the reporting entities did not suspect TF *per se*, but subsequent investigation suggested that the transactions might be related to terrorism or TF.

Table 24. Number of STRs related to TF, 2003-2007

Year	No. TF-related STRs
2003	73
2004	14
2005	9
2006	19
2007	20
Total	135

Recommendation 14

Protection for liability where reporting suspicions in good faith

544. Section 25A(3) DTROP and OSCO and s.12(3) UNATMO specifically provide that: “A disclosure referred to in subsection (1)-

- (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
- (b) shall not render the person who made it liable in damages for any loss arising out of-
 - (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.”

545. The STR reporting obligations (and the protections granted) do not require that the reporting entity knows the nature of the underlying criminal activity. Nor does they require that there was in fact illegal activity.

Prohibition from tipping off

546. Under s.25A(5) DTROP and OSCO, and s.12(5) UNATMO, a person commits an offence if, knowing or suspecting a suspicious transaction report has been made, s/he ‘discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.’ Under subsection (4) the “first-mentioned disclosure” is defined to mean the first point at which an employee notifies an appropriate person within an institution of their suspicions in line with the institution’s internal procedures. Therefore, in principle, the tipping-off provision includes circumstances where a suspicion has been raised internally, but has not yet been reported to the JFIU. However, subsection (4) only extends this scope to a “person who was in employment at the relevant time”, and therefore would not apply to sole traders (*e.g.* some remitters or money changers) or to directors of institutions where the directors are not technically employees. More generally, the provision governing tipping-off after the report has been filed with the JFIU would be applicable to directors, officers and all employees of financial institutions. There have been no prosecutions to date for contravention of s.25A(5) DTROPO/OSCO or s.12(5) UNATMO.

Additional elements

547. All STRs are recorded on the JFIU's STREAMS database which is only accessible by FIU staff and is subject to strict security protocols. Disseminations of STRs can only be made by the head of the FIU. Under s.26(1) DTROP and OSCO, witnesses in civil and criminal proceedings cannot be obliged to reveal the identity of any person as the person who made an STR unless the proceedings is for the hearing of an offence of money laundering or "tipping off" under s.25 and s.25A DTROP and s.26(2) OSCO. The UNATMO does not contain a similar protection for witnesses. It is an offence to publish or broadcast the fact a disclosure has been made or the identity of the party who made the report (s.26 DTROP and OSCO and s.12 UNATMO).

Recommendation 25 (Guidance and Feedback Related to STRs)

Guidance on STR obligations

548. The Head of JFIU chairs the Suspicious Transaction Reports Working Group, comprising the financial regulators, representatives from business associations and the Narcotics Division. The STR Working Group aims to enhance the quality and quantity of STRs submitted and discusses issues concerning the reporting and feedback mechanism. In addition, the JFIU's Chief Inspector sits on the HKMA's IWG. The banks are also assigned designated liaison officers of inspector rank from within JFIU, who they can directly contact to resolve any operational reporting issues that may arise. The JFIU has posted a Quarterly Suspicious Transaction Analysis Report on its website since 2005 which covers statistics, qualitative analysis of STRs and case studies to help reporting entities to identify suspicious transactions and improve the quality of their STRs. In addition, the *JFIU Guideline* provides broad guidance and examples of what might constitute suspicious transactions (not intended to be exhaustive). It also highlights the most basic ways in which money may be laundered and provides red flag indicators.

549. The banking sector: To facilitate AIs to identify suspicious transactions, examples of what might constitute suspicious transactions are given in Annex 5 to the *Bank Guidelines*. In support of this, the HKMA, in collaboration with the JFIU, organises regular briefings to update AIs on recent AML/CFT issues and developments including issues on suspicious transaction reporting.

550. The securities sector: The SFC has provided a list of potentially suspicious or unusual activities, showing the types of transactions that could be a cause of scrutiny, in Appendix C(ii) of the *Securities Guidelines*. Examples and common indicators of suspicious transactions are also provided on the SFC's AML/CFT website. The SFC has also issued circulars to inform LCs of the common indicators of suspicious transactions and to remind them of their legal and regulatory obligations to report suspicious transactions. Through its on-site inspections, training seminars and circulars issued to the LCs, the SFC reminds the LCs of their STR obligation. It commonly refers LCs seeking further information to the Quarterly Suspicious Transaction Analysis Reports, available on a secure section of the JFIU's website, and the reports on ML typologies issued by FATF and the Egmont Group of Financial Intelligence Units (see for example SFC circular letters of 26 April 2006 and 17 November 2006 on AML/CFT issues).

551. The insurance sector: Paragraph 8 of the OCI's *Insurance Guidelines* particularly concerns recognition and reporting of suspicious transactions and indicators of suspicious transactions and examples of ML schemes are set out in Annexes 1 and 2 to these guidelines. During seminars and in its circulars issued to the IIs, the OCI reminds IIs to be alert to suspicious transactions and make STRs to the JFIU as appropriate. IIs are also advised to browse, from time to time, the relevant documents of the IAIS and FATF at their respective websites for the latest updates. In addition, the OCI has, via circulars and seminars, reminded the IIs to apply for access to the secure portion of the JFIU website where further guidance and examples may be obtained.

552. Remittance agents and money changers: The JFIU's 2007 *Guideline for Remittance and Money Changers* provides detailed guidance for the sector on AML procedures and reporting requirements.

Feedback

553. The JFIU provides specific and general feedback on all STRs received.

554. The reporting entity receives acknowledgement of receipt within three days of receipt of the STR. If there is no need for immediate action the acknowledgement will normally contain consent to the transaction/continued operation of the account (see further s.25A(2) DTROP and OSCO and s.12(2)(a) UNATMO). All reports are classified after analysis as either 'low risk' or 'high risk' and this rating is communicated in a written reply to the reporting entity which is sent within ten days from receipt of the STR. A 'high risk' classification means that the report is subject to further investigation and/or analysis and the reporting entity will be advised of the outcome in due course. In addition, reporting entities may be contacted when the JFIU seeks additional information to assist their analysis of the STR.

555. The JFIU publishes a quarterly report, which provides reporting entities with information on the latest money laundering trends, typologies, sanitised cases of interest and reporting statistics. In addition to publication on the secure area of the JFIU's website, this is sent in hard copy to the regulators for dissemination in their respective sectors.

556. In conjunction with the Narcotics Division of the Security Bureau (ND), the JFIU has, in the last three years, organised a series of seminars for financial sectors and DNFBPs. Between 2006-2007, 24 seminars were held in which the JFIU provided sector-specific basic and advanced training on; STR identification, reporting, and emerging typologies. In August 2007, the JFIU and the ND also jointly organised specialised outreach seminars to NPOs. During the JFIU seminars to the financial institutions and DNFBPs, the JFIU provides information on the latest trends and typologies. In 2007, the ND and the JFIU issued a practical guide and training CD_ROM for RAMCs which includes the latest ML/TF trends, suspicious activity indicators and case examples.

557. While discussions with reporting entities indicated a general satisfaction with the level of guidance and feedback provided with respect to STRs, some comment was made about the need for this type of information to be developed and provided for each specific sector. Reporting entities would like to know more of the results achieved from STRs. In addition, there is an appetite for more information on current techniques, methods and trends and for more examples of actual ML cases.

Recommendation 19

558. Hong Kong authorities have advised that they have considered the feasibility and utility of a system where banks and other financial institutions are required to report currency transactions above a fixed amount to a central agency with a computerised database. The HKMA sought the views of the Hong Kong Association of Banks in April 2006 on the feasibility and utility of establishing such a threshold reporting system. Having considered the views of the association, the HKMA and other agencies agreed that it was not desirable to establish such a system due to:

- Difficulties in setting a reasonable threshold, having regard to the volume of transactions and the need to present a disincentive to money launderers who might break down large transactions into smaller ones below the threshold.
- The risk that reporting entities may become less vigilant in identifying STRs.
- The significant resources that would be required to maintain a threshold reporting system in a large international financial centre such as Hong Kong.

Statistics⁴² and Effectiveness

559. A breakdown of annual STR filing by sector is provided below:

Table 25. STRs submitted, 2004-2007

	Year	2004	2005	2006	2007
Financial Institutions	Banking	13 570	12 449	13 041	12 789
	Insurance	144	560	132	311
	Licensed Money Lenders	37	10	35	42
	Securities and Futures	76	150	121	220
	RAMCs	132	268	1 119	2 001

560. The bulk of the STRs have been submitted by banking institutions, and the number of STRs received from the securities and insurance sectors, while relatively low, does not appear to be out of line with experience in other jurisdictions. Additional statistics provided by the JFIU indicate that a small number of banking institutions submitted a high proportion of the STRs, with the four most frequent reporting institutions accounting for about 72% of the total. Together these institutions account for 48% of market share in terms of customer deposits.

561. The number of STRs submitted by money lenders is low. This may indicate a need for greater outreach to that sector. The significant increase in STR reporting from remittance agents and money changers in 2006 coincided with an intensive outreach campaign focussed on that sector. Data for the first half of 2007 showed a substantial drop in the number of reports from this sector, but the level of reporting rose sharply in the second half following the publication of the JFIU guidance. This pattern suggests that the remitters react very positively to the outreach, but may lose sight of the issues when the focus is less intense. Therefore, the authorities will need to keep a close eye on developments in this sector.

562. The regulators are alert to these issues (in particular any suggestions of under-reporting by individual institutions) and have sought to identify the underlying causes through their examinations. They use the quarterly data provided by the JFIU as an input into their normal regulatory models for targeting the quality of STR reporting. With respect to the concentration of reporting by a relatively small number of institutions, the authorities believe that some of this is due to over-reporting by some institutions which apply an automatic threshold, rather than a judgemental test. However, they do not believe that the pattern is particularly unusual, given that the major reporters in both the banking and securities sectors are those institutions that have significant retail business. With respect to the insurance sector, the OCI indicated that there had been a period of concentrated reporting due to restructuring in the market, which had led to particularly close scrutiny of accounts following takeovers.

563. The JFIU actively provides guidance and feedback on STRs to the reporting entities, including statistics on the STRs received as well as information on the latest money laundering trends and typologies. In addition, it has provided a series of seminars for various reporting entities, which appear quite effective as they have prompted a substantial increase in the number of STRs submitted by the RAMC sector. Still, it seems from meetings during the on-site visit that there is an appetite for more sector-specific guidance, trends and typologies.

⁴² As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

3.7.2 Recommendations and Comments

Recommendations 13-14, 19 and 25 and Special Recommendation IV

564. The DTROP, OSCO and UNATMO all provide clear and broad reporting obligations for reporting suspicious transactions, with associated protection from civil or criminal liability when complying with the reporting obligation. Financial institutions and their directors, officers and employees are prohibited from disclosing the fact that an STR has been submitted but this prohibition does not apply in all cases where an STR is in the process of being submitted. Recommendations made previously in this report with respect to the predicate offences and the TF offence are also important for the complete implementation of STR reporting obligations.

565. The JFIU and the regulators provide guidance to reporting entities on the STR obligation and the JFIU provides general and specific feedback on STRs submitted. The JFIU and other regulatory authorities should consider providing, in addition to the guidance and feedback already being provided, further information on the actual cases and outcomes achieved from STRs. The outreach conducted by the JFIU and relevant agencies has been significantly strengthened in recent years and in at least one sector a clear increase in STR reporting has resulted. It is recommended that this level of outreach be maintained at least at its present level, and that it covers all types of financial institutions. It is important that the authorities monitor closely the trend in reporting once the heightened publicity surrounding the outreach programmes has died down. In addition, the JFIU and relevant regulatory authorities should consider providing feedback and guidance jointly and in a more structured manner.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criterion 25.2), and Special Recommendation IV

	Rating	Summary of Factors Underlying Rating
R.13	LC	<ul style="list-style-type: none"> Some minor deficiencies in Hong Kong's list of predicate offences (re environmental crime) impact on the scope of the suspicious transaction reporting requirement. The requirement to report transactions suspected of being related to terrorism only arises where there is a link to terrorist acts, and not where the finances are for a terrorist organisation or individual terrorist in the absence of a link to a terrorist act.
R.14	LC	<ul style="list-style-type: none"> The prohibition on tipping-off does not apply in all cases where an STR is being considered, but has not yet been submitted to the JFIU.
R.19	C	<ul style="list-style-type: none"> This Recommendation is fully observed.
R.25	C	<ul style="list-style-type: none"> This Recommendation is fully observed
SR IV	LC	<ul style="list-style-type: none"> The requirement to report transactions suspected of being related to terrorism only arises where there is a link to terrorist acts, and not where the finances are for a terrorist organisation or individual terrorist in the absence of a link to a terrorist act. The only reports submitted to date where terrorist financing is suspected relate to potential matches with entities designated on lists.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Recommendation 15

566. While a number of relevant provisions are in place in the banking, securities and insurance sectors, there are no provisions within OSCO that address the need for internal control procedures, training or employee screening within the RAMC sector, and there are no other enforceable provisions elsewhere. However, sections 5 and 13 of the *JFIU Guideline* do advise RAMCs that they should establish policies and procedures to comply with AML/CFT requirements; appoint a compliance officer to oversee such matters; communicate AML/CFT policies and procedures in writing to all key personnel in branches and subsidiaries; and conduct internal audits to ensure compliance with internal AML/CFT policy requirements. There are no provisions in place with respect to internal control procedures, training or employee screening for money changers, money lenders, credit unions, the post office and financial leasing companies.

Internal procedures, policies and controls to prevent ML and TF

567. The banking sector: For an AI to continue to be authorised under the *Banking Ordinance*, it must satisfy the authorisation criteria in the seventh schedule to the law, which, among other things, requires an AI to maintain adequate accounting systems and systems of control. The latter are deemed to include controls for combating ML and TF. Section 2 of the *Bank Supplement* requires AIs to develop customer acceptance policies and procedures that aim to identify the types of customers that are likely to pose a higher than average risk of ML. This section goes on to identify the factors that should be taken into account when developing the policy. In addition, section 4 of the *Bank Guidelines* requires that AIs should issue a clear statement of ML policies to their staff, and maintain effective procedures and controls to prevent ML and TF. The procedures must be consistent with the guideline, which covers a broad range of issues, including; account opening, identification of applicants for business, record-keeping; and, STR reporting.

568. The securities sector: LCs are required under paragraph 4.2 of the *Securities Guidelines* to establish internal control procedures to prevent ML and TF. It stipulates that LCs should issue a statement of policies and procedures for dealing with ML and TF reflecting current legal and regulatory requirements, including maintenance of records and co-operation with the relevant law enforcement authorities. The guidelines themselves require institutions to implement procedures to address a broad range of AML/CFT matters, including the development of customer acceptance policies on terms similar to those specified in the *Bank Supplement*. LCs are also required to ensure that the content of the *Securities Guidelines*, is to the extent appropriate understood by all staff members. Paragraph V(4) of the *Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC (Internal Control Guidelines)* also provides that staff of LCs performing the compliance function, in conjunction with management, should establish, maintain and enforce effective compliance procedures in relation to, amongst other things, prevention of ML, record keeping and internal control.

569. The insurance sector: Section 4 of the *Insurance Guidelines* specifies that IIs should issue, and review on a regular basis, a clear statement of group policies in relation to ML and TF, and should communicate the group policies to all management and relevant staff (whether in branches, departments or subsidiaries). This (and section 5) further requires that IIs should develop instruction manuals setting out procedures for customer acceptance, CDD, record-keeping, recognition and reporting of suspicious transactions as well as staff screening and training. More generally, the *Guidance Note on the Corporate Governance of Authorized Insurers* issued by the OCI stipulates that

the board of directors of an insurer should ensure that a sound internal control system is in place and the relevant procedures are properly followed.

Compliance management arrangements

570. The banking sector: Section 16 of the *Bank Supplement* requires AIs to put in place an effective risk management system to ensure compliance with the *Bank Guidelines* and the *Bank Supplement*. Specifically, AIs are required to appoint a compliance officer responsible for AML/CFT matters who should be of 'sufficient status within the organisation' and have adequate resources to perform his or her functions. Although the term 'sufficient status' is not elaborated, the compliance officer falls within the definition of 'manager' under the *Banking Ordinance* Cap. 155, and includes "any individual ... appointed by the institution ... for the conduct of any one or more of the affairs in the Fourteenth Schedule", which covers the "maintenance of systems of control of an authorized institution to protect it against involvement in money laundering". The guideline states that the compliance officer should be responsible for checking and testing on an ongoing basis that the AI has policies and procedures to ensure compliance with legal and regulatory requirements and that s/he should act as a central reference point for reporting STRs. Paragraph 13.2 of the *Bank Supplement* requires AIs to have MIS to provide compliance officers with timely information to enable them to detect patterns of unusual or suspicious activities. Paragraph 3.5 stresses that the use of confidential numbered accounts "should in no circumstances be used to hide the customer identity from an AI's compliance function".

571. The securities sector: Paragraph 10.2 of the *Securities Guidelines* provides that an officer responsible for the compliance function should be appointed within an LC or an associated company to act as a central reference point within the organisation to facilitate onward reporting to the JFIU. This paragraph also indicates that the compliance officer should "undertake regular review of exception reports of large or irregular transactions.....as well as ad hoc reports made by front line staff". Chapter 11 of the guidelines requires LCs to identify the key positions in their own organisational structures with respect to AML/CFT and to ensure that all employees taking up such positions are suitable and competent to perform their duties. Further guidance with respect to the compliance function is contained in the SFC's *Internal Control Guidelines* which vests the responsibility for establishing and maintaining an appropriate and effective compliance function in management, and requires the compliance function to report directly to management. For the purposes of the guidelines, the licensed/ registered person and its senior management are collectively referred to as 'management', and may include a firm's Board of Directors, Chief Executive Officer, Managing Director or other senior operating management personnel (as the case may be). The guidelines also focus on the qualifications of compliance officers.

572. The insurance sector: Paragraphs 8.2.3 – 8.2.9 of the *Insurance Guidelines* requires each II to appoint a compliance officer at the management level who should also have sufficient status within the organisation to enable him to perform his functions. The role of the compliance officer in acting as a central point for the analysis of internal reports and the filing of STRs with the JFIU is described in similar terms to those used in the *Bank Supplement*. Similarly, institutions are required (paragraph 8.1.1) to put in place an MIS to provide managers and compliance officers with timely information on a regular basis.

Independent audit function

573. The banking sector: Paragraph 16.7 of the *Bank Supplement* requires an AI's internal audit function to evaluate independently the effectiveness of the AI's AML/CFT policies and procedures including the effectiveness of the compliance officer function, the adequacy of relevant MIS reports, and the quality of STRs. It is stated in that paragraph that the internal audit function should have sufficient expertise and resources to enable it to carry out its responsibilities. In addition, the HKMA has issued a statutory guideline (*General Risk Management Controls*) under s.7(3) BO, paragraph 6.2.3 which states that the internal audit function of an AI: i) should be given unfettered power to

choose which departments or business products or activities to be audited and to access records and documents; *ii*) should have appropriate independence and status within the AI to ensure that senior management reacts to and acts upon their recommendations; *iii*) should have sufficient resources and staff that are suitably trained and have relevant expertise and experience to understand the risk management process and the measurement models or methods employed; and *iv*) should employ a methodology that identifies the key risks run by the AI and allocates resources accordingly.

574. The securities sector: Under paragraph 4.2.2 of the *Securities Guidelines*, LCs are required to regularly review the AML/CFT policies and procedures to ensure their effectiveness. The guideline does not require the employment of an independent audit function, but simply offers this as an example of how such reviews may be carried out. The scope of the review is required to include: *i*) an assessment of the system for detecting suspected money laundering transactions; *ii*) evaluation and checking of the adequacy of exception reports generated on large and/or irregular transactions; *iii*) review of the quality of reporting of suspicious transactions; and *iv*) an assessment of the level of awareness of front line staff regarding their responsibilities. Under paragraph V of the *Internal Control Guidelines*, LCs are also required to establish and maintain policies and procedures to ensure the LC's compliance with all applicable legal and regulatory requirements as well as with the LC's own internal policies and procedures. Paragraph VI further provides that, where practicable, LCs should establish an independent and objective internal audit function to examine, evaluate and report on the adequacy, effectiveness and efficiency of the corporation's management, operations and internal controls. Where such a function cannot, for practical reasons, be undertaken by internal staff (*e.g.* the institution is very small), institutions are advised to use external consultants or auditors.

575. The insurance sector: Paragraph 4.1 of the *Insurance Guidelines* requires IIs to instruct their internal audit/inspection departments to regularly verify compliance with ML/TF policies, procedures and controls. Paragraph 8.2.11 further provides that the internal audit should check the effectiveness of the compliance officer function, the adequacy of the MIS reports and the quality of STRs. In addition, it states that the internal audit function should have sufficient expertise and resources to enable it to carry out its responsibilities and should have direct access and report directly to the management and the board of directors. Paragraph 14(i) of the *Guidance Note on the Corporate Governance of Authorised Insurers* also stipulates that the internal auditor should:

- Have unfettered access to the insurer's entire business lines and support departments.
- Be independent from the day-to-day operation and have status within the insurer to ensure that the senior management is responsive to his recommendations and takes timely actions thereon.
- Have sufficient resources and staff who are suitably trained and experienced in understanding and evaluating the business they are auditing.
- Employ a methodology that identifies any major risks that may be encountered by the insurer and allocate his resources accordingly.

Training and screening of employees

576. The banking sector: Paragraphs 4.3(d) and 11.3 of the *Bank Guidelines* require AIs to provide proper AML training, including refresher training, to their local and overseas staff. The latter paragraph goes into extensive detail about the obligation, addressing the general theme as well as different categories of staff. The training offered by AIs should seek to make sure that new employees are aware of their personal statutory responsibility for reporting suspicious transactions, the procedures for making a suspicious transaction report and the offence of "tipping off". Front-line staff should be provided with training on factors that may give rise to suspicions and the procedures to be followed when a transaction is considered to be suspicious. Account opening and new client personnel should be provided, on top of the regular training for general front-line staff, with training on the AI's account opening and customer verification procedures. A higher level of instruction covering all

aspects of AML procedures (this should include latest ML methods) should be provided to those with responsibility for supervising or managing staff. In addition, paragraph 15.12 of the *Bank Supplement* requires AIs to acquaint themselves with the FATF guidance for financial institutions in detecting TF and use it in staff training.

577. In accordance with s.71 BO, the appointment of a chief executive of an AI and the appointment of a director of a locally incorporated AI are subject to HKMA approval. In addition, AIs are required to have adequate systems of control to ensure that their senior executives who fall within the definition of “manager” in s.2 are fit and proper persons (paragraph 5A of the seventh schedule to BO). Section 73 further provides that no person who is bankrupt or has entered into a composition with his creditors, or has been convicted in any place of an offence involving fraud or dishonesty may, without the consent of the HKMA, become an employee of an AI or continue to be an employee.

578. The securities sector: Section 11 of the *Securities Guidelines* requires LCs to provide proper AML/CFT training to their local and overseas staff members, having regard to the risk of ML and TF. Staff should understand their own personal obligations under DTROP, OSCO and UNATMO, and be aware that they can be personally liable should they fail to report information as required. Section 11 also provides that LCs should have educational programmes (including regular refresher courses) in place for training all new employees to ensure that members of staff, in particular those who deal with the public directly including new accounts opening, and those who supervise or manage such staff members, do not forget their responsibilities.

579. Under s.120 SFO, any individual who carries on a regulated activity on behalf of an LC is required to apply for approval to be a licensed representative accredited to that LC. No person can become a licensed representative of an LC unless s/he is considered fit and proper by the SFC. Also, paragraph 4.1 of the *Code of Conduct* provides that an LC should ensure that any person it employs or appoints to conduct business is fit and proper or otherwise qualified to act in the capacity so employed or appointed (including having relevant professional training or experience). More specifically for AML/CFT, LCs are required under s.11 of the *Securities Guidelines* to take such measures for screening and training employees that are appropriate having regard to the risk of ML and TF and the size of their business. They should ensure that all employees taking up key positions are suitable and competent to perform their duties.

580. The insurance sector: Paragraph 9.2.3(f) of the *Insurance Guidelines* requires IIs to establish ongoing employee training and refresher programmes. A twelve or six-monthly review of training or, alternatively, a review of the instructions for recognising and reporting suspected ML or TF transactions is suggested. As is the case with the banking guidelines, those covering the insurance sector go into detail about the specific training needs of different categories of staff, including new employees, sales/advisory staff, processing staff, management and also compliance officers.

581. Paragraph 9.1.1 of the *Insurance Guidelines* requires IIs to identify the key positions within their organisations with respect to AML/CFT and develop internal procedures for assessing whether employees taking up the key positions meet fit and proper requirements and are of high standards. Specifically, IIs are required to have procedures to verify the identity of the person being recruited, and to verify whether the information and references being provided are correct and complete. The IIs should also keep records on the identification data obtained from their employees.

Recommendation 22

582. The banking, securities and insurance guidelines have similar provisions requiring domestically-incorporated institutions to apply the Hong Kong AML/CFT standards on a group-wide basis to include their overseas branches and subsidiaries (*Bank Guidelines* paragraph 1.2, *Securities Guidelines* paragraph 4.3 and *Insurance Guidelines* paragraph 1.4). Where this is not possible because of local laws or other impediments, institutions are required to report the fact to their respective regulators. The guidelines issued by the HKMA and the OCI specifically provide that institutions

should adopt the higher of either Hong Kong or the foreign jurisdiction's standards, but the *Securities Guidelines* are silent on this specific scenario, although they refer generally to the obligation, wherever there is any inconsistency in the laws, codes or regulatory standards applicable to an institution, to apply the higher standard. The respective regulatory guidelines require institutions to pay particular attention to the application of group procedures when they operate in jurisdictions that apply inadequate or inferior AML/CFT standards. At end-September 2007, there were 230 branches and 20 subsidiaries of Hong Kong banks operating in a broad range of jurisdictions, including several emerging markets; 25 branches and 5 subsidiaries of licensed corporations; and 23 branches and 26 subsidiaries of long-term insurers.

583. Similar principles to those described above have been incorporated into the *JFIU Guidelines*, but these are not enforceable.

Effectiveness

584. All three regulatory authorities report that, through their inspection programmes, they have established that, in general, institutions are aware of their obligations to maintain appropriate AML/CFT internal control procedures, and that they are addressing the key areas of communicating the policies and procedures to staff, providing proper training, and maintaining a compliance function. Discussions with the private sector (both individual institutions and the respective associations) tended to confirm that there is a high level of awareness in the industry.

585. The HKMA has so far received one report about problems encountered in implementing AML/CFT standards in overseas jurisdictions. That case concerned the difficulty in obtaining proofs of residential address of directors and shareholders of corporate customers in an Asian country. The AI concerned was required to take additional measures to mitigate the AML/CFT risks that might potentially arise because of the difficulty (*e.g.* to more closely monitor the transactions of the corporate customers).

3.8.2 Recommendations and Comments

Recommendations 15 and 22

586. While the requirements in the various guidelines are quite extensive, it is recommended that the authorities introduce obligations for remittance agents, money changers and money lenders to have appropriate internal procedures, policies and controls.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of Factors Underlying Rating
R.15	LC	<ul style="list-style-type: none"> There are no requirements for remittance agents, money changers and money lenders to have internal procedures, policies and controls or to have employee training and screening. Scope limitation: no formal assessment undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from the preventive measures.
R.22	LC	<ul style="list-style-type: none"> There are no requirements for remittance agents or money changers to ensure their foreign branches and subsidiaries observe AML/CFT measures consistent with the requirements in Hong Kong and no requirements for the foreign branches and subsidiaries to notify the home supervisor when they are unable to do so.

3.9 Shell Banks (R.18)

3.9.1 Description and Analysis

587. The HKMA policy, as stated in its *Guide to Authorisation* (a general document published by the HKMA), is not to allow the establishment of a shell bank in Hong Kong. The HKMA requires that every AI must engage in genuine banking or deposit-taking operations and must maintain a physical presence in Hong Kong to provide a point of contact with the bank for both customers and the HKMA (paragraph 9.5 of the *Guide to Authorisation*). There are currently over 140 banks operating in Hong Kong, all of which maintain a physical presence in the jurisdiction.

588. Paragraph 11.6 of the *Bank Supplement* states that AIs should not establish or continue a correspondent banking relationship with a shell bank. Paragraph 11.4 requires AIs to collect details about their respondent banks, including the ML prevention efforts of such banks, and the interpretative notes to the *Bank Supplement* further specify that in assessing the AML efforts of a respondent bank, AIs should pay attention to whether the respondent bank is permitted to open accounts for or carry out transactions with shell banks. However, there is no explicit obligation on AIs to satisfy themselves that their respondents are not conducting business with shell operations.

3.9.2 Recommendations and Comments

589. The HKMA will not approve the establishment of shell banks and institutions are not allowed to establish or continue a correspondent banking relationship with a shell bank. Thus, this Recommendation is substantially observed, but an explicit requirement should be introduced on banks to determine, as far as reasonably possible, that their respondent banks are not providing correspondent facilities to shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of Factors Underlying Rating
R.18	LC	<ul style="list-style-type: none">Financial institutions are not required to satisfy themselves that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The Supervisory and Oversight System: Competent Authorities and SROs. Role, Functions, Duties and Powers (Including Sanctions) (R.23, 29, 17 & 25)

3.10.1 Description and Analysis

590. Supervisory and oversight systems are in place for AML/CFT matters in the banking, securities and insurance sectors, and there is a basic statutory regime for RAMCs. These arrangements are described throughout this section. Such systems are not however in place for money lenders, credit unions, the post office and financial leasing companies.

591. Money lenders: Pursuant to s.7 MLO, money lenders must be licensed and must carry out their money lending activities at the premises specified in the licence. Section 8 requires that the licence application be made to the Registrar in a prescribed form, with a copy submitted to the Commissioner of Police. The Police Commissioner may investigate whether there are grounds for objecting to the application (s.11). There are 741 licensed money lenders as at 30 November 2007, comprising 716 limited companies, 20 sole proprietorships and five partnerships. Pawnbrokers must be licensed, with licences valid for one year issued by the Commissioner of Police. Pawnbrokers' loans up to an

amount of HKD 50 000 (USD 6 410), individually or combined, must be made in accordance with the *Pawnbrokers Ordinance*, s.2 and s.3. The *Money Lenders Ordinance* applies where the loans are above that amount. There is no supervisory authority for money lenders and pawnbrokers.

592. Credit unions: Statutory functions pertaining to credit unions, such as registration, amendment of by-laws, inquiry and examinations, and cancellation of registration are vested in the Registrar of Credit Unions who is concurrently the Director of Agriculture, Fisheries and Conservation. It is obligatory for bodies seeking to be recognised as credit unions to be registered. As at 31 March 2007, there were 42 credit unions in Hong Kong. They mainly comprise of employees of government departments or large corporations, and members of local churches or neighbourhood organisations. Altogether they have a total membership of 66 506 and total share capital of HKD 4.5 billion, the largest being the police credit union with total deposits of approximately HKD 3 billion. There is no supervisory authority for credit unions.

593. Post office: Hongkong Post provides bilateral remittance services with overseas postal administrations (postal remittance) and via Western Unions networks (electronic remittance) at post office counters. Remittance services provided by the Hongkong Post are conducted in accordance with the *Post Office Trading Ordinance*. There is no supervisory authority which regulates the financial activities of the Hong Kong Post.

594. Financial leasing companies: There is no regulatory regime governing financial leasing companies. However, as most of the companies which conduct these activities are AIs, they are subject to HKMA's supervision with respect to activities within HKMA's remit.

Authorities/SROs Roles and Duties & Structure and Resources: R.23, 30

AML/CFT regulation and supervision of financial institutions

595. The banking sector: Section 7(2) BO states that the HKMA is responsible for supervising compliance of AIs and other relevant companies with the provisions of the ordinance. The HKMA must ensure that banking business is carried on with integrity, prudence and an appropriate degree of professional competence and in a manner which is not detrimental, or likely to be detrimental to the interests of depositors, or potential depositors. In relation to AML/CFT, the HKMA has issued two statutory guidelines (*i.e.* the *Bank Guidelines* and the *Bank Supplement*) pursuant to the BO to require AIs to put in place effective systems for combating ML and TF. The HKMA monitors compliance of AIs with its AML/CFT guidelines as part of its supervision of AIs. Its supervisory approach is based on a policy of "continuous supervision". This involves on-going monitoring of AIs through supervisory contacts such as on-site examinations, off-site reviews, prudential meetings, meetings with boards of directors, co-operation with external auditors and sharing of information with other supervisors.

596. The securities sector: The SFC is responsible for the supervision of LCs (s.5 SFO). LCs must satisfy the SFC that they are fit and proper persons to be so licensed (s.129 SFO). To remain fit and proper, LCs have to comply with all applicable provisions of the SFO and its subsidiary legislation as well as codes and guidelines issued by the SFC, including the *Securities Guidelines* at all times. As part of its ongoing monitoring and onsite inspection program, the SFC reviews LCs' compliance with relevant laws and regulatory requirements (including the *Securities Guidelines*). The areas covered in inspections include: customer identification and due diligence, monitoring and reporting of suspicious transactions, record keeping and compliance. Failure to comply with any requirements of the *Securities Guidelines* by LCs will reflect adversely on their fitness and properness (paragraph 1.3 of the *Securities Guidelines*) and the SFC takes disciplinary action against regulated persons in serious cases of failure to comply with such requirements.

597. The insurance sector: The ICO provides a legislative framework for the prudential supervision of the insurance industry in Hong Kong. The Commissioner of Insurance, being the head of the OCI,

is appointed as the Insurance Authority (IA) to administer the ICO. Under s.4A ICO, the principal function of the IA is to regulate and supervise the insurance industry. The IA monitors insurers' compliance with the ICO and guidance notes, including the *Insurance Guidelines*. Despite the self-regulatory system for insurance intermediaries, the IA also has the overall responsibility for the effective operation of this system. As the *Insurance Guidelines* also apply to insurance intermediaries carrying on or advising on long term business, the IA has also enlisted the assistance of the two approved bodies of insurance brokers to conduct inspections of their member brokers. To monitor insurers' compliance with the laws, regulations and other regulatory requirements (including with respect to AML/CFT), OCI regularly conducts on-site inspection visits to active insurers.

598. **Remittance agents and money changers:** RAMCs are required under the OSCO to register with the officer designated by the Secretary for Security (*i.e.* the Chief Superintendent, Narcotics Division). The register of RAMCs is administered by an officer of the JFIU. As at 1 July 2007, there were 1 722 registered RAMCs in Hong Kong. All Hong Kong Police and C&ED officers are authorised to conduct inspections of business to ensure compliance with mandatory registration, record keeping and suspicious transaction reporting obligations (s.24E OSCO), but only when there is suspicion that an offence has been committed. There are no broader supervisory powers vested in the Hong Kong Police or any other agency. A recent government review of the AML/CFT regulatory regime for RAMCs has concluded that there is a need to strengthen regulation of the RAMC sector. During the onsite visit, the assessors were informed by the authorities that a working group was reviewing the regulatory regime of the RAMC sector with a view to establishing a dedicated regulatory authority vested with appropriate powers⁴³.

Resources (Supervisors)⁴⁴

Structure, funding, staffing and resourced

599. **HKMA:** The HKMA is headed by the Monetary Authority (MA) who is a public officer appointed by the Financial Secretary under s.5A of the *Exchange Fund Ordinance*, Cap. 66 (EFO). The HKMA's activities are overseen by the Exchange Fund Advisory Committee (EFAC) which is responsible for advising the Financial Secretary on matters relating to the control of the Exchange Fund (the foreign exchange reserve of Hong Kong) and the operation of the HKMA. The Financial Secretary is ex officio chairman of EFAC. Other members are appointed in a personal capacity by the Financial Secretary on the basis of their expertise and experience in monetary, financial, investment and economic affairs. The EFAC also reviews the work of the HKMA and approves its annual budget. The authorities report that, since the establishment of the HKMA in 1993, there have been no cases of government or political interference in its operations.

600. The HKMA is funded by the Exchange Fund and the licence fees payable by AIs. It is not dependent on the general government revenue for its financial support. The use of the Exchange Fund for the purposes specified in the EFO is not subject to the approval of the Legislative Council. This is enshrined in Article 113 of the *Basic Law*. With the Exchange Fund providing the necessary funding support, the HKMA has been able to attract and retain qualified staff by maintaining salary scales that are competitive in market terms. It has also been successful in procuring adequate funding support to hire outside experts on specific areas (including a AML/CFT specialist), to strengthen information technology support and internal management information systems for banking supervision, to enhance training for supervisory staff, and to enable them to undertake local and overseas examinations.

601. The Chief Executive of the HKMA is assisted by three Deputies, including the Deputy Chief Executive (Banking) who oversees all matters relating to the banking sector. He looks after three

⁴³ In April, a central co-ordinating committee on AML/CFT, chaired by the Financial Secretary, was formed and the committee decided that the Commissioner for Customs and Excise would in the near future become the regulator for RAMCs.

⁴⁴ As related to R.30; see s.7.1 for the compliance rating for this Recommendation.

departments, namely the Banking Supervision Department (BSD), the Banking Policy Department (BPD) and the Banking Development Department (BDD). An organisation chart of the three banking departments can be found in [Annex 5](#) to this report.

- The BSD handles the day-to-day supervision of AIs. Its staff are divided into off-site and on-site teams. The off-site teams have overall responsibility for the supervision of AIs. They are the ‘case officers’ and are charged with conducting off-site reviews, prudential meetings and meetings with the boards of directors. On-site teams are responsible for carrying out regular examinations of AIs. In relation to AML/CFT, the staff in the BSD are the first line of defence in monitoring compliance with the HKMA’s AML/CFT guidelines. They conduct high-level (tier-1) examinations to assess the overall effectiveness of individual AIs’ AML/CFT systems.
- The BPD formulates supervisory policies to promote the safety and soundness of the banking sector. Division B within the BPD is dedicated to overseeing and co-ordinating the HKMA’s AML/CFT efforts. It also carries out in-depth (tier-2) examinations of AIs and thematic examinations focused on specific banking operations such as private banking and correspondent banking. The division was created in January 2007 by centralising the existing policy and specialist examination functions in that division. The resources of the division have been increased to enable more tier-2 and thematic examinations to be conducted.
- The BDD formulates policies to promote the development of the banking industry. It is also responsible for processing applications of companies seeking to become an AI in Hong Kong.

602. SFC: The functions and powers of the SFC are set out in s.5 SFO. The SFC is eligible to receive an appropriation from the Government (s.14 SFO) but has requested the government not to make appropriations to it since the financial year ended 31 March 1994. The funding for the SFC comes primarily from the industry, in the form of a levy on transactions recorded on the Hong Kong Stock Exchange and Futures Exchange (s.394 and s.396 SFO). The SFC also collects fees and charges in relation to its functions and services according to the provisions of subsidiary legislation (authorisations, approvals, exemptions, waivers and modifications). In addition, the SFC has income in the form of interest derived from the investment of its reserves (s.17 SFO).

603. The SFC has four operational divisions: Intermediaries and Investment Products (comprising three departments; Licensing, Intermediaries Supervision and Investment Products); Enforcement; Supervision of Markets; and, Corporate Finance. It is supported by the Legal Services Division and by External Relations and other departments covering finance and administration, human resources and training, investor education and communication, information technology and secretarial matters. The SFC organisation chart can be found in [Annex 5](#) to this report.

604. The Intermediaries Supervision Department (ISD) is responsible for formulation of supervisory policies, including those concerning AML/CFT, and day-to-day supervision of LCs. As part of the ongoing monitoring program, the staff of ISD assess the adequacy of LCs’ AML/CFT systems and controls during on-site inspections. If non-compliance with AML/CFT requirements is identified during inspections, the ISD will take up the matter with the LCs in the first instance and may refer a matter to Enforcement Division for investigation or possible disciplinary action.

605. The Enforcement Division comprises three departments; Surveillance, Investigation and Discipline. The Surveillance Department monitors the trading of Hong Kong’s securities and futures markets, and inquires into irregularities. The Investigation Department undertakes investigations into suspected breaches of the SFO, relevant codes and guidelines.

606. The SFC is empowered to employ such staff on such terms and conditions as it determines (s.9 SFO). A significant number of its staff have professional qualifications. As at 31 December 2007, there were 434 staff. The number of staff of Intermediaries Supervision, Enforcement and Legal Services Departments is shown in the table below.

Table 26. Staffing of key SFC departments, 31 December 2007

	Total no. of staff	No. of accountants and lawyers
Intermediaries Supervision	59	44 accountants and 1 lawyer
Enforcement	90	18 accountants and 21 lawyers
Legal Services	17	13 lawyers

607. OCI: The OCI is an establishment under the government's Financial Services and the Treasury Bureau. In line with international supervisory principles and to keep pace with rapid development of the insurance market, the government has commissioned a study to consider the establishment of a new agency, operationally independent from the Government. The majority of the OCI's expenditure is financed by public funds whilst the rest is funded by the authorisation and annual fees paid by the authorised insurers and insurance brokers.

608. The OCI comprises three divisions, each headed by an Assistant Commissioner of Insurance: Policy and Development; General Business; and, Long Term Business. Regulatory duties are assigned to ten professional teams operating under these three divisions, each led by a Senior Insurance Officer. About two-thirds of the OCI's staff are professional staff possessing professional qualifications and expertise in the accounting, insurance and actuarial fields. As at 31 December 2007, there were 28 general grade staff members providing administrative and clerical support to 64 professional officers. The OCI organisation chart can be found in Annex 5 to this report.

609. The General Business Division and Long Term Business Division handle the day-to-day supervision of the authorised insurers. Their supervision is mainly carried out by case officers through scrutinising the financial statements and other returns submitted by the authorised insurers. They also carry out on-site inspection visits to the authorised insurers to monitor compliance with the ICO and OCI's guidance notes, including the *Insurance Guidelines*. There are 28 staff responsible for monitoring the financial soundness and compliance (including AML/CFT) of the 66 insurers which carry on long term business. The Policy and Development Division is responsible for, amongst other things, formulating policies and promulgating guidance notes for better supervision of the insurance industry. It also handles various matters relating to AML/CFT issues, such as preparing the *Insurance Guidelines*, issuing AML/CFT circulars to the IIs, organising seminars and liaising with other agencies on AML/CFT matters. Three officers are employed to focus on AML/CFT issues.

Professional standards of staff of competent authorities

610. The HKMA: The HKMA has issued a *Staff Handbook* to all members of staff. It is referred to in the employment contract and thus all members of staff are bound by it. Chapter 4 of the *Staff Handbook* sets out the standards of conduct that staff members are expected to observe. It covers areas such as investment restrictions, acceptance of advantages and entertainment, and confidentiality of information. Specifically, staff members working in the three Banking Departments are bound by the secrecy provisions under s.120 BO. They are required to protect the confidentiality of information received by the HKMA in the course of its supervision of AIs. Moreover, there are established systems for handling gifts received by staff in their official capacity and for them to report investments made.

611. SFC: The requirements and the relevant legal obligations to be observed by SFC staff are set out in the *Staff Code of Conduct*, which is binding on all staff under their employment contracts. In particular, all staff should be aware of potential conflicts of interest and ensure that their work is carried out properly, impartially and free from any suggestion of improper influence. The *Staff Code of Conduct* sets out a clear policy for staff on personal dealings in securities and futures contracts and

various statutory requirements relating to personal dealings. It also requires staff to keep information acquired in the course of duties confidential, reinforcing the secrecy obligations in s.378 of the SFO.

612. OCI: Staff of the OCI are required to have professional/academic qualifications and most of them have experience in insurance, accounting or actuarial science. All staff are recruited through open recruitment and offered employment under prevailing terms and conditions of government employment, which includes an integrity checking system. Staff are required to observe all civil service regulations (CSR) and circulars issued by the Civil Service Bureau (CSB). The CSR covers various matters including regulations on conflicts of interest, acceptance of advantages and entertainment, investments and outside work. In addition to the provisions on investments which are applicable to all civil servants, staff of the OCI must comply with the OCI's *General Circular No. 1/2005 (Restrictions on Investments)* and are subject to s.53A and s.53B ICO, which requires them to maintain secrecy with regard to all matters relating to the affairs of any insurer that may come to their knowledge in performing supervisory functions.

Training of staff of competent authorities

613. HKMA: The HKMA organises regular training courses on AML/CFT issues for staff of the BSD and the BPD. The training programmes are given either by the AML/CFT Specialist in the BPD or by knowledgeable industry practitioners. In 2006, for example, there was a general AML refresher course on AML/CFT issues and more specialised training in private banking; CDD for high risk customers; the suspicious transaction reporting process; and, trade-based money laundering. The AML/CFT Specialist also produces a bi-weekly case study to update staff of the banking departments on latest AML/CFT developments.

614. More in-depth training programmes are provided to the staff of Division D of the BPD, which oversees and co-ordinates the HKMA's AML/CFT efforts. Industry experts are invited to present details of commercial products that include screening software solutions, data analysis tools and integrity checking. All BPD staff responsible for developing AML/CFT supervisory policies are expected to attend FATF assessor training workshop (five of the seven senior staff members in Division B of the BPD have received this training so far). The staff members of the specialist examination teams responsible for conducting tier-2 examinations attend relevant training provided by overseas regulators where possible.

615. SFC: SFC staff attend training courses and information sessions on AML/CFT matters. In recent years, presentations have been given by the JFIU, other regulatory authorities, experienced market practitioners and internal/external experts. Topics covered include: requirements under the *Securities Guidelines*; reporting requirements under the AML/CFT legislation; common ML/TF typologies; AML/CFT on-site inspection programs; self-assessment programs; the major indicators of money laundering by securities and futures firms; how to create a risk assessment matrix; and, how LCs conduct CDD and perform on-going monitoring of accounts and transactions. The number of training courses attended by SFC staff since 2005 is shown in the table below.

Table 27. AML/CFT training provided to SFC staff, 2005-2007

	2005	2006	2007	TOTAL
No. of AML/CFT training courses /seminars	2	3	6	11
Estimated no. of participants	130	152	234	516

616. In addition, some staff, particularly new recruits, have attended the AML/CFT seminars that the SFC organises for the industry. The SFC's AML/CFT website, which has training modules covering AML legislation, requirements under the *Securities Guidelines*, how the securities and futures sector

may be used by money launderers and examples of disciplinary actions taken against LCs for breaches of AML/CFT requirements, also serves as an on-line educational tool for the SFC staff.

617. OCI: The OCI offers its staff a mix of local and overseas training programmes. Since 1 April 2000, the OCI has implemented a Continuing Professional Development (CPD) programme for the professional staff. The objectives are *i*) to maintain and enhance the technical knowledge and professional skills of the staff; and *ii*) to provide a reasonable assurance that the staff have the technical knowledge and professional skills required to perform their duties. Under the CPD programme, all professional staff are encouraged to undertake a minimum of 40 CPD hours in each financial year. Alternatively, staff may choose to write a research paper on technical topics such as insurance, accounting, law and any matter which is within the professionalism and business of the staff concerned (including AML/CFT). Thirty-four staff have also attended general AML/CFT courses in the past two years, run by a variety of organisations.

Authorities Powers and Sanctions – R.29 & 17

Powers to monitor compliance

618. HKMA: The HKMA has powers to conduct examinations of AIs (s.55 BO); to require AIs to submit information which the HKMA may reasonably require for performing its functions (s.63(2)); and to commission an audit report on their control systems (s.59(2)). Section 56(1) has made it clear that, in an examination of an AI, the HKMA examiners have the power to access the AI's books and accounts and such other information and facilities which may be required for the examination. The HKMA's powers under s.56(1) and s.63(2) are not predicated on the need to require a court order. All these powers extend to overseas branches and subsidiaries of AIs.

619. SFC: Section 180 SFO empowers the SFC to inspect LCs' compliance with regulatory requirements, including the AML/CFT requirements. Specifically, the SFC has the powers to enter the premises of the LCs, inspect and make copies of records or documents and make inquiries concerning such records or documents and transactions (s.181 and s.183 SFO). In exercising its powers, the SFC can require the LCs to give the SFC access to any record or document and answer any question. Furthermore, the SFC may in writing require a person to verify his answers by statutory declaration. Disciplinary powers are provided under s.194 and s.196 SFO.

620. In addition to its general inspection power, the SFC can:

- Require any person whom the SFC believes is holding any securities, futures contract, etc. or who has an interest in such, to disclose to the SFC the identity of the person on whose behalf/by/from/to/through whom, the relevant securities or futures contract etc. are held or have been transacted, and to disclose related particulars (s.181).
- Investigate possible offences under the SFO and require the person under investigation or any person whom the SFC believes to have in his possession any information to produce, explain the records and attend an interview to answer questions, etc (s.182 and s.183).
- Apply to court for a search warrant for entering premises, on which required records are suspected to be stored, and seize and remove records from the premises (s.191).

621. The SFC's powers under sections 180, 181 and 183 to compel production of, or to obtain access to information for supervisory and investigatory purposes are not predicated on the need to obtain a court order.

622. OCI: Section 4A ICO gives the OCI (as the persona of the Insurance Authority) the responsibility to supervise insurance companies' compliance with the provisions of the legislation. Thereafter, the specific powers given to the OCI for routine supervision appear to be limited. Part V provides a range of powers of intervention, but specifically restricts these to circumstances where

there are concerns about the financial health of the institution or its compliance with the law (s.26). There appears to be no general authority to conduct routine inspections (although these take place in practice). Section 34 gives the OCI the authority to access or request a broad range of information from licensed businesses, although this again is tied to the occurrence of one of the circumstances defined in s.26. However, one such circumstance is when the OCI considers it desirable in the interests of policy holders to establish that an institution is able to meet its liabilities, which may be broadly construed as a general enabling authority to require the submission of data.

Recommendation 17

Sanctions

623. In general, criminal sanctions are also available for offences under the three main ordinances, namely DTROP, OSCO and UNATMO and these are applicable to all natural and legal persons (see Section 2 of this report for discussion of these sanctions). Failure to comply with a specific provision in the statutory guidelines does not, of itself, constitute an offence or necessarily open the institution to an automatic regulatory sanction. Compliance failures generally are considered in the broader context of the regulatory requirements relating to such matters as the “fit and proper” tests, the maintenance of adequate systems and controls, and the prudent conduct of business.

624. The banking sector: The HKMA is the primary authority responsible for taking supervisory action against AIs. The only exceptions are where the AML/CFT deficiencies relate to the securities business of AIs or involve breaches of DTROP, OSCO or UNATMO. In the former case, the HKMA will recommend the SFC to exercise its powers available under the SFO to discipline the AI concerned and/or its relevant staff. As for the latter, the HKMA will refer the case to the relevant law enforcement authority for investigation or prosecution.

625. The HKMA has a broad range of supervisory measures that can be taken against an AI which fails to comply with the *Bank Guidelines* or *Bank Supplement*. These sanctions, which may be applied with respect to the institutions and/or its directors and managers, range from administrative or prudential measures to the exercise of general statutory powers available to the HKMA under the BO, and include the following:

Administrative or prudential measures:

- Issuance of a caution/warning statement to the AI’s senior management, setting out the AML/CFT deficiencies and requiring rectification of them within a reasonable period.
- Communication with the AI’s board of directors, head office, parent bank or home supervisor.
- Requiring the AI to take specific remedial actions as appropriate in the circumstances, including for example replacing management or staff with inadequate AML/CFT expertise.
- Requiring the AI to submit a detailed investigation report on specific accounts, transactions or matters which are suspicious of being associated with ML or TF activity.
- Downgrading the supervisory rating of the AI, which may result in a higher level of capital requirement and, where applicable, a larger amount of deposit protection contribution.
- Putting on hold the AI’s new business or branch expansion plans while remedial actions are still being implemented by the AI.

Statutory powers under the BO:

- Attaching conditions to the AI’s authorisation (such as a restriction on business or branch expansion) (s.16(5)).
- Proposing to revoke the AI’s authorisation (s.22(1)).

- Suspending or temporarily suspending the AI’s authorisation (s.24(1) and s.25(1)).
- Directing the AI to seek advice on the management of its affairs, business and property from an advisor appointed by the MA (s.52(1)(B)).
- Appointing a manager to replace the current management to manage the affairs, business and property of the AI (s.52(1)(C)).
- Requiring the AI to commission an external auditors’ report on all or specific aspects of its AML/CFT policies, system and control (s.59(2)).
- Withdrawing previous consent given by the MA for the appointment of a person as a director or the chief executive of the AI (s.71(4)).

626. In October 2006, the HKMA issued a circular letter describing its framework for applying supervisory measures for AML/CFT purposes. The supervisory measures are broadly categorised into three levels to correspond with increasing levels of seriousness of AML/CFT deficiencies:

- Level I measures act as the first line of defence against an AI’s AML/CFT deficiencies of “emerging” concern which, although not posing immediate risks to the AI, reveal an unsatisfactory level of compliance that needs to be improved promptly in order to prevent the situation from further deterioration.
- Level II measures are to tackle an AI’s AML deficiencies of “significant” concern, which include major deficiencies associated with AML obligations in relation to customer due diligence and recordkeeping, and a combination of other areas of non-compliance that may have an adverse impact on the financial soundness and prudential operation of the AI.
- Level III measures are to address large-scale and persistent AML deficiencies of “severe” concern which may have systemic implications.

627. The circular indicates that, generally, the HKMA would seek to rely on its administrative and prudential powers to address levels 1 and 2 deficiencies, whereas it would have recourse to its statutory powers for level 3 issues. Annex II to the circular spells out in detail the types of measure that could be applied in particular circumstances (as summarised above).

628. The securities sector: The SFC is empowered under s.194 SFO to impose disciplinary sanctions on LCs, their responsible officers and management who are guilty of misconduct or are deemed to not be fit and proper. Similarly, the SFC is empowered to take disciplinary actions against registered institutions, their senior officers and management staff (s.196). The SFC considers that failure to comply with any of the requirements of the *Securities Guidelines* by regulated persons may reflect adversely on their fitness and properness.

629. The disciplinary sanctions available to the SFC under s.194 and s.196 range from reprimand to suspension and revocation of licence, and the imposition of fines of up to HKD 10 million or three times the profit gained or loss avoided from the breach and include:

- Revocation or suspension of the licence for all or part of the regulated activities.
- Revocation or suspension of approval granted as a responsible officer.
- Public or private reprimand.
- Rejection of any licence applications
- Rejection of any applications for approval as a responsible officer of a licensed corporation.
- Imposing a pecuniary penalty (not exceeding the amount which is the greater of HKD 10 million or 3 times the profit gained or loss avoided). The SFC has under s.199 published guidelines on how it will impose fines and consider those guidelines when it fines.

630. The insurance sector: The range of interventionary actions that the IA may take against an authorised insurer (s.27 to s.35 ICO) include:

- Verbal warnings and warning letters.
- Discussion with the insurer's management and communication with the insurer's board of directors.
- Restriction on new business.
- Requirements about investment.
- Acceleration of submission of financial information.
- Custody of assets.
- Limitation of premium income.
- Actuarial investigation.
- Making of bank deposits in the IA's name as trustee for the insurer.

631. For extreme but rare cases, sanctions may include the appointment of a manager to manage the affairs, business and property of the insurer, withdrawal of the insurer's authorisation, petition for winding-up of the insurer under Part V and Part VI of the ICO.

632. With respect to insurance brokers and agents, the OCI has the power to:

- Direct an insurer with which the appointed insurance agent is registered to de-register the agent.
- Withdraw an insurance broker's authorisation or a body of insurance brokers's approval.

633. However, all these actions are with respect to the IIs only. None of the OCI's sanctions apply directly to the directors and senior management of insurance institutions. Moreover, the sanctions are all tied to relatively specific failings, which do not include breaches of AML/CFT obligations or even the more general failure to maintain adequate systems and controls or risk management procedures. Therefore, in seeking to enforce compliance with the *Insurance Guidelines* the OCI would be required to rely on s.26(1)(e) ICO, which relates to actions that would bring into question whether the threshold conditions for authorisation continue to be met, and, in particular, the fitness and properness of the directors and controllers of the institution. Paragraph 1.3 of the *Insurance Guidelines* confirms this by stating that failure by an II to follow its requirements may reflect adversely on the fitness and properness of its directors and controllers. It requires a high burden of proof to establish that individuals are not fit and proper, and so, with the exception of the most egregious cases, the practical sanctions regime appears to be limited.

634. Remittance agents and money changers: Criminal sanctions are available for breaches of the registration and record keeping requirements for RAMCs. The maximum penalties for failing to register is a fine of HKD 50 000 (USD 6 410). For failing to verify identity or keep records the penalty is imprisonment for three months and a fine of HKD 100 000. Section 24D OSCO imposes criminal liability for contravention of the registration, identity verification and record keeping requirements on directors, partners and management of a corporation that failed to take reasonable steps to prevent the contravention of registration or recording keeping requirements. Where the employer of the person is a corporation, each director, manager, secretary and other similar officer of the corporation and any person purporting to act in any of those capacities is also criminally liable unless he took reasonable steps to prevent the commission of the offence.

Market entry – R.23

Measures to prevent criminals/their associates from influence in a financial institution

635. The banking sector: In accordance with s.70 and s.71 BO, any person wishing to become a majority shareholder (or controller of a majority shareholding)⁴⁵ or a chief executive of an AI or a director of a locally incorporated AI must obtain written consent from the HKMA. A key factor is the extent to which the person might damage the institution, *e.g.* because of his reputation or other business interests. With respect to chief executives and directors, the factors that the HKMA takes in account include:

- The person's reputation and character (this includes whether the person has a criminal record and whether the person has contravened any provision of banking, insurance, securities or other legislation designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice).
- The person's knowledge and experience, competence, soundness of judgment and diligence.
- Whether the person has a record of non-compliance with various non-statutory codes or has been reprimanded or disqualified by professional or regulatory bodies.
- Whether the person has been a director of a company which has been wound up.
- The person's business record and interests, and his/her financial soundness and strength.

636. If the HKMA is not satisfied that the person is fit and proper for the position being applied for, it must issue a notice of objection to the person. The HKMA may also withdraw consent in respect of an existing person whom it no longer considers fit and proper.

637. Apart from the approval requirements for directors and chief executives, AIs are required to maintain adequate systems of control to ensure the fitness and propriety of their senior executives who fall within the meaning of 'manager' in s.2 BO. This is one of the authorisation criteria stated in the seventh schedule to the BO. In cases where a senior executive of an AI is found to be not fit and proper, the HKMA will follow up with the AI to see what needs to be done to ensure that the relevant authorisation criterion is being satisfied on a continuous basis.

638. The securities sector: Any corporation which carries on a regulated activity in Hong Kong is required to be licensed by the SFC under s.116 SFO. Also, any individual who performs any regulated function in relation to a regulated activity carried on as a business by an LC is required to apply for a licence as a representative accredited to that LC. Moreover, each LC is required to appoint at least two responsible officers for each regulated activity which it is licensed to carry on (s.125). No person can become a licensed representative (including responsible officer) of an LC unless he is considered fit and proper by the SFC (s.125). Section 126 notes that the SFC will refuse to approve a person as a responsible officer of an LC unless the person satisfies the SFC that *i*) he is a fit and proper person to be so approved and *ii*) he has sufficient authority within the LC.

639. Section 131 SFO provides that a person shall not become and continue to be a substantial shareholder of an LC without first being approved by the SFC. Section 132 provides that the SFC shall refuse to approve an applicant to become or continue to be a substantial shareholder of the LC concerned unless the applicant satisfies the SFC that the LC will remain fit and proper to be licensed if the application is approved. Under s.129 SFO, in considering whether a person is a fit and proper person, the SFC will consider matters including the person's ability to carry on the regulated activity concerned competently, honestly and fairly, and the person's reputation, character, reliability and

⁴⁵ A majority shareholder is a person who either alone or with associates controls over 50% of the voting rights of an AI (or of another company of which the AI is a subsidiary).

financial integrity. Paragraph 7.1.1(a)(ii) of the SFC's *Fit and Proper Guidelines* state that a person is not likely to be fit and proper if that person has been convicted of a criminal offence or is the subject of unresolved criminal charges which are of direct relevance to fitness and properness.

640. The insurance sector: For insurers, insurance brokers and insurance agents to be authorised or registered, they have to meet certain authorisation criteria, including the fit and proper person test, based on the following:

- Insurer: Under s.8(2) ICO, the IA should not authorise a company if it appears that any person who is a director or controller of the company is not a fit and proper person to hold the position. Sections 13A and 13B ICO further require an insurer to obtain the IA's prior approval for the appointment of managing director, chief executive and major shareholders. Besides, the IA is empowered under s.14(4) ICO to object to the appointment of a director or controller (other than a controller to whom s.13A or s.13B applies) if that person appears to the IA not to be a fit and proper person to be appointed to that position. Senior management of insurance institutions are not encapsulated in these provisions. To provide guidance to the insurance industry, the IA has issued the *Guidance Note on Fit and Proper Criteria* which requires a natural person to possess adequate qualifications, experience, capability and integrity, and (for a shareholder or corporate controller) financial status or security.
- Insurance agent: An indirect fit and proper requirement is in place for insurance agents. Section 67(4) ICO requires an insurer to comply with a code of practice approved by the IA in its administration of insurance agents. The HKFI's *Code of Practice for the Administration of Insurance Agents* has been approved by the IA for the purpose. Part E of that code sets out the fit and proper criteria for insurance agents, including a requirement that they must, amongst other things, have successfully passed the relevant papers of the Insurance Intermediaries Qualifying Examination. Other factors include whether that person has ever been *i)* declared bankrupt; *ii)* a controller or director of a corporation that has become insolvent; or *iii)* convicted of any criminal offence.
- Insurance broker: Section 70(3)(a) prescribes that for a body of insurance brokers to be approved by the IA, he has to be satisfied, amongst other things, that the body is managed or supervised by persons who are fit and proper persons to manage or supervise a body of insurance brokers. To provide guidance to the insurance industry, the IA has issued the *Minimum Requirements for Insurance Brokers*, which, in Part IV, sets out the fundamental principles relating to the fit and proper test for insurance brokers. The fundamental principles include utmost good faith, due care and diligence, priority of client's interests and non-disclosure of client's information. In addition, it provides for the minimum experience and qualifications required for an individual who intends to become the chief executive of a brokerage firm, as well as providing that s/he should not have been convicted of any criminal offence or found guilty of misconduct by a professional body.

641. Remittance agents and money changers: Nothing in OSCO requires the authority in charge of registering the remittance agents and money changers to conduct any screening as part of the registration process. Owners, directors and senior management of remittance agents are not evaluated on the basis of any criteria.

Ongoing Supervision and Monitoring – R.23 & R.32

642. The banking sector: The HKMA adopts a practice of incorporating an AML/CFT module into its routine supervisory inspection cycle for each institution. Locally-incorporated AIs (approximately 70) are subject to on-site inspections every year, while foreign institutions are visited on a cycle of 2-3 years, a cycle partly determined by the fact that foreign regulators are permitted to undertake their own examinations in Hong Kong of the entities for which they have ultimate regulatory responsibility. In examining an AI's AML/CFT system, the HKMA reviews the AI's relevant policies and procedures and conducts sample tests of its account and transaction records to check compliance with

the AML/CFT guidelines. Where particular concerns are identified, the line supervisors may commission additional examinations from the specialist AML/CFT team within the Banking Policy Department. These may take the form of institution-specific examinations (the so-called tier 2 inspections) or more general thematic reviews across a range of institutions.

643. Since the formation of the specialised AML/CFT examination team in early 2006 and up to December 2007, seven tier-2 examinations have been undertaken and approximately 20 institutions have been visited as part of thematic reviews. By way of monitoring subsequent compliance, individual institutions are required to provide a formal response to the HKMA findings and recommendations, and subsequent implementation is monitored by the line supervisors. The line supervisors follow up with institutions to ensure that deficiencies identified in the examination have been properly rectified. Where necessary, the line supervisors will request the examiners to return to the institution to verify compliance, or alternatively commission a review by external auditors under s.59(2) BO. The thematic reviews have covered private banking, correspondent banking, transactions monitoring and CDD for high-risk customers. The results of these reviews are provided to the institutions involved (with instructions for corrective action where necessary), but may also be used as the basis for circular letters to the wider industry, or for further work to be considered by the Industry Working Group.

644. The HKMA has trialled an AML/CFT risk model, but has decided not to pursue this for the time-being. Instead, it seeks to capture AML/CFT as part of reputation and operational risk in the overall risk profile of the institution. The overall risk review is used (approximately quarterly) to help determine and focus the inspection programme. Of a total of about 200 institutions that it supervises, the HKMA has classified twelve as high-risk, of which three are included because of AML/CFT concerns. For AIs that are classified as high-risk for AML/CFT purposes, the responsible case officers devise specific supervisory programmes appropriate for each institution.

645. The securities sector: While the Hong Kong Stock Exchange has regulatory powers that are typical of many such exchanges, its focus is primarily on the primary market participants, while the SFC deals almost exclusively with the secondary market players (the brokers). The SFC generally undertakes full-scope inspections (including an AML/CFT component) based on a risk assessment of the institutions. The risk model takes into account the institution's business strategy, client base and internal control procedures, as well as information gleaned from other regulators and external sources, including the JFIU's quarterly report on STR submissions. The SFC groups LCs into high, medium and low risk categories, and at end-2007 had classified approximately 50 and 300 into the high and medium-risk categories, respectively (out of a total of approximately 1 400 LCs). Low-risk institutions generally include only those that do not handle client funds. High risk institutions are inspected on a cycle of 3-4 years, with the on-site work specifically tailored to the institution and involving a high level of sampling of customer accounts. Medium risk institutions are treated on a 6-7 year cycle, with a focus generally on testing the broader systems and controls, while there is very limited testing undertaken with respect to the low-risk entities. The AML/CFT component focuses on a review of customer identification and due diligence, monitoring and reporting of suspicious activities; and record keeping.

646. The findings from the inspections are relayed to the LC's management, and a timetable set for implementation of recommendations. Where serious deficiencies are identified, the SFC will usually require the LC to appoint an external specialist to undertake a more thorough examination.

647. The insurance sector: Although the OCI appears not to have any specific statutory authority to inspect insurers on a routine basis, it does undertake such a programme. Such visits are normally conducted once every three years but the frequency of visits to those insurers with single premium business has been increased to once every two years. Checking AML/CFT compliance is part of the OCI's on-site inspection visits, with a focus on the overall systems and controls, and the training records of the relevant staff, etc.

648. Prior to inspections, the OCI requires the insurer, amongst other things, to complete a checklist for its compliance with the *Insurance Guidelines* and provide copies of supporting documents, e.g. its AML/CFT policies and procedural manuals. The insurer is also required to produce sample policy files randomly selected by OCI from lists of insurance policies for inspection at the visit. The OCI is empowered under s.34 ICO to require an insurer to furnish him with information when there are particular regulatory concerns (including “fit and proper” standards). The OCI’s routine access to information appears to rely on the threat that this power would be invoked if the insurer were uncooperative by not providing the requested information. The OCI has indicated that this seldom happens during routine on-site inspections.

649. Under the terms of the *Code of Practice for the Administration of Insurance Agents* (issued under s.67 ICO), the insurers are required to apply the code to their agents and to oversee compliance. This includes implementation of the *Insurance Guidelines*. The OCI does not inspect the agents, but relies on a review of the insurers’ own systems for monitoring their agents’ compliance, including a sampling of the documentation submitted by the agents. However, the code of practice does not apply to insurance brokers, who have simply been instructed by their professional associations to follow the OCI guidelines. Since June 2007, the OCI has engaged the brokers’ associations to conduct compliance visits to their members.

Guidance for Financial Institutions (Other than on STRs) – Recommendation 25

650. The ND and the JFIU actively work to enhance the AML/CFT awareness and knowledge of FIs and DNFBPs. Annual seminars are organised for FIs and DNFBPs to keep them abreast of new AML/CFT developments and requirements. The JFIU compiles a collection of feedback cases which are used to strengthen the understanding of FIs and DNFBPs on the AML/CFT requirements. The cases are available at the secure area of the JFIU website.

651. The banking sector: In addition to the *Bank Guidelines* and the *Bank Supplement*, the HKMA issues circular letters from time to time to provide guidance to AIs on specific AML/CFT issues. For example, a circular letter was issued in September 2006 to remind AIs of their legal obligations under the *Weapons of Mass Destruction (Control of Provision of Services) Ordinance* Cap. 526. And in April 2007, another circular letter was issued to draw the attention of AIs to S/RES/1737(2006) and S/RES/1747(2007) as well as the then updated list of individuals and entities issued by the US Government under the *US Executive Order 13224*. In addition, the HKMA co-ordinated the establishment of the Industry Working Group (IWG) in 2006. The IWG is chaired by the HKMA and comprises 20 AIs and the JFIU. Apart from providing a forum for communication among the HKMA, the banking industry and the JFIU, the IWG also aims at developing practical guidance to AIs on specific AML/CFT issues. It is currently working on guidance papers on various issues such as address proof for personal customers, CDD process for overseas companies, PEPs and high-level principles for effective transaction monitoring.

652. The securities sector: The SFC has adopted the following measures to help LCs comply with the AML/CFT requirements and increase their awareness:

- Issued the *Securities Guidelines*, a set of frequently asked questions on the *Securities Guidelines* and AML/CFT circulars from time to time. These documents incorporate guidance on various AML/CFT matters including customer identification and verification; omnibus accounts; beneficial owner identification; know your client; record keeping; third party reliance; and, unsuccessful customer due diligence process.
- Provides training to the industry from time to time. From January 2004 to December 2007, SFC participated in 17 seminars on various AML/CFT matters, delivered to approximately 3 000 participants. The participants included front-line officers, compliance officers, senior management, auditors and lawyers.

- Launched an AML/CFT self-assessment program to help LCs assess their compliance with the AML/CFT requirements and identify areas that require improvement at an early stage.
- Developed an AML/CFT website containing a set of training modules and providing links to other relevant information and documents.

653. The insurance sector: The OCI has issued the *Insurance Guidelines* and various AML/CFT circulars to assist IIs to comply with the relevant requirements. Seminars on AML/CFT have also been organised for the insurance industry from time to time to boost their awareness and facilitate their understanding of the AML/CFT standards. In addition, the OCI often engages in dialogue with industry practitioners to understand their practical difficulties and clear their doubts on matters such as the CDD requirements. The *Insurance Guidelines* provides guidance on customer acceptance, CDD, record keeping, recognition and reporting of suspicious transactions, staff screening and training, etc. Examples on indicators of suspicious transactions and money laundering schemes are also provided. The circulars issued also cover various topics such as suspected terrorists and countries that do not or inadequately apply the FATF standards.

654. Remittance agents and money changers: The JFIU first issued an AML/CFT guideline to RAMCs in 2000. In 2007, the JFIU revised the guideline to bring it more in line with the FATF requirements and in the same year, jointly with the ND, issued a self-learning kit for RAMCs to raise their AML/CFT awareness. The JFIU sends information to the RAMCs to ensure they are aware of new developments and requirements, including notifications of updates to the UN lists of designated persons and entities. The ND and the JFIU have formed a focus group with representatives of the RAMCs primarily for discussion of AML/CFT issues. The group has met four times and has discussed issues relating to AML/CFT training, guidance and implementation of SR VII.

Statistics⁴⁶ and Effectiveness

655. The HKMA and the SFC are adequately structured, sufficiently funded from their own resources, and have appropriate technical and other resources to fulfil their responsibilities. The OCI, however, is an agency under the Financial Services and the Treasury Bureau, with the majority of its operational budget coming from public funds. Although this model does not comply with accepted international standards, it does not appear to have hindered the OCI's ability to obtain adequate resources to perform its role. Moreover, although the OCI staff are government employees, they are recruited specifically to the OCI, and are not subject to the system of staff rotation widely applied to other government departments.

656. The HKMA and SFC have adequate powers to monitor and enforce compliance with AML/CFT laws, regulations and guidelines, including the power to conduct examinations and to obtain access promptly the books, records and other information maintained by the institutions that they supervise. However, the statutory position with respect to the OCI is less satisfactory. While the ICO gives it a range of powers (including the authority to inspect and sanction), these are generally linked very specifically to the circumstances defined in section 26 of the ICO, none of which relates to AML/CFT issues, or indeed to a very general set of circumstances that might be deemed to subsume such issues. In practice, this does not appear to have prevented the OCI from undertaking routine examinations and acquiring information from institutions in the normal course of its regulatory activities, but this would appear to depend, in part, on the goodwill of the institutions. However, it would clearly be preferable for the legal authority of the OCI to be broadened.

657. In terms of the inspection procedures and compliance measures taken by the respective regulators, the following data tend to indicate that largely satisfactory attention is being applied to

⁴⁶ As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

AML/CFT matters, although the scope for the OCI to take robust action, when necessary, appears to be much more limited than is the case with the other core regulators.

658. The banking sector: In the past four years, the HKMA has conducted 313 on-site examinations of AIs' AML/CFT controls, as detailed below.

Table 28. HKMA AML/CFT supervisory contacts, 2004-2007

	2004	2005	2006	2007
On-site examinations	70	72	84	87
Prudential interviews	107	119	121	125
Tripartite meetings (including auditors)	31	23	15	11
Meetings with board of directors	2	8	22	18

659. The on-site visits in 2006 included 4 tier-2 examinations and 17 thematic examinations conducted by the specialist examination team, and in 2007 there were 3 tier-2 and 21 thematic examinations. The overall examination programme detected deficiencies of various levels, in respect of which the AIs were required to take remedial action. Of these cases, 16 were classified as more serious and included deficiencies in the CDD process, inadequate management information systems in relation to AML/CFT, poor transaction monitoring, and inadequate records. These deficiencies resulted in a range of sanctions, including the use of statutory powers referred to in paragraph 625 above; the implementation of ring-fencing measures; the capping or suspension of certain business activities; the commissioning of independent experts' reports; the completion of special internal reviews; and the imposition of enhanced reporting requirements. The HKMA reported that all AIs concerned have taken action to address the identified deficiencies, and there is no evidence to suggest that the measures applied have been ineffective in bringing the institutions into compliance. However, it is to be noted that the HKMA, unlike the SFC, does not have the power to levy financial penalties on institutions for non-compliance with regulatory requirements.

660. The securities sector: The number of on-site inspections relating to or including AML/CFT reviews is set out in the table below.

Table 29. SFC inspections and disciplinary actions relating to AML/CFT, 2004-2007

	2004	2005	2006	2007
No. of inspections	164	141	130	152
Public reprimand	5	8	1	0
Fine	0	5	4	5
Suspension/Prohibition from re-entering the industry	9	7	10	7

661. As a result of these inspections, the SFC detected AML/CFT issues of six main types:

- Failure to report an STR or to discharge the duty to identify STRs.
- Failure to keep proper records or maintain an audit trail.
- Failure to keep identification records.
- Operation of a secret account by the account executive.
- Failure to verify client identity or a related breach of the KYC rules.
- Failure to stipulate AML policies.

662. In response to these identified deficiencies, the SFC has imposed sanctions which include public reprimands, and the suspension or prohibition from re-entering the securities industry, as well as, financial penalties. These have been applied against both natural and legal persons. The fines imposed have ranged from HKD 30 000 to HKD 700 000 and the suspensions have ranged from one month to two years nine months.

663. The insurance sector: Statistics with respect to inspections and sanctions applied by the OCI are shown below.

Table 30. OCI Inspections and disciplinary action, 2004-2007

	2004	2005	2006	2007
No. of active insurers carrying on long term business subject to AML/CFT compliance checking	38	38	45	47
No. of on-site inspections	21	5	12	31
No. of oral warnings given during the inspection	7	1	0	0
No. of warning letters issued	4	0	2	18

664. The OCI conducts an on-site inspection of each insurer approximately every three years, or every two years for single premium businesses. The sanctions imposed against the insurers for AML/CFT breaches discovered during on-site inspections between 2004 and 2007 comprised eight oral warnings and 24 written warnings (issued to 22 insurers in total).

Table 31. OCI sanctions for AML/CFT breaches, 2004 to 2007

Nature of Breaches (<i>see below</i>)	Number of cases	Sanction
I	1	Warning Letter
II	8	Oral Warning
II	10	Warning Letter
I and II	3	Warning Letter
I and IV	2	Warning Letter
II and IV	3	Warning Letter
II and V	5	Warning Letter

Note: Nature of Breaches:

- I - Did not keep copies of customers' ID (for policies issued before the *Insurance Guidelines*).
- II - Did not keep copies of the customers' ID (for policies with premium/claim amounts below a specified threshold).
- III - Did not keep copies of certificate of incorporation.
- IV - Did not keep copies of board resolution authorising designated staff to enter into insurance contracts.
- V - Did not keep copies of address proof.

665. While these measures may be proportionate to the deficiencies identified to date, there are doubts as to whether the OCI could apply more serious sanctions, in view of the provisions of the ICO, which essentially tie the sanctions regime to very specific failings (not including AML/CFT); and which ultimately require the regulator to establish that the controllers or directors of the institution are not fit and proper before action can be taken against the institution itself.

666. Remittance agents and money changers: The inspection and sanctions regime for the RAMCs is limited to circumstances where a breach of the OSCO provisions is suspected and subsequently proven in court. Although the JFIU has been diligent in investigating all such suspicions, it clearly does not have the authority to conduct routine or random inspections to ensure routine compliance

with those AML provisions that do apply to this sector. However, the following actions have been taken since the relevant provisions were introduced under the OSCO:

- Registration – 77 cases have been successfully prosecuted for failing to register, resulting in fines of HKD 30 000.
- Identity Verification and Record Keeping – 104 cases have been successfully prosecuted, with a maximum penalty imposed, so far, of HKD 70 000 and one month imprisonment suspended for one year.

3.10.2 Recommendations and Comments

667. It is recommended that the authorities:

- Review the statutory powers of the OCI to ensure that it has clear authority to undertake routine compliance monitoring for AML/CFT issues, and is able to apply effective, proportionate and dissuasive sanctions. In this regard, it is understood that the authorities have commissioned a study to consider the establishment of a new agency, operationally independent from the Government, that would replace the OCI and take up the relevant statutory powers.
- Provide the ability for routine compliance monitoring of the RAMC sector (with appropriate sanctioning powers), without the need for the relevant authority to have a suspicion that an offence is being committed. Again, it is encouraging to note that the Hong Kong government has completed an internal review which concluded that there is a need to establish a designated regulator responsible for ensuring that RAMCs adequately comply with AML/CFT requirements⁴⁷.
- In the light of the recommended risk assessment in relation to the those sectors not currently covered by specific AML/CFT requirements, consider the need for appropriate supervisory or monitoring procedures.

3.10.3 Compliance with Recommendations 23, 29, 17 & 25

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.17	PC	<ul style="list-style-type: none"> • Sanctions available with respect to the insurance sector are limited in their scope and do not lend themselves readily to address the wide range of deficiencies that may be identified. • Only criminal sanctions are available with respect to remittance and money changing businesses, and no measures are available to address less serious deficiencies. • Scope limitation: no formal assessment undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from the preventive measures and corresponding regulatory regime. • For institutions regulated by the HKMA, the range of sanctions available does not include the power to impose financial sanctions.

⁴⁷ In April 2008, a senior joint agency working group agreed that the Commissioner for Customs and Excise would in the near future become the regulator for RAMCs.

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.23	LC	<ul style="list-style-type: none"> • The fit and proper test for insurance institutions applies to chief executives and managing directors but not to senior management. • Remittance agents and money changers are not routinely monitored or supervised for AML/CFT; and there are no measures to prevent criminals from controlling or managing these businesses. • Scope limitation: no formal assessment undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from the preventive measures and corresponding regulatory regime.
R.25	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.
R.29	PC	<ul style="list-style-type: none"> • The legal authority of the OCI routinely to monitor for AML/CFT compliance and to apply sanctions is limited. • There are no powers to permit routine monitoring of remittance and money changing businesses. • Only police powers are available to require production of or access to records, documents or information of the remittance agents. • Only criminal sanctions are available for individuals running remittance services and these criminal sanctions are not proportionate to the offences, nor do they apply to all AML/CFT requirements. • Scope limitation: no formal assessment undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from the preventive measures and corresponding regulatory regime.

3.11 Money or value transfer services (SR VI)

3.11.1 Description and Analysis

Registration/licensing authority

668. The remittance sector in Hong Kong is very diverse, ranging from large corporate entities, through stand-alone professionals, to corner-shop outlets. Since June 2000, all RAMCs (whether they are natural or legal persons) have been required under OSCO to register with the JFIU within one month of commencing business. This obligation extends to every set of premises in Hong Kong at which the remittance agent provides services, including residential addresses, where appropriate. All sub-agents are required to register in their own right. Remittance agents are defined to include not only persons who send or receive money (or arrange for such transmission) between Hong Kong and elsewhere, but also persons who arrange for the receipt of money outside Hong Kong, irrespective of its origins. The Chief Superintendent of the Hong Kong Police Narcotics Bureau has been designated by the Secretary for Security to hold the register which is administered by an officer of the JFIU. The names and addresses of all registered remittance agents and money changers are published on the JFIU website⁴⁸ for public inspection. It is a criminal offence to operate without registering with JFIU, subject to a maximum penalty of a fine of HKD 50 000 (USD 6 410) (s.24B OSCO). As at 31 December 2007, there were 1 761 registered entities operating as RAMCs in Hong Kong.

669. The JFIU has conducted annual seminars on AML/CFT measures for RAMCs since 2005 and has issued non-statutory guidelines to assist the industry to develop procedures that go beyond the legal requirements. The JFIU, jointly with the ND, has also issued a self-learning AML/CFT guide for RAMCs (and for three other sectors). The JFIU issues guidelines to RAMCs from time to time to keep RAMCs abreast of new AML/CFT developments and requirements. In addition, the ND and the JFIU have formed a focus group with representatives of the RAMCs in order to discuss AML/CFT

⁴⁸ <http://www.info.gov.hk/police/jfiu/english/index.htm>.

issues with the sector and to allow ND and JFIU to consult on matters of concern. The group has met four times and has discussed issues relating to training, guidelines and implementation of SR VII.

670. As a government department, Hongkong Post is not required to register under OSCO to provide remittance services. Instead, it is empowered to provide such service under the *Post Office Trading Fund Ordinance* Cap. 430E. However, staff are required to follow all the relevant provisions of OSCO concerning remittance service and attend updates or training on new AML/CFT measures organised by JFIU. Postal remittance procedures are guided by Hongkong Post *Departmental Rules* sections C60-64 whilst that of the electronic remittance via Western Union is guided by the *Operation Manual and Anti-money Laundering Compliance Manual* agreed between the two organisations.

Subject to 40+9 Recommendations

671. The obligations imposed on RAMCs under the OSCO (s.24C) are limited to basic customer identification and verification procedures, record-keeping and the filing of STRs. Specifically, they must record the name, address and telephone number of the sender or recipient (depending on the role of the remittance agent in the transaction) of all transactions of, or above HKD 8 000, and verify the person's identity by reference to an identity card, travel document or other form of identity document. However, such verification is only necessary when the transaction is conducted on a face-to-face basis. All records and details of the transactions themselves must be retained for at least six years. RAMCs are captured within Hong Kong's very broad STR regime (which applies to all persons), and are equally covered by the provisions relating to protection from civil liability and tipping off.

672. Beyond these, there are no enforceable AML/CFT obligations imposed on RAMCs, although, in May 2007, the JFIU issued a set of guidelines that provide advice to the sector on a broad range of related issues, including CDD, systems and controls, on-going monitoring, PEPs, risk management and staff training. The details of the guidelines have been referenced elsewhere in the report. The guidelines address issues well beyond the legal obligations imposed under the OSCO, and were issued in an attempt to improve the quality of business within the sector, but, because of their purely advisory nature, they have not been factored positively into the compliance rating.

Monitoring compliance and sanctions

673. The Police and the C&ED take enforcement action when they suspect failures to comply with registration, identity verification, record keeping, or suspicious transaction reporting requirements in the course of their routine investigations and intelligence-led enforcement operations. In practice, most investigations are generated by information contained in suspicious transactions reports filed by the banks. Beyond this, the authorities have no responsibilities for routine oversight of the RAMCs' operations. Law enforcement has the right to enter the business premises of any registered entity (or entity suspected of operating without having registered) and inspect their records, but a search warrant, issued by a magistrate, is required to enter and inspect any domestic premises from which an RAMC may be operating. The power to enter and search is based purely on the basis of suspicion that an offence has been committed under Part IVA OSCO, and the JFIU has indicated that it uses search warrants in all cases in order to gain the widest access possible to books and records.

674. Sanctions for non-compliance with the OSCO obligations may be applied against both natural and legal persons. Only criminal sanctions are available, involving a maximum fine of HKD 50 000 for failing to register, and a fine of HKD 100 000 and a term of three months imprisonment for failure to keep proper customer identification and transactions records.

List of agents

675. Remittance agents are required to provide JFIU with the particulars of all premises in which they operate within Hong Kong. All sub-agents that operate should register in their own right.

Section 24B(2) OSCO states that “The responsible officer (JFIU) shall maintain a register, in such form as he thinks fit, containing:

- (i) the name of every remittance agent and the address of every premises in Hong Kong at which a remittance agent provides, whether in whole or in part and whether or not any other activity is carried on in the premises, a service as a remittance agent;
- (ii) the name of every money changer and the address of every premises in Hong Kong at which a money changer carries on, whether in whole or in part and whether or not any other activity is carried on in the premises, business as a money changer; and
- (iii) such other particulars of remittance agents and money changers as the responsible officer thinks fit.”

Effectiveness

676. The Police and the C&ED conduct regular enforcement actions against suspected unlicensed operators that are disclosed through investigations of other offences, or, commonly, through suspicious transaction reports filed by the banks. As at December 2007, there had been 88 successful prosecutions of RAMCs for contravention of the registration requirement, for which the heaviest penalty imposed was HKD 30 000 (USD 3 840). The sharp rise in ‘inspections’ of RAMCs in 2007 was due primarily to a single investigation into counterfeit HKD 1 000 currency notes, where it was believed that the RAMC sector was being targeted.

Table 32. Inspections and prosecutions of RAMCs, 2004-2007

	INSPECTIONS	PROSECUTIONS	CONVICTIONS
2004	61	28	28
2005	30	29	29
2006	24	11	11
2007	175	48	48

677. When the law was first introduced, it was the practice of the authorities to issue warnings for any breaches of the record-keeping requirements, but now prosecution takes place automatically. Since June 2000, there have been 127 prosecutions for failing to keep appropriate records. The heaviest penalty imposed to date for this offence has been a sentence of two months imprisonment, suspended for two years, and a fine of HKD 70 000 (USD 8 970).

678. The sanctions for breaches of the legislation are not proportionate, effective and dissuasive. This is particularly the case with the maximum penalty for failure to register (HKD 50 000) significantly below that for failing to keep proper records (HKD 100 000 and three months imprisonment). It might be thought that the failure to register should be the primary offence, attracting the severest penalty, although it appears that the authorities bring joint charges of failure to register and improper record-keeping in the worst cases. In one such case, a combined fine of HKD 100 000 and a suspended prison sentence was handed down.

679. The number of STRs received from RAMC since 2004 are shown in the table below. The increase in STR submission in 2006 (representing over 8% of all STRs received that year) is believed to be a direct result of targeted outreach and awareness raising efforts in the preceding year.

Table 33. STRs received from RAMCs, 2004-2007

	2004	2005	2006	2007
Number of STR filings	132	268	1 119	2 001

680. A particular challenge in the authorities' dealings with the remittance sector was highlighted during the on-site visit. Press reports indicated that mainland authorities had arrested a Hong Kong-based woman in Shenzhen who had acted as an underground conduit for reportedly RMB 4.7 billion (USD 654 million) channelled into Hong Kong for investment, primarily in the local stock market. The person arrested was described as the owner of a Hong Kong remittance company which was alleged to have been involved in the transfer together with other such companies (although this was not considered to be the sole route through which the funds were moved into Hong Kong, other possibilities being the use of cash couriers and net settlement techniques between Hong Kong and the mainland). While the transfers were described as illegal under the mainland's currency control regime, the Hong Kong authorities advised that, because such controls did not exist in Hong Kong, there was unlikely to be an offence committed under local legislation. This is clearly activity which could have a material impact upon the effectiveness of the AML regime.

681. By way of footnote, it should be remarked that the question of access by the RAMC sector to mainstream banking services is a "hot topic" in Hong Kong at present. Several banks have sought to terminate facilities offered to RAMCs on the grounds that the cost of compliance with the CDD and monitoring requirements for what they regard as a high risk sector do not justify retention of the business. Not surprisingly, the RAMCs have lobbied to have political pressure brought to bear on the banks not to take such an approach, and it is important that, in any resolution of the debate, the ability of financial institutions to apply appropriate risk-based procedures should not be compromised.

3.11.2 Recommendations and Comments

682. The authorities have been taking a robust line in dealing with the RAMC sector, both by pursuing investigations and prosecutions for unregistered activities and failure to keep records, and by actively engaging the industry in an extensive outreach programme. There is no evidence to suggest that this approach is failing to identify significant numbers of underground remitters. That said, the provisions within the OSCO that bring the remittance sector into the broader AML/CFT regime are quite basic in relation to the overall preventative measures, and do not provide for an oversight regime to access the remitters' premises and to check their compliance with their obligations. It is recommended that Hong Kong:

- Extend the scope of the obligations on RAMCs to incorporate the FATF standards in relation to CDD, record-keeping, transaction monitoring, internal controls and regulatory oversight.
- Provide an oversight regime which is not reliant on application of law enforcement powers⁴⁹.
- Review whether the current criminal sanctions regime is effective, proportionate and dissuasive, particularly with respect to conducting an unregistered business.
- Consider the need for an administrative sanctions regime to accompany the introduction of more diverse CDD and internal controls obligations.

⁴⁹ In April 2008 a senior inter-agency committee agreed to designate the Commissioner for Customs and Excise as the regulator for remittance agents in the near future.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of Factors Underlying Rating
SR VI	PC	<ul style="list-style-type: none">• There is no system for monitoring remittance services and ensuring they comply with the FATF Recommendations: the only oversight is by use of law enforcement powers.• Only criminal sanctions are available and these are not effective, proportionate and dissuasive.• A broad range of deficiencies identified under other Recommendations are also relevant to the remittance sector.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer Due Diligence and Record-keeping (R.12) (applying R.5, 6, and 8 to 11)

4.1.1 Description and Analysis

Recommendation 12

683. All categories of DNFBP, except land-based casinos, as defined by the methodology are found in Hong Kong. There are approximately:

- 6 700 certified public accountants (CPA), including CPA's working in public practice.
- 21 000 estate agents or salespersons and 4 000 estate agency shops.
- 1 000 practising barristers, comprising some 80 Senior Counsel and 920 juniors.
- 5 800 practising solicitors and 700 law firms.
- 380 notaries public, most of whom are experienced solicitors.
- 4 500 chartered secretaries, of whom about 1 800⁵⁰ are potentially engaged in the provision of trust and company services.
- 2 500 precious stones dealers and precious metals dealers.

684. Although the operation of casinos is illegal within the jurisdiction, Hong Kong is the home port for several cruise ships offering day or night-time cruises into international waters, for the principal purpose of providing casino operations. While these vessels operate under flags of other states (Bahamas and Panama), some of the companies operating them are registered in Hong Kong and some have Hong Kong ownership. The authorities consider that such operations do not fall within their sphere of control for AML/CFT purposes due to the limitation of extra-territorial jurisdiction. No information has been received to indicate that internet casinos operate from Hong Kong, even though this is not directly prohibited by legislation.

685. To date, only very limited steps have been taken by the authorities to bring any of the categories of DNFBPs into the AML/CFT legal framework with respect to CDD and related obligations. However, in a number of cases, there are professional codes of ethics or regulatory and self-regulatory standards that have some relevance to CDD measures. These are briefly described below, but, with the exception of the provisions governing estate agents which have statutory backing, they are given no measure in the compliance rating because they are not underpinned by an explicit and enforceable AML obligation. It has also to be noted that the authorities have undertaken significant outreach to the DNFBP sector to prepare them for eventual incorporation within the legal framework for AML/CFT. This outreach programme is described under Recommendation 25 below.

⁵⁰ This figure includes those members working in the banks/financial institutions, corporate secretarial firms, accounting firms, law firms and management/consultancy firms in 2006.

686. Accountants: The Hong Kong Institute of Certified Public Accountants (HKICPA) is the only body authorised by law to register and monitor the practice of company auditors in Hong Kong under the *Professional Accountants Ordinance* Cap. 50 (PAO). In order to sign audit reports in Hong Kong, an accountant must be a CPA (practising), while HKICPA's disciplinary remit extends to all members, including practising CPAs, accountants engaged in non-audit work may be members of the HKICPA, members of other professional bodies or none at all.

687. The HKICPA has from time to time issued guidelines on AML/CFT to members. The latest of these was an advisory *Legal Bulletin* (LB), issued in July 2006 to draw its members' attention to the current AML/CFT legislation in Hong Kong concerning, amongst other things, suspicious transaction reporting. The LB also covers other requirements under the *FATF Recommendations*, in particular customer due diligence and record keeping, but the document has no specific authority in its own right and does not represent a professional standard.

688. CDD and record keeping requirements are also covered in the *Hong Kong Standard on Quality Control 1* (HKSQC1), the *Code of Ethics for Professional Accountants* (the Code), and the *Hong Kong Standards of Auditing* (HKSA) issued by the institute. Members of the HKICPA engaged in audit work are required to comply with HKSQC1, the Code and HKSA. Failures in compliance with them are liable to be enquired into by the appropriate committee established under the authority of HKICPA, and disciplinary action may be taken, with potential penalties including removal of a member from the HKICPA's register and withdrawal of a practising certificate.

689. Estate agents: The Estate Agents Authority (EAA) is the statutory regulator of all estate agents, salespersons and estate agency companies. The EAA is an independent and self-financing statutory body established in November 1997 under the *Estate Agents Ordinance* Cap. 511 (EAO) to: regulate and control the practice of the Hong Kong estate agency trade, to promote the integrity and competence of estate agents and to enhance the status of the estate agency trade. Licensed estate agents and agency companies must comply with the EAO, the *Code of Ethics* promulgated by EAA and other guidelines or circulars drawn up by EAA from time to time.

690. Some CDD and record keeping requirements are set out in EAO and its subsidiary legislation, namely the *Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation* Cap. 511C (EAR). In January 2004 the EAA also issued a mandatory *Practice Circular* (EAPC) relating to the AML/CFT requirements for estate agents and estate agency companies. This contains very basic provisions relating to customer identification and record-keeping, but also lists some indicators for suspicious transactions. Hong Kong authorities advise that non-compliance with these regulations and circulars can result in disciplinary action and sanctions ranging from reprimand to revocation of licence, although the language in the EAPC does not appear to be mandatory (e.g. "the Authority would ask estate agency practitioners to adopt the following measures").

691. The *Code of Ethics* also provides general guidance relevant to AML/CFT. Section 36(1)(a)(i) EAO and s.3 EAR require a licensed estate agent (licensee) to complete various forms specifying the address of the residential property and the name and Hong Kong identity card number of the vendor and the purchaser (for an individual) or the name of the signatory and the name and business registration certificate number of the vendor (for a company). In addition, s.13(3) EAR provides that a licensee shall take all practicable steps to ensure that the name of the vendor is correct.

692. Section 8(2)(a) EAR provides that a licensed estate agent shall keep a copy of all estate agency agreements entered into in relation to residential properties, for not less than three years after the agreements were entered into. Under the EAPC, issued by EAA in January 2004, estate agency practitioners are required to ensure that where they have successfully arranged for the sale or purchase of a property by a client who is an individual, the client information (name, address, type and number of identity card or travel document) and the address of the property and the price are properly recorded, and that the records be retained for at least five years, thus extending the statutory timeframe of three years laid down in the regulations.

693. Legal profession: Prior to 2007, the Law Society had issued three specific circulars on AML/CFT to members, all of which were purely advisory in nature:

- Circular 97-280 draws solicitors' attention to the relevant provisions of the DTROP and OSCO. Guidance notes were provided to solicitors advising them to be alert for ML transactions. Solicitors were also reminded of the minimum record keeping periods for different types of files. Statutory requirements are in place for the retention of accounting papers for a period of not less than seven years.
- Circular 03-428 informs solicitors of the application of the revised *40 Recommendations* to solicitors and asked them to note in particular the CDD and STR requirements.
- Circular 05-291 provides additional guidance on CDD, PEP, intermediaries and internal control.

694. However, on 3 December 2007 the Law Society issued Circular 07-726, which replaced the previous documents and included a Practice Direction. Table A and paragraphs 18-28 of the practice direction set down certain basic CDD, record-keeping and employee training requirements, which will become mandatory on 1 July 2008. Any law firm or lawyer who fails to follow the mandatory elements of a Practice Direction may be subject to disciplinary proceedings (chapter 16 of the *Hong Kong Solicitors' Guide to Professional Conduct*).

695. Notaries: Only solicitors with over seven years' experience who have passed the Hong Kong Society of Notaries (HKSJ) examination may be appointed as a notary public. Services commonly provided by a notary public in Hong Kong include authentication of documents, witnessing of powers of attorney for use overseas and witnessing of documents for the purchase/sale of land or real property overseas. The HKSJ is the professional body for notaries public in Hong Kong. The HKSJ has issued a circular (HKSJC) to all its members in June 2007 reminding that notaries public should not hold or manage client's money and assets in their capacity of notary public.

696. Trust and company service providers: In Hong Kong, some trust and company service providers are accountants, who are members of the HKICPA, or solicitors, who are members of the Law Society. In addition, there are two main associations representing the industry; the Hong Kong Institute of Chartered Secretaries (HKICS), which is an independent professional body with approximately 4 500 members and 2 600 students, and the Association of Incorporated Services Limited (AISL). However, TCSPs conducting business in Hong Kong are not required to be members of any professional body, either in Hong Kong or elsewhere.

697. As HKICS and AISL are not statutory self-regulatory bodies, they are not empowered to make any enforceable rules on AML/CFT for their members. The HKICS has put in place an International Qualifying Scheme, a *Code of Conduct*, investigatory and disciplinary proceedings, and is currently preparing a set of guidelines on AML compliance for its members' reference which is expected to be published by mid 2008. AISL has not issued any guidelines to its members yet.

698. Precious metals dealers and precious stones dealers: Precious metals dealers and precious stones dealers are not subject to professional standards relating to AML/CFT. However, legislation and controls are in place with respect to: *i*) declaration and manifestation for exports and imports; *ii*) registration and certification of the rough diamond traders; *iii*) regulation of the standard of fineness of precious metals (*i.e.* gold and gold alloy, platinum); and *iv*) protection of intellectual property right. The authorities believe that this regulatory regime has helped to reduce the risk of misuse of the sector for ML/FT purposes as, for example, an audit trail of the precious stones and metals could be established when necessary.

4.1.2 Recommendations and Comments

699. Although there are certain measures in place that have relevance to CDD, either through regulation (as is partly the case with estate agents) or through professional codes of ethics (e.g. the Law Society's Practice Direction), none addresses adequately the demands of Recommendation 5, 6 and 8-11. Moreover, the Law Society measures do not come into force until July 2008, which falls outside the time scope of this report. However, the authorities are to be commended for their outreach programme to the DNFBP sectors since there appears to be a relatively high rate of awareness of the AML/CFT issues within the businesses and professions, even ahead of their being brought fully into the framework. Undoubtedly, this is primarily driven by the fact that the STR obligation in Hong Kong has universal application, and therefore the DNFBPs have long had certain legal obligations in the AML/CFT context.

700. Clearly, it is important that the authorities proceed, as quickly as possible, to bring the relevant businesses and professions fully into the CDD and record-keeping regime in line with Recommendation 12. In the course of taking such action, it is also essential that consideration be given to the position of the offshore cruise ship casino sector, although it is recognised that the FATF, itself, has not yet addressed this specific matter, including the complexities that would arise from international maritime law. At the very minimum, the authorities should undertake a risk assessment of the offshore casino industry and determine the extent to which appropriate controls are necessary and feasible.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of Factors Underlying Rating
R.12	NC	<ul style="list-style-type: none">• With very limited exceptions, no relevant CDD or other obligations (as required under R.5, 6 and 8-11) have been imposed on any of the DNFBP sectors.

4.2 Monitoring transactions and other issues (R.16) (applying R.13-15, 17 & 21)

4.2.1 Description and Analysis

Recommendation 16

701. All categories of DNFBPs, except land-based casinos which are not found in Hong Kong, are subject to the legal obligation to report suspicious transactions directly to the JFIU under s.25A DTROP and OSCO and s.12 UNATMO. This is a universal obligation, applicable to all persons in Hong Kong, natural and legal. Failure to comply with the reporting requirement is an offence punishable by up to three months imprisonment and/or a HKD 50 000 fine.

702. As noted previously, in [Section 3.7](#) of this report, the DTROP, OSCO and UNATMO all provide clear and broad reporting obligations for reporting suspicious transactions, with associated protection from civil or criminal liability when complying with the reporting obligation. These obligations suffer however from the limitations in the TF offence and from the incomplete coverage of one of the required types of predicate offences: environmental crimes.

703. Notaries public cannot claim that legal profession privilege (LPP) excuses them from submitting STRs. Lawyers (including solicitors and barristers) may be excused from reporting due to LPP (see s.2(14) and s.22 DTROP, s.2(18) and s.3(9) OSCO and s.2(1) and s.2(5) UNATMO). In addition, *Robert Pang Yiu Hung vs Commissioner of Police* (HCAL 133/2002) found that:

- Hong Kong’s suspicious transaction reporting requirement is applicable to lawyers.
- Unless the information is subject to LPP, lawyers are obliged to make a STR when circumstances arise.
- The obligation to submit STRs does not limit or abrogate the common law rule of LPP.
- LPP does not apply to obtaining advice for a criminal purpose, regardless of the lawyer’s knowledge, or lack thereof, of the criminal purpose.

Recommendations 14, 15 and 21 should apply to DNFBPs

704. Statutory provisions exist to protect entities filing STRs from breach of any legal, contractual, or professional obligations. Neither civil nor criminal liability can arise from reporting suspicious transactions under sections 25A(1) DTROP and OSCO, and under s.12(1) UNATMO.

705. “Tipping off” is an offence. Respectively under s.25A(5) DTROP and OSCO, a person commits an offence if, knowing or suspecting that a STR has been made, he/she discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following that STR. Similarly, under s.12(5) UNATMO, where a person knows or suspects that a STR has been made, he/she shall not disclose to another person any information or other matter which is likely to prejudice any investigation which might be conducted following that STR. This prohibition in DTROP, OSCO and UNATMO is however only applicable once a STR has been made and not at the earlier stage when a person knows that an STR is in the process of being reported⁵¹.

Internal procedures, policies and controls

706. Accountants: For accountants that conduct audit, assurance or related service engagements, the HKICPA has issued professional standards and other guidance setting out procedures for practice units. The *Legal Bulletin* explains the current legal requirements relating to AML/CFT, including offences (e.g. dealing in the proceeds of crime, non-reporting of suspicious transactions, tipping off, offences relating to investigations and access to information). It advises members to establish appropriate policies and procedures to ensure compliance with the law. It indicates specific procedures to facilitate compliance with STR requirements and highlights the expectations of compliance officers. It is pointed out that the statutory duty to make disclosures, where applicable, overrides the duty of confidentiality owed to clients.

707. Solicitors: The Law Society of Hong Kong issued guidance notes on AML since 1997 advising that, amongst other things, principals in private practice should consider instituting internal procedures to facilitate compliance with the AML legislation. Recommended steps included appointment of a compliance officer to ensure compliance with internal AML procedures, on-going training of staff and establishment of internal reporting procedures. In May 2005, the Law Society issued *Circular 05-291* advising solicitors’ firm to establish procedures of internal control and communication for the purpose of preventing money laundering; and to review the procedures regularly. *Circular 05-291* also sets out relevant issues to be included in internal control and communication such as: client identification and verification; beneficial owner identification and verification; review of the firm’s vulnerability of being used for money laundering activities with regard to the structure of the firm and the areas of which they practise; identification of source of fund when dealing with cash; training of staff; and, on-going due diligence. These circulars have now been replaced by the December 2007 Practice Direction, which comes into force in July 2008.

708. At present, there are no specific internal control requirements for AML/CFT imposed on TCSPs, estate agents or dealers in precious metals and stones.

⁵¹ This deficiency was not identified in FATF mutual evaluation reports prior to February 2008.

Business with persons from/in countries which insufficiently apply the FATF Recommendations

709. There are no provisions applicable to the DNFBPs which relate to the requirements of Recommendation 21.

Statistics⁵² and Effectiveness

710. The number of STRs submitted by the accountants, lawyers and TCSPs are shown below. While lawyers and TCSPs have been submitting a limited number of STRs for the last four years, only five STRs have been submitted by accountants; one each in 2003 and 2004 and three in the second half of 2007. The figure for TCSPs includes filings by company formation and secretarial service providers, rather than the broader category of TCSPs. There have been no STRs filed by dealers in precious metals and stones.

Table 34. STRs submitted by DNFBPs, 2003 - 2007

	Accountants	Lawyers	TCSPs	Estate Agents
2003	1	4	10	0
2004	1	13	2	1
2005	0	5	11	0
2006	0	11	6	0
2007	3	9	5	0

711. The evaluation team is concerned with the very low level of reporting by some DNFBPs and complete lack of reporting from others. Although significant effort has been directed at raising the awareness of DNFBPs to their STR obligations, results are very limited. It is encouraging to note that the lawyers in Hong Kong have been submitting some STRs each year and this is expected to continue as, on 3 December 2007 the Law Society of Hong Kong issued a new consolidated and updated circular and Practice Direction P on ML and TF. With regard to the estate agency sector, the EAA has advised that a further circular on requiring the management to attend to internal control of AML and their STR obligations will be issued in the first half year of 2008 and a more user-friendly STR report form has been created for the use by estate agency practitioners. Further, in collaboration with the ND and the JFIU, the EAA has increased awareness-raising activities for estate agents on the importance of AML and STRs in particular.

712. Attention has been given by the JFIU and respective self regulatory organisations to issuing guidelines and codes of practice (none of which are in law, regulation or other enforceable means) which are designed to enhance the awareness of DNFBPs in preventing ML/TF. The evaluation team was not however able to establish whether DNFBPs have in practice established and maintained sufficient internal procedures, policies and control to prevent ML and TF.

4.2.2 Recommendations and Comments

713. DNFBPs are subject to the same obligations for reporting suspicious transactions, with associated protection from civil or criminal liability when complying with the reporting obligation, as financial institutions. These obligations suffer however from the limitations in the TF offence and from the incomplete coverage of one of the required types of predicate offences: environmental crimes. The evaluation team's recommendations made with respect to Recommendations 1, 13-15 and 21 and with respect to Special Recommendation II are also important for DNFBP sectors.

⁵² As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

714. The authorities should give priority to ensuring that the DNFBPs effectively establish and maintain internal procedures, policies and control to prevent ML and TF. This should also include a focus on identifying why the level of reporting of suspicious transactions is consistently low across the sector.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of Factors Underlying Rating
R.16	NC	<ul style="list-style-type: none"> • Some deficiencies in Hong Kong's list of predicate offences (re environmental crimes) impact on the scope of the suspicious transaction reporting requirement. • The requirement to report transactions suspected of being related to terrorism only arises where there is a link to terrorist acts, and not where the financing is for a terrorist organisation or individual terrorist in the absence of a link to a terrorist act. • The prohibition from disclosing the fact that an STR has been submitted does not apply when they are aware that an STR is in the process of being submitted. • There are serious concerns about the effectiveness of the reporting system as most DNFBPs rarely submit reports. • DNFBPs are not obliged to have compliance officers or internal control programmes. • DNFBPs are not required to pay special attention to transactions with countries which do not or do not adequately implement the FATF Recommendations.

4.3 Regulation, Supervision and Monitoring (R.24, R.25)

4.3.1 Description and Analysis

Recommendation 24

715. There are no statutory provisions that relate specifically to AML/CFT compliance monitoring for any category of DNFBP. While the DNFBPs are subject to the criminal law in respect of filing STRs, there are currently no administrative procedures to monitor for compliance in this area. However, some of the professions and businesses have more general obligations that may be relevant indirectly to AML/CFT, and which are subject to oversight by statutory bodies or self-regulatory organisations. The following provides a brief description of the circumstances in which this applies, but they are not considered material to the rating of compliance with the Recommendation 24.

716. Casinos: As indicated in the discussion under Recommendation 12, it is illegal to operate a casino within the jurisdiction, but there are several cruise ships based within Hong Kong that provide day or night cruises into international waters to cater for the gambling public. These are unregulated for AML/CFT purposes.

717. Accountants: In July 2006, the HKICPA issued a Legal Bulletin drawing the attention of its members to the current legal requirements in Hong Kong relating to AML/CFT, and to the FATF Recommendations. However, this is purely advisory and as such, the HKICPA has no specific power to enforce compliance with it.

718. Estate agents: All individuals and companies carrying on estate agency work must hold a licence issued by the Estate Agents Authority (EAA) under the EAO. It is an offence to practise estate agency work without a valid licence. Section 19 EAO provides that an individual shall not be eligible to be granted an estate agent's licence unless s/he satisfies the prescribed requirements and the EAA otherwise considers him/her a fit and proper person to hold a licence. There are similar fit and proper requirements for directors of companies and salespersons under s.20 and s.21. Licensed estate agents

and agency companies must comply with the EAO, the *Code of Ethics* drawn up by EAA and other guidelines/circulars issued by EAA from time to time. EAA performs its statutory regulatory and enforcement functions through random compliance checks (estate agency premises and first-sale sites), complaints investigations and exercising its disciplinary powers (see table below). Compliance with the Practice Circular on AML/CFT (EAPC) forms part of such checks.

Table 35. Compliance Checks Conducted by EAA, 2004-2007

	Number of Compliance Inspections	Instances of Non-compliance Detected
2004	477	173
2005	405	170
2006	499	49
2007	412	54

719. The EAA reports that it has observed through these on-site inspections that in general estate agents are aware of the importance of preventing ML and TF and have observed to a relatively high degree the basic customer identification and record keeping requirements of the EAPC (the EAA reports a 90% compliance level). The table below indicates the number of disciplinary actions taken as a result of failures to comply with the customer identification and record-keeping requirements contained in both the general regulations governing estate agents' practices and the EAPC. Should an estate agent be found in breach of both the general regulations and the EAPC (which in essence covers the general regulations requirements), action would be taken under the regulations. For those who had only breached the EAPC but not the general regulations, reminders of good practice instead of disciplinary sanctions would be issued in most cases. Seven reminders of good practice were issued in 2007. Also, to gauge the present understanding of those preventive measures, as well as to ascertain the training needs of practitioners, a questionnaire has been dispatched to managers of all estate agency shops. The questionnaire will also serve to bring the necessity of AML/CFT measures to the attention of estate agencies' management and will be a useful reference for future EAA action.

Table 36. Disciplinary sanctions taken against licensees for non-compliance related to AML/CFT, 2004 - 2007

Year	EAR13(3) (Customer identificaton)	EAR6(1)/6(2) (client agreement)	EAR8(2)(a) (Record-keeping)	EAO36(1)(a)(i) (record-keeping)	Circular 04-01 (AML circular)
2004	0	0	0	0	0
2005	0	0	0	2 x Admonishment	0
2006	1 x Suspension 1 x Attachment of Condition	9 x Admonishment 9 x Reprimand 4 x Attachment of Condition 3 x Suspension 2 x Fine	2 x Reprimand 2 x Fine	5 x Admonishment 4 x Reprimand 1 x Attachment of Condition	0
2007	0	3 x Admonishment 20 x Reprimand 10 x Attachment of Condition 1 x Suspension	1 x Admonishment 1 x Reprimand	3 x Admonishment 20 x Reprimand 6 x Attachment of Condition	0

720. Cases involving serious allegations are referred to the EAA Disciplinary Committee and, where appropriate, an inquiry hearing may be conducted. If the case is substantiated (based principally on

the concept of the agent being no longer fit and proper), the Disciplinary Committee may exercise the disciplinary powers set out in the EAO. Available sanctions include admonishment or reprimand, attachment of conditions to licences, variation of conditions to licences, suspension of licence for up to two years, revocation of licence and fines up to HKD 300 000 (USD 38 500).

721. Following the issuing of the EAPC setting out AML/CFT requirements for estate agents, the EAA has been promoting awareness mainly through training of the management of estate agencies. Talks and seminars by AML/CFT experts from the Security Bureau, the Hong Kong Police and the C&ED have been conducted as an ongoing plan, in particular, the EAA has, in collaboration with the ND and JFIU, launched and will continue to launch structured courses, making AML as its core subject for new entrants and branch managers in 2008.

722. Solicitors: All legal practitioners are regulated by the *Legal Practitioners Ordinance* (LPO). The Law Society is a self-regulatory organisation of the solicitors' branch of the legal profession⁵³. A practising solicitor must be a member of the Law Society and hold a practising certificate (s.7). Under the LPO, the Law Society, subject to the prior approval of the Chief Justice, is empowered to make rules governing the professional practices, conduct and discipline of solicitors, employees of solicitors' firms, trainee solicitors and registered foreign lawyers. In December 2007 the Law Society issued its Practice Direction relating to AML/CFT, the mandatory elements of which come into force on 1 July 2008. Prior to the implementation of these measures, relevant circulars were only advisory in nature, and no disciplinary proceeding have been taken against any member for AML/CFT deficiencies. With effect from 1 July 2008, any law firm, solicitor or foreign lawyer practising in Hong Kong who fails to comply with the mandatory requirements of the practice direction may face disciplinary proceedings with sanctions ranging from a warning letter to a fine to being struck off the roll of solicitors (Chapter 16 of the *Hong Kong Solicitors' Guide to Professional Conduct*).

723. Trust and company services providers (TCSPs): Although some TCSPs may come within the scope of certain professional bodies (*i.e.* HKICPA and the Law Society), there are no oversight procedures that apply specifically to the business of providing trust and company services.

724. Precious metals dealers and precious stones dealers: No AML/CFT regulatory framework for precious metals dealers and precious stones dealers.

Recommendation 25 (Guidance for DNFbps Other than Guidance on STRs)

725. Over the years, the ND, in collaboration with the JFIU, had introduced a series of programmes to raise the general as well as sector-specific awareness on AML/CFT. Since 2005, it has been organising an annual series of seminars for financial institutions and DNFbps on AML/CFT with attendance at the current series exceeding 2 000. Sector-specific training seminars are also organised upon request of the relevant sectors. Focus groups have also been set up for estate agents, precious stones and precious metals dealers and TCSPs to discuss issues relating to the implementation of the *FATF Recommendations* to the trades. An interactive training kit, which consists of a practical guide and a VCD-ROM has been produced to raise awareness among estate agents, precious stones and precious metals dealers, remittance agents and money changers and money lenders. Since June 2007, over 6 000 training kits and over 10 000 VCD-ROMs have been distributed to practitioners of the targeted trades. Announcements for broadcasting on television and radio channels and related publicity materials (over 130 000 posters and leaflets have been distributed) had also been produced for all DNFbps since September 2007.

⁵³ Access to barristers by the general public is normally through solicitors. Changes have recently been made so that, in some instances, barristers may also be instructed by other professions such as accountants, company secretaries, arbitrators, etc known as "Direct Professional Access." As such, barristers do not receive payment for their services from the public but only from solicitors and a few other professional bodies.

726. In preparation for the introduction of the new practice direction, the Law Society held a seminar in January 2008 which was attended by some 180 members. It is also planning a series of seminars to assist law firms to train their staff on the practice direction.

4.3.2 Recommendations and Comments

Recommendation 24

727. With the limited exception of the estate agency profession, there are no formal structures in place to monitor AML/CFT compliance within the DNFBP sectors. In moving forward, the authorities will need to give consideration to what type of regulatory or oversight regime would best address the risks, and who should be responsible for its implementation. At present, there are a certain number of statutory bodies (*e.g.* the EAA) and self-regulatory organisations (*e.g.* the Law Society) that have regulatory or disciplinary powers. However, only a few of these embrace all practitioners in the respective sectors (and changes in relevant legislation would be required to give some of them responsibility for AML compliance monitoring), and so consideration might have to be given to whether additional responsibilities should be given to existing governmental agencies, or whether a new agency might need to be created. As discussed under Recommendation 12, this review should also consider the position of the offshore cruise ship casino sector.

Recommendation 25

728. The authorities (and, in particular, the JFIU) are to be commended for the outreach and training programmes that have been delivering to the DNFBP sectors. While these efforts are important steps in the right direction, the impact and effectiveness of such efforts in for the DNFBPs could not be immediately assessed as most of the awareness-raising efforts for these sectors commenced relatively recently.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of Factors Underlying Rating
R.24	NC	<ul style="list-style-type: none"> Except for estate agents, there are no designated competent authorities or formal structures in place to monitor DNFBPs' compliance with AML/CFT obligations. With very limited exceptions, the only sanctions applicable to DNFBPs arise under the criminal law for failure to file STRs.
R.25	C	<ul style="list-style-type: none"> This Recommendation is fully observed.

4.4 Other Non-financial Businesses and Professions – Modern Secure Transaction Techniques (R.20)

4.4.1 Description and Analysis

Recommendation 20

729. The reporting obligations in s.25A DTROP and OSCO, and s.12 UNATMO, require all natural and legal persons in Hong Kong to file STRs. This legal framework applies to, financial and non-financial businesses alike. Below are the numbers of STRs submitted since 2004 by persons and entities which are neither financial institutions nor DNFBPs (including individuals and entities such as credit card companies). Approximately half of these were submitted by the Hong Kong Jockey Club (HKJC) which has also implemented customer identification procedures and staff training on AML

matters even though the only AML/CFT obligation which applies to them is the STR reporting requirement.

Table 37. STRs submitted by entities other than financial institutions and DNFBPs, 2004-2007

	2004	2005	2006	2007
No. of STRs	53	52	92	77

730. Pawnshops are regulated under the *Pawnbrokers Ordinance* Cap. 166 (PO). The Hong Kong Police inspects pawnshops whenever there is a suspicion of criminal activity. Nevertheless, the sector has a shrinking market, which coupled with the nature of business, is considered to have declining risk of misuse for ML and TF.

731. Hong Kong authorities advised that they have considered applying CDD requirements to other high risk non-financial businesses and professions, such as the gambling junket dealers who arrange junkets for off-shore casinos. However, no details have been received as to when or to what extent this consideration occurred or what it concluded.

Modern and secure techniques for conducting financial transactions

732. The policy of the government and the financial regulators is to avoid standing in the way of the development of electronic money in Hong Kong, and to develop a regulatory framework which provides a sound and secure basis for the conduct of financial transactions. As of the end of 2006, the number of credit cards and multi-purpose stored value cards (mainly Octopus cards for use on transport systems) in use in Hong Kong amounted to 10.9 million and 12.5 million respectively, compared with 9.2 million and 7.5 million in 2001. As at the end of 2007, the number of Internet banking accounts had reached 5.2 million, compared with a population of 6.8 million in Hong Kong. In addition, the largest banknote denomination in Hong Kong is HKD 1 000 which is equivalent to about USD 128. Hong Kong has no intention to issue banknotes with larger denominations in the foreseeable future.

733. Relevant government strategies in this context include:

- **e-banking security**: The HKMA has developed, in collaboration with the banking industry, a supervisory framework to facilitate the development of electronic banking under which AIs have since June 2006 been required to adopt two-factor authentication for higher risk transactions such as third-party transfers.
- **Enhancing security of electronic transactions**: In 2000, the *Electronic Transactions Ordinance* Cap. 553 (ETO) gave electronic record and electronic signature the same legal status as that of their paper-based counterparts. Over 1.8 million recognised certificates have been issued in Hong Kong. The identity of the parties involved in electronic transactions (including payment transactions) can be established (by individuals and businesses) through the use of recognised digital certificates issued by recognised certification authorities. Since June 2003, a new generation of Smart ID Cards has been issued in the form of smart cards. Hong Kong citizens can choose to embed the digital certificate in the Smart ID Card.
- **Funding support**: Hong Kong funding schemes, such as the Innovation and Technology Fund, have provided support to projects conducted by higher education institutes, the private sector (including banks) and technology companies. The amount of funding provided in recent years is in excess of HKD 22 million (USD 3 million). Deliverables of these projects include; an open payment platform with e-payment sub-system, prepaid card module and PPS (payment by phone services) modules.
- **Computer emergency alert and response**: The Hong Kong Computer Emergency Response Team/Coordination Centre (HKCERT) was established in 2001 to provide a centralised

contact on computer security incident reporting and response for local enterprises and Internet users in case of security incidents. It publishes security threat monitoring information and alerts to the public and businesses, co-ordinates response and recovery actions for reported incidents, advises on guidelines and preventive measures against security threats, and seeks to promote the general public's awareness of information security. The HKCERT is also invited to provide technical advice in some investigations concerning cyber security.

- Awareness raising: To help businesses protect their electronic transactions, services and customers, the Government published a risk assessment and electronic authentication framework for public reference in October 2007. The Office of Government Chief Information Officer organises seminars and training, and publishes leaflets, posters and security tips to enhance public awareness of information security and cyber crimes, so that people realise the importance of information security and knowledge of protection/detection against Internet frauds, phishing, fraudulent websites and various cyber crimes such as money laundering activities. The InfoSec website at <http://www.infosec.gov.hk> is set up to serve as a one-stop portal for the public to access information security related materials as well as tips for safe use of the Internet and cyber resources.
- Promoting the use of electronic payment systems: The HKMA has recently undertaken a review of the retail payment systems in Hong Kong. The recommendations arising from the review, if implemented, will make payment through electronic channels more convenient, which in turn will help reduce reliance on cash transactions. At present, there are 250 000 transactions worth HKD 450 million processed daily through electronic payment systems (EPS).
- The Octopus stored value card: Founded in 1994 by the major public transport operators as a smartcard payment system, the Octopus card has extended beyond public transport systems to operators including car parks, fast food outlets, convenient stores, supermarkets and pay phones. More than 16 million cards are in circulation with over 95% of the population possessing an Octopus card. In 2007 an average of 10 million transactions were conducted each day using Octopus cards, with an average value of HKD 8.10 (USD 1) per transaction.

4.4.2 Recommendations and Comments

734. Hong Kong's STR reporting obligations are universal, and thus apply to non-financial businesses and professions as well as to financial institutions and DNFBPs. STRs have in fact been submitted by some non-financial businesses and professions. In addition, CDD requirements are in place for pawnbrokers and the HKJC has chosen to implement its own customer identification system. These represent positive implementation of AML/CFT obligations in some non-financial businesses and professions. Hong Kong authorities advise that they have undertaken a review which considered applying Recommendations 6, 8-11, 15, 17 and 21 to non-financial and businesses and profession (other than DNFBPs) that are at risk of being misused for ML or TF, though little is known about this review. It is recommended that Hong Kong conduct such a review periodically to identify which sectors are at risk of being exploited by the perpetrators of ML and TF and what appropriate measures should be implemented for such sectors.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of Factors Underlying Rating
R.20	LC	<ul style="list-style-type: none"> • No evidence exists of adequate consideration being paid to applying Recommendations 5, 6, 8-11, 15, 17 and 21 to non-financial businesses and professions (other than DNFBPs) that are at risk of being misused for money laundering or terrorist financing.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to Beneficial Ownership and Control Information (R.33)

5.1.1 Description and Analysis

735. Hong Kong adopts a four-pronged approach to prevent the unlawful use of legal persons and legal arrangements for ML and TF, namely: (a) central registration; (b) investigatory and other powers of law enforcement and financial regulators; (c) AML/CFT compliance monitoring of financial institutions; and (d) statutory disclosure obligations.

Registration of companies and legal persons

736. Companies incorporated in Hong Kong under the *Companies Ordinance* Cap. 32 (CO) must be registered with the Companies Registry (CR). Additionally, non-Hong Kong companies which wish to establish a place of business in Hong Kong must also register with the CR.

737. The information and documents which must be provided to the CR for registration of a company incorporated in Hong Kong are specified in s.5, s.9 and s.10 CO. Other statutory requirements relating to the registers of charges and debentures, members, directors and secretary which must be kept by the company are contained in s.85, s.95, s.153, s.153A, s.154, s.154A, s.158 and s.158A CO. Companies are required to provide details of their company name, type of company, directors, secretary, registered office and charges to the CR for record and public inspection. The CR allocates a unique number to each company on incorporation. Thereafter, the CR must be notified of any changes to the company's particulars within 14 days of the change, and the company must file an annual return with the CR which specifies its directors and members. In the case of guarantee companies, the annual return must be accompanied by information on the number of members and the address where the registers of members, charges and holders of debentures are kept. Guarantee companies must also notify the CR of any changes in this information within 14 days of any such change. Public companies and private companies which are members of a group of which a listed company is a member are not permitted to have corporate directors.

738. Non-Hong Kong companies are required to provide the CR with; copies of their constitutions, lists of directors, secretary and authorised representative(s) in Hong Kong who can accept service of process on the company's behalf, certificate of incorporation issued in the home jurisdiction and accounts (where the non-Hong Kong company is required by the law of its place of incorporation or any regulator to prepare and file such accounts). Details of any changes in this information must be filed within one month of the change (see s.333, s.333A, s.333B, s.335 and s.336 CO). An annual return containing this information must also be submitted (s.334).

739. To ensure the information filed with the CR is up to date and accurate, the CR prosecutes companies which have failed to file their annual returns on time. A total of 3 462 summonses were issued in the calendar year 2005, 6 028 summonses were issued in 2006 and 6 125 were issued in 2007. In 2007, 84% of companies filed their annual returns within the prescribed time limit. The CR also prosecutes other breaches of the CO including failure to update particulars with respect to

directors, secretaries and the registered office. There is no system for verification of other information submitted to the CR, in particular the details of persons named as directors or shareholders of the company as the CO provides that the Registrar is not responsible for verifying the truth of any statement made in any document delivered to the CR for registration. It is an offence under s.349 CO to provide false information to the CR. Such cases are referred to the Hong Kong Police for investigation. Since 2004, nine such cases have been referred, one of which resulted in conviction.

740. Information on incorporated companies and non-Hong Kong companies is available for public inspection either in person at the CR's offices during office hours or over the internet through the CR's website⁵⁴, upon payment of a small fee. The CR and users of its fairly sophisticated system can, in addition to the expected basic searches, search an index of directors and company names.

741. Partnerships must be registered with the Business Registration Office (BRO) under s.5 of the *Business Registration Ordinance* Cap. 310 (BROr) within one month from the date of commencement of business. Many small businesses exist in this form, as do some quite large professional services firms. Sole proprietorships are also required to register with the BRO within one month from the date of commencement of business. When registering with the BRO (regulation 3 of the *Business Registration Regulations*), partnerships and sole proprietorships must provide the business name, business address, nature of business, date of commencement and information of the owners. When there is any change in business registration particulars or when the partnership/sole proprietorship ceases to do business, they should notify the BRO in writing within one month (s.8 BROr). The public may (s.19 and s.19A BROr) apply for an extract of any information on the business register in certified or uncertified form by paying a small fee. The business register contains business registration information, as supplemented or replaced by information from time to time, received by the Commissioner of Inland Revenue from the business operators. The register contains information on the business name, its business nature and address, the date of commencement of business, the date of cessation of business (if applicable) and the personal particulars of its owners (if applicable). The application may be made in person at the BRO or over the Internet⁵⁵.

742. In addition to the information kept by the CR, reliance is also placed on the investigative powers of law enforcement agencies, financial regulators and the Financial Secretary or on the disclosure obligations under sections 25A DTROP and OSCO or s.12 UNATMO for ascertaining the beneficial ownership of legal persons. In addition to the broad powers of enforcement and regulatory agencies to obtain information from legal persons (see Sections 2 and 3 of this report), the Financial Secretary (FS) has the power to appoint an inspector to investigate the affairs of a company pursuant to s.142, s.143 and s.152A CO and s.95 of the *Trustee Ordinance* Cap. 29. An inspector may also be appointed by the FS to investigate the ownership of a listed corporation pursuant to s.356 SFO.

Access to information on the beneficial ownership and control of legal persons

743. All information held by the CR on incorporated companies and non-Hong Kong companies is available to competent authorities. Similarly, all information on the business register held by the BRO is available to competent authorities. Where the information being sought by a competent authority is not publicly available information, (e.g. some of the information held by the CR and BRO and the information held by regulators on the ownership and control of entities they supervise) competent authorities rely on s.58 of the *Personal Data (Privacy) Ordinance* Cap. 486, which provides that authorities may obtain any information from other authorities for any of the following purposes:

- The prevention or detection of crime.
- The apprehension, prosecution or detention of offenders.
- The assessment or collection of any tax or duty.

⁵⁴ www.cr.gov.hk.

⁵⁵ www.gov.hk/br.

- The prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons.
- The prevention or preclusion of significant financial loss arising from:
 - any imprudent business practices or activities of persons; or
 - unlawful or seriously improper conduct, or dishonesty or malpractice, by persons, etc.
- Ascertaining whether the character or activities of the entity are likely to have a significantly adverse impact on any matter:
 - to which the discharge of statutory functions by the data user relates; or
 - which relates to the discharge of functions of a financial regulator for (a) protecting members of the public against financial loss arising from dishonesty, incompetence, malpractice or seriously improper conduct by persons as specified in subsection 3(i), (b) maintaining or promoting the general stability or effective working of any systems which provide services in banking, insurance, investment or other financial services, or (c) a specified function.

744. Legal persons liable for tax are required under the *Inland Revenue Ordinance* Cap. 112 (IRO) to file tax returns with the Inland Revenue Department (IRD). The information necessary for ascertaining the tax liability of the taxpayers can be useful for establishing beneficial ownership and control of the legal person. Information in tax returns and other information held by the IRD can be disclosed to the JFIU under specified conditions elaborated in s.25A DTROP, s.25A OSCO and s.12 UNATMO, overriding the normal secrecy provision of the IRO.

745. If the information is not kept by public or government bodies, law enforcement agencies can resort to various statutory powers to obtain information including that which would indicate the ownership and control of a legal person.

Share warrants to bearer

746. Companies incorporated in Hong Kong (public and private) are permitted to issue share warrants to bearer, under s.73 CO, provided that the same is authorised by the company's articles. The issuance of share warrants to bearer is required to be reflected in a company's register of members, which is available for public inspection. In the event of a transfer of share warrants to bearer, the name of the new shareholder is entered in the share register when s/he or his lawful representative gives the company notice of the change of ownership and proves his right.

747. To the extent that financial institutions are involved in regulated activities under their respective ordinances, they are subject to the HKMA, the SFC and/or the OCI's regulations and supervision and are required to conduct customer due diligence (CDD) on corporate entities and trust arrangements, in particular, identifying their beneficial owners for the purpose of complying with the regulators' respective requirements (see [Section 3.2](#) of this report, previous).

748. Financial institutions are required to exercise special care in dealing with companies which have a significant proportion of capital in the form of share warrants to bearer (paragraph 4.9 of the *Bank Supplement*, s.6.4.6 of the *Securities Guidelines* and paragraphs 6.3.7, 6.3.8 and 6.3.9 of the *Insurance Guidelines*). The financial institutions should have procedures in place to monitor the identity of principal shareholders. This may require the financial institutions to consider whether to immobilise the shares. Where it is not practical to immobilise share warrants to bearer, financial institutions should obtain a declaration from each beneficial owner who holds 5% or more of the total shares of the corporate customer on the percentage of shareholding. Such owners should also provide a further declaration on an annual basis and notify the AI, LC or II immediately if the shares are sold, assigned or transferred. In addition, the *Insurance Guidelines* require IIs to exercise care in initiating business transactions with companies with nominee shareholders and companies which have a

significant proportion of capital in the form of share warrants to bearer, to obtain satisfactory evidence of beneficial owners of such companies or to have procedures to monitor the identity of principal shareholders.

Statistics⁵⁶ and Effectiveness

749. The Hong Kong register of companies is increasing by approximately 84 000 new incorporations per year.

Table 38. Registered/incorporated business entities, 31 December 2007

Local Companies	654 836
Non-Hong Kong Companies	7 042
Local Listed Companies	202
Non-Hong Kong Listed Companies	1 039
Partnerships	32 813
Sole Proprietors	207 934
Total	903 866

750. Law enforcement agencies in Hong Kong possess adequate and wide-ranging powers in identifying beneficial owners of legal entities, namely the witness order under s.3 OSCO for intangible information and the production order for information stored outside Hong Kong.

751. Hong Kong has a typical company registry system which holds information on company names, deeds of incorporation, directors etc. The BRO's registration system also encapsulates partnerships. Requirements are in place in the CO for the information submitted to be updated, including a requirement that companies submit an update within 14 days of change of a director (one month for a non-Hong Kong company). Shareholder details are however only supplied to the registry by locally incorporated companies once a year in an annual return and no information is held by the CR in terms of the shareholders of non-Hong Kong companies. Similarly, the systems in place for compliance checking and verification of information submitted to the CR is strong in some areas, but weak with respect to shareholder information. The gaps in information required and examined with respect to shareholders present a risk, particularly since Hong Kong also allows for the existence of corporate directors (of which more than 52 000 companies have corporate directors and these directors could be incorporated or based anywhere), nominee directors and corporate secretaries (of which more than 280 000 exist). The use of shelf companies is common in Hong Kong as it is relatively easy to acquire companies and change shareholdings without authorities knowing. Share warrants to bearer exist in Hong Kong and authorities do not know how many exist. Authorities advised that generally for bearer share warrant holders, the company just strikes out the name of the previous warrant holder on its share register and leaves the share register blank.

5.1.2 Recommendations and Comments

752. It is recommended that the CR work with other relevant agencies to conduct a review of the company registry system in Hong Kong with a view to obtaining and checking a wider range of information on shareholders and shareholdings. It is noted that the CR is assisting in a rewrite of the CO and proposals including the abolition or restriction of corporate directorship are being considered. In addition, the implementation by mid-2008 of the new incorporation forms for locally incorporated companies, which require the provision of all major company particulars including details of the directors and secretaries, might help reduce the occurrence of shelf companies.

⁵⁶ As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

5.1.3 Compliance with Recommendations 33

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.33	PC	<ul style="list-style-type: none"> Measures are not adequate to ensure that there is sufficient, accurate and timely information held on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. Information on the companies register pertains only to legal ownership/control (as opposed to beneficial ownership), is not verified and is not necessarily reliable. Corporate and nominee directors are permitted, which further obscures beneficial ownership and control information No specific measures are in place to ensure that the share warrants to bearer, which may be issued by companies incorporated in Hong Kong, are not misused for money laundering.

5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

Information pertaining to trusts

753. As with many common law jurisdictions, trusts are a long-standing, popular and integral part of the legal and economic landscape of Hong Kong. There is no register of trusts in Hong Kong, though there is a register of trust companies under Part VIII of the *Trustee Ordinance* Cap. 29. Some trusts are however known to authorities for various reasons.

754. Charitable trusts, which are usually formed as public guarantee companies, may apply to the Inland Revenue Department (IRD) for recognition as tax-exempt charities under s.88 IRO. For charitable trusts recognised under s.88 IRO (Tax-exempt status), IRD will keep certain information about the trusts, which includes its governing instruments and documents recording its activities. A list of charitable entities, including charitable trusts, recognised as tax-exempt charities under s.88 IRO is available on the IRD website. A charitable trust which has not been recognised as a tax-exempt charity has to submit annual tax returns to the IRD for assessment similar to other business entities in Hong Kong. Small charitable bodies may also register with the CR under the *Registered Trustees Incorporation Ordinance* Cap. 306 (RTIO) as registered trustee corporations (RTCs), primarily, in order to hold real property.

755. There is no requirement for trust service providers to obtain, verify and retain records of the details of trust or other similar legal arrangements. However, those trust service providers which are also companies registered under the CO are required to maintain a register of members (s.95 CO), proper books of accounts at their registered office (s.121 CO) and a register of directors and secretaries. If they are public companies, they will also be required to file audited annual accounts with the CR. Trust service providers are not subject to or monitored for any AML/CFT obligations. Trust service providers which are engaged in regulated activities under the SFO are subject to the regulation of the SFC.

756. Trustees of trust companies registered under the RTIO are required to notify the CR of: the nature and objects of the corporation; its rules and regulations; copies of every deed and other instruments constituting the corporation; descriptions of all properties held by the corporation; the names, residential addresses, occupations and nationalities of the trustees of the corporation; the address of the principal office; and, details of the common seal and regulations for the custody and use thereof. Much of this information is available to members of the public.

757. Unit trusts and other financial trusts to which the general public may subscribe are subject to financial licensing and regulation.

758. AIs are required to identify and verify the beneficial owners of trusts and other legal arrangements. Paragraphs 5.17 to 5.20 of the *Bank Guidelines* and paragraphs 5.1 and 5.4 of the *Bank Supplement* spell out the requirements on trust and nominee accounts. Paragraphs 6.4 and 6.8 of the *Securities Guidelines* also require LCs to identify and verify the beneficial owners of trust and nominee accounts. Similar requirements are set out in paragraph 5.4 of the *Code of Conduct*. Paragraph 6.5.1 of the *Insurance Guidelines* requires IIs to verify the identity of the trustees, any other person exercising effective control over the trust property, the settlers and the beneficiaries. Paragraphs 6.3.7 and 6.3.8 respectively require IIs to exercise care in initiating business transactions with companies with nominee shareholders and companies which have a significant proportion of capital in the form of share warrants to bearer, to obtain satisfactory evidence of beneficial owners of such companies or to have procedures to monitor the identity of all principal shareholders.

Investigative powers to access information on trusts

759. As with legal persons, in addition to the information kept by the CR, reliance is placed on the investigative powers of law enforcement agencies, financial regulators and the Financial Secretary, or on the disclosure obligations under sections 25A DTROP and OSCO or s.12 UNATMO, for obtaining information about trusts. In addition to the broad powers of enforcement and regulatory agencies to obtain information from legal persons (see Sections 2 and 3 of this report), the Financial Secretary has the power to appoint an inspector to investigate the affairs of a company (s.142 or s.143 CO and s.95 of the *Trustee Ordinance* Cap. 29).

760. In addition, certain information must be submitted to enforcement agencies. According to s.25A DTROP and OSCO and s.12 UNATMO, STRs must be submitted to the JFIU. As this reporting obligation fall on every person in Hong Kong, if an officer of IRD knows or suspects that a trust or a charitable trust recognised under s.88 IRO is involved in ML or TF, the officer should report his/her knowledge or suspicion and any matters based on which the knowledge or suspicion is formed, to the JFIU. The knowledge and suspicion can be formed in the course of assessing the tax liability of the trust or reviewing the s.88 status of the charitable trust and can be based on information contained in the documents filed by the trust concerned. In cases where the IRD officer is not able to form the required knowledge or suspicion, the law enforcement agencies investigating the case can resort to the investigative powers (production orders or search warrant).

Statistics⁵⁷ and Effectiveness

Table 39. Known Hong Kong trusts, 2007*

FORM OF TRUST	NUMBER REGISTERED
Public guarantee companies formed under s.21 of the CO	689
Trustee corporations registered under the RTIO	85
Charitable institutions and trusts with tax-exempt status	4 944
Trust companies registered under Part VIII of the <i>Trust Ordinance</i>	53

* As at 30 June 2007.

761. While powers of investigative agencies to gain information are strong and broad, the fact that most trusts do not come to the attention of authorities and the absence of record keeping or reporting requirements on trusts makes identifying the trusts or the existence of the trust difficult. It is not

⁵⁷ As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

known how many trusts have been created in Hong Kong or how many trustees there are. Most importantly, there are no requirements that will ensure trust beneficial ownership information would be available to competent authorities on a timely basis. These factors limit the extent of information which might be found when investigative powers are used.

5.2.2 Recommendations and Comments

762. Hong Kong does not have a registry of trusts. Some information on trusts is held by the IRD, other government agencies and financial institutions. Reliance is placed on the strong investigative powers to access information pertaining to beneficial ownership and control of trusts. While Hong Kong's system of trusts is typical for a common law jurisdiction, it is recommended that Hong Kong introduce measures to enhance the transparency of trusts. In particular, measures which would enable enforcement agencies to identify the existence of a trust and require a party to hold information on the beneficial ownership and control of trusts and other legal arrangements. It is also recommended that providers of trust services be made subject to some AML/CFT obligations.

5.2.3 Compliance with Recommendations 34

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.34	PC	<ul style="list-style-type: none"> • While the investigative powers are generally sound, there are not adequate measures in place to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal arrangements that can be obtained or accessed in a timely fashion by competent authorities. • Providers of trust services, other than those which are financial institutions, are not subject to or monitored for AML/CFT obligations.

5.3 Non-profit organisations (SR VIII)

5.3.1 Description and Analysis

Overview

763. The NPO sector in Hong Kong is highly diverse and the organisations within the sector vary greatly in size and structure. NPOs can be categorised according to their activities/services into the following groups: Educational; Social Services; Health Services; Community-Based; Civic and Advocacy; Environmental; International and Cross-Boundary activities; Sports and Recreational; Arts and Culture; and, Religious. There are four ways to establish an NPO in Hong Kong:

- As a *company* incorporated under the *Companies Ordinance* Cap. 32.
- As a *society* registered with the Hong Kong Police under the *Societies Ordinance* Cap. 151.
- As a *trust*, by the settler appointing a trustee (a person or a corporate entity), or trusts established under relevant Hong Kong legislation. Registered trust corporations, formed by associations or trustees of charities to hold trust property, may be registered under the RTIO.
- As a *statutory body* established under Hong Kong legislation, such as the *Community Chest of Hong Kong Ordinance* Cap. 1122 and the *Chinese Temples Ordinance* Cap. 153.

Table 40. Tax-exempt charities, classified by structure, 30 June 2007

	Number	%
Corporation	3 560	72
Society	626	13
Trust	406	8
Others	352	7
Total	4 944	100

764. Each NPO is subject to regulatory measures, such as its governance structure and scope of charitable activities, as is set out in the laws under which it is established (as discussed below).

765. NPOs have various sources of funding for their activities, including fundraising in a public place, government subsidies, fees and private donations. Some NPOs obtain funding support from overseas bodies. Many NPOs in Hong Kong, especially those engaging in educational, health and welfare services, mainly rely on Government support. Some NPOs secure their funding from management or membership fees. NPOs advocating different societal issues obtain their funding from members' donations, local and overseas foundations, churches and occasional government project/consultancy fees. Funding for religious NPOs mainly comes from local and overseas donations and some organisations are also supported financially by their parent organisations. Though the Government does not directly subsidise these religious organisations, it provides resources such as land allocation for places of worship and social service complexes and provides subsidies for educational, health and social services rendered by religious organisations. International cross-boundary NPOs are heavily dependent on fund-raising activities and donations from individuals, corporations and overseas bodies to support their services.

766. Hong Kong authorities consider that the risk of the NPO sector being misused for criminal or terrorist purposes is low. There is no record of any NPO (charitable or not) in Hong Kong being abused by or in any way linked to criminal syndicates, terrorist organisations or individual terrorists, and neither the JFIU nor the Hong Kong Police have received any requests from their overseas counterparts for information about local NPOs. Nevertheless, the Hong Kong government indicated that it closely monitors international developments and their impact on Hong Kong, maintains close contact with foreign counterparts and that its threat assessment is constantly reviewed.

767. There is no supervisory authority designated to supervise all NPOs and no requirement for NPOs to register as NPOs. The Hong Kong Law Reform Commission is currently conducting a review of the NPO sector and its governance which might lead to changes in this area, though the review is not focused on AML/CFT issues. The primary laws governing the supervision of NPOs include: the UNATMO, the OSCO and the DTRDP; the *Summary Offences Ordinance* Cap. 228 (SOO), which concerns fund raising activities in public place; and, the *Gambling Ordinance* Cap. 148 (GO), which concerns fund raising by lotteries. Also, charitable NPOs are exempt from tax under s.88 IRO and may apply for recognition as tax-exempt charities.

768. There are a number of government agencies that have a role in monitoring certain types of NPOs at different stages and most NPOs apply for tax exempt status with the Inland Revenue Department (IRD). While not all monitoring bodies keep comprehensive statistics on the NPOs registered with them, the domestic review provided useful information on the characteristics and size of the NPO sector (as discussed below). As at 2004-2005, authorities estimated that there were around 16 700 'non-profit-making' entities in Hong Kong, of which approximately 5 000 entities would fit

the FATF definition of a ‘non-profit organisation’⁵⁸. As at 30 June 2007, 4 944 have been recognised as tax-exempt charities under s.88 IRO. The IRD conducted a study in December 2007 using individual case files and accounts submitted periodically, and estimated that the turnover of tax-exempt charities is around HKD 25 billion (USD 3.2 billion).

Reviews of the domestic non-profit sector

769. Hong Kong conducted a review of the sector in 2005 and 2006 and the report of the review studied: the general profile of the sector; the risk of the NPO sector being misused for TF; the effectiveness of the existing supervisory regime and countermeasures against the misuse of the sector; and, Hong Kong’s internal and international information sharing capability concerning NPOs. The study was based on the information provided by a number of relevant government departments, namely the ND of the Security Bureau, the Central Policy Unit (CPU), the Hong Kong Police, the JFIU, the IRD, the Social Welfare Department (SWD) and the CR. The review also examined the results of an earlier survey conducted by the CPU on the ‘Third Sector’ in Hong Kong.

770. The review concluded that there was no particular area of risk in the sector as a result of: its highly localised nature; the geopolitical location of Hong Kong; the effectiveness of the supervisory measures; and, the absence of a local community linked to or associated with terrorist groups or individuals. The review also concluded that the present measures to minimise the risk of misuse of NPOs for TF are effective and commensurate with the present risk level of the sector. Despite this, the review recommended that more outreach be undertaken to enhance the awareness of the sector and to equip the sector with the knowledge to prevent any misuse. This outreach has since commenced.

Effective supervision or monitoring of NPOs

771. Hong Kong has not established a single supervisor responsible for entities within the NPO sector. There are however a number of measures in place which are regulatory and limit the risk that NPOs might be misused for criminal and terrorist purposes:

- AML/CFT legislation.
- The taxation system.
- Regulation of government subsidised services and fund raising activities.
- Self-regulation by umbrella organisations.
- Publicity and education.

772. AML/CFT legislation: As noted previously, the UNATMO requires any person (including NPOs, and their staff) to make a disclosure to an authorised officer in the JFIU if s/he comes across with any property, which s/he knows or suspects to be terrorist property or property intended to be used for terrorism. OSCO and DTROP similarly require any person to make a disclosure, if s/he comes across any property which he/she knows or suspects to be crime or drug proceeds. Failure to disclose is an offence. No STRs relating to TF have been made by the NPO sector.

773. The taxation system: Charitable NPOs may apply to the IRD for recognition as tax-exempt charities under s.88 IRO. As at 30 June 2007, there were 4 944 recognised tax-exempt charities which cover almost all of the non-profit organisations defined by FATF. For an organisation to be granted tax-exemption, it must be established for purposes that are exclusively charitable according to law, such as relief of poverty, advancement of education, advancement of religion and other charitable

⁵⁸ The other entities were either residential owners’ corporations or neighbourhood associations serving only very small and localised areas, and were non-charitable.

purposes beneficial to the Hong Kong community. An NPO seeking recognition as a tax-exempt charity also needs to be established by a written governing instrument, which should contain clauses:

- Stating precisely and clearly its objects.
- Limiting the application of its funds to the attainment of its stated objects.
- Prohibiting distribution of its income and properties amongst its members.
- Prohibiting members of its governing body (directors/trustees) from receiving remuneration.
- Specifying how assets should be dealt with upon its dissolution.
- Requiring the keeping of sufficient records of income and expenditure (including donation receipts), accounting books and compilation of annual financial statements.
- Excluding the powers set forth in the Seventh Schedule to the CO (if the charity is a company incorporated under that ordinance).

774. In support of an application for recognition as a tax-exempt charity, the NPO needs to submit, inter alia, a copy of the relevant certificate of registration, a certified true copy of the instrument and rules governing its activities, e.g. the memorandum and articles of association in the case of a corporation, the ordinance that establishes the body, the trust deed in the case of a trust or the constitution in the case of a society, a list of any activities which have been carried out in the past 12 months (or less, if appropriate), a list of activities planned for the next 12 months and a copy of its accounts for the last financial year. Tax-exempt charities are required to advise the IRD of any establishment or cessation of subsidiary organisations, alteration of its governing instrument, or change of name or correspondence address. The IRD will, from time to time, call for accounts, annual reports or other documents to review the tax-exempt status and to examine whether the institution's objects are still charitable and its activities are compatible with its objects. This takes place on average every four years, and more often if there has been a complaint in relation to an NPO.

775. Regulation of government subsidised services and fund-raising activities: Regulatory measures apply whenever an NPO applies for government support (called 'subventions'), conducts fund-raising activities in public places, or runs lotteries for fund-raising purposes. Tax-exempt NPOs providing social welfare services may apply to the SWD for government support. Before granting support, the SWD will examine, *inter alia*, the records of the tax-exempt NPOs, including financial records and service standards, to ensure they are fit and proper to deliver the services. Approximately 170 NPOs providing social welfare services are currently government supported. The support allocation for these NPOs for 2005-06, 2006-07 and 2007-08 is approximately HKD 6.32 billion (USD 810 million), HKD 6.43 billion (USD 824 million) and HKD 6.87 billion (USD 880 million) respectively. These entities are required to enter into a "Funding and Service Agreement" with the SWD to ensure that the services are properly delivered and the funding appropriately spent. The SWD also has a *Service Performance Monitoring System* for these NPOs. Supported NPOs must submit to SWD annual financial reports and reports issued by the external auditors with respect to the Funding and Service Agreement activities as well as audited financial statements. The SWD also conducts inspections of these NPOs. In examining the relevant records, book of accounts etc., if SWD officers suspect that support provided to an NPO has been misused for TF, they are required by UNATMO to report their suspicion to the JFIU. No such reports have been made. Hong Kong authorities indicated that if such a case arose, it is likely the SWD would immediately cancel its support to the NPO.

776. Anyone who organises, provides equipment for, or participates in charitable fund-raising activities for collection of funds in public places must have a permit from the SWD in accordance with the SOO. Organising or conducting fund-raising in public places without a permit is an offence. In the last three years, 1 953 permits were issued to NPOs; 683 in 2006-07, 625 in 2005-06 and 645 in 2004-05. The SWD imposes conditions when issuing permits, with which NPOs must comply. Common conditions include:

- The funds collected must be used only for the specified purpose.
- The SWD should be informed of the total amount collected and how the funds will be applied.
- The audited accounts of the fundraising activities should be forwarded to the SWD.
- A receipt should be kept for each donation of funds from the fund-raising to another NPO.
- Audited accounts must be published in local newspapers if money is spent outside Hong Kong.

777. An NPO intending to conduct a lottery for the purpose of fund-raising in Hong Kong has to apply for a licence from the Television and Entertainment Licensing Authority (TELA) in accordance with the GO. The NPO has to comply with the conditions of the licence, which limit the use of the proceeds of the lottery, specify the format of the lottery ticket and the timing of the sale. The conditions also require the NPO, upon completion of the lottery events, to prepare an income and expenditure statement. The statement has to be audited, made available for public inspection and placed on the homepage of the TELA for public information.

778. Self-regulation by umbrella organisations: In addition to the aforementioned measures, some NPOs are also subject to monitoring by umbrella organisations, such as the Hong Kong Council of Social Service (HKCSS) and the Community Chest. The HKCSS has over 300 member NPOs which deliver approximately 90% of welfare services in Hong Kong. It aims to enhance the accountability of local services providers. NPOs that have joined HKCSS are required to submit their annual reports to the council. NPOs must meet the following criteria before becoming members:

- Be recognised by the HKCSS as being a non-profit-making body.
- Have been in operation for a period of at least one year.
- Possess a constitution or a similar document on incorporation.
- Publish their annual report and audited accounts or certified accounts.
- Comply with conditions prescribed by the HKCSS Executive Committee from time to time.

779. The HKCSS has powers to inspect and sanction its members for breaches of the *Hong Kong Council of Social Service Incorporation Ordinance* Cap. 1057, including for failure to provide reports. The HKCSS indicated to the evaluation team that in carrying out its functions it had not come across any suspicious cases involving TF or related activities and agreed with the government's overall assessment that the risk of TF in the NPO sector is low.

780. The Community Chest, established in 1969 under the *Community Chest of Hong Kong Ordinance*, Cap. 1122, currently has about 140 member NPOs. It is an independent, non-profit organisation which is neither funded nor operated by the government of Hong Kong. The Community Chest serves as an umbrella organisation to provide grants to a wide range of community projects. The member NPOs are subject to similar requirements of submitting reports and accounts as the NPOs which are members of the HKCSS. The Community Chest's administrative costs are subsidised by an annual grant from the Hong Kong Jockey Club and investment in various funds (HKD 3.9 billion, which is approximately USD 500 million was invested in 2006).

Outreach to the NPO sector

781. The ND, which is the government policy unit overseeing matters relating to anti-drug, AML and CFT issues, has recently intensified outreach to the sector having regard to the domestic review of the NPO sector mentioned previously. In 2006, the ND set up a focus group for the government and the sector to exchange views on preventing the sector from misuse for TF. Two meetings have been

held since it was formed. Training seminars and workshops specifically on *Preventing the Misuse of NPO for Terrorist Financing* were organised in July 2007 for the sector with support of the US Treasury Department, the UK Charities Commission and the JFIU, as well as for the government officials who were involved in supervising or monitoring NPO-related activities.

782. Following consultation with the NPO sector, the JFIU and the SWD, the ND published its *Guideline on Preventing NPOs from Abuse for Terrorist Financing* in July 2007⁵⁹, which is advisory in nature. Through the established network of the major NPOs, the guideline has been distributed to over 1 000 NGOs. The guideline has also been hyperlinked to the websites of SWD and TELA. The SWD organised training seminars/workshops for the management and board members of supported NPOs in 2001, 2003, 2006 and 2007. These workshops did not primarily relate to AML/CFT issues, but focussed on financial management issues, good governance and the legal and moral responsibilities of managers in the government ‘subvented’ NPO sector.

783. The SWD has also published guidelines and reference materials on management to its supported NPOs to promote good corporate governance. These best practice or reference guides aim to promote good governance, financial transparency, accountability and anti-corruption and can be found on the SWD’s website⁶⁰. There is however no specific reference to AML/CFT issues in these materials and no current plans to update the materials to include reference to AML/CFT. Jointly with the ICAC, the SWD has also promulgated best practice guides on procurement procedures, contracting out services, letting and administration of works contracts, stores management and staff management in NPOs. A *Reference Guide on Best Practices for Charitable Fund-raising Activities* was also issued. NPOs are encouraged to adopt the best practices for their fund-raising activities. The public is also encouraged to use the guide as a reference against which the performance of a charity can be measured.

Information to be maintained by NPOs

784. In addition to other legislation such as OSCO, DTROP and UNATMO, each NPO is subject to regulatory measures set out in the laws under which it is established, such as the SO and the CO. Under the SO, a society should register or apply for an exemption from registration to the Police Licensing Office (PLO). An NPO established under the SO is required to disclose the following information to the Police:

- The name of the society.
- The objects of the society.
- The particulars of the office-bearers of the society.
- The address of the principal place of business of the society and of every place or premises owned or occupied by the society.

785. As noted in table 40, there are 626 societies recognised under s.88 IRO as at 30 June 2007. Given their nature and prescribed scope of activities, the risk of misuse of societies for terrorist financing is considered by authorities to be very low. Of these recognised tax-exempt charities established in the form of societies, nine are identified as “Hong Kong Branch of Overseas Charities”. Of the rest, over 90% broadly fall within the following categories:

- Parent Teacher Associations.
- Local culture groups (*e.g.* Chinese opera, singing, drama, arts and dance groups).

⁵⁹ www.nd.gov.hk.

⁶⁰ www.swd.gov.hk/en/index/site_ngo/

- Region/district-based groups (*e.g.* rural committees, Kai-fong Neighbourhood Association, Junior Police Call, District Community Centre).
- District religious groups (*e.g.* Ministries/Churches/Temples).
- Patient support groups.
- Education related groups.
- Local religious groups.
- Groups serving the Hong Kong community generally.

786. After receiving the registration or application, the PLO checks and verifies the information provided in the documents submitted. Under certain circumstances, the Commissioner of Police can under the SO refuse the registration or application for exemption after consulting with the Secretary for Security regarding the interests of national security or public safety, public order or protection of the rights and freedom of others (s.5A(3) SO).

787. The society has to notify the police of any change in the above information in writing within one month. Failure to do so is an offence and every office-bearer of the society will be criminally liable for the breach. Moreover, the police may, at any time, by notice in writing served on any society, require the society to submit in writing within a specified timeframe (being not less than seven days) such information as the Police may reasonably require for the supervision of societies under the SO. The information required may include the income, the source of the income and the expenditure of the society or its branch. Police officers may, where they reasonably believe that it is necessary to do so in connection with the supervision of societies under the SO, at all reasonable times enter into any place or premises, apart from residential premises, which they have reason to believe is or are kept or used by any society or any of its members as a place of meeting or place of business. Between 2003 and 2007 there have been no prosecutions against NPOs for a failure to report.

788. If an NPO is incorporated under the CO, it must file an annual return in the prescribed form and keep proper books of account for seven years. As such companies are public companies, the annual returns also need to include balance sheets and the accompanying auditor's report. The annual return should contain information relating to the company including the names of the directors and secretaries, the registered office address, the number of members, and nature of business. The information is available to the public. Unlike the checks carried out in relation to office-bearers of NPOs established under the SO, under the CO, the Companies Registrar does not conduct checks or vet the directors of the applicant NPO before issuing a certificate of incorporation.

789. For statutory NPOs, their objectives and activities are set out in their establishing ordinances. Statutory NPOs are required to file the information of board chairman, members, management staff, etc. with the authorities. For example, the Community Chest of Hong Kong is required to file with the CR the following information and make it available to the public:

- Notice of the address of the office of the corporation and any change thereto.
- A copy of the constitution and any amendment thereto, certified as correct by the president.
- The name and address of any person appointed under s.5 to sign contracts and other instruments and any change therein, certified as correct by the president.
- The names and addresses of the officers of the corporation and the members of the board and any change therein, certified as correct by the president.

Sanctions

790. Violation of oversight measures: The sanctions available for violations of oversight measures or rules by an NPO or persons acting on behalf of an NPO depend on the legal basis of the NPO. For example, for NPOs which are supported by the SWD, sanctions are available to the SWD for breaches of funding conditions which have been used, for example, for breaches of reporting conditions. NPOs supported by the SWD are monitored according to the Funding and Service Agreements, subventions guide and manual which are not statutory in nature. Sanctions are available for breaches of funding conditions, for example, to withhold or terminate support if an NPO fails to exercise reasonable and prudent financial management and achieve reasonable standard of performance or comply with rules. There have been two NPOs in relation to which support was withheld or terminated due to unsatisfactory service performance and problems in corporate governance respectively.

791. Breaches of AML/CFT legislation: Under UNATMO, the collection or provision of funds for terrorism and the making of funds or financial services available to terrorists are criminal offences. The legislation applies to all entities without exception, including NPOs. Any member of an NPO is required to make a disclosure to an authorised officer, *i.e.* the JFIU, if he/she comes across with any property, which he/she knows or suspects to be terrorist property or property intended to be used for terrorism, or crime proceeds. Failure to disclose the knowledge or suspicion is an offence under UNATMO, OSCO or DTROP, as appropriate.

792. Freezing and forfeiture of terrorist property: Under s.6 UNATMO, where the Secretary for Security has reasonable grounds to suspect that property/funds held by any person are terrorist property, he may, by notice in writing specifying the property/funds, direct that the property/funds not to be made available, directly or indirectly, to any person except under the authority of a licence granted by him. Property/funds can be restrained in this way for up to two years or until the conclusion of proceedings concerning the property/funds. Section 13 UNATMO allows the Court of First Instance to subsequently order the forfeiture of the property or funds under certain conditions.

793. Withdrawal of tax-exempt status: If in processing an application for recognition as a tax-exempt charity or making a tax assessment, an IRD officer suspects misuse of an NPO in terrorism or TF, s/he is required under s.12 UNATMO to make a disclosure to the JFIU. To qualify as a tax-exempt charity, the objects of the organisation must be exclusively charitable. If a tax-exempt charity is involved in terrorism, its objects are unlikely to be exclusively charitable. Apart from possible criminal sanctions under UNATMO, the tax-exemption may be withdrawn. Approximately 80 approvals for tax-exemption are withdrawn each year by the IRD (though none have been withdrawn because of concerns re TF) and 200-300 approvals for tax exempt status are granted each year.

794. Regulation of and sanctions concerning fund-raising activities: Under s.4(17)(i) SOO, anyone who organises, provides equipment for or participates in charitable fund raising activities for collection of funds in public places without a permit commits an offence. Failure to comply with any permit conditions may render future application by the same applicant to be rejected. Under s.22 GO, all lotteries are illegal except, among others, those licensed by the Television and Entertainment Licensing Authority (TELA). Lotteries for fund-raising licensed by TELA have to be in compliance with licence conditions which limit the use of the proceeds of the lottery, specify the format of the lottery ticket and the timing of sale. These conditions require NPOs to prepare income and expenditure statements after lottery events which must be audited. When the statement is available for public inspection, TELA adds an announcement to that effect on its internet homepage. Contravention of any licence condition is an offence (s.22(6)).

NPOs should be licensed or registered

795. As noted above, NPOs in Hong Kong are not centrally licensed or registered. The IRD does however keep a list of the names of tax-exempt charities⁶¹ which, as noted above, covers nearly all NPOs as defined by FATF. The list is available on the website of IRD. IRD also keeps information about other NPO organisations if they pay tax under the IRO. Information maintained by the IRD can be disclosed under specified conditions to the JFIU by virtue of the disclosure obligations under UNATMO, OSCO and DTROP or produced to law enforcement agencies by production orders under OSCO and DTROP.

Maintain and make available records for at least five years

796. The majority of NPOs in Hong Kong are, as companies incorporated under the CO, required to file an annual return in the prescribed form and to keep proper books of account for seven years. There are however no requirements for the retention of documents applicable to non-corporate entities registered under the SO.

797. The IRD regularly reviews the tax exempt status of charitable NPOs under s.88 of the IRO. The IRD will, from time to time, call for account statements, annual reports or other documents to review the tax-exempt status ensuring that the institution's objects are still charitable and its activities are compatible with its objects. The IRD will examine larger transactions to check that funds raised have been spent as intended. The SWD requires NPOs receiving support to retain the books of accounts and other related document either permanently or for a period from two years to seven years according to the nature of the documents.

798. Under the conditions of the permit issued by SWD, for fund-raising events where the monies collected will be spent outside Hong Kong, the audited accounts must be published in local newspapers. If the gross donation income does not exceed HKD 50 000, the audited account may be uploaded to the organisation's own website for at least six months and hard copies should be retained for public inspection. In addition, paragraph 3.2(d) of the *Guide on Preventing the Misuse of Charities for Terrorist Financing* encourages NPOs to maintain, for at least five years, and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent consistently with the purposes and objectives of the NPO. These guidelines are not however legally binding or enforceable.

Domestic co-operation, co-ordination and information sharing

799. The JFIU is the central point of contact for jurisdictional or international exchange of information concerning NPOs. Law enforcement agencies receiving relevant information or intelligence will be passed to the JFIU for initial action. For non-law enforcement agencies (*e.g.* SWD or IRD), whenever there is suspicion that a particular NPO is involved in terrorism or TF, a disclosure will be made under s.12 UNATMO. On receiving a referral from law enforcement agencies or a disclosure from non-LEAs, the JFIU conducts initial analysis. The disclosure with added intelligence is then forwarded to the designated investigation team of the Hong Kong Police for further investigation.

800. The JFIU has recently established a working group with relevant authorities which hold information on NPO to discuss matters of concern regarding information sharing. TELA's internal guidelines on STR reporting were issued on 3 August 2007, while SWD departmental guidelines were issued on 14 December 2007. The IRD issued a departmental circular in September 2007.

801. Law enforcement agencies can obtain information from or relating to NPOs through production orders, search warrants or witness orders by virtue of UNATMO, OSCO or DTROP as appropriate,

⁶¹ www.ird.gov.hk/eng/tax/ach.htm.

though they have not yet done so in relation to the NPO sector. Failure to comply with the orders is an offence under the ordinances. Under s.12 UNATMO, and s.5A OSCO and DTROP, NPOs or relevant government departments are required to submit STRs to the JFIU, including disclosures of information which they hold in respect of NPOs when they suspect any property to be terrorist property or crime proceeds. Failure to make a disclosure is an offence under the ordinances. The requirement to report STRs overrides tax secrecy provisions.

International requests for information

802. The JFIU is the central point of contact for international exchange of information regarding NPOs involved in terrorism, TF or other criminal activities. The JFIU is empowered to exchange information with overseas financial intelligence units and law enforcement agencies, under UNATMO, OSCO and DTROP. These three pieces of legislation do not require the JFIU to enter into MOUs with overseas counterparts for such information exchange. The procedures follow the Egmont Group's *Principles of Information Exchange*.

803. The JFIU, after receiving information from overseas, will analyse it and approach relevant departments or organisations for information about the NPO under analysis or investigation. There is no legal provision restricting the sharing of information of NPOs amongst government departments, except the IRD. The JFIU enjoys virtually unlimited direct or indirect access to relevant databases with the exception of the IRD database and during the normal course of their duties, either analytical or investigative, can provide this information to international counterparts upon request.

5.3.2 Recommendations and Comments

804. Hong Kong has taken a number of important steps regarding its NPO sector, particularly in view of the finding of the recent domestic review that the sector is of relatively low risk of misuse for TF. Conducting that domestic review was an important step which provided useful information on the characteristics and scope of the NPO sector. The IRD conducted a study in December 2007 and computed the annual turnover of the tax-exempt NPOs to be around HKD 25 billion. While the review included a general survey of the NPO sector and of the adequacy of current laws and regulations relating to NPOs, concluding that they were generally commensurate with the level of risk, it did not address some of the gaps identified by the evaluation team in the supervision/ monitoring of the NPO sector. These issues should be addressed in any periodic reassessments of the sector.

805. Hong Kong has engaged the NPO sector specifically on TF matters through a government/NPO sector focus group established in mid-2006 to exchange views on the prevention of TF in the sector and has issued advisory guidelines in July 2007 to the sector, which are welcome developments. Despite the fact that the guidelines have only recently been issued and are only advisory in nature, the authorities have recently conducted a survey of major NPOs and found that there is a high awareness of the risk of TF across the NPO sector. Further outreach to the sector, including promotion of the ND guidelines, should be undertaken, as recommended in the recent domestic review.

806. In relation to effective supervision/monitoring of NPOs which account for a significant portion of the financial resources under control of the sector; and a substantial share of the sector's international activities, a lack of comprehensive summary data on the financial resources of the sector made it difficult during the on-site visit for the evaluation team to assess effectiveness in this area. The IRD study in December 2007 has addressed this gap to a large extent. Nonetheless, Hong Kong authorities should further improve data collection and/or collation to enable them to form a clearer picture of the resources of the sector. Leaving this issue to one side, however, the extent and type of information held on the purpose and objectives of NPOs and on the identity of owners and controllers of NPOs and office-bearers varies, depending on the legal form that the NPO takes. Of some concern is that for NPOs established as companies under the CO, no checks are done on the background of owners/office-bearers other than against the UN lists. Moreover, the problems with identifying the

beneficial ownership of corporate entities referred to elsewhere in this report generally apply specifically to those corporate entities which are NPOs (the majority of NPOs).

807. As for the retention of records, record-keeping requirements also vary somewhat and, while generally adequate for the majority of NPOs (*i.e.* companies established under the CO), are less clear for other forms of NPOs (*i.e.* societies and trusts). There is a range of sanctions available in relation to NPOs, depending on the NPO’s legal basis and these sanctions have been used by various agencies, but not for ML or TF-related issues. This makes it difficult to judge the effectiveness of available sanctions in an AML/CFT context, though the relevant authorities indicated their willingness to use the available sanctions should the circumstances justify it (*e.g.* for non-reporting of STRs).

808. In the absence of centralised system of registration/licensing for NPOs, Hong Kong authorities should take measures to ensure a more consistent approach to licensing/registration requirements for NPOs, the maintenance of information on persons owning, controlling or directing their activities and record-keeping requirements, regardless of the legal form of the NPO. In the context of the review of the sector being conducted by the Law Reform Commission, and given the significant role of the NPO sector in Hong Kong society, authorities should consider establishing/assigning a specific competent authority in to oversee the activities of NPOs for AML/CFT and other purposes.

809. The evaluation team notes the Hong Kong authorities’ overall assessment that the level of risk in the NPO sector of misuse for TF is low, due to the sector’s particular characteristics. Nonetheless, the JFIU and other relevant authorities should remain vigilant and continue to monitor the sector’s understanding of and compliance with the STR reporting requirements.

5.3.3 Compliance with Special Recommendation VIII

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
SR VIII	LC	<ul style="list-style-type: none"> • While a domestic review has recently been completed, and various statistics are kept by relevant authorities, there remain some information gaps in relation to the size and financial scope of the NPO sector in Hong Kong. • Outreach has recently commenced to the NPO sector but it is too early to fully judge effectiveness. • Requirements to identify persons who own, control or direct the activities of NPOs vary depending on the legal form of the NPO and, for NPOs established as companies (the majority of NPOs), are not fully adequate, even allowing for the lower level of risk. • The requirement to maintain documents for at least five years is not met for NPOs other than those established as companies under the CO.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R.31 and R.32)

6.1.1 Description and Analysis

Recommendation 31

810. Hong Kong has no central committee that oversees AML/CFT policy⁶². Instead, it relies on close working relations between the different policy and regulatory agencies tasked with relevant responsibilities. While the Narcotics Division, Security Bureau (ND) has a leading role in this area, many other policy bureaus (*e.g.* the Financial Services and the Treasury Bureau (FSTB) and the Commerce and Economic Development Bureau) and relevant agencies (such as the Hong Kong Police, C&ED, ICAC, HKMA, SFC and OCI) are involved. As Hong Kong is a small jurisdiction, inter-agency co-operation is close and commonly face-to-face. Meetings of policy bureaus, enforcement agencies, the JFIU, and financial regulators are held to:

- Discuss and follow-up on AML/CFT issues such as those arising from FATF meetings.
- Collect views when a policy decision on AML/CFT matters is called for.
- Co-ordinate efforts when there is an AML/CFT initiative involving various stakeholders.

Policy agencies

811. At the policy level, co-ordination is achieved by various means: regular and ad hoc meetings; circulation and exchange of information; staff secondments, and, joint participation in FATF and APG meetings. An Executive Officer in the ND is specifically tasked to circulate AML/CFT materials and information to stakeholders, and seek and consolidate their comments. A Police Superintendent is seconded to the ND on a permanent basis to support co-ordination with enforcement agencies. When necessary, officers from other competent authorities can be similarly seconded to ND. The evaluation team understands that there is no formal, central co-ordination mechanism at the officials' level, such as a central co-ordination committee, responsible for overall co-ordination of AML/CFT matters.

Law enforcement and FIU

812. The Police and C&ED are the principal agencies enforcing the DTROP, OSCO and UNATMO. In addition to jointly manning the JFIU, the two agencies also work closely with each other on policy and operational matters. The heads of the respective financial investigation units and their staff meet regularly to discuss matters of common concern and conduct joint operations to enforce the registration and record-keeping scheme for RAMCs. The ICAC has designated contacts for

⁶² In April 2008 (after the period of time to which this evaluation relates) Hong Kong established the central co-ordinating committee on AML and CFT. That committee's role is to: (i) steer and co-ordinate the strategic development of Hong Kong's AML/CFT regime in line with international standards; (ii) ensure appropriate legal, regulatory and supervisory systems are in place; (iii) monitor the implementation of AML/CFT policies; and (iv) review the effectiveness of Hong Kong's AML/CFT regime.

operational liaison with the Police and C&ED (information sharing and operational assistance) in relation to the investigation of corruption facilitated money laundering cases.

813. The Head of the JFIU chairs the Suspicious Transactions Reporting Working Group (STRWG), comprising enforcement agencies (Hong Kong Police, C&ED and ICAC), financial regulators (HKMA, SFC and OCI), representatives from private sector professional bodies and the ND. The STRWG is primarily a forum at which issues relating to suspicious transaction reporting are discussed.

814. The Hong Kong Police and C&ED also work closely with other enforcement agencies and if necessary, multi-agency task forces can be formed. For example between 2001 and 2004, a joint Police/ICAC task force was set up to investigate ML and corruption allegations in relation to a number of banks and remittance agencies connected to offshore commercial fraud.

Financial regulators

815. The financial regulators (HKMA, SFC and OCI) have entered into memoranda of understanding among themselves to provide for co-operation, information sharing and joint initiatives. The MOUs set out the modes of co-operation between the regulators in the supervision of cross-sectoral activities of financial institutions. In accordance with the MOUs, the regulators hold periodic meetings. AML/CFT issues are a standing agenda item.

816. The HKMA maintains regular dialogue with other government agencies involved in the fight against ML and TF. There are clear gateways under s.120 BO for the HKMA to exchange information with law enforcement agencies and other financial regulators.

817. One of the functions of the SFC under the SFO is to co-operate with and provide assistance to regulatory authorities and organisations. The SFC maintains regular contact with other enforcement agencies, the HKMA and the OCI with a view to, amongst other things, combating securities-related ML and TF. Under s.378 SFO, the SFC may disclose confidential information to law enforcement agencies and financial regulators so as to assist them in the performance of their functions.

818. Pursuant to s.4A(2)(f) ICO, one function of the OCI is to co-operate with and assist financial services supervisors. Section 53A further provides for the disclosure of information to other supervisory authorities. The OCI has entered into MOUs with the HKMA, the SFC and the Mandatory Provident Fund Schemes Authority to facilitate exchange of information and mutual assistance, including with respect to AML/CFT matters. The OCI may disclose information to the Financial Secretary, an inspector or any public officer appointed by the FS, the HKMA, the SFC or the MPFA to enable them to exercise their functions (s.53A(3)(e) and s.53A(3B)).

Additional elements

819. The ND and the JFIU have formed focus groups with RAMCs, money lenders, estate agents, charities, and dealers in precious metals and stones to discuss AML/CFT matters. The groups have been consulted on the production of AML/CFT training kits, implementation of SR VII, the *Guideline for Charities on Combating Terrorist Financing*, and the revision of the AML/CFT Guidelines for RAMCs. When necessary, the ND also surveys relevant sectors on specific AML/CFT issues. The STRWG involves representatives of the financial institutions and DNFBPs. It aims to improve the quality and quantity of STRs; enhance reporting entities' knowledge of STR laws, practices and procedures; and, strengthen AML/CFT co-operation.

820. The HKMA consults the two industry associations (the Hong Kong Association of Banks and the Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies) when developing and refining its AML/CFT guidelines. In addition, in 2006 the HKMA re-activated the Industry Working Group on Prevention of ML and TF (IWG). The IWG, chaired by the HKMA,

comprises representatives from 20 AIs and the JFIU. It provides a forum for the HKMA to engage the banking sector about AML/CFT issues and to consult on proposals.

821. It is normal practice for the SFC to consult the public in the development and continuous refinement of its *Securities Guidelines*. Consultation papers are posted on the SFC website. In particular, the consultation paper on the last revised *Securities Guidelines* was circulated to parties, including industry associations, and posted on the SFC website for comment⁶³.

822. The OCI consults major industry bodies (*i.e.* the Hong Kong Federation of Insurers, the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association) in the development and continuous refinement of its *Insurance Guidelines*. Regular meetings are held involving the OCI and these industry bodies to discuss matters of mutual concern, including AML/CFT matters. The OCI also organises AML/CFT seminars for the insurance industry from time to time. During those occasions, industry practitioners are given opportunities to raise practical questions including with respect to compliance with the *Insurance Guidelines*.

Recommendation 32 (Reviews of the Effectiveness of the AML/CFT System)

823. The Hong Kong authorities have not undertaken a comprehensive threat or risk assessment against which it might measure the effectiveness of its measures. However, both routine reviews and thematic reviews are conducted from time to time to gauge the effectiveness and efficiency aspects of Hong Kong's AML/CFT system, but these initiatives tend to be driven by external pressures (*e.g.* revised *FATF Recommendations*) or *ad hoc* events.

824. Routine reviews are conducted by each competent authority, normally on a periodic basis, by examining statistics and other relevant information. The results of operational reviews are forwarded to ND which examines them to see if there is any change. Competent authorities also report any untoward or peculiar circumstances to ND. ND will then liaise with stakeholders to work out appropriate responses. The financial regulators similarly conduct regular reviews of their AML/CFT supervisory frameworks, primarily through reviews of their guidelines, through on-site and off-site monitoring of compliance, and through industry consultation.

825. Thematic reviews are conducted when a particular concern about the effectiveness about the AML/CFT regime arises, when new trends or typologies are identified, or when routine review has revealed deficiencies in the regime. For example, between 2005 and 2007 the authorities undertook various reviews on the effectiveness of the STR reporting requirements, on the effectiveness of the ML and TF offences, on the potential AML/CFT threat arising from the development of mobile phone remittance, and on the regulation of remittance agents and money changers.

Resources (Policy Makers)⁶⁴

Policy agencies should be adequately structured, funded, staffed and resourced

826. The ND is responsible for setting policy on and co-ordinating the implementation of AML and CFT measures in Hong Kong. The ND is led by the Commissioner for Narcotics, who is a senior directorate officer in the Hong Kong government. Since 2006, the ND has been expanding gradually to cope with increasing workload. The Division has seven professional staff: the Commissioner; one Principal Assistant Secretary for Security (Narcotics) Special Duties; three Assistant Secretaries for Security (Anti-Money Laundering); one Executive Officer; and, one Superintendent of Police

⁶³ The comments received and the consultation conclusions can be found on the SFC's website at <http://www.sfc.hk/sfc/html/EN/speeches/consult/consult.html>

⁶⁴ As related to R.30; see s.7.1 for the compliance rating for this Recommendation.

seconded to the division. They form the core team in the Hong Kong government to formulate and review AML/CFT strategies, legislation and policies.

827. The Security Bureau, of which the Narcotics Division is one part, has a sufficient and relatively stable annual budget. The 2007-08 budget for all internal security matters for the Security Bureau was HKD 98.4 million (USD 12.6 million). The bureau is able to obtain additional resources (human and technical) as circumstances arise. The recent expansion of the division's staffing is a case in point.

Professional standards of staff of policy agencies

828. The government has a set of shared core values which managers at all levels are expected to transmit, nourish and reinforce through leadership and personal example. In addition, staff in the ND are all civil servants and, as such, are subject to an integrity checking system which is designed to ensure that employees are of good character and high integrity. There are clear guidelines, which require civil servants to be vigilant to avoid any real or apparent conflict of interest situation. For example, senior civil servants are required to declare, on a regular basis, their private investments in and outside Hong Kong. Moreover, as a general rule, civil servants may not take up outside work which is liable to affect the performance of or give rise to a conflict of interest with official duties.

829. The POBO prohibits bribery in the public and private sectors. It is an offence for a civil servant to, without permission: solicit or accept an advantage; solicit or accept an advantage in relation to his official capacity; maintain a standard of living beyond his means; or, be in control of unexplained pecuniary resources or property. In addition, any breach of the *Civil Service Regulations* can lead to disciplinary action. Civil servants are also subject to *Government Security Regulations* which concern confidentiality of information and documents. Any leak of or unauthorised access to confidential information and/or documents may lead to disciplinary proceedings and/or criminal prosecution. Punishment under formal disciplinary action may include reprimand, severe reprimand, financial penalty, demotion, compulsory retirement or dismissal. An officer may be suspended from duty pending the outcome of any disciplinary or criminal proceedings if that is considered to be in the public interest. Apart from providing for disciplinary actions for misconduct, the *Public Service (Administration) Order* also provides that the government may require an officer to be retired in the public interest.

Staff training (policy makers only)

830. All staff of the ND undergo specific training tailored for their grades, including:

- Induction training – various courses in law, media skills, language and personal development in their first two years of service.
- Post-probation training – on completion of probation, officers can be sent to universities overseas.
- Junior directorate training programme – further training in management and leadership skills is provided to equip senior officers for directorate responsibilities.
- National studies programmes and mainland familiarisation visits – officers are encouraged to participate in the national studies programmes and familiarisation visits to the Mainland.
- Executive development programmes – selected officers are offered sponsorship to attend degree programmes or short-term executive development programmes at overseas institutions.
- Sponsorship for part-time studies – in line with the philosophy of continuous learning, officers are offered sponsorship to pursue part-time studies in relevant fields and foreign languages.

831. When new to the post, staff of the ND will first visit relevant bureaus and agencies to receive briefings on AML/CFT issues and developments. Staff of the ND also seize opportunities to enrich their AML/CFT knowledge by attending training courses and seminars organised for law enforcement agencies and the private sector.

Effectiveness

832. Staff of relevant competent authorities are clearly involved in co-operative efforts, with a good understanding of each other's role. The evaluation team was impressed by the professionalism and competence of staff that it met. Joint agency meetings and forums have produced useful guidance and effective operations across all sectors; policy, enforcement and regulatory. However, Hong Kong does not have a central AML/CFT strategy as such, developments to the AML/CFT system appear to be reactive measures and there appears to be a reluctance to take matters to the Legislative Council where amendments to ordinances are required. This raises some question as to the effectiveness of the co-ordination mechanisms at the most strategic level and it is not entirely clear how well placed the Narcotics Division is to drive a strategic whole of government approach to AML/CFT.

6.1.2 Recommendations and Comments

833. While communication between relevant agencies in Hong Kong appears to be ongoing and very constructive, its focus is primarily on operational co-ordination. Hong Kong does not have a central AML/CFT strategy as such, developments to the AML/CFT system appear to be reactive measures and there appears to be a reluctance to take matters to the Legislative Council where amendments to ordinances are required. Hong Kong should consider creating a mechanism to co-ordinate AML/CFT developments at the policy level. It is recommended that Hong Kong develop a multi-agency AML/CFT strategy and associated action plan and that agencies work to place relevant issues before the Legislative Council.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of Factors Underlying Rating
R.31	LC	<ul style="list-style-type: none"> Effectiveness concern: The mechanisms to co-operate and co-ordinate domestically concerning development and implementation of policies and activities to combat money laundering and terrorist financing are impacted by some reluctance to elevate matters to the Legislative Council where amendments to ordinances are required, and the fact that developments to the AML/CFT system appear to be reactive rather than proactive measures.

6.2 The Conventions and UN Special Resolutions (R.35 & SR I)

6.2.1 Description and Analysis

Recommendation 35 & Special Recommendation I

834. Article 13 of the *Basic Law* provides that the Central People's Government of the PRC is responsible for foreign affairs relating to Hong Kong. Article 153 deals with the application of international agreements to Hong Kong and their implementation. The *Vienna Convention*, the *Palermo Convention* and the *Terrorist Financing Convention* are applied to Hong Kong under the provisions of Article 153.

835. UN Security Council Resolutions are implemented in Hong Kong pursuant to Article 48(8) of the *Basic Law*, which provides that the Chief Executive shall implement directives issued by the CPG

in respect of relevant matters provided for in the *Basic Law*. Because foreign affairs are the responsibility of CPG under Article 13, Article 48(8) mandates the issuing of directives that enable Hong Kong's implementation of UN Security Council Resolutions.

The Vienna Convention

836. The *Vienna Convention* applied to Hong Kong prior to resumption of Chinese sovereignty in 1997 and continues to be applied to Hong Kong. Hong Kong is compliant with the convention due to its comprehensive drug-related crimes, ML provisions, investigative powers, witness protection laws, restraint and proceeds recovery laws and mutual legal assistance/extradition provisions. Hong Kong has not taken up certain non-mandatory provisions of the convention (*e.g.* jurisdiction predicated upon the nationality principle and dissemination of recovered proceeds to “intergovernmental bodies specializing in the fight against illicit traffic in and abuse of narcotic drugs and psychotropic substances”).

The Palermo Convention

837. PRC ratified the *Palermo Convention* on 23 September 2003. It was applied to Hong Kong on 27 September 2006. Again, due to fairly comprehensive ML provisions, restraint and proceeds recovery laws and mutual legal assistance/extradition provisions – as well as comprehensive corruption-related offences under the *Prevention of Bribery Ordinance* – Hong Kong is compliant with the Convention.

838. As noted, Hong Kong has not rendered it an offence for a person to “participate” in an organised criminal group within the meaning of Article 5(1)(a)(ii). However, it does recognise conspiratorial liability in accordance with Article 5(1)(a)(i) and is thereby compliant with Article 5.

839. Extradition in Hong Kong is governed by the *Fugitive Offenders Ordinance* Cap. 503 (FOO). All extradition must occur pursuant to s.3, which empowers the Chief Executive to promulgate orders to give effect to “arrangements for the surrender of fugitive offenders” provided such arrangements are in “substantial conformity” with the provisions of FOO. Because extradition in respect of offences covered by the *Palermo Convention* is covered by its bilateral agreements, Hong Kong complies with the convention's extradition requirements (Article 16). Further to this, Hong Kong is also looking to promulgate an order under s.3 FOO to enable the convention itself to function as a legal basis for extradition.

The Terrorist Financing Convention, S/RES/1267(1999) and S/RES/1373(2001)

840. The PRC ratified the *Terrorist Financing Convention* on 19 April 2006 and applied it to Hong Kong with effect from 19 May 2006. Although UNATMO was enacted in August 2002, there are deficiencies with Hong Kong's compliance with Special Recommendation I, Special Recommendation II and Special Recommendation III, as outlined in Section 2 of this report.

841. On the criminalisation front, to the requirements of the *TF Convention* (Articles 1 & 2):

- Section 7 UNATMO does not extend to ‘funds’ as broadly defined by the Convention.
- The definition of ‘terrorist act’ does not extend to acts or threats directed at international organisations.
- The ‘civil protest’ exemptions to certain classes of terrorist acts as defined in the UNATMO are of potentially broad application.

842. On the freezing front, Hong Kong seeks compliance with S/RES/1267(1999) via UNSAR which does not effect an express freeze, though the prohibition against making funds available fills this gap to some extent. With respect to S/RES/1373(2001), Hong Kong lacks the capacity to implement freezes on terrorist property.

843. On the forfeiture front, there is no capacity to forfeit “funds used or allocated for the purpose of committing” terrorist offences, other than those associated with Al Qaeda and the Taliban and covered under s.3 UNSAR⁶⁵. Contrary to the requirements of the *TF Convention* (Article 8), there is no present capacity to forfeit “funds used or allocated for the purpose of committing terrorist offences”.

844. Article 18(b) of the *Terrorist Financing Convention* also requires states to require financial institutions and other professions involved in financial transactions to have efficient customer identification mechanisms in place. As noted previously, in Section 3 of this report, there are some deficiencies in Hong Kong’s customer due diligence. Of relevance here are the deficiencies noted with respect to identification of legal entities (Recommendation 5), unusual large transactions and patterns of transactions (Recommendation 11) and record keeping (Recommendation 10).

845. As such, Hong Kong has not gone far in terms of implementation of the *Terrorist Financing Convention*, S/RES/1267(1999) and S/RES/1373(2001).

Additional elements

846. On 13 November 2001, the PRC acceded to the *International Convention for the Suppression of Terrorist Bombings* and applied it to Hong Kong. The PRC ratified the *UN Convention Against Corruption* on 13 January 2006. The Convention has applied to Hong Kong since 12 February 2006.

6.2.2 Recommendations and Comments

847. Hong Kong has implemented all critical provisions of the *Vienna Convention* and the *Palermo Convention*. However, little is in place to implement the *Terrorist Financing Convention* and relevant Security Council resolutions. Recommendations for reform in these respects are enumerated in Sections 2.2 and 2.4 of this report.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of Factors Underlying Rating
R.35	LC	<ul style="list-style-type: none"> Significant shortcomings exist in implementation of the <i>Terrorist Financing Convention</i> (in particular articles 2, 8 and 18): the TF offence does not extend to ‘funds’ as broadly defined by the Convention; the definition of ‘terrorist act’ does not extend to acts or threats directed at international organisations; the civil ‘protest’ exemptions to certain classes of ‘terrorist acts’ are of potentially broad application; there is no current capacity to effect forfeiture of funds used or allocated for the purpose of committing terrorist offences; and not all customer due diligence requirements have been implemented.

⁶⁵ Sections 6 and 8 of UNATMO are intended to fill this gap when they come into force in the future.

	Rating	Summary of Factors Underlying Rating
SR I	PC	<ul style="list-style-type: none"> • Significant shortcomings exist in implementation of the <i>Terrorist Financing Convention</i> (in particular articles 2, 8 and 18): the TF offence does not extend to 'funds' as broadly defined by the Convention; the definition of 'terrorist act' does not extend to acts or threats directed at international organisations; the 'civil protest' exemption to certain classes of 'terrorist acts' are of potentially broad application; there is no current capacity to effect forfeiture of funds used or allocated for the purpose of committing terrorist offences; and not all customer due diligence requirements have been implemented. • S/RES/1373(2001) has not been fully implemented and shortcomings exist in relation to implementation of S/RES/1267(1999); Hong Kong lacks the capacity to implement express freezes on terrorist property and has no capacity to forfeit "funds used or allocated for the purpose of committing" terrorist offences other than those associated with Al Qaeda and the Taliban.

6.3 Mutual Legal Assistance (R.36-38, SR V)

6.3.1 Description and Analysis

Recommendation 36

848. The principal laws governing mutual legal assistance in criminal matters in Hong Kong are the *Mutual Legal Assistance in Criminal Matters Ordinance* Cap. 525 (MLAO) and the *Evidence Ordinance* Cap. 8.

849. The MLAO came into force in 1997. It regulates the provision and receipt of assistance in criminal matters between Hong Kong and places outside Hong Kong (excluding other parts of the PRC). It is also used to give effect to agreements on mutual legal assistance binding on Hong Kong. The MLAO also governs the terms under which co-signatories to multilateral conventions, such as the *Vienna Convention*, are able to seek assistance pursuant to those conventions.

850. Under Article 96 of the *Basic Law*, and with authorisation from the CPG, Hong Kong has negotiated and signed 22 bilateral agreements on mutual legal assistance (MLA), with; Australia, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Israel, Italy, Republic of Korea, Malaysia, Netherlands, New Zealand, Philippines, Portugal, Poland, Singapore, Switzerland, UK, Ukraine and USA. Except for those recently established agreements with Finland, Germany, Ireland and Italy, all are in force. Bilateral agreements on MLA are implemented by way of orders made by the Chief Executive in Council, with the approval of the Legislative Council under s.4 MLAO. Hong Kong is also able to provide assistance in the absence of a bilateral agreement, providing the requesting jurisdiction gives an undertaking to render similar assistance to Hong Kong in the future.

851. Importantly however, the MLAO does not apply to mainland China or Macao. DOJ officials have advised that, notwithstanding long-standing intentions to institute arrangements redressing this gap, the only legal mechanism for provision of MLA between Hong Kong and the mainland and Macao is via court-to-court assistance under the *Evidence Ordinance* (EO).

852. The EO pre-dates MLAO. It permits court-to-court requests for the examination of witnesses or production of documents to facilitate criminal proceedings that have either been instituted or are likely to be instituted if the evidence is obtained. Being court-to-court, these requests do not depend upon any bilateral agreement. Because the types of assistance available under the EO are comparatively limited, MLAO is more frequently used.

Provide the widest possible range of mutual legal assistance

853. Under MLAO, a requesting jurisdiction may seek assistance for the purpose of a criminal matter, *i.e.* for the purpose of *i*) investigation or prosecution of an offence against a law of a place outside Hong Kong ('external offence') or *ii*) investigation into an ancillary criminal matter. 'Ancillary criminal matter' covers restraint, forfeiture and related enforcement proceedings. The following assistance may be generally afforded under MLAO:

- Taking of evidence by a magistrate (including via live television link) and orders for witnesses to produce anything, as though under summons (s.10).
- Transfer on a voluntary basis of a person, in custody or otherwise, out of Hong Kong to assist in a criminal matter (s.23).
- Service of documents relating to a court process outside Hong Kong (s.31).

854. There are limits upon the scope of s.10:

- Evidence (whether *viva voce* or tendered by way of a requirement for a thing to be produced) not compellable in the requesting country is not compellable.
- Evidence that would be not be compellable if the matter was tried in Hong Kong is not compellable.
- Persons may not be asked about "things" that have been in that person's control which may be relevant to the matter in question.

855. The following assistance may be afforded under MLAO only where it relates to a foreign offence carrying at least two years' imprisonment ('external serious offence'):

- Search and seizure of things, including information, documents or evidence, pursuant to a court warrant (s.12).
- Court orders for production of materials, including books, documents or other records in any form and any articles or substance (s.15).
- Obtaining restraint of property pending issue of confiscation or forfeiture orders and enforcement of confiscation or forfeiture orders (s.27).

856. Hong Kong authorities have advised that the restriction of these types of assistance to criminal matters involving external serious offences is driven by a policy imperative that regards these forms of assistance as inherently more intrusive. Indeed, production orders under s.15 are available only where *i*) it can be shown that the material obtained is likely to be of substantial value and *ii*) the granting of an order is in the public interest. DOJ officials advised that these thresholds are unproblematic in practice and that any material that is 'not insubstantial' evidentially would satisfy the first of these requirements.

857. Hong Kong authorities maintain that they are able to and do in fact provide MLA in a timely, constructive and effective manner. Following enactment of the MLAO, the DOJ established a MLA Unit in early 1998 to function as the central authority. The MLA Unit is staffed by one deputy law officer and eight lawyers. All staff are involved full-time in processing MLA and extradition requests. In accordance with a government-wide 'Performance Pledge', counsel are required to acknowledge requests within ten working days. In urgent cases, counsel attempt to process requests within a timeframe specified by the requesting jurisdiction. Where requests involve applications to the court for warrants or orders, the MLA Unit will settle the necessary papers and provide associated advice to the assigned officer. If court hearings are necessary (*e.g.* to take evidence of a witness before a magistrate, to obtain a restraint order or to register an external confiscation order), MLA Unit counsel

will appear. Unless otherwise requested, once evidence is obtained it is sent to the MLA Unit for direct transmission to the requesting jurisdiction.

858. The evaluation team was advised that time taken to meet a request depends upon the nature and complexity of the request itself, with routine requests ‘usually’ processed within three to four months (often sooner) and urgent requests of a simple nature expedited as quickly as within a week if necessary.

859. Due to the dual criminality requirement (considered below in the context of Recommendation 37), unless the underlying factual setting would have been caught by s.7 UNATMO (or somehow captured by some other offence) the deficits in Hong Kong’s TF offences may limit Hong Kong’s capacity to render MLA for the purpose of facilitating foreign TF investigations and prosecutions. Hong Kong does however apply the dual criminality test flexibly and has not yet rejected a TF-related MLA request on grounds of dual criminality.

Conditions applied

860. There are mandatory and discretionary grounds for refusal of assistance contained in s.5 of the MLAO, but they are not unduly restrictive. Under s.5, the following requests shall be refused:

- Requests relating to prosecutions of a ‘political character’.
- Requests where there is no dual criminality.
- Request relating solely to an offence under the military law.
- Requests made for the purpose of prejudicing a person on account of race, religion, nationality or political opinion.
- Requests relating to a prosecution in circumstances of *autrefois* convict, *autrefois* acquit (the defendant has already been convicted or acquitted of an offence that was founded upon the same facts), or where a pardon has been granted.
- Requests that are contrary to the ‘essential interests’ of Hong Kong or that invite action that would impair the sovereignty or security/public order of the PRC.

861. It should be noted that the requirement for dual criminality is construed by reference to the conduct underlying the offence that gives rise to the request, without reference to the technical ingredients or elements of the offences (see further with respect to Recommendation 37 below).

862. Assistance may also be refused if the request relates to an offence punishable with the death penalty and if the requesting place fails to give an undertaking that the penalty will not be imposed.

863. A requesting jurisdiction that does not have a bilateral agreement with Hong Kong is required to supply a reciprocity undertaking before assistance can be rendered. This undertaking is couched in broad terms and requires the requesting jurisdiction to render assistance having an effect comparable to that sought from Hong Kong.

864. Under s.34 MLAO, the Chief Executive is required to notify the PRC government of all inward and outward requests. The CPG may issue an instruction to the Chief Executive to refuse to issue/action a request if the interests of the People's Republic of China in matters of sovereignty, security or public order would be significantly affected. Section 34 does, however, enable interim issuance/action in cases of emergency. The evaluation team was advised that, in practice, notification to the CPG is given via the Office of the Commissioner of the Ministry of Foreign Affairs for the PRC in Hong Kong. It was further advised that, of approximately 900 requests for assistance received since the inception of the MLA Unit, only four have resulted in an instruction from the CPG to deny assistance. In such cases, the requesting jurisdiction may raise the matter directly with the PRC.

Execution of mutual legal assistance requests

865. The central authority charged with receiving MLA requests in Hong Kong (the MLA Unit) maintains carriage of the matter until completion. To that end, the unit acts as a central co-ordinating hub that liaises with both external agencies and the requesting jurisdiction in order to expedite the request. Hong Kong's MLA provisions are uncomplicated and do not hinder the efficient processing of MLA requests. Under MLAO s.8, the formal requirements of requests are standard:

- Description of the nature of the criminal matter.
- A statement setting out a summary of the relevant facts and laws.
- Procedural specifications (*e.g.* confidentiality requirements or details of the manner and form in which any information, document or thing is to be supplied).
- A statement setting out the maximum penalty for the offence to which the matter relates.
- Other information that may be relevant.

866. In addition, as outlined below, the fetters placed upon the discharge of requests are not onerous.

Grounds for refusal of MLA requests

867. Under the MLAO, if a foreign jurisdiction has a mutual legal assistance agreement with Hong Kong, it may seek assistance in respect of an investigation or prosecution of an offence of a fiscal nature. For jurisdictions which do not have an MLA agreement with Hong Kong, the MLAO restricts assistance where an investigation is being conducted (but a prosecution not yet commenced) into an external offence relating to taxation. In such cases production orders may not be obtained over 'tax documents' that belong to a tax adviser/auditor and are (in specified ways) connected with the giving or obtaining of advice about the tax affairs of the client (s.15(9)(b) MLAO). There is no such impediment to the provision of court-to-court assistance under the EO where the request relates to an investigation into a fiscal offence, provided that the requisite threshold is met, *viz.* provided that if evidence is obtained proceedings are likely to be instituted before the requesting court.

868. MLAO s.15 governs requests to Hong Kong for production of material. Express restrictions upon fulfilling such requests are limited to recognition of legal professional privilege and do not extend to 'confidentiality' or 'secrecy' more generally.

Availability of competent authorities' powers for mutual legal assistance

869. Where a request relates to a foreign offence carrying at least two years' imprisonment (external serious offence), the following powers of competent authorities can be invoked:

- Search and seizure of things (including information, documents or evidence) pursuant to a court warrant (s.12).
- Court orders for production of materials, including books, documents or other records in any form and any articles or substance (s.15).
- Obtaining restraint of property pending issue of confiscation or forfeiture orders and enforcement of confiscation or forfeiture orders (s.27).

Determining the best venue for prosecution of defendants

870. Hong Kong's bilateral agreements provide a mechanism for determination of appropriate venue for prosecution in cases involving concurrent jurisdiction. Other cases stand to be dealt with on a

case-by-case basis. In addition, the requested party may refuse assistance if execution of the request would interfere with an ongoing investigation or prosecution being conducted by within the jurisdiction of the requested party. If necessary, the MLA Unit will co-ordinate with the Prosecutions Division and relevant law enforcement agencies in order to broker agreement.

Recommendation 37 (Dual Criminality Relating to Mutual Legal Assistance)

871. The MLAO requires that the offences underlying any MLA request satisfy the dual criminality requirement set out in s.5(1)(g): “A request ... shall be refused, if in the opinion of the Secretary for Justice ... (g) the request relates to an act or omission that, if it had occurred in Hong Kong, would not have constituted a Hong Kong offence.” Hong Kong authorities have advised that the dual criminality requirement is considered an important safeguard to ensure the proper operation of Hong Kong’s legal assistance regime. However, it is the criminal nature of the conduct underlying the offence, rather than technical parallels between the elements of respective offences, that is relevant in considering dual criminality. The leading authority in this context derives from a consideration of dual criminality in the context of extradition: *Cosby v Chief Executive HKSAR* [2000] 3 HKC 662.

872. For assistance not requiring compulsory measures, such as public record searches, interviews of witnesses or the release of information on a consensual basis, there is no need to resort to MLAO and therefore no dual criminality requirement.

Recommendation 38

873. The MLAO and DTROP both enable mutual legal assistance in the restraint and confiscation of proceeds and instrumentalities of crime. DTROP deals with proceeds of drug trafficking. The MLAO covers proceeds and instrumentalities of all criminal offences punishable with imprisonment for at least two years. This would include the offence of TF although, as noted, due to the dual criminality requirement, deficiencies in the scope of Hong Kong’s TF offence may limit Hong Kong’s capacity to comprehensively render assistance in TF cases.

874. DTROP/DTROPOr: Under s.28 DTROP, the Chief Executive may promulgate orders designating countries whose confiscation orders can be considered as though they were made pursuant to DTROP (with some modification). The net effect of such designations, therefore, is to confer legal recognition upon confiscation orders of certain other countries (termed ‘external confiscation orders’). Pursuant to this power, the Chief Executive has promulgated the *Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order* (DTROPOr). The terms upon which Hong Kong will entertain requests for registration and enforcement of drug trafficking related external confiscation orders are set out in Schedule 2 to the DTROPOr, paragraph 3 of which defines an external confiscation order as one relating to a drug trafficking offence, including pecuniary penalty orders and orders for the recovery of proceeds (direct and indirect) and instrumentalities. It also extends to orders for the recovery of amounts corresponding in value to such benefits. The definition expressly includes both civil and criminal orders and both *in rem* orders (for confiscation of identified assets) and *in personam* order (pecuniary penalty orders). Hong Kong can thus enforce on behalf of other jurisdictions a wider range of orders than are available to domestic agencies.

875. As under the OSCO and DTROP, the DTROPOr defines ‘realisable property’ in extremely broad terms. Where an external confiscation order has been made, it includes any property specified in the order. Otherwise, it includes any property held by a person to whom the defendant has directly or indirectly made a gift (as defined) and any property under the control of the defendant. Instrumentalities are not directly covered.

876. Under the Schedule 1, DTROPOr designates a range of countries, including some important partner countries, such as Australia, Canada, Malaysia, Netherlands, the PRC, Thailand, the United Kingdom and the United States. Further, s.3 DTROPOr extends coverage also to all countries to which the *Vienna Convention* applies.

877. Restraint is available only where proceedings are on foot and an external confiscation order has been made or may be made. An external confiscation order may be registered (and thereby enforced) under s.28 DTROP where *i*) it is not under appeal, *ii*) the defendant received due notice of the confiscation proceedings and *iii*) registration is in the “public interest”.

878. MLAO: Under MLAO s.4, the Chief Executive, with the approval of the Legislative Council, may order that the MLAO (subject to any stipulated modifications) govern MLA relationships with specified jurisdictions. No other part of the People's Republic of China can be designated by this process, these jurisdictions being expressly exempt from the ambit of the MLAO (s.3). MLAO s.2 defines “external confiscation order” in terms identical to the DTROP, only the order must relate to an “external serious offence”, viz. one punishable by at least two years’ imprisonment. The scope of restraint and confiscation available is otherwise identical. The provisions of Schedule 2 to the MLAO govern restraint and confiscation relating to “external serious offences”. As under DTROP, instrumentalities are included in the definition of an external confiscation order.

879. Where an external confiscation order relates to a drug trafficking offence carrying at least two years’ imprisonment, both DTROP/DTROP and MLAO are available as avenues of restraint and confiscation. Although the MLAO contains a provision for the repeal of DTROP (s.15, schedule 3), it is not yet in force. The evaluation team was advised that, notwithstanding the broader reach of predicate offences under the MLAO, DTROP remains unrepealed in order to retain, essentially, a fall back mechanism in the event of teething problems with the operation of the MLAO.

880. As noted, the MLAO does not extend the provision of MLA to other parts of the People’s Republic of China, such as mainland China or Macao. However, no such express exemptions restrain the ambit of DTROP or the *Evidence Ordinance*. Accordingly, the only assistance available to other parts of the PRC is *i*) Court-to-Court assistance under the *Evidence Ordinance*, *ii*) registration and enforcement of external confiscation orders relating to drug trafficking under DTROP and *iii*) operational assistance that does not entail use of coercive powers.

Processes for identification, freezing, seizing and confiscation of property in response to requests

881. As noted, under the MLAO a requesting jurisdiction may seek assistance for the purpose of investigation into an “ancillary criminal matters”, namely restraint, forfeiture and related enforcement proceedings. In order to assist in the identification of property, Hong Kong may therefore employ – in addition to non-coercive measures (such as intelligence exchange) – the various types of assistance discussed previously with respect to Recommendation 36.

882. Under paragraph 9, Schedule 2 of the DTROP and paragraph 6, Schedule 2 of the MLAO, requests for restraint of property may be acceded to where:

- Proceedings have been instituted in the requesting jurisdiction.
- The proceedings have not been concluded.
- Either an external confiscation order has been made or it appears to the court that there are reasonable grounds for believing that an external confiscation order may be made.

or

- Proceedings are to be instituted in a place outside the Hong Kong and it appears to the court that an external confiscation order may be made in those proceedings.

883. The court may also exercise the power to restrain property if it is satisfied that proceedings are to be instituted in a place outside the Hong Kong and it appears to the court that an external confiscation order may be made in those proceedings.

884. The provisions governing restraint, being permissive in nature, enable the MLA Unit to respond effectively to urgent requests. Further, the requirement under s.34 MLAO for notification of MLA requests to the CPG expressly permits an inward request to be actioned on an interim basis in cases of emergency.

885. As noted, the provisions of MLAO and DTROP or Schedules 2 govern the terms upon which Hong Kong can register and enforce external confiscation orders, including orders for restraint. Restraint is available in relation to property *i)* against which an order may be enforced or *ii)* where proceedings have been/are to be instituted and an order has not been made, that may be available to satisfy any order that may be made. Both ordinances make provision for the registration of charging orders and the appointment of receivers to effect enforcement of registered external orders.

886. Requests must be directed to the competent authority, viz. the MLA Unit in the DOJ. Counsel in the Unit advise on the request and, where required, institute proceedings for enforcement via registration with the Court of First Instance. Following registration, steps will be taken to enforce the order by realising property located in Hong Kong.

Corresponding value

887. As noted, both DTROP/DTROP or and MLAO permit the restraint and forfeiture of assets of corresponding value to the defendant’s proceeds of crime, derivative proceeds or instrumentalities.

Co-ordination of seizure, confiscation and asset sharing

888. Hong Kong authorities have advised that: *i)* when required, Hong Kong authorities can (and do) undertake recovery action in co-ordination with a requesting jurisdiction; *ii)* many overseas law enforcement agencies have liaison officers stationed in Hong Kong to facilitate this; and *iii)* Hong Kong officers might also co-ordinate operations undertaken overseas.

889. Hong Kong has not established a separate asset forfeiture fund. All funds realised from confiscated or forfeited assets are paid into the General Revenue. The Hong Kong authorities have advised that Hong Kong has considered, but decided not to establish, a separate asset forfeiture fund and that a key consideration in this respect is the potential of such a fund to engender law enforcement bias toward the investigation of cases likely to yield high forfeiture returns. It remains unclear, however, at what level – and with what deliberation – these matters have been considered.

890. MLAO and DTROP empower the Secretary for Justice to order sharing of confiscated assets. The Hong Kong authorities have advised that bilateral agreements incorporate provisions on asset sharing that, generally, provide for assets to remain with the requested jurisdiction, subject to a discretion for sharing on a case by case basis. In practice, realised funds over a threshold of HKD 10million are shared on a 50/50 division.

Table 41. Assets shared with foreign jurisdictions, 2000-2003

Year	Amount Shared	Shared	
		From	To
2000	USD 907 000	USA	Hong Kong
2003	USD 2.89 million	USA	Hong Kong
2003	USD 722 000	Hong Kong	Australia
2003	USD 3.53 million	Hong Kong	USA

891. Recently three further requests for asset sharing were received. These are currently under consideration by the Security Bureau, which co-ordinates the policy aspects of asset sharing requests from foreign jurisdictions.

Additional elements

892. DTROP and MLAO enable recognition of both criminal and civil external confiscation orders.

Special Recommendation V

893. Because of the dual criminality requirement, the gaps in Hong Kong's domestic TF regime (as identified in [Section 2.2](#)) could impede Hong Kong's capacity to render comprehensive MLA in this context (*e.g.* in cases involving financing that cannot be tied to the commission of a terrorist act or a 1267 Committee listee and in cases of provision/collection of assets other than funds). There is no reason however why the non-technical interpretation of the dual criminality requirement used for other MLA requests would not also be applied with respect to TF offences, thus ameliorating some of the constraints that might otherwise present. Furthermore, where the request relates to provision of investigative assistance, prior to any settling by the requesting jurisdiction of specific charges, Hong Kong authorities are afforded more latitude in assessing the facts and the sorts of charges they might sustain. These factors do not, however, remove the possibility for dual criminality impediments arising from the limited scope of the TF offence.

894. Notwithstanding the dual criminality requirement, between 2004 and 2007, Hong Kong serviced four MLA requests relating to TF and denied none.

895. External confiscation orders predicated upon foreign convictions for or allegations of TF may be registered, subject to the general grounds for refusal found under s.5 MLAO, including dual criminality.

Resources (Central Authority for Mutual Legal Assistance/Extradition Requests)⁶⁶

896. The MLA Unit is the central authority for all MLA and extradition requests. It is located within the International Law Division of the DOJ, along with the Treaties and Law Unit. The MLA Unit functions as a genuine competent authority in that it comprehensively services MLA requests rather than functioning simply as a distribution point within the wider Department.

897. Department of Justice officials advised the evaluation team that they believe the Unit is adequately funded and resourced. The MLA Unit is staffed by nine counsel, each of whom are involved full-time in processing of MLA and extradition requests. Counsel in the MLA Unit are all government lawyers and are accordingly subject to integrity standards applicable to civil servants, including background vetting. Most counsel are members of the Hong Kong Bar Association or the Hong Kong Law Society and are thereby subject to relevant professional standards. All staff in the unit hold tertiary qualifications and have acquired legal skills either elsewhere in DOJ (*e.g.* as a prosecutor) or in the private sector before attachment to the Unit. The Hong Kong authorities have advised that MLA Unit staff receive internal training upon attachment and regularly participate in relevant local and international training seminars and conferences. Some have also been trained as evaluators and have participated in FATF mutual evaluations.

898. The evaluation team was advised that the time taken to meet a request depends upon the nature and complexity of the request itself, with routine requests processed within three to four months and urgent requests expedited as necessary. Law enforcement agencies expressed no concerns as to the efficiency of the unit. Countries survey results in this respect fully support the contention of DOJ officials that the unit is very well regarded internationally.

⁶⁶ As related to R.30; see s.7.1 for the compliance rating for this Recommendation.

Additional elements

899. The same system noted previously in terms of MLA, with respect to cases of ML, applies where the request relates to TF. The powers of competent authorities are available for use in response to MLA requests. As noted, production orders and search warrants are not available on a direct agency-to-agency or court-to-court basis. As noted, Hong Kong's bilateral agreements provide a mechanism for determination of appropriate venue for prosecution. Cases involving non-treaty countries are dealt with on a case-by-case basis. The extent to which Hong Kong has given high level and deliberate consideration to the issue of establishing an asset forfeiture fund is not clear. As noted, Hong Kong's bilateral agreements make provision for the discretionary sharing of confiscated assets and this has occurred in a limited number of cases (none of which related to TF cases). As noted, civil and criminal external confiscation orders may be registered in Hong Kong.

Statistics⁶⁷

900. The MLA Unit maintains statistics, shown below, on:

- Requests for legal assistance received and made (Tables 42 to 44).
- Restraint and confiscation orders obtained and the value of assets covered (Tables 48 and 49).
- Court orders obtained enabling assistance requiring coercive measures (Table 50).

901. An MLA Unit report on the types of assistance provided across countries from 1 January 2003 to 31 December 2007 shows that Hong Kong's main partners in terms of legal assistance (including transfer of sentenced prisoners and assistance under MLA, UNATMO, DTROP, EO and the *Fugitive Offenders Ordinance*) are (showing total of both inward and outward requests): United States (177); Macao (86); United Kingdom (86); Australia (71); Thailand (61); Netherlands (36); Switzerland (36); Canada (34); Argentina (26); France (24); India (24); Belgium; (22); Germany (22); and Singapore (22). The majority of the other countries with which Hong Kong has worked to progress MLA requests have sent or received requests from Hong Kong on less than five occasions each.

902. Statistics provided to the evaluation team also show that Hong Kong is universally (and decisively) a net provider, rather than consumer, of mutual legal assistance. For example, of the 177 requests between Hong Kong and the US, 131 were inward requests. Of the 86 involving Macao, 76 were inward (67 relating to prisoner transfers and 9 under the EO). Of the 86 involving the UK, some 72 were inward. These proportions are indicative across the board.

903. The MLA Unit maintains statistics on assistance requiring coercive measures, such as taking of evidence from persons, search warrants, production orders and restraint and registration of external confiscation orders. The MLA Unit does not maintain statistics on assistance that does not require coercive measures, such as taking of voluntary statements, service of court process and transfer of person on a voluntary basis. For these forms of assistance the MLA Unit has a database showing the total number of requests received, from what jurisdiction, what type of offence is under investigation or prosecution, and whether the request is processed under MLA, EO or DTROP. Information on the volume or nature of non-coercive measures taken is not however held.

904. Some requests cannot be executed because they do not meet the minimum legal requirements for processing. In such cases, appropriate advice to remedy the request is given. In other cases, requests may be executed in part only (for example, banks records are obtained but funds are not frozen because of a nil balance).

⁶⁷ As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

Requests made on a Government-to-Government basis (under the DTROP or the MLAO)

Table 42. MLA requests, 2004-2007

Year	Incoming	Outgoing	Total
2004	98	17	115
2005	98	26	124
2006	95	25	120
2007	100	39	139

905. There is also a disproportion between inward and outward requests which has been noted by DOJ officials. DOJ offered a number of possible reasons:

- As Hong Kong only has conviction-based forfeiture, forfeiture in Hong Kong is less prevalent than other jurisdictions, yet Hong Kong recognises civil forfeiture orders of other jurisdictions.
- Hong Kong is often able to provide assistance in the absence of formal MLA requests.
- Hong Kong is a net recipient of proceeds of crime. Much MLA is accordingly related to the recovery of these proceeds by foreign jurisdictions. Because such requests imply the commission of a predicate offence in the requesting country, the prosecutions associated with these recovery proceedings also tend to occur in other jurisdictions.

Table 43. Incoming MLA requests[#] with breakdown by ML, TF and other offences, 2004-2007

Year	Money Laundering	Terrorist Financing	Other Offences
2004	24	2	76
2005	24	1	76
2006	28	0	70
2007	23	2	84

[#]Please note that some requests relate to more than one offence.

Table 44. Outgoing MLA requests[#] with breakdown by ML, TF and other offences, 2004-2007

Year	Money Laundering	Terrorist Financing	Other Offences
2004	4	0	13
2005	6	0	20
2006	6	0	19
2007	6	0	35

[#]Please note that some requests relate to more than one offence.

Statistics on requests made on a Court-to-Court basis (under the Evidence Ordinance)

Table 45. Letters of request, 2004-2007

Year	Incoming Requests	Outgoing Requests	Total
2004	12	6	18
2005	19	6	25
2006	15	2	17
2007	18	2	20

Table 46. Incoming letters of request with breakdown by ML, TF and other matters, 2004-2007

Year	Money Laundering	Terrorist Financing	Other Matters
2004	2	0	10
2005	0	0	19
2006	0	0	15
2007	2	0	16

Table 47. Outgoing letters of request with breakdown by ML, TF and other matters, 2004-2007

Year	Money Laundering	Terrorist Financing	Other Matters
2004	3	0	3
2005	0	0	6
2006	2	0	0
2007	1	0	2

Table 48. Restraint orders obtained, 2003- 2007

Year	Number of Restraint Orders	Value of Assets Restrained
2003	2	HKD 7.6 million
2004	1	HKD 4 million
2005	6	HKD 151 million
2006	3	HKD 28.5 million
2007	3	HKD 227 million

Table 49. Confiscation of property, 2003-2007

Year	No. of Confiscation Orders Registered	Value of Property Confiscated	Value of Property Pending Confiscation
2003	0	0	0
2004	2	HKD 10.5 million	0
2005	0	0	0
2006	2	HKD 3.1 million	HKD 1.7 million
2007	3	HKD 5million	HKD 101.5 million

Table 50. Court orders granted for obtaining of evidence, 2003-2007

Year	Witness Summonses (s.10 MLA0)	Search Warrants (s.12 MLA0)	Orders (s.15 MLA0)	Orders for Witness Examination (EO)
2003	42	15	56	1
2004	22	13	82	2
2005	9	4	107	8
2006	33	6	106	10
2007	4	6	80	8

6.3.2 Recommendations and Comments

906. Subject to the limited restriction noted above concerning the availability of production orders in tax related investigations, the MLA0 offers a wide range of assistance. The power vested in the CPG to direct refusal is potentially of concern but is sparingly exercised and, particularly given the number of requests received and processed by the MLA Unit, does not appear to be a significant impediment.

907. The DTROP0r offers a limited avenue for provision of assistance to the PRC and Macao – something not available under the MLA0. The absence of a mechanism enabling Hong Kong to render comprehensive mutual legal assistance to (and seek such assistance from) the PRC and Macao presents a significant gap in an otherwise sound MLA regime. Hong Kong authorities have noted that enforcement capabilities would be greatly enhanced if appropriate formal arrangements for mutual legal assistance were in place. These arrangements should be established as a matter of priority.

908. The MLA Unit has taken responsibility for improving education of authorities with respect to MLA. DOJ admitted to particular concern that mutual legal assistance is insufficiently pursued for the purpose of making requests for proceeds recovery. It is recommended that there be continued outreach in this respect. The numbers of outgoing requests related to ML investigations is low, even in absolute terms.

909. On the TF front, due to the requirement of dual criminality, gaps in Hong Kong’s domestic offences have the potential to create commensurate gaps in her capacity to assist others, even if this has not caused a problem to date. Hong Kong should address the various deficiencies identified in Section 2.2 of this report.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of Factors Underlying Rating
R.36	LC	<ul style="list-style-type: none"> Only limited assistance entailing coercive measures is available to “other parts of the People’s Republic of China”, such as Macao and mainland China, which would be Hong Kong’s most important partners on cross-border crimes. As dual criminality is required for mutual legal assistance, the limitations in the TF offence may have an impact on the extent and effectiveness of mutual legal assistance provided by Hong Kong for TF matters.
R.37	C	<ul style="list-style-type: none"> This Recommendation is fully observed.
R.38	LC	<ul style="list-style-type: none"> Only limited proceeds recovery related assistance is available to ‘other parts of the People’s Republic of China’, such as Macau and Mainland China for investigations and prosecutions of drug trafficking offences punishable by at least two years’

	Rating	Summary of Factors Underlying Rating
		<p>imprisonment.</p> <ul style="list-style-type: none"> • The mutual legal assistance provisions are seldom used by Hong Kong authorities for the purpose of asset recovery. • Insufficient information is available to demonstrate that authorities have considered establishing an asset recovery fund.
SR V	LC	<ul style="list-style-type: none"> • Only limited assistance entailing coercive measures is available to Macao and the PRC. • As dual criminality is required, the limitations in the TF offence may have an impact on the extent and effectiveness of mutual legal assistance provided by Hong Kong for TF matters.

6.4 Extradition (R.37, 39, SR V)

6.4.1 Description and Analysis

Recommendation 39 and SR V

910. Extradition is governed by the *Fugitive Offenders Ordinance Cap. 503 (FOO)*, which was enacted in 1997 following reunification with China, to implement new international arrangements for the surrender of fugitives between Hong Kong and other jurisdictions (excluding other parts of the PRC). All extradition must occur pursuant to s.3 FOO.

911. Section 3 empowers the Chief Executive to promulgate orders to give effect to “arrangements for the surrender of fugitive offenders” provided such arrangements are in “substantial conformity” with the provisions of FOO. As such, FOO is underpinned by a number of bilateral and multilateral arrangements for surrender of fugitives, each of which is the subject of a s.3 FOO order. As at 31 December 2007, Hong Kong had signed 17 bilateral fugitive offender agreements (Australia, Canada, Finland, Germany, India, Indonesia, Ireland, Malaysia, Netherlands, New Zealand, Philippines, Portugal, Republic of Korea, Singapore, Sri Lanka, UK and the USA). Hong Kong authorities have advised that Hong Kong is actively negotiating further bilateral agreements with other jurisdictions.

912. Section 3 orders have also been used to effect the extradition provisions of the *Vienna Convention* and the *UN Convention for the Suppression of Terrorist Financing* (the *Fugitive Offenders (Drugs) Order 1997* and the *Fugitive Offenders (Suppression of the Financing of Terrorism) Order 2007* respectively). A s.3 FOO order is pending to implement the extradition provisions in the *Palermo Convention*.

913. Surrender of fugitive offenders from mainland China to Hong Kong occurs from time to time but only pursuant to administrative arrangements, not under the extradition arrangements in the FOO. These administrative arrangements may be used for returning to Hong Kong *i*) Hong Kong residents who fled to the mainland after committing crimes in Hong Kong, and *ii*) Hong Kong residents who committed crimes in both the mainland and in Hong Kong, after serving sentences in the mainland.

914. In the absence of a formal arrangement underpinned by legislation, no fugitive offenders have ever been returned from Hong Kong to the Mainland or Macao.

Scope and procedure

915. Section 4 FOO defines persons liable to be surrendered, viz. persons wanted for prosecution or sentencing for a “relevant offence”. Section 2 defines “relevant offence” as one that, effectively, is *i*)

listed in the first schedule of FOO, *ii*) sustained by acts that satisfy a dual criminality requirement and *iii*) would be punishable in Hong Kong by more than 12 months. Schedule 1 lists a range of specific offences as well as the generic descriptor: “offences for which persons may be surrendered under multi-lateral international conventions; offences created as a result of decisions of international organizations”. In this way FOO covers, for example, TF, even though this is not specifically listed.

916. Section 5 and s.13 contain a number of grounds upon which extradition ‘shall’ be refused:

- The offence is of a political character.
- The defendant was convicted in absentia (and, if surrendered, would not be present at a retrial).
- The defendant is sought for prosecution on account of his race, religion, nationality or political opinion (or might be prejudiced at trial on account of such considerations).
- Where Hong Kong courts consider the defendant to have already been convicted or acquitted of an offence founded upon the same facts.
- There are no mechanisms ensuring that the defendant will not be *i*) tried for any offence other than that for which extradition is sought (or an equivalent/lesser offence) without the consent of the Chief Executive, *ii*) re-surrendered to another place *iii*) subject to imposition or execution of the death penalty.

917. Sections 6 to 13 establish the extradition procedure. Under s.6, a ‘surrender request’ is received via diplomatic or ‘approved’ channels. Authority to proceed is held by the Chief Executive (CE). In practice, this power remains undelegated. Such authority may be given where it appears a surrender order could be lawfully made. Under s.7, a Magistrate may issue an arrest warrant (or, in the absence of authority to proceed, a provisional warrant that is susceptible to cancellation by the CE).

918. Section 10 establishes the procedure for proceedings for committal of arrested persons. Such persons “shall” be committed where there is a *prima facie* case to answer or, in the case of extradition for the purpose of sentencing, where there is a sentence to be imposed or more than six months to be served. Bail pending committal is available in only ‘special circumstances’. Section 11 provides a right of appeal on questions of law where committal has been refused. Appeals are to the Court of First Instance and must be brought within 15 days. For 14 days thereafter, further appeal to the Court of Appeal lies as of right. Subsequent rights of appeal to the Court of Final Appeal may be granted with leave. Section 12 establishes appeal rights where committal is granted. Such appeals proceed by way of habeas corpus proceedings initiated in the Court of First Instance and appealable thereafter.

Money laundering should be an extraditable offence

919. Money laundering is an extraditable offence. Included amongst those descriptions of offences listed as relevant offences in Schedule 1 of FOO are “offences relating to the possession or laundering of proceeds obtained from the commission of any offence described in the Schedule”.

Extradition of own nationals

920. The extradition of PRC nationals is a matter of discretion. Under s.13(4), the Chief Executive may “decide to make no order for surrender in the case of a person who is a national of the People's Republic of China”. To date, this discretion has not been exercised. Virtually all Hong Kong residents of Chinese descent who hold no other nationality are regarded as PRC nationals and Hong Kong regularly surrenders such persons to foreign jurisdictions.

Extradition requests and proceedings relating to ML to be handled without undue delay

921. The MLA Unit is the central authority for the receipt of extradition requests. Such requests can derive from either the consular representative or the central authority of the requesting jurisdiction (depending upon the terms of the bilateral arrangement). Upon receipt, the MLA Unit verifies the content of the request and initiates the extradition process. MLA counsel assigned to the matter conduct necessary court proceeding and liaise with the requesting jurisdiction and local enforcement agencies (the Hong Kong Police, C&ED and ICAC).

922. Hong Kong authorities have advised that the courts are alive to the need to avoid excessive delay in the processing of extradition requests. Courts of committal, therefore, frequently allocate the earliest available court hearing time for committal proceedings with the Court of First Instance according priority to applications for habeas corpus. Table 51 below shows the timelines and dispositions of all extradition requests received between 1 January 2002 and 30 June 2007. In the vast majority of cases, the time taken from arrest to surrender is two to four months. This attests to an uncomplicated legal framework that is appropriately supported by a well-resourced, dedicated central authority and responsive courts. DOJ officials have advised that, in the usual course, defendants do not exercise rights of appeal following committal and are therefore surrendered following committal hearings, which generally occur within two to three months of arrest.

Additional elements

923. There is no scope for extradition solely on the basis of an arrest warrant. However, under s.10(6)(a) FOO, a person can consent to surrender, thereby obliging a court of committal to make an immediate committal order whether or not the application is supported by any documentation. Thereafter, the Chief Executive may make an expedited order for surrender.

Recommendation 37 and SR V

Extradition and dual criminality

924. As noted previously, dual criminality is a prerequisite to the granting of MLA and extradition. Given limitations in Hong Kong's TF offences under s.7 UNATMO and s.3 UNSAR (as noted in [Section 2](#) previously), the dual criminality requirement has potential to limit Hong Kong's capacity to render extradition in TF cases.

925. However, the dual criminality requirement is not applied in a restrictive way. In *Cosby v Chief Executive HKSAR* [2000] 3 HKC 662 it was held that technical differences in the elements or taxonomy of offences are irrelevant to the question of dual criminality – it is the criminality of the underlying conduct that is determinant. In that case, a fugitive was wanted for ML offences in the United States. Although ML was not then criminalised in Hong Kong, the court ordered extradition on the basis that supporting documentation disclosed offences that were described in Schedule 1.

Extradition related to terrorist acts and TF

926. Schedule 1 of FOO lists “offences for which persons may be extradited under multi-lateral international conventions”. As also noted previously, a s.3 FOO order has been made to effect the extradition provisions of the *UN Convention for the Suppression of Terrorist Financing*, namely the *Fugitive Offenders (Suppression of the Financing of Terrorism) Order 2007*. By these means, Hong Kong is able to extradite persons facing TF charges.

927. As noted previously, a requirement of dual criminality is incorporated into the definition of ‘relevant offence’ and thus is also required for extradition. As with MLA, because of the dual criminality requirement, the gaps in Hong Kong's domestic TF regime may impede Hong Kong's capacity to comprehensively engage in extradition for TF. However, the unrestrictive application of

the dual criminality requirement in Hong Kong may ameliorate some of the constraints that might otherwise present. In 2002, Hong Kong fielded three related requests for extradition stemming from TF offences. Pursuant to those requests, in 2003 Hong Kong extradited to the U.S. three persons on offences of providing material support to terrorists. The dual criminality requirement did not prevent extradition on the facts of that case.

Statistics⁶⁸

928. Between 1 January 2002 and 31 December 2007, 77 extradition requests were received by Hong Kong. Statistics relating to extradition requests received are provided below. For the incoming requests, where no arrest has been made, the fugitive was not located in Hong Kong.

Table 51. Incoming extradition requests, 2002-2007

Date of Request	Nature of Case	Date of Arrest	Date of Surrender
11.2.02	Fraud	-	-
27.2.02	Murder	27.2.02	4.11.02
26.3.02	Fraud	17.5.02	19.7.02
31.5.02	Drugs	-	Request Withdrawn
27.6.02	Fraud	29.6.02	26.9.02
16.7.02	Child abuse	Request Withdrawn	
15.8.02	Fraud	29.9.02	23.12.02
4.9.02	Illegal immigration	-	Request Withdrawn
18.9.02	Drugs, terrorist financing	20.9.02	5.3.03
18.9.02	Drugs, terrorist financing	20.9.02	5.3.03
18.9.02	Drugs, terrorist financing	20.9.02	5.3.03
9.10.02	Trafficking counterfeit goods	21.12.02	24.2.03
9.10.02	Trafficking counterfeit goods	21.12.02	24.2.03
9.10.02	Trafficking counterfeit goods	-	-
4.11.02	Fraud	-	-
29.11.02	Fraud	Request did not meet minimum legal standards	
14.12.02	Drugs, money laundering	16.12.02	21.3.03
2.1.03	Kidnapping	12.3.03	22.5.03
7.3.03	Fraud	-	-
7.3.03	Fraud	-	-
16.5.03	Drugs	16.5.03	19.9.03
16.5.03	Drugs	17.5.03	19.9.03
20.5.03	Drugs	22.5.03	19.9.03
27.5.03	Drugs	9.6.03	4.8.03
8.7.03	Drugs	7.8.03	Discharged by court of committal
17.11.03	Fraud	1.12.03	31.5.04
19.12.03	Murder	Request withdrawn	

⁶⁸ As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

Date of Request	Nature of Case	Date of Arrest	Date of Surrender
3.1.04	Sexual offences	15.1.04	12.3.04
2.2.04	Bribery	9.3.04	30.4.04
24.2.04	Theft, forgery	Request did not meet minimum legal standards	
30.3.04	Theft, forgery	4.5.04	21.1.05
12.4.04	Kidnapping, robbery	Request declined due to absence of treaty	
27.5.04	Deception, forgery	31.7.04	6.2.07
18.6.04	Immigration fraud	21.6.04	17.8.04
23.6.04	Drugs	5.7.04	1.12.05
23.7.04	Manslaughter	28.7.04	14.10.04
13.9.04	Drugs	16.9.04	20.8.05
16.9.04	Drugs	Request Withdrawn	
18.10.04	Forgery & deception	29.10.04	14.2.07
20.10.04	Possession of firearms	27.12.04	1.3.2005
21.10.04	Dangerous drugs	23.11.04	19.7.05
5.11.04	Immigrant smuggling	-	-
13.1.05	Visa fraud	-	-
13.01.05	Visa fraud	-	-
8.3.05	Deception, money laundering	17.8.05	13.4.06
12.5.05	Drugs	13.5.05	1.12.05
23.7.05	Trafficking in counterfeit goods	23.7.05	18.11.05
30.8.05	Murder	-	-
22.9.05	Murder	Request withdrawn	
30.9.05	Deception	Request did not meet minimum legal standards	
29.10.05	Drugs	29.10.05	17.5.06
13.1.06	Deception	Request withdrawn	
7.2.06	Computer related offences	-	-
9.3.06	Stolen goods	Request declined due to absence of treaty	
18.5.06	Murder	6.9.2006	-
2.7.06	Drug related offences	Request Withdrawn	
20.7.06	Drugs	-	-
8.9.06	Smuggling, counterfeiting	20.9.06	Request withdrawn
1.12.06	Assault and extortion	Request declined due to absence of treaty	
22.12.06	Alien smuggling	28.12.06	9.3.07
5.1.07	Computer fraud	-	-
12.1.07	Computer fraud	26.1.07	25.5.07
13.2.07	Sexual offences against children	2.5.07	-
13.2.07	Fraud	Request declined due to absence of treaty	
15.2.07	Drugs	-	Request withdrawn
16.2.07	Money laundering	28.2.07	22.6.07

Date of Request	Nature of Case	Date of Arrest	Date of Surrender
16.02.07	Money laundering	28.2.07	22.6.07
4.4.07	Corruption	-	-
4.6.2007	Fraud	-	-
21.6.2007	Fraud	-	-
26.6.2007	Theft	-	-
4.9.2007	Drugs	Pending conclusion of Hong Kong proceeding	
4.10.2007	Money laundering	9.10.2007	-
27.10.2007	Smuggling	29.10.2007	-
19.11.2007	Drugs	Pending submission of the full request	
3.12.2007	Smuggling	11.12.2007	-
21.12.2007	Fraud	-	-

Table 52. Incoming extradition requests with breakdown by ML, TF and other offences, 2002-2007

Year	Money Laundering	Terrorist Financing	Other Offences
2002	1	3	17
2003	0	0	10
2004	0	0	16
2005	1	0	9
2006	0	0	9
2007	3	0	14

Table 53. Outgoing extradition requests with breakdown by ML, TF and other offences, 2002-2007

Year	Money Laundering	Terrorist Financing	Other Offences
2002	0	0	17
2003	0	0	13
2004	1	0	5
2005	0	0	7
2006	0	0	9
2007	0	0	3

6.4.2 Recommendations and Comments

929. FOO establishes an uncomplicated extradition regime that is not subject to unreasonable grounds for refusal. The discretion to refuse extradition of PRC nationals has not, to date, been exercised. In practice, extradition requests are actioned and concluded with admirable expedition. As with other forms of MLA, however, it is the absence of a mechanism enabling Hong Kong to extradite to (and seek extradition from) other parts of the PRC, her two closest neighbours, that presents the most significant deficit in Hong Kong's extradition arrangements. It remains the intention of the Hong Kong government to conclude formal arrangements for extradition between Hong Kong, Macao and mainland China. It is recommended that these arrangements be concluded as a matter of priority.

930. This report has noted the deficits in Hong Kong’s counter-TF regime, the delays in bringing into force the TF offences under UNATMO and the potential impacts of this upon Hong Kong’s capacity to comprehensively provide MLA, including extradition. Whilst accepting that Hong Kong has extradited persons for providing material support to terrorists, these concerns remain. In order to ensure that MLA and extradition will be rendered in a comprehensive range of TF cases there remains a critical need for Hong Kong to address the deficiencies mentioned in Section 2.2 of this report.

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of Factors Underlying Rating
R.39	LC	<ul style="list-style-type: none"> It is not possible to extradite persons to other parts of the PRC, such as mainland China and Macao.
R.37	C	<ul style="list-style-type: none"> This Recommendation is fully observed.
SR V	LC	<ul style="list-style-type: none"> It is not possible to extradite persons between mainland China, Macao and Hong Kong. As dual criminality is required, the limitations in the TF offence may have an impact on the extent and effectiveness of extradition provided by Hong Kong for TF matters.

6.5 Other forms of international co-operation (R.40 & SR V)

6.5.1 Description and Analysis

Recommendation 40

International co-operation by competent authorities

931. Case authority in Hong Kong states that, in the absence of an express prohibition by law, there is nothing to preclude a LEA from disclosing information which has lawfully come in to its possession to an appropriate authority for those purposes that could be fairly regarded as incidental to or consequential to its statutory and common law duties (*Hall v ICAC* [1987] HKLR 210, *HO Shau-hong v Commissioner of Police* [1987] HKLR 945). Moreover, pursuant to s.58(1)(a), s58(2) and s.58(3) of the *Personal Data (Privacy) Ordinance* Cap. 486 (PDPO), disclosure of personal data to investigative and regulatory authorities can be required. These agencies may release the information to their overseas counterparts to assist the latter to prevent or detect ML/TF.

932. Hong Kong Police: The Hong Kong Police exchange intelligence on a police-to-police basis through Interpol channels and with the network of overseas liaison officers based in Hong Kong and surrounding jurisdictions. The Liaison Bureau (LB) co-ordinates inquiries from overseas police organisations and local consular officials. LB is the main contact point for enforcement agencies of other jurisdictions. It also represents the Hong Kong Police in the International Criminal Police Organisation (ICPO-Interpol). LB is headed by a Senior Superintendent assisted by a Superintendent and two Chief Inspectors. There are seven teams in the Bureau, each with a geographic area of responsibility. Release of information is conducted on the basis of reciprocity. Spontaneous dissemination or exchange of information by means of Interpol, Customs and Egmont Group channels is permissible for the purposes of preventing or detecting crime (including ML and TF).

933. All requests for information to the Hong Kong Police should state the reason for the request and sufficient information to satisfy the law enforcement agencies or the JFIU that the requests relate to the prevention or detection of crime or for the purposes of preventing and suppressing TF. Properly prepared and documented requests are, in most cases, responded to in a prompt manner however those lacking in content take longer. On average, requests for information are replied to within a month.

934. JFIU: Sections 25A(9) DTROP and OSCO, and s.12(6) UNATMO allow an authorised officer to disseminate information disclosed in STRs to an appropriate overseas authority to combat crime, or for the purposes of preventing and suppressing the financing of terrorist acts. The JFIU is therefore not restricted in its dealings with a corresponding overseas FIU and law enforcement agencies. The JFIU entertains requests for assistance from overseas FIUs through Egmont Group channels or from overseas law enforcement agencies through Interpol channels or the Customs network. The JFIU exchanges information with other FIUs and overseas law enforcement agencies without the need for formal reciprocal arrangements. The JFIU has signed MOUs with some FIUs which require such an underpinning for exchange of information, with: the Australian Transaction Reports and Analysis Centre, Financial Intelligence Unit of the Republic of Korea, Financial Transactions Reports Analysis Centre of Canada, Japanese Financial Investigation's Office and Singapore's Suspicious Transaction Reporting Office. In conducting such exchanges the JFIU staff are mindful of the Egmont Group's *Statement of Purpose* and its *Principles for Information Exchange Between Financial Intelligence Units for Money Laundering Cases*.

935. The JFIU provides an initial acknowledgement to requesting authorities and follows with a response as soon as possible. While the time taken for the JFIU to respond to international requests for information is not known, relevant counterpart authorities have commented favourably on the assistance provided to them by the JFIU.

936. C&ED: International exchanges of information are conducted in accordance with the provisions stipulated in the PDPO and Chapter 33 "International Co-operation" of the *Customs Standing Order*. The Customs Liaison Bureau (CLB) of C&ED is responsible for all liaison with overseas customs administrations as well as the work on the co-operative arrangements and international conventions.

937. For the purpose of promoting international co-operation between customs administrations, C&ED has since May 1991 entered into 11 Co-operative Arrangements with its overseas counterparts, namely the customs authorities of: Australia, Belgium, Canada, France, India, Korea, New Zealand, People's Republic of China, Thailand, United Kingdom and the, United States. Moreover, in 1999 Hong Kong entered into a Customs Co-operation Agreement with the European Community (EC), which provides for the exchange of information and co-ordination between C&ED and competent authorities within the EC to ensure effective application of respective customs legislations. Under these arrangements, intelligence can be exchanged between the counterparts and C&ED.

938. ICAC: The unit of the ICAC which is responsible for international liaison, maintains a close working relationship with overseas counterpart agencies and with consulates of various countries stationed in Hong Kong. This facilitates the exchange of intelligence and requests for assistance, within the statutory limits of the ICAC, on matters relating to corruption and related crimes including corruption-facilitated ML cases.

939. HKMA: One of the functions of the HKMA under s.7(2) BO is to co-operate with and assist recognised financial services supervisory authorities of any place outside Hong Kong whenever appropriate and to the extent permitted by laws. Section 121 provides for disclosure of information with overseas supervisory authorities. Under this section, the HKMA may disclose information to an overseas supervisory authority provided that (a) the overseas authority is subject to adequate secrecy provisions; and (b) it is in the interests of depositors to make the disclosure; or the information so disclosed will enable or assist the overseas authority to exercise its functions and it is not contrary to the interests of depositors to make the disclosure.

940. In practice, the HKMA has designated officers at a senior level to handle dealings with individual overseas supervisory authorities (usually the Division Head in the Banking Supervision Department who supervises AIs from that jurisdiction). The HKMA strives to provide assistance to its overseas counterparts in a rapid, constructive and effective manner. Requests for assistance are dealt with as soon as practicable. Where the requested information is readily available, the HKMA

responds within one to two working days. Where the HKMA needs to gather the requested information from the AI, it normally responds within one to two weeks.

941. The HKMA has entered into MOUs and other formal arrangements with banking supervisory agencies in 17 jurisdictions to enhance the exchange of supervisory information and co-operation: Australia, Belgium, Canada, mainland China, Denmark, France, Germany, Indonesia, Macao, Pakistan, Philippines, South Africa, South Korea, Switzerland, Thailand, the United Kingdom and the United States. These provide the framework under which the HKMA and its counterparts agree to: (a) share and exchange, to the extent permitted by law, supervisory information to assist in the supervision of banks that operate in both signatories' jurisdictions; (b) hold regular meetings and have informal contact to discuss matters of common interest; (c) consult each other regarding any cross-border establishment or investment by the banks; (d) keep the information shared confidential and to restrict the sharing, use and onward disclosure of such information in accordance with the provisions of the arrangements.

942. Exchange of information between the HKMA and its overseas counterparts is possible both spontaneously and upon request. Spontaneous exchange of information will take place, for example, where the HKMA has identified a significant concern about a foreign bank branch or subsidiary. In such cases, the HKMA will take the initiative to provide the relevant information to the home supervisor to enable it to exercise consolidated supervision over the foreign bank.

943. SFC: One of the functions of the SFC under s.5(1) SFO is to co-operate with and provide assistance to regulatory authorities or organisations, whether formed or established in Hong Kong or elsewhere. Under s.378 and s.186 SFO, the SFC may share information with, and provide investigatory assistance to, foreign counterparts respectively. The SFC may provide foreign counterparts with any information, spontaneously or on request, that it considers is likely to be of assistance to them in combating securities crimes, securities related ML offences and the underlying predicate offences. The SFC maintains close contact with overseas regulatory authorities and aims to process requests for information or investigatory assistance from its foreign counterparts as quickly as possible. The average response time is three weeks. Some requests are responded to the same day, while the maximum has been 3 months in a case where the banks which were asked to produce the documents had to retrieve this information from outside HK.

944. The SFC has entered into arrangements with 40 foreign counterparts in the form of either an MOU, a letter of confidentiality understanding, a Statement of Intent or a Memorandum of Regulatory Co-operation. A full list of these overseas authorities can be found on the SFC website⁶⁹. In addition, the SFC is an early signatory to the IOSCO Multilateral MOU, which currently has 41 signatories⁷⁰. Assistance available under the IOSCO MMOU includes: providing information and documents; and, taking or compelling a person's statement.

945. In the absence of these co-operative mechanisms, informal assistance is possible where the information requested for is publicly available information or voluntary assistance. In the case of requests for non-public information the SFC may disclose such information in its possession as long as certain parameters specified in s.378 and s.186 SFO are satisfied. These conditions are designed to ensure the recipient has similar functions and secrecy provisions to the SFC and are designed to ensure that exchanges are in the public interest.

946. OCI: Pursuant to s.4A(2)(f) ICO, one of the functions of the IA is to co-operate with and assist overseas financial services supervisory authorities. Section 53B further provides for the disclosure of information to an overseas financial service supervisor in a specified manner. International co-

⁶⁹ <http://www.sfc.hk/sfc/html/EN/aboutsfc/co-operation/co-operation.html>.

⁷⁰ A list of the IOSCO MMOU signatories can be found at http://www.iosco.org/library/index.cfm?section=mou_siglist.

operation is mainly in the form of information exchange to facilitate the performance of financial supervisory functions, including information on supervisory regime, IIs, their management, directors and controllers. Spontaneous assistance may be rendered by OCI when there are adverse incidents affecting the IIs in Hong Kong or their senior management/directors/controllers. If such incidents have serious implications on the overseas financial institutions, then the IA provides spontaneous (confidential) information to the relevant overseas financial service supervisor.

947. The OCI does not need a formal agreement or other vehicle to be in existence prior to rendering international assistance. Nevertheless, to foster mutual co-operation, the IA has signed eight MOUs with overseas counterparts, providing for reciprocal exchange of information regarding IIs for the better administration of the insurance regulatory regime of the signatories: Australian Prudential Regulation Authority; Isle of Man Government Insurance and Pensions Authority; National Association of Insurance Commissioners, USA; Office of the Superintendent of Financial Institutions Canada; Financial Services Authority of the United Kingdom; Monetary Authority of Singapore; Monetary Authority of Macao; and, China Insurance Regulatory Commission.

948. All requests are handled in an effective manner. The requests are directed to the designated contact person (at senior management level) who immediately refers them to the relevant officers for action. The OCI has a database of information about the local insurance market and authorised insurers (*e.g.* market statistics and analyses; financial data of individual insurers; insurers' authorisation status and the particulars of their directors and controllers) from which information and analytical reports can be retrieved or generated promptly in response to a request. Relatively simple requests, such as for information about directors and controllers, are handled within a few days whereas more complicated requests can take three weeks.

Competent authorities' inquiries and investigations on behalf of foreign counterparts

949. Hong Kong law enforcement agencies can carry out inquiries or investigations for overseas counterparts on a direct agency-to-agency basis:

- Hong Kong law enforcement agencies may provide intelligence through the protocol of Interpol or Customs related agreements. Such intelligence can only be used for investigation purposes.
- Law enforcement agencies can also carry out inquiries or investigation (involving the use of powers under Recommendation 28) when the request leads the local law enforcement agencies to suspect that there is a crime in Hong Kong.
- If no statutory power needs to be invoked (*e.g.* simply taking a voluntary witness statement from a witness or making enquiries with witnesses) there is no need for the prerequisite condition of suspicion of a crime in Hong Kong for carrying out the inquiries or investigations.

950. The HKMA may conduct inquiries on behalf of overseas counterparts using powers under s.55 and s.63(2) BO. These sections empower the MA to conduct examinations of AIs and require AIs to produce specified information. As described above, the SFC can conduct inquiries to assist overseas authorities in accordance with s.186 SFO. Where the circumstances justify, the IA may, upon request of a foreign counterpart, exercise the s.34 ICO power to investigate an insurer if it is desirable for protecting policy holders or potential policy holders against the risk that the insurer may be unable to meet its liabilities. Under s.53C ICO, subject to the IA's approval, an overseas insurance supervisory authority can examine the books, accounts and transactions of any office or agency of an insurer carrying on business in or from Hong Kong, provided that the insurer concerned is incorporated or has its principal place of business in that country, or is a subsidiary or associate of an insurer incorporated (or has its principal place of business) in that country.

Ability of the FIU to search its own and other databases to respond to international requests

951. As noted previously, there is case law in Hong Kong stating that, in the absence of an express prohibition by law, there is nothing to preclude a LEA from disclosing information lawfully in its possession to an appropriate authority for purposes related to its duties. Upon receiving a request, the JFIU will search its own database and the Police and the Customs databases. If a situation warrants, or the request specifically requires, the search will be extended to databases of relevant departments, to which JFIU has direct or indirect access. Public and administrative databases, which the JFIU has direct and indirect access to, are listed in Section 2.5. Commercially available databases, which the JFIU also has indirect access to, include telecommunications databases.

Conditions on exchanges of information

952. There are few restrictions on information exchange between law enforcement agencies and their overseas counterparts.

953. The only preconditions for exchange of information by the HKMA with an overseas supervisory authority (s.121(1)(b) and s.121(3) BO) relate to the secrecy provisions in place for the counterpart authority, ensuring the exchange is in the public interest and ensuring that any information about AIs' customers is not disclosed by the recipient regulatory agency to any third party. These requirements do not in practice present hurdles in the sharing of information with overseas authorities. The SFC may disclose non-publicly available information in its possession as long as certain parameters specified in s.378 and s.186 SFO are satisfied. These parameters are designed to ensure the recipient has similar functions and secrecy provisions to the SFC and are designed to ensure that exchanges are in the public interest. These conditions are not disproportionate or restrictive and are common to many jurisdictions. Exchange of information by the OCI is not subject to disproportionate or unduly restrictive conditions. Section 53B(1)(b) ICO permits the IA to disclose information to an overseas financial service supervisor if the IA considers that the supervisor is subject to adequate secrecy provisions and it is desirable to do so in the interests of policy holders or the public, or such disclosure will enable the supervisor to exercise his functions.

Grounds for refusing requests for co-operation

954. The three financial regulators would not refuse co-operation to foreign counterparts on the ground that the request is considered to involve fiscal matters. There is no indication that law enforcement agencies would refuse co-operation to foreign counterparts on the grounds that the request is considered to involve fiscal matters. As tax evasion is a ML offence in HK it is unlikely that any such refusal would be countenanced.

955. There are no banking secrecy laws which prohibit access to information held by banks, and court orders may be obtained to override a banker's duty of confidentiality to client. Section 67 of the PFO allows for the Commissioner of Police to issue a letter demanding that a deposit taking institution provide information within a specified period of time that must be adhered to. In addition, search warrants and production orders override the bankers' duty of client confidentiality. Relevant information may be subject to legal professional privilege depending upon the circumstances but not all materials held by lawyers will be privileged. As noted above, all relevant and enforcement agencies have clear and broad powers to share this information with foreign counterparts, not limited by secrecy or confidentiality provisions where they are convinced that the foreign counterpart is subject to adequate secrecy provisions and consider that the disclosure will assist the foreign counterpart in the exercise of its functions.

Use of information by competent authorities

956. Hong Kong Police: All information received is retained on the police intelligence system - CICS III - which is a stand-alone database subject to physical and security measures in accordance

with the government's information security regulations, IT security policy, interoperability framework and the Hong Kong Police internal information security policies and guidelines. Access to and use of data is password protected and may only be accessed from secure designated terminals at designated police premises. All password holders are vetted (by the dedicated police vetting unit) and access is strictly monitored and subject to regular audit checks. Unauthorised access is subject to criminal prosecution. Section 161 *Crimes Ordinance* Cap.200 (CrO) criminalises "Access to computer with criminal or dishonest intent" (see also *Hong Kong v LI Man-wai* [MA 732/2002]).

957. JFIU: All information received is retained on STREAMS which is a secure encrypted system for the receipt and analysis of STRs and a database for storage of information and intelligence contained in and developed from the STRs. STREAMS is a stand-alone database subject to physical and security measures in accordance with the government's information security regulations, IT security policy, interoperability framework and the Police's internal information security policies and guidelines. Access to and use of data is password protected and may only occur at secure designated terminals within the Police Headquarters complex. All password holders are vetted (by the dedicated police vetting unit) and the database and information contained therein is subject to security guidelines laid down in the STREAMS Security Order. Unauthorised access is subject to criminal prosecution (s.161 CrO). Access is strictly monitored and subject to regular audit checks.

958. C&ED: All investigation files are classified as confidential and are handled in strict confidence. In the exchange of information, confidential mails in secured and encrypted format will be used for the exchange of information related to STRs. All information received is stored in a central repository – the Customs and Excise Intelligence System (CEIS) - which is a web-based system to support the collection, processing and dissemination of intelligence and risk management products in C&ED. This system is subject to physical and security measures in accordance with the government's *Information Security Regulations*, IT Security Policy, interoperability framework and C&ED Standing Circulars on internal information security. Access rights are assigned to users on a need-to-know basis and confidential data is encrypted in database servers. Only authorised users can access the CEIS with User ID and password and unauthorised access is subject to criminal prosecution.

959. ICAC: All materials acquired in the course of investigation are classified confidential. Information received is handled securely in accordance with the ICAC's *Commission Standing Orders* and *IT Security Policy and Guidelines*. It is stored in a closed network system in the ICAC that complies with the government's security regulations on information systems. Stored information can only be accessed by authorised officers, subject to stringent data access control and audit checks. Unauthorised access or disclosure of such information is a criminal offence.

960. HKMA: The secrecy provisions under s.120 BO require all HKMA staff to preserve and aid in preserving the secrecy of information obtained by them in the course of *performance of functions under the BO*. Failure to comply with these provisions is a criminal offence. In practice, all information received from AIs is handled with great care. Access to files containing information relating to individual AIs is confined to authorised personnel.

961. SFC: Section 378(1) SFO provides that, except in the performance of a function under the SFO, all SFC staff are required to preserve and aid in preserving the secrecy of any information coming to their knowledge in the course of performance of any function under the SFO. Failure to comply with this provision is a criminal offence. The SFC has developed an information security policy which sets out, amongst other matters, the access controls to prevent unauthorised access. All staff are required to attend mandatory information security awareness training. Information received by the SFC from foreign counterparts cannot be disclosed or used unless it is in furtherance of the SFC's functions. This ensures that information received will be used in an authorised manner.

962. OCI: Sections 53A(1) and 53A(1AA) ICO stipulate that, except in the exercise of any function under the ICO, persons employed by the IA must preserve secrecy with regard to all matters relating

to the affairs of any insurer that may come to his knowledge in the exercise of any function under the ICO. Failure to comply with this provision is an offence. The OCI has a database that stores comprehensive information about the local insurance market and authorised insurers. All OCI staff are required to follow the *IT Security Policy and Guidelines* in accessing the database. It is also specified in the international MOUs signed by the IA that the information supplied by the requested authority should be used only in connection with regulatory and supervisory functions.

Additional elements

963. As noted previously, there is case law which states that, in the absence of an express prohibition, enforcement agencies may disclose information which has lawfully come into their possession to an appropriate authority in furtherance of their duties. In addition, under s.33(2) and s.58(1) PDPO, information can be released to non-counterparts for the purposes of prevention and detection of crime. The JFIU may spontaneously release STR information to any authorities or persons responsible for investigating or preventing crime, or handling the disclosure of knowledge or suspicion on property relating to crime, of any place outside Hong Kong (s.25A(9) DTROP and OSCO and s.12(6) UNATMO). Thus, the JFIU can exchange information with non-counterparts. Moreover, it can exchange information with overseas LEAs through Interpol and Customs networks.

964. Financial regulators can also exchange information directly with non-counterparts which have some regulatory function. The HKMA can exchange information with overseas securities and insurance regulators provided that the same pre-conditions that apply to an overseas banking regulator are satisfied. In addition to sharing information with its counterparts, the SFC may disclose information to any foreign authority which regulates, supervises or investigates banking, insurance or other financial services or the affairs of corporations; and are subject to adequate secrecy provisions. In respect of the OCI, s.53B ICO allows the IA to disclose confidential information to any overseas financial service supervisor if it is subject to adequate secrecy provisions and disclosure is in the interests of the policy holders/the public or will assist the supervisor to exercise his functions.

965. The JFIU can obtain from other competent authorities or other persons relevant information requested by a foreign counterpart FIU. All staff of the JFIU are either police officers or C&ED officers, as such they have full police investigation powers.

Statistics⁷¹ and Effectiveness

Law enforcement agencies

Table 54. International requests for information processed by the Hong Kong Police LB, 2003-2007

Year	No. of Requests Received	No. of Requests Made
2003	1 466	1 538
2004	1 619	1 589
2005	1 670	1 319
2006	1 475	1 307
2007	1 437	1 318

⁷¹ As related to R.32; see s.7.2 for the compliance rating for this Recommendation.

Table 55. Police (FI NB) international requests for assistance, 2003-2007

Year	Request s Received	Requests Sent
2003	70	58
2004	59	101
2005	75	58
2006	32	45
2007	35	40

Table 56. C&ED (FIG C&ED) international requests for assistance, 2003-2007

Year	Requests Received	Requests Sent
2003	53	96
2004	29	16
2005	84	130
2006	116	119
2007	116	72

966. As a result of the absence of a disclosure/declaration system for cross-border movement of currency or BNI, sharing of information with foreign jurisdictions in such matters is rare.

Table 57. ICAC international requests for assistance, 2003-2007

Year	Requests Received	Requests Sent
2003	0	2
2004	1	7
2005	2	2
2006	5	2
2007	5	3

Table 58. International requests for information to/from the JFIU, 2003-2007

	Request to JFIU		Requests from JFIU	
	Granted	Refused	Granted	Refused
2003	139	11	195	1
2004	245	8	145	2
2005	218	9	86	3
2006	160	12	59	1
2007	114	3	62	1
Total	876	43	547	8

967. The JFIU endeavours to entertain incoming requests. Where a request contains insufficient information to satisfy the JFIU as to the nature of the investigation or enquiry, the requesting jurisdiction is requested to provide further information. Some requests to the JFIU were refused because the requests failed to follow the Egmont *Principles for Information Exchange*. Some requests made by the JFIU were refused due to the absence of an MOU with the requested FIU.

Table 59. Spontaneous disseminations by the JFIU, 2004-2007

	2004	2005	2006	2007
Spontaneous disseminations	145	86	50	62

Regulators

968. The HKMA has received eight requests for information/assistance from overseas authorities which relate to AML/CFT from 2004 to 2007. All but one of these were granted. In that particular case, the information requested was to be used by law enforcement agencies in the furtherance of a criminal investigation. This was outside the remit permitted under s.121 BO and the request was thus declined. The overseas authority was advised to direct its request to the Secretary for Justice and it was eventually granted under the MLAO. Apart from formal requests for assistance, the HKMA also holds meetings with overseas authorities to discuss, among other things, matters relating to AML/CFT. In the past four years, 36 such meetings have been held.

969. During 2007, the SFC received 63 requests for assistance related to enforcement matters. Most of those requests (especially the cases relating to market manipulation, insider dealing and fraud) involved ML elements, although no case was specifically stated as for ML offences. During the same year the SFC made 50 requests to overseas regulators.

Table 60. International requests for assistance (enforcement related) to/from the SFC, 2004-2007

	2004	2005	2006	2007
Received	55	47	74	63
Sent	5	10	25	50

970. To date, the OCI has not received or made any international requests for assistance regarding or relating to AML/CFT.

6.5.2 Recommendations and Comments

971. Hong Kong authorities (enforcement and regulatory) provide a wide range of international co-operation to their foreign counterparts and have clear and effective gateways to facilitate the prompt and constructive exchange of information, both spontaneous and upon request. These arrangements appear to be working well.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of Factors Underlying Rating
R.40	C	<ul style="list-style-type: none"> This Recommendation is fully observed.
SR V	LC	<i>(This is a composite rating and does not derive from the issues covered here.)</i>

7. OTHER ISSUES

7.1 Resources and statistics (R.30 & R.32)

972. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report, *i.e.* all of Section 2, parts of Sections 3 and 4, and in Section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains the boxes showing the rating and the factors underlying the rating.

	Rating	Summary of Factors Underlying Rating
R.30	LC	<ul style="list-style-type: none">• There is a need for greater training and awareness-raising to be provided to relevant agencies to address the low number of confiscations relating to ML prosecutions.• The number of requests made for mutual legal assistance, particularly for recovery of proceeds of crime, is low, and additional outreach to relevant agencies is required to address this.
R.32	LC	<ul style="list-style-type: none">• Hong Kong does not review the effectiveness of its system for combating money laundering and terrorist financing on a regular basis.

7.2 Other relevant AML/CFT measures or issues

973. There are no further issues to be discussed in this section.

7.3 General framework for AML/CFT system (see also s.1.1)

974. There are no further issues to be discussed in this section.

TABLES

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations has been made according to the four levels of compliance mentioned in the 2004 Methodology⁷² (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or, in exceptional cases, Not Applicable (N/A).

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely Compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially Compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non Compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not Applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

Recommendations	Rating	Summary of Factors Underlying Rating ⁷³
Legal systems		
1 – ML offence	LC	<ul style="list-style-type: none"> The predicate offences do not adequately cover one of the 20 designated categories of offences, specifically; environmental crimes.
2 – ML offence – mental element and corporate liability	C	<ul style="list-style-type: none"> This Recommendation is fully observed.

⁷² *Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations*, 27 February 2004 (Updated as of February 2007).

⁷³ These factors are only required to be set out when the rating is less than Compliant.

Recommendations	Rating	Summary of Factors Underlying Rating ⁷³
3 – Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • OSCO restraint and forfeiture is limited to cases where benefits exceed HKD 100 000. • Confiscation powers under OSCO are not available for all predicate offences. • No mechanisms exist for confiscation of the proceeds of TF. • Powers to confiscate instrumentalities do not extend to property that does not come into the possession of a court or police or customs agencies. • Effectiveness: Given the risk of money being laundered in Hong Kong (including the proceeds of foreign predicate offences), the number of restraint and confiscation applications made each year is low.
Preventive measures		
4 – Secrecy laws	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.
5 – Customer due diligence	PC	<ul style="list-style-type: none"> • Key CDD obligations are not set out in law or regulation. • Only basic CDD obligations are in place for money remitters and money exchange companies and, due to the absence of a supervisor for these entities, it is not possible to determine the extent of implementation of the existing CDD obligations. • The threshold for CDD on occasional customers in the banking sector (other than in relation to remittances and money changing) is not clearly specified. • Pending implementation of the new HKMA Guidelines, there are no obligations on banks to obtain information on the purpose and nature of the account. • Scope limitation: no formal assessment has been undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from CDD requirements.
6 – Politically exposed persons	PC	<ul style="list-style-type: none"> • The banking and insurance guidelines do not specify explicitly that senior management approval is required to continue a business relationship with a customer subsequently discovered to be a PEP. • There are no enforceable provisions regarding the identification and verification of PEPs for remittance agents and money changers. • Scope limitation: no formal assessment has been undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from CDD requirements.
7 – Correspondent banking	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.

Recommendations	Rating	Summary of Factors Underlying Rating ⁷³
8 – New technologies & non face-to-face business	LC	<ul style="list-style-type: none"> • Remittance agents are not required to have policies in place or take measures to prevent the misuse of technological developments in ML and TF schemes. • There is no requirement for remittance agents and money changers (or for AIs undertaking remittance transactions for non-account holders) to verify a customer's identity or to take alternative measures when conducting non-face-to-face transactions. • Scope limitation: no formal assessment has been undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from CDD requirements.
9 – Third parties and introducers	PC	<ul style="list-style-type: none"> • In the banking and securities sectors, reliance may be placed on introducers who are not regulated for AML/CFT purposes. • Financial institutions may rely on intermediaries incorporated in or operating from "equivalent" jurisdictions but the list of equivalent jurisdictions is not derived from an objective, qualitative assessment. • Scope limitation: no formal assessment has been undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from the preventive measures.
10 – Record keeping	PC	<ul style="list-style-type: none"> • Only general record-keeping requirements are embedded in law or regulation. • In the securities sector the obligation to maintain identification records, account files and business correspondence for a minimum of five years is recommended but not mandatory. • The record keeping requirements for remittance agents are incomplete: records must only be kept for transactions of HKD 8 000 or more and there is no requirement that remittance agents or money changers verify data obtained and kept for non-face-to-face transactions. • The level of implementation of record keeping requirements by remittance agents and money changers cannot be determined. • Competent authorities may only demand that remittance agents and money changers provide them with records and information where they have a reasonable suspicion that an offence has been committed and this may limit the timely provision of information to competent authorities by remittance agents. • Scope limitation: no formal assessment has been undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from the preventive measures and corresponding regulatory regime.
11 – Unusual transactions	PC	<ul style="list-style-type: none"> • Banking institutions are not currently required to record in writing their findings and analysis of the background and purpose of complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. • There are no requirements for remittance agents and money changers to pay special attention to complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. • Scope limitation: no formal assessment has been undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from the preventive measures.

Recommendations	Rating	Summary of Factors Underlying Rating ⁷³
12 – DNFBPs – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> • With very limited exceptions, no relevant CDD or other obligations (as required under R.5, 6 and 8-11) have been imposed on any of the DNFBP sectors.
13 – Suspicious transaction reporting	LC	<ul style="list-style-type: none"> • Some minor deficiencies in Hong Kong's list of predicate offences (re environmental crime) impact on the scope of the suspicious transaction reporting requirement. • The requirement to report transactions suspected of being related to terrorism only arises where there is a link to terrorist acts, and not where the finances are for a terrorist organisation or individual terrorist in the absence of a link to a terrorist act.
14 – Protection & no tipping-off	LC	<ul style="list-style-type: none"> • The prohibition on tipping-off does not apply in all cases where an STR is being considered, but has not yet been submitted to the JFIU.
15 – Internal controls, compliance & audit	LC	<ul style="list-style-type: none"> • There are no requirements for remittance agents, money changers and money lenders to have internal procedures, policies and controls or to have employee training and screening. • Scope limitation: no formal assessment has been undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from the preventive measures.
16 – DNFBPs – R.13-15 & 21	NC	<ul style="list-style-type: none"> • Some deficiencies in Hong Kong's list of predicate offences (re environmental crimes) impact on the scope of the suspicious transaction reporting requirement. • The requirement to report transactions suspected of being related to terrorism only arises where there is a link to terrorist acts, and not where the financing is for a terrorist organisation or individual terrorist in the absence of a link to a terrorist act. • The prohibition on tipping-off does not apply in all cases where an STR is being considered, but has not yet been submitted to the JFIU. • There are serious concerns about the effectiveness of the reporting system as most DNFBPs rarely submit reports. • DNFBPs are not obliged to have compliance officers or internal control programmes. • DNFBPs are not required to pay special attention to transactions with countries which do not or do not adequately implement the FATF Recommendations.
17 – Sanctions	PC	<ul style="list-style-type: none"> • Sanctions available with respect to the insurance sector are limited in their scope and do not lend themselves readily to address the wide range of deficiencies that may be identified. • Only criminal sanctions are available with respect to remittance and money changing businesses, and no measures are available to address less serious deficiencies. • Scope limitation: no formal assessment has been undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from the preventive measures and corresponding regulatory regime. • For institutions regulated by the HKMA, the range of sanctions available does not include the power to impose financial sanctions.

Recommendations	Rating	Summary of Factors Underlying Rating ⁷³
18 – Shell banks	LC	<ul style="list-style-type: none"> Financial institutions are not required to satisfy themselves that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks.
19 – Other forms of reporting	C	<ul style="list-style-type: none"> This Recommendation is fully observed.
20 – Other NFBP & secure transaction techniques	LC	<ul style="list-style-type: none"> No evidence exists of adequate consideration being paid to applying Recommendations 5, 6, 8-11, 15, 17 and 21 to non-financial businesses and professions (other than DNFBPs) that are at risk of being misused for money laundering or terrorist financing.
21 – Special attention for higher risk countries	LC	<ul style="list-style-type: none"> There are no requirements for remittance agents or money changers to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the <i>FATF Recommendations</i>. Scope limitation: no formal assessment has been undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from the preventive measures.
22 – Foreign branches & subsidiaries	LC	<ul style="list-style-type: none"> There are no requirements for remittance agents or money changers to ensure their foreign branches and subsidiaries observe AML/CFT measures consistent with the requirements in Hong Kong and no requirements for the foreign branches and subsidiaries to notify the home supervisor when they are unable to do so.
23 – Regulation, supervision and monitoring	LC	<ul style="list-style-type: none"> The fit and proper test for insurance institutions applies to chief executives and managing directors but not to senior management. Remittance agents and money changers are not routinely monitored or supervised for AML/CFT; and there are no measures to prevent criminals from controlling or managing these businesses. Scope limitation: no formal assessment has been undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from the preventive measures and corresponding regulatory regime.
24 – DNFBP: regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> Except for estate agents, there are no designated competent authorities or formal structures in place to monitor DNFBPs' compliance with AML/CFT obligations. With very limited exceptions, the only sanctions applicable to DNFBPs arise under the criminal law for failure to file STRs.
25 – Guidelines & Feedback	C	<ul style="list-style-type: none"> This Recommendation is fully observed.
Institutional and other measures		
26 – The FIU	C	<ul style="list-style-type: none"> This Recommendation is fully observed.
27 – Law enforcement authorities	C	<ul style="list-style-type: none"> This Recommendation is fully observed.
28 – Powers of competent authorities	C	<ul style="list-style-type: none"> This Recommendation is fully observed.

Recommendations	Rating	Summary of Factors Underlying Rating ⁷³
29 – Supervisors	PC	<ul style="list-style-type: none"> • The legal authority of the OCl routinely to monitor for AML/CFT compliance and to apply sanctions is limited. • There are no powers to permit routine monitoring of remittance and money changing businesses. • Only police powers are available to require production of or access to records, documents or information of the remittance agents. • Only criminal sanctions are available for individuals running remittance services and these criminal sanctions are not proportionate to the offences, nor do they apply to all AML/CFT requirements. • Scope limitation: no formal assessment has been undertaken to justify exclusion of money lenders, credit unions, the post office and financial leasing companies from the preventive measures and corresponding regulatory regime.
30 – Resources, integrity and training	LC	<ul style="list-style-type: none"> • There is a need for greater training and awareness-raising to be provided to relevant agencies to address the low number of confiscations relating to ML prosecutions. • The number of requests made for mutual legal assistance, particularly for recovery of proceeds of crime, is low, and additional outreach to relevant agencies is required to address this.
31 – National co-operation	LC	<ul style="list-style-type: none"> • Effectiveness concern: The mechanisms to co-operate and co-ordinate domestically concerning development and implementation of policies and activities to combat money laundering and terrorist financing are impacted by some reluctance to elevate matters to the Legislative Council where amendments to ordinances are required, and the fact that developments to the AML/CFT system appear to be reactive rather than proactive.
32 – Statistics	LC	<ul style="list-style-type: none"> • Hong Kong does not review the effectiveness of its system for combating money laundering and terrorist financing on a regular basis.
33 – Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> • Measures are not adequate to ensure that there is sufficient, accurate and timely information held on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. • Information on the companies register pertains only to legal ownership/control (as opposed to beneficial ownership), is not verified and is not necessarily reliable. • Corporate and nominee directors are permitted, which further obscures beneficial ownership and control information • There are only limited measures in place to ensure that share warrants to bearer, which may be issued by companies incorporated in Hong Kong, are not misused for money laundering.
34 – Legal arrangements – beneficial owners	PC	<ul style="list-style-type: none"> • While the investigative powers are generally sound, there are not adequate measures in place to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal arrangements that can be obtained or accessed in a timely fashion by competent authorities. • Providers of trust services, other than those which are financial institutions, are not subject to or monitored for AML/CFT obligations.

Recommendations	Rating	Summary of Factors Underlying Rating ⁷³
International Co-operation		
35 – Conventions	LC	<ul style="list-style-type: none"> • Significant shortcomings exist in implementation of the <i>Terrorist Financing Convention</i> (in particular articles 2, 8 and 18): the TF offence does not extend to ‘funds’ as broadly defined by the Convention; the definition of ‘terrorist act’ does not extend to acts or threats directed at international organisations; the civil ‘protest’ exemptions to certain classes of ‘terrorist acts’ are of potentially broad application; there is no current capacity to effect forfeiture of funds used or allocated for the purpose of committing terrorist offences; and not all customer due diligence requirements have been implemented.
36 – Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> • Only limited assistance entailing coercive measures is available to “other parts of the People’s Republic of China”, such as Macao and Mainland China, which would be Hong Kong’s most important partners on cross-border crimes. • As dual criminality is required for mutual legal assistance, the limitations in the TF offence may have an impact on the extent and effectiveness of mutual legal assistance provided by Hong Kong for TF matters.
37 – Dual criminality	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.
38 – MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> • Only limited proceeds recovery related assistance is available to “other parts of the People’s Republic of China”, such as Macau and Mainland China for investigations and prosecutions of drug trafficking offences punishable by at least two years’ imprisonment. • The mutual legal assistance provisions are seldom used by Hong Kong authorities for the purpose of asset recovery. • Insufficient information is available to demonstrate that authorities have considered establishing an asset recovery fund.
39 – Extradition	LC	<ul style="list-style-type: none"> • It is not possible to extradite persons to other parts of the PRC, such as Mainland China and Macao.
40 – Other forms of co-operation	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.

Recommendations	Rating	Summary of Factors Underlying Rating ⁷³
Nine Special Recommendations		
SR I – Implement UN instruments	PC	<ul style="list-style-type: none"> • Significant shortcomings exist in implementation of the <i>Terrorist Financing Convention</i> (in particular articles 2, 8 and 18): the TF offence does not extend to 'funds' as broadly defined by the Convention; the definition of 'terrorist act' does not extend to acts or threats directed at international organisations; the 'civil protest' exemptions to certain classes of 'terrorist acts' are of potentially broad application; there is no current capacity to effect forfeiture of funds used or allocated for the purpose of committing terrorist offences; and not all customer due diligence requirements have been implemented. • S/RES/1373(2001) has not been fully implemented and shortcomings exist in relation to implementation of S/RES/1267(1999); Hong Kong lacks the capacity to implement express freezes on terrorist property and has no capacity to forfeit "funds used or allocated for the purpose of committing" terrorist offences other than those associated with Al Qaeda and the Taliban.
SR II – Criminalise TF	PC	<ul style="list-style-type: none"> • The TF offence does not encompass provision/collection of assets other than "funds". • The TF offence under UNATMO does not cover provision/collection for an individual terrorist or terrorist organisation and the offence under UNSAR extends only to those individuals and entities designated by the 1267 Committee. • Terrorist acts as defined in UNATMO do not extend to intended coercion of an international organisation. • The 'civil protest' exemptions to certain classes of terrorist acts as defined in UNATMO are potentially of broad application.
SR III – Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> • Obligations under S/RES/1267(1999) with respect to assets under the direct control of designated entities have not been implemented. • The freezing requirements of S/RES/1373(2001) have not been implemented. • Hong Kong does not have a system for examining and giving effect to actions initiated under freezing mechanisms of other jurisdictions. • There are no provisions concerning jointly held property or property derived from funds or assets owned or controlled by designated entities. • Guidance is not provided to institutions and other natural or legal persons concerning obligations under freezing mechanisms. • There are no mechanisms enabling challenges to freezing actions or enabling access to frozen funds or assets. • There are no provisions with respect to confiscation of funds or other assets of designated entities.
SR IV – Suspicious transaction reporting	LC	<ul style="list-style-type: none"> • The requirement to report transactions suspected of being related to terrorism only arises where there is a link to terrorist acts, and not where the finances are for a terrorist organisation or individual terrorist in the absence of a link to a terrorist act. • The only reports submitted to date where terrorist financing is suspected relate to potential matches with entities designated on lists.

Recommendations	Rating	Summary of Factors Underlying Rating ⁷³
SR V – International co-operation	LC	<ul style="list-style-type: none"> • Only limited assistance entailing coercive measures is available to Macao and the PRC and it is not possible to extradite persons between Mainland China, Macao and Hong Kong. • As dual criminality is required, the limitations in the TF offence may have an impact on the extent and effectiveness of mutual legal assistance and extradition provided by Hong Kong for TF matters.
SR VI – AML requirements for money/value transfer services	PC	<ul style="list-style-type: none"> • There is no system for monitoring remittance services and ensuring they comply with the FATF Recommendations: the only oversight is by use of law enforcement powers. • Only criminal sanctions are available and these are not effective, proportionate and dissuasive. • A broad range of deficiencies identified under other Recommendations are also relevant to the remittance sector.
SR VII – Wire transfer rules	PC	<ul style="list-style-type: none"> • For remittances ordered by non-accountholders, institutions are only required to conduct verification of the customer's identity for amounts of HKD 8 000 or more when the remitter appears in person. • There is no requirement for remittance agents or the post office to transmit full originator information in the message or form accompanying the wire transfer. • There is no mechanism for monitoring compliance by remittance agents.
SR VIII – Non-profit organisations	LC	<ul style="list-style-type: none"> • While a domestic review has recently been completed, and various statistics are kept by relevant authorities, there remain some information gaps in relation to the size and financial scope of the NPO sector in Hong Kong. • Outreach has recently commenced to the NPO sector but it is too early to fully judge effectiveness. • Requirements to identify persons who own, control or direct the activities of NPOs vary depending on the legal form of the NPO and, for NPOs established as companies (the majority of NPOs), are not fully adequate, even allowing for the lower level of risk. • The requirement to maintain documents for at least five years is not met for NPOs other than those established as companies under the CO.

Recommendations	Rating	Summary of Factors Underlying Rating ⁷³
SR IX – Cross-border Declaration & Disclosure	NC	<ul style="list-style-type: none"> • There is neither a disclosure nor a declaration system for detection, seizure or confiscation of cross-border movement of currency or BNI. • Authorities are not empowered to ask for further information where a false/misleading disclosure/declaration has been made. • There is no offence for making a false/misleading declaration or disclosure and authorities are not empowered to seize or confiscate property resulting from a false/misleading disclosure or declaration. • The only specific authority to seize currency or BNI at the border is in relation to property that is related to drug trafficking. • The Immigration Department is not involved in domestic co-ordination mechanisms in this area. • There appears to be no co-ordination or action taken jointly with Mainland China border authorities in relation to the cross-border movement of currency or BNI. • There are no sanctions in cross-border movement of currency or BNI related to ML or TF other than the TF offence itself. • Limited statistics are maintained on cross-border movement of currency or BNI.

Table 2. Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of ML (R.1 & 2)	<ul style="list-style-type: none"> • In order to more consistently achieve sentences that reflect the seriousness of the crime, the sentencing range and the maximum available sentence of 14 years' imprisonment – and to afford appropriate opportunity for the continued development of guideline judgements that comprehend the maximum sentencing range, Hong Kong should more consistently prosecute more serious ML cases in the High Court. • Hong Kong should consider rendering a greater range of environmental crimes as indictable – and therefore predicate – offences. • Hong Kong should consider additional provisions for the imputation of criminal knowledge to legal entities.
2.2 Criminalisation of TF (SR II)	<ul style="list-style-type: none"> • It is recommended that Hong Kong review UNATMO with a view to expressly criminalising the provision of all assets, and not simply funds. The evaluation team also recommends that the Hong Kong authorities: (i) broaden the scope of terrorist act to cover the intended coercion of an international organisation and (ii) prescribe more clearly the extent of the 'civil protest' exceptions to certain classes of terrorist acts. • It is strongly recommended that the authorities prioritise work required to give effect to s.8 and other sections of UNATMO which are still not in force and examine the evaluation team's initial concerns with s.8.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> • It is recommended that the limitations to the confiscation system posed by; the HKD 100 000 threshold, the requirement of a link to specified offences (which are not all predicate offences for money laundering) and the inability to confiscate all forms of instrumentalities, be rectified. • Both DTROP and OSCO would benefit from provisions providing powers to void actions taken to frustrate recovery. • The evaluation team further recommends that s.13 UNATMO be brought into effect as soon as possible. This will provide for forfeiture of proceeds/instrumentalities of terrorist acts or TF. • The enhanced focus on confiscation that began in 2007 should continue so as to enhance the number of restraint and confiscation applications and to ensure that Hong Kong administers an effective regime for confiscation of the proceeds of ML and TF.
2.4 Freezing of funds used for TF (SR III)	<ul style="list-style-type: none"> • In order to fully implement S/RES/1267(1999), the evaluation team recommends that Hong Kong implement an express provision to freeze assets (funds and other economic resources) of relevant entities. • The evaluation team recommends that provisions of UNATMO designed to implement S/RES/1373(2001) and the freezing mechanisms of other jurisdictions be promptly brought into effect.
2.5 The Financial Intelligence Unit and its functions (R.26)	<ul style="list-style-type: none"> • In order to better judge the effectiveness of the JFIU, it is recommended that, going forward, the JFIU makes a concerted effort to compile statistics on the utility of their disseminations, including:

AML/CFT System	Recommended Action (listed in order of priority)
	<ul style="list-style-type: none"> • Number of disseminations that initiated/contributed to an investigation. • Number of investigations resulting in a prosecution/conviction which benefited from JFIU disseminations. • Number of search warrants or production orders that used information provided by the JFIU. • Number of seizures, restraint orders, forfeitures, fines, etc., that were generated as a result of information provided by the JFIU. • It is recommended that the JFIU consider producing sector-specific indicators and typologies where possible to assist the various sectors in their training and overall awareness in this area.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	<ul style="list-style-type: none"> • It is recommended that HK authorities place more emphasis in their investigation on the tracing, seizure and confiscation of the proceeds of crime. An increase in the outreach by the DOJ asset recovery section may enhance effectiveness in this area.
2.7 Cross-border Declaration & Disclosure (SR IX)	<ul style="list-style-type: none"> • It is recommended that a threat assessment be conducted in relation to the movement of currency into Hong Kong, particularly from Mainland China and its impact on the economy of Hong Kong and that a plan be formulated to detect and curb the flow of illicit funds that in all likelihood are co-mingled with the legitimate flow. • It is recommended that Hong Kong implement as a matter of priority a declaration or disclosure system to detect, seize or confiscate the physical cross-border transportation of currency or BNI that are related to ML or TF. It is recommended that an offence for making a false/misleading declaration or disclosure be made an offence within this system. It is recommended that the Immigration Department be better integrated into co-ordination mechanisms to ensure all relevant parties are part of the multi-agency process. Once this system is in place, extensive programmes will be needed to train C&ED and other enforcement officers and to raise the awareness of those working for land, sea and air carriers. • It is recommended that C&ED develop a 'constant random' methodology for inspecting passengers in addition to the targeted searches. • It is recommended that Hong Kong establish separate laws to enable customs enforcement or the police to specifically stop and seize currency or BNI where there is a suspicion of ML or TF or any predicate offence. • The C&ED should consider implementing a rigorous process of using x-ray and other inspection equipment commensurate with the significant daily traffic in and out of Hong Kong at both border points and the airport. In addition, records and statistics from this screening activity should be maintained. • It is recommended that Hong Kong authorities establish a systematic and close working relationship with authorities from Mainland China in an effort to deal with the risks associated with cross-border movement of currency and BNI. • It is recommended that Hong Kong adopt all of SR IX essential criteria and additional elements and consider implementing the measures set out in the Best Practices Paper for SR IX. • It is recommended that relevant authorities improve the information collected and analysed with respect to cross-border movement of currency/BNI. Such statistics could include: <ul style="list-style-type: none"> • Number of persons targeted through intelligence for inspection. • Number of disclosures or declarations made at the time of

AML/CFT System	Recommended Action (listed in order of priority)
	<p>inspection.</p> <ul style="list-style-type: none"> • Number of false or misleading statements provided at time of inspection. • Amounts of currency/BNI interdicted at border. • Amounts of currency/BNI seized and or confiscated through interdiction efforts.
3. Preventive Measures – Financial Institutions	
3.1 Risk of ML or TF	-
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<ul style="list-style-type: none"> • The authorities should consider the following actions: <ul style="list-style-type: none"> • Incorporate the key elements of the CDD process into law or regulation (<i>i.e.</i> the asterisked items within the assessment methodology). It is understood that this has been under discussion for some time within the regulatory community. • Undertake a formal risk assessment to determine whether there is any justification for excluding the credit unions, money lenders, financial leasing companies and the post office from the CDD requirements. • Extend the currently limited CDD obligations that apply to the RAMC sector to bring them into line with the overall requirements. • Within the existing framework, amend the provisions to require RAMCs to verify the identity of non-face-to-face customers, using techniques that are at least as effective as those used for face-to-face customers. • Clarify within the banking and insurance guidelines that senior management approval should be required to continue a business relationship with a PEP if the customer's status is discovered in the course of an ongoing relationship. • Review the treatment of omnibus accounts in the <i>Securities Guidelines</i>, to ensure that the beneficial owner of the underlying funds must be identified.
3.3 Third parties and introduced business (R.9)	<ul style="list-style-type: none"> • As the scope of permissible reliance on third-party introductions within the banking and securities sectors is too broad, the authorities should consider the following: <ul style="list-style-type: none"> • Within the banking and securities sectors, limit the eligibility of introducers to those that are regulated and supervised for AML/CFT purposes. • Determine on an objective qualitative basis the jurisdictions that are considered adequately to apply the FATF standards. • Extend relevant provisions to remittance agents, money changers and money lenders, credit unions and leasing companies.
3.4 Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> • It is recommended that the current review of the system of oversight of remittance agents and money changers result in provision of full powers to access information being granted to the agency which becomes designated as the supervisor for these entities.
3.5 Record keeping and wire transfer rules (R.10 & SR VII)	<ul style="list-style-type: none"> • It is recommended that the authorities ensure that keeping the records that the FATF requires is mandated by law or regulation. • It is recommended that the <i>Securities Guidelines</i> be amended to, at a minimum, remove the phrase 'wherever practicable' from

AML/CFT System	Recommended Action (listed in order of priority)
	<p>paragraph 8.1.</p> <ul style="list-style-type: none"> • It is recommended that Hong Kong strengthen record keeping by remittance agents and money changers, by; introducing a regulator for that sector, requiring that records be kept for all transactions, and requiring that verification data be kept for non-face-to-face transactions. • It is recommended that all existing requirements with respect to wire transfers be extended to the remittance sector.
3.6 Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> • Hong Kong authorities are encouraged to extend requirements regarding unusual transactions and jurisdictions which insufficiently apply the FATF Recommendations to remittance agents, money changers, money lenders, credit unions, the post office and financial leasing companies.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR IV)	<ul style="list-style-type: none"> • Recommendations made in this report with respect to the predicate offences and the TF offence are also important for the complete implementation of STR reporting obligations. • It is recommended that the level of outreach provided by the JFIU be maintained at least at its present level, and that it cover all types of financial institutions. It is important that the authorities monitor closely the trend in reporting once the heightened publicity surrounding the outreach programmes has died down. In addition, the JFIU and relevant regulatory authorities should consider providing feedback and guidance jointly and in a more structured manner.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> • While the requirements encompassed within the various guidelines are quite extensive, it is recommended that the authorities introduce obligations for remittance agents, money changers and money lenders to have appropriate internal procedures, policies and controls.
3.9 Shell banks (R.18)	<ul style="list-style-type: none"> • An explicit requirement should be introduced to the effect that banks should determine, as far as reasonably possible, that their respondent banks are not providing correspondent facilities to shell banks.
3.10 The supervisory and oversight system: competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	<ul style="list-style-type: none"> • It is recommended that the authorities: <ul style="list-style-type: none"> • Review the statutory powers of the OCI to ensure that it has clear authority to undertake routine compliance monitoring for AML/CFT issues, and is able to apply effective, proportionate and dissuasive sanctions. In this regard, it is understood that the authorities have commissioned a study to consider the establishment of a new agency, operationally independent from the Government, that would replace the OCI and take up the relevant statutory powers. • Provide the ability for routine compliance monitoring of the RAMC sector (with appropriate sanctioning powers), without the need for the relevant authority to have a suspicion that an offence is being committed. Again, it is encouraging to note that the Hong Kong government has completed an internal review which concluded that there is a need to establish a designated regulator responsible for ensuring that RAMCs adequately comply with AML/CFT requirements⁷⁴.

⁷⁴ In April 2008, a central co-ordinating committee on AML/CFT chaired by the Financial Secretary was formed and the committee decided that the Commissioner for Customs and Excise would in the near future become the regulator for RAMCs.

AML/CFT System	Recommended Action (listed in order of priority)
	<ul style="list-style-type: none"> In the light of the recommended risk assessment in relation to the those sectors not currently covered by specific AML/CFT requirements, consider the need for appropriate supervisory or monitoring procedures.
3.11 Money value transfer services (SR VI)	<ul style="list-style-type: none"> It is recommended that Hong Kong: <ul style="list-style-type: none"> Extend the scope of the obligations on RAMCs to incorporate the FATF standards in relation to CDD, record-keeping, transaction monitoring, internal controls and regulatory oversight. Provide an oversight regime which is not reliant on application of law enforcement powers⁷⁵. Review whether the current criminal sanctions regime is effective, proportionate and dissuasive, particularly with respect to conducting an unregistered business. Consider the need for an administrative sanctions regime to accompany the introduction of more diverse CDD and internal controls obligations.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> It is important that the authorities proceed, as quickly as possible, to bring the relevant businesses and professions fully into the CDD and record-keeping regime in line with Recommendation 12. In the course of taking such action, it is also essential that consideration be given to the position of the offshore cruise ship casino sector, although it is recognised that the FATF, itself, has not yet addressed this specific matter, including the complexities that would arise from international maritime law. At the very minimum, the authorities should undertake a risk assessment of the offshore casino industry and determine the extent to which appropriate controls are necessary and feasible.
4.2 Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> The evaluation team's recommendations made with respect to Recommendations 1, 13-15 and 21 and with respect to Special Recommendation II are also important for DNFBP sectors. The authorities should give priority to ensuring that the DNFBPs effectively establish and maintain internal procedures, policies and control to prevent ML and TF. This should also include a focus on identifying why the level of reporting of suspicious transactions is consistently low across the sector.
4.3 Regulation, supervision and monitoring (R.24-25)	<ul style="list-style-type: none"> In moving forward, the authorities will need to give consideration to what type of regulatory or oversight regime would best address the AML/CFT risks in the DNFBP sectors, and who should be responsible for its implementation. Consideration might have to be given to whether additional responsibilities should be given to existing governmental agencies, or whether a new agency might need to be created. As discussed under Recommendation 12, this review should also consider the position of the offshore cruise ship casino sector.
4.4 Other non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> It is recommended that Hong Kong conduct a review periodically to identify which sectors are at risk of being exploited by the

⁷⁵ In April 2008 a central co-ordinating committee on AML/CFT chaired by the Financial Secretary was formed and the committee decided that the Commissioner for Customs and Excise would in the near future become the regulator for RAMCs.

AML/CFT System	Recommended Action (listed in order of priority)
	perpetrators of ML and TF and what appropriate measures should be implemented for such sectors.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> It is recommended that the CR work with other relevant agencies to conduct a review of the company registry system in Hong Kong with a view to obtaining and checking a wider range of information on shareholders and shareholdings.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> While Hong Kong's system of trusts is typical for a common law jurisdiction, it is recommended that Hong Kong introduce measures to enhance the transparency of trusts. In particular, measures which would enable enforcement agencies to identify the existence of a trust and require a party to hold information on the beneficial ownership and control of trusts and other legal arrangements. It is also recommended that providers of trust services be made subject to some AML/CFT obligations.
5.3 Non-profit organisations (SR VIII)	<ul style="list-style-type: none"> The gaps identified by the evaluation team in the supervision/monitoring of the NPO sector should be addressed in any periodic reassessments of the sector. Further outreach to the sector, including promotion of the ND guidelines, should be undertaken, as recommended in the recent domestic review. In the absence of centralised system of registration/licensing for NPOs, Hong Kong authorities should take measures to ensure a more consistent approach to licensing/registration requirements for NPOs, the maintenance of information on persons owning, controlling or directing their activities and record-keeping requirements, regardless of the legal form of the NPO. In the context of the review of the sector being conducted by the Law Reform Commission, and given the significant role of the NPO sector in Hong Kong society, authorities should consider establishing/assigning a specific competent authority in to oversee the activities of NPOs for AML/CFT and other purposes. The JFIU and other relevant authorities should remain vigilant and continue to monitor the sector's understanding of and compliance with the STR reporting requirements.
6. National and International Co-operation	
6.1 National co-operation and co-ordination (R.31)	<ul style="list-style-type: none"> Hong Kong should consider creating a mechanism to co-ordinate AML/CFT developments at the policy level. It is recommended that Hong Kong develop a multi-agency AML/CFT strategy and associated action plan and that agencies work to place relevant issues before the Legislative Council.
6.2 The Conventions and UN Special Resolutions (R.35 & SR I)	<ul style="list-style-type: none"> Recommendations to improve implementation of the <i>Terrorist Financing Convention</i> and relevant Security Council resolutions are enumerated in Sections 2.2 and 2.4.
6.3 Mutual Legal Assistance (R.36-38 & SR V)	<ul style="list-style-type: none"> Hong Kong authorities have acknowledged that law enforcement capabilities would be greatly enhanced if appropriate formal arrangements for mutual legal assistance were in place with Mainland China and Macao. These arrangements should be established as a matter of priority.

AML/CFT System	Recommended Action (listed in order of priority)
	<ul style="list-style-type: none"> The MLA Unit has taken responsibility for improving education of authorities with respect to MLA. It is recommended that there be continued outreach in this respect. Hong Kong should address the various deficiencies identified in Section 2.2.
6.4 Extradition (R.39, 37 & SR V)	<ul style="list-style-type: none"> It remains the intention of the Hong Kong government to conclude formal arrangements for extradition between Hong Kong, Macao and Mainland China. It is recommended that these arrangements be concluded as a matter of priority. In order to ensure that MLA and extradition will be rendered in a comprehensive range of TF cases there remains a critical need for Hong Kong to address the deficiencies mentioned in Section 2.2.
6.5 Other Forms of Co-operation (R.40 & SR V)	-
7. Other Issues	
7.1 Resources and statistics (R.30 & 32)	-
7.2 Other relevant AML/CFT measures or issues	-
7.3 General framework – structural issues	-

Table 3. Authorities' Response to the Evaluation

Relevant sections and paragraphs	Jurisdiction's Comments
Section 6.1	<p>Hong Kong, China is firmly committed to maintaining a robust and effective AML/CFT regime. A Central Co-ordinating Committee on Anti-Money Laundering and Counter Financing of Terrorism (CCC) has been set up. The CCC will steer and coordinate the strategic development of Hong Kong's AML/CFT regime in line with internationally recognized standards. Its terms of reference are to ensure that appropriate legal, regulatory and supervisory systems are in place to implement Hong Kong's policies and commitment to fight money laundering and counter terrorist financing; to monitor the progress of the implementation of AML/CFT policies, and to direct and guide further action by relevant agencies; and to keep under review the effectiveness of Hong Kong's AML/CFT regime and ensure an effective systemic response to changing threats.</p> <p>Chaired by the Financial Secretary, the CCC membership comprises very senior officials including the Secretary for Justice, Secretary for Financial Services and the Treasury, Secretary for Security, Secretary for Commerce and Economic Development, Commissioner of Police, Commissioner of Customs & Excise, Commissioner, Independent Commission Against Corruption; the Hong Kong Monetary Authority, Securities and Futures Commission, and the Office of the Commissioner of Insurance.</p> <p>At its first meeting in April 2008, it was decided that the Financial Services and the Treasury Bureau will take over the overall co-ordinating role of AML/CFT policies from the Narcotics Division of the Security Bureau to enhance and improve the strategic response of the AML/CFT regime to the changing money laundering and financing of terrorism landscape. This will take effect after the Mutual Evaluation Report is published in July 2008.</p> <p>It was also decided at the same meeting that the Customs & Excise Department will assume a regulatory role for remittance agents and money changers for AML/CFT purposes.</p>

ANNEXES

Annex 1: Abbreviations

Annex 2: All Bodies Met During the On-site Visit.

Annex 3: Provisions of Key Laws, Regulations and Other Measures

Annex 4: List of all Laws, Regulations and Other Material Received

Annex 5: Additional Charts and Tables

ANNEX 1. Abbreviations

Abbreviation	Full term
AI	Authorised institution
AISL	Association of Incorporated Services Limited
AML	Anti-money laundering
APG	Asia/Pacific Group on Money Laundering
BCC	<i>Code of Conduct</i> for the Bar Association of Hong Kong
BDO	Betting Duty Ordinances (Cap. 108)
BL	The <i>Basic Law</i> of the Hong Kong Special Administrative Region of the People's Republic of China (Cap. 2101)
BNI	Bearer negotiable instruments
BO	Banking Ordinance (Cap. 155)
BORO	Hong Kong Bill of Rights Ordinance (Cap. 383)
BPGNPO	Best Practice Guides for NPO (SWD) – Procurement Procedures/Staff Administration/ Stores Management/Work Contract
BQAPR	Barristers (Qualification for Admission and Pupillage) Rules (Cap. 159AC)
BRO	Business Registration Office
BROr	Business Registration Ordinance (Cap. 310)
CCHKO	Community Chest of Hong Kong Ordinance (Cap. 1122)
CDD	Customer due diligence
C&ED	Customs and Excise Department
CE	Chief Executive

Abbreviation	Full term
CECCD	Customs and Excise Department - Code on Conduct and Discipline
CEEO	Chief Executive Election Ordinance (Cap. 569)
CEIS	Customs and Excise Intelligence System
CESDR	Customs and Excise Service (Discipline) Rules (Cap. 342B)
CESO	Customs and Excise Service Ordinance (Cap. 342)
CESSO	Customs and Excise Service Standing Order
CFA	Court of Final Appeal
CFAO	Hong Kong Court of Final Appeal Ordinance (Cap. 484)
CFT	Combating the financing of terrorism
CIP	Chief Inspector
CLB	Customs Liaison Bureau
CO	Companies Ordinance (Cap. 32)
CPO	Criminal Procedure Ordinance (Cap. 221)
CR	Companies Registry
CrO	Crimes Ordinance (Cap. 200)
CS	Chief Secretary for Administration
CTO	Chinese Temples Ordinance (Cap. 153)
DCO	District Court Ordinance (Cap. 336)
DDO	Dangerous Drugs Ordinance (Cap. 134)
DNFBP	Designated non-financial businesses and profession
DOJ	Department of Justice
DTC	Deposit-taking company
DTROP	Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)
DTROPOr	Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories Order (Cap. 405A)
EACE	Estate Agents Code of Ethics
EAO	Estate Agents Ordinance (Cap. 511)
EAPC	Estate Agents Practice Circular
EAR	Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Cap. 511C)
EFO	Exchange Fund Ordinance (Cap. 66)

Abbreviation	Full term
EO	Evidence Ordinance (Cap. 8)
ESW	Egmont secure web
FATF	Financial Action Task Force
FIU	Financial intelligence unit
FODOr	Fugitive Offenders (Drugs) Order (Cap. 503J)
FOGOr	Fugitive Offenders (Genocide) Order (Cap. 503K)
FOIPPHOr	Fugitive Offenders (Internationally Protected Persons and Hostages) Order (Cap. 503H)
FOO	Fugitive Offenders Ordinance (Cap. 503)
FOSCAOr	Fugitive Offenders (Safety of Civil Aviation) Order (Cap. 503G)
FOSFTOr	Fugitive Offenders (Suppression of the Financing of Terrorism) Order (Cap. 503AA)
FOTOr	Fugitive Offenders (Torture) Order (Cap. 503I)
FS	Financial Secretary
GLNPO	Guideline on Preventing NPOs from Abuse for Terrorist Financing
GO	Gambling Ordinance (Cap. 148)
HCO	High Court Ordinance (Cap. 4)
HKCSS	Hong Kong Council of Social Service
HKCSSIO	Hong Kong Council of Social Service Incorporation Ordinance (Cap. 1057)
HKICPA	Hong Kong Institute of Certified Public Accountants
HKMA	Hong Kong Monetary Authority
HKSA	Hong Kong Standards of Auditing
HKSNC	Hong Kong Society of Notaries Circular
HKSN	Hong Kong Society of Notaries
HKSQC1	Hong Kong Standard on Quality Control 1
IAIS	International Association of Insurance Supervisors
ICAC	Independent Commission Against Corruption
ICACO	Independent Commission Against Corruption Ordinance (Cap. 204)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICO	Insurance Companies Ordinance (Cap. 41)

Abbreviation	Full term
ICSCC	Hong Kong Institute of Chartered Secretaries <i>Code of Conduct</i>
ICSO	Interception of Communications and Surveillance Ordinance (Cap. 589)
ID	Identification document(s)
IEGR	Import and Export (General) Regulations (Cap. 60A)
IEO	Import and Export Ordinance (Cap. 60)
IERR	Import and Export (Registration) Regulations (Cap.60E)
IGCO	Interpretation and General Clauses Ordinance (Cap.1)
IO	Immigration Ordinance (Cap. 115)
IRD	Inland Revenue Department
IRO	Inland Revenue Ordinance (Cap. 112)
IWG	Industry Working Group on Prevention of Money Laundering and Terrorist Financing
JFIU	Joint Financial Intelligence Unit
LACCR	Legal Aid in Criminal Cases Rules (Cap. 221D)
LB	Legal Bulletin
LEA	Law enforcement agency
LPARTO	Limited Partnerships Ordinance (Cap. 37)
LPO	Legal Practitioners Ordinance (Cap. 159)
LSAR	Solicitors' Accounts Rules
MCO	Money Changers Ordinance (Cap. 34)
ML	Money laundering
MLA	Mutual legal assistance
MLAO	Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)
MLO	Money Lenders Ordinance (Cap. 163)
MOU/MI	Memorandum of understanding between the HKMA and the SFC
NPC	National People's Congress
NPO	Non-profit organisation
OCI	Office of the Commissioner of Insurance
OSCO	Organized and Serious Crimes Ordinance (Cap. 455)
PACE	Code of Ethics for Professional Accountants

Abbreviation	Full term
PAO	Professional Accountants Ordinance (Cap. 50)
PDPO	Personal Data (Privacy) Ordinance (Cap. 486)
PDR	Police Force Discipline Regulation
PEP	Politically exposed person
PFO	Police Force Ordinance (Cap. 232)
PGO	Police General Orders
PLO	Police Licensing Office
POBO	Prevention of Bribery Ordinance (Cap. 201)
PRC	People's Republic of China
PSDR	Public Service (Disciplinary) Regulation
RTCs	Registered Trustee Corporations
RTIO	Registered Trustees Incorporation Ordinance (Cap. 306)
SFC	Securities and Futures Commission
SGPC	Hong Kong Solicitors' Guide to Professional Conduct
SJ	Secretary for Justice
SO	Societies Ordinance (Cap. 151)
SOO	Summary Offences Ordinance (Cap. 228)
SRO	Self-regulatory organisation
STR	Suspicious transaction report
STREAMS	Suspicious Transaction Report and Management System
STRWG	Suspicious Transactions Reporting Working Group
SWD	Social Welfare Department
TELA	Television and Entertainment Licensing Authority
TF	Terrorist financing
UN	United Nations
UNATMO	United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)
UNSC	United Nations Security Council

Abbreviation	Currency Units
EUR	Euro
HKD	Hong Kong Dollar
USD	United States Dollar

ANNEX 2. All Bodies Met During the On-site Visit

Government Agencies

Commerce and Economic Development Bureau	Independent Commission Against Corruption
Customs and Excise Department	Inland Revenue Department
Department of Justice	Joint Financial Intelligence Unit
Estate Agents Authority	Office of the Commissioner of Insurance
Financial Secretary's Office	Securities and Futures Commission
Financial Services and the Treasury Bureau	Security Bureau
Hong Kong Monetary Authority	Social Welfare Department
Hong Kong Police	Television and Entertainment Licensing Authority

Industry Bodies

Association of Incorporation Services Limited	Hong Kong Jewellers' and Goldsmiths' Association
The Chinese Gold & Silver Exchange Society	Hong Kong Law Society
Estate Agents Management Association Ltd	Hong Kong Real Estate Agencies General Association
Hong Kong Association of Banks	Hong Kong Society of Notaries
Hong Kong Bar Association	Hong Kong Stockbrokers Association
Hong Kong Chamber of Professional Property Consultants Ltd	New Territories Estate Agency Association Ltd
The Hong Kong Federation of Insurers	Property Agencies Association Ltd
Hong Kong Institute of Certified Public Accountants	Society of Hong Kong Estate Agents Ltd
Hong Kong Institute of Chartered Secretaries	

Private Sector

Bank of China (Hong Kong) Ltd	JP Morgan
BNP Paribas	Lotus Forex Co Ltd
Can Exchange	Ngau Kee Money Changer Co Ltd
Caritas, Hong Kong	Oxfam
Citibank	The Salvation Army Hong Kong
DBS Bank	Standard Chartered Bank
Hong Kong Council of Social Services	Travelex PLC
Hong Kong Federation of Youth Groups	Wing Hang Bank Ltd
HSBC	World Vision

ANNEX 3. Provisions of Key Laws, Regulations and Other Measures

(Date of download: 09/08/2007)

Chapter:	405	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number	Version Date
		Long title	L.N. 145 of 2002	01/01/2003

To provide for the tracing, confiscation and recovery of the proceeds of drug trafficking, to create offences relating to those proceeds or property representing those proceeds, and for incidental or related matters.

(Enacted 1989. Amended 26 of 2002 s. 2)

[The Ordinance, except section 25(1), (2), (4) and (5) and paragraph (a) of section 25(3) } 1 September 1989
Section 25(1), (2), (4) and (5) and paragraph (a) of section 25(3) } 1 December 1989 *L.N. 297 of 1989*]

(Originally 35 of 1989)

Section:	1	Short title		30/06/1997
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PART I

PRELIMINARY

This Ordinance may be cited as the Drug Trafficking (Recovery of Proceeds) Ordinance.

(Enacted 1989)

Section:	2	Interpretation	L.N. 145 of 2002	01/01/2003
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(1) In this Ordinance, unless the context otherwise requires-

"absconded" (潛逃), in relation to a person, includes absconded for any reason whatsoever, and whether or not, before absconding, the person had been-

- (a) taken into custody; or
- (b) released on bail; (Added 89 of 1995 s. 2)

"authorized officer" (獲授權人) means-

- (a) any police officer;
- (b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342); and
- (c) any other person authorized in writing by the Secretary for Justice for the purposes of this Ordinance; (Amended L.N. 362 of 1997)

"confiscation order" (沒收令) means an order made under section 3(6);

"corresponding law" (相應的法律) has the same meaning as in section 2(1) of the Dangerous Drugs Ordinance (Cap 134);

"dangerous drug" (毒品) has the same meaning as in section 2(1) of the Dangerous Drugs Ordinance (Cap 134);

"dealing" (處理), in relation to property referred to in the definition of "drug trafficking", section 10(1) or 25, includes-

- (a) receiving or acquiring the property;

- (b) concealing or disguising the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
- (c) disposing of or converting the property;
- (d) bringing into or removing from Hong Kong the property;
- (e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise); (Added 89 of 1995 s. 2)

"defendant" (被告) means a person against whom proceedings have been instituted for a drug trafficking offence (whether or not he has been convicted of that offence);

"drug trafficking" (販毒) means doing or being concerned in, whether in Hong Kong or elsewhere, any act constituting-

- (a) a drug trafficking offence; or
- (b) an offence punishable under a corresponding law,

and includes dealing, whether in Hong Kong or elsewhere, with any property which in whole or in part directly or indirectly represents any person's proceeds of drug trafficking; (Replaced 89 of 1995 s. 2)

"drug trafficking offence" (販毒罪行) means-

- (a) any of the offences specified in Schedule 1;
- (b) conspiracy to commit any of those offences;
- (c) inciting another to commit any of those offences;
- (d) attempting to commit any of those offences;
- (e) aiding, abetting, counselling or procuring the commission of any of those offences;

"interest" (權益), in relation to property, includes right;

"material" (物料) includes any book, document or other record in any form whatsoever, and any article or substance; (Replaced 87 of 1997 s. 36)

"property" (財產) includes both movable and immovable property within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1);

"Registrar" (司法常務官) means the Registrar of the High Court. (Amended 25 of 1998 s. 2)

(2) The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Ordinance listed in the right hand column in relation to those expressions.

Expression	Relevant provision
Benefited from drug trafficking (從販毒獲利)	Section 3(4)
Charging order (抵押令)	Section 11(2)
Gift caught by this Ordinance (受本條例圍制的饋贈)	Section 7(9)
Making a gift (作出饋贈)	Section 7(10)
Proceeds of drug trafficking (販毒得益)	Section 4(1)(a)
Realisable property (可變現財產)	Section 7(1)
Restraint order (限制令)	Section 10(1)
Value of gift, payment or reward (饋贈、付款或酬賞的價值) ...	Section 7
Value of proceeds of drug trafficking (販毒得益的價值)	Section 4(1)(b)
Value of property (財產的價值)	Section 7(4)

(Amended 89 of 1995 s. 2)

- (3) This Ordinance applies to property whether it is situated in Hong Kong or elsewhere.
- (4) References in this Ordinance to offences include a reference to offences committed before the commencement of this Ordinance; but nothing in this Ordinance imposes any duty or confers any power on any court in or in connection with proceedings against a person for a drug trafficking offence instituted before the commencement of this Ordinance.
- (5) References in this Ordinance to property received in connection with drug trafficking include a reference to property received both in that connection and in some other connection.
- (6) Subsections (7) to (13) shall have effect for the interpretation of this Ordinance.
- (7) Property is held by any person if he holds any interest in it.
- (8) References to property held by a person include a reference to property vested in his trustee in bankruptcy or in a liquidator.
- (9) References to an interest held by a person beneficially in property include, where the property is vested in his trustee in bankruptcy or in a liquidator, a reference to an interest which would be held by him beneficially if the property were not so vested.
- (10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.
- (11) Proceedings for an offence are instituted in Hong Kong-
 - (a) when a magistrate issues a warrant or summons under section 72 of the Magistrates Ordinance (Cap 227) in respect of the offence;
 - (aa) when a person has been arrested for the offence and released on bail or has refused bail; (Added 26 of 2002 s. 2)
 - (b) when a person is charged with the offence after being taken into custody without a warrant; or
 - (c) when an indictment is preferred by the direction or with the consent of a judge under section 24A(1)(b) of the Criminal Procedure Ordinance (Cap 221), and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.
- (12) Proceedings in Hong Kong for an offence are concluded on the occurrence of one of the following events-
 - (a) the discontinuance of the proceedings whether by entry of a nolle prosequi or otherwise;
 - (b) an order or verdict acquitting the defendant, not being an order or verdict which is subject to appeal or review within the meaning of subsection (13);
 - (c) the quashing of his conviction for the offence except where, under section 83E of the Criminal Procedure Ordinance (Cap 221), an order is made that he be retried;
 - (d) the grant of the Chief Executive's pardon in respect of his conviction for the offence; (Amended 15 of 1999 s. 3)
 - (e) the court sentencing or otherwise dealing with him in respect of his conviction for the offence where the Secretary for Justice either does not apply for a confiscation order, or applies for a confiscation order and the order is not made; or (Amended 89 of 1995 s. 2; L.N. 362 of 1997)
 - (f) the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).
- (12A) An application for a confiscation order made in respect of a defendant where section 3(1)(a)(ii) or (7) is applicable is concluded-
 - (a) if the Court of First Instance or the District Court decides not to make such an order, when it makes that decision; or (Amended 25 of 1998 s. 2)
 - (b) if such an order is made as a result of that application, when the order is satisfied. (Added 89 of 1995 s. 2)
- (12B) An application under section 15(1A) in respect of a confiscation order made against a defendant is concluded-
 - (a) if the Court of First Instance decides not to vary that order, when it makes that decision; or
 - (b) if the Court of First Instance varies that order as a result of that application, when the order is satisfied. (Added 89 of 1995 s. 2. Amended 25 of 1998 s. 2)
- (13) An order or verdict (including an order or verdict of acquittal) is subject to appeal or review so

long as an appeal, further appeal or review is pending against the order or verdict; and for this purpose an appeal, further appeal or review shall be treated as pending (where one is competent but has not been instituted) until-

- (a) (Repealed 79 of 1995 s. 50)
 - (b) the expiration of the time prescribed for instituting the appeal, further appeal or review. (Amended 79 of 1995 s. 50)
- (14) Subject to subsection (15), nothing in this Ordinance shall require the disclosure of any items subject to legal privilege within the meaning of section 22. (Added 26 of 2002 s. 2)
- (15) Subsection (14) shall not prejudice the operation of sections 20, 21 and 22. (Added 26 of 2002 s. 2)

(Enacted 1989)
[cf. 1986 c. 32 s. 38 U.K.]

Section:	3	Confiscation orders	L.N. 145 of 2002	01/01/2003
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PART II

CONFISCATION OF PROCEEDS OF DRUG TRAFFICKING

- (1) Where-
- (a) either-
 - (i) in proceedings before the Court of First Instance or the District Court a person is to be sentenced in respect of one or more drug trafficking offences and has not previously been sentenced in respect of his conviction for the offence, or as the case may be, any of the offences concerned; or
 - (ii) proceedings for one or more drug trafficking offences have been instituted against a person but have not been concluded because the person-
 - (A) has died; or
 - (B) has absconded; and
 - (b) an application is made by or on behalf of the Secretary for Justice for a confiscation order, (Amended L.N. 362 of 1997)
- the Court of First Instance or the District Court, as the case may be, shall act as follows. (Replaced 89 of 1995 s. 3. Amended 25 of 1998 s. 2)
- (2) The court shall first-
- (a) where subsection (1)(a)(i) is applicable-
 - (i) impose on the person such period of imprisonment or detention (if any) as is appropriate in respect of the offence, or as the case may be, the offences concerned;
 - (ii) make such order or orders (other than a confiscation order) in relation to sentence as is appropriate in respect of the offence, or as the case may be, the offences concerned, and such order or orders may be or include any order-
 - (A) imposing any fine on the person;
 - (B) involving any payment by the person; or
 - (C) under section 38F or 56 of the Dangerous Drugs Ordinance (Cap 134), or under section 72, 84A, 102 or 103 of the Criminal Procedure Ordinance (Cap 221);
 - (b) where subsection (1)(a)(ii)(A) is applicable, be satisfied that-
 - (i) the person has died; and
 - (ii) having regard to all relevant matters before it, the person could have been convicted in respect of the offence, or as the case may be, the offences concerned;
 - (c) where subsection (1)(a)(ii)(B) is applicable, be satisfied that-
 - (i) the person has absconded and that not less than 6 months have elapsed beginning with the date which is, in the opinion of the court, the date on which the person absconded;
 - (ii) in the case of-
 - (A) a person who is known to be outside Hong Kong and whose exact whereabouts are known-
 - (I) reasonable steps have been taken, but have been unsuccessful, to obtain the

- return of that person to Hong Kong for the purposes of the proceedings concerned;
- (II) if that person is in custody outside Hong Kong for purposes other than the purposes referred to in sub-sub-paragraph (I), he is in such custody by virtue of conduct which would constitute an indictable offence if it had occurred in Hong Kong; and
- (III) notice of those proceedings was given to that person in sufficient time to enable him to defend them;
- (B) subject to subsection (2A), a person whose exact whereabouts are not known-
- (I) reasonable steps have been taken to ascertain the person's whereabouts (including, if appropriate, a step mentioned in paragraph (a), (b) or (c) of rule 5(1) of Order 65 of the Rules of the High Court (Cap 4 sub. leg. A)); and
- (II) notice of those proceedings, addressed to that person, has been published in a Chinese language newspaper, and an English language newspaper, circulating generally in Hong Kong; and (Replaced 26 of 2002 s. 2)
- (iii) having regard to all relevant matters before it, the person could have been convicted in respect of the offence, or as the case may be, the offences concerned. (Replaced 89 of 1995 s. 3)
- (2A) Where subsection (2)(c)(ii)(B) is applicable, and notwithstanding that the court is satisfied as mentioned in that subsection that actions have been taken, the court may, if it is satisfied that it is in the interests of justice to do so, require that notice of the proceedings mentioned in that subsection be given to the person mentioned in that subsection in such additional manner as the court may direct. (Added 26 of 2002 s. 2)
- (3) The court shall then determine whether the person has benefited from drug trafficking.
- (4) For the purposes of this Ordinance, a person who has at any time (whether before or after the commencement of this Ordinance) received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking.
- (5) If the court determines that he has so benefited, the court shall determine in accordance with section 6 the amount to be recovered in his case by virtue of this section.
- (6) The court shall then, in respect of the offence or offences concerned, order the person to pay-
- (a) that amount; or
- (b) without prejudice to the generality of paragraph (a), such proportion of that amount as it thinks fit after taking into account any order or orders provided for or referred to in subsection (2)(a)(ii)(A), (B) or (C) which has or have been made in respect of the person. (Replaced 89 of 1995 s. 3)
- (7) Where-
- (a) a person has been convicted of one or more drug trafficking offences;
- (b) an application for a confiscation order has been made in respect of the person; and
- (c) the person has died or absconded before that application has been concluded, then that application may still be concluded notwithstanding that death or abscondment, as the case may be. (Replaced 89 of 1995 s. 3)
- (8) Where subsection (7) is applicable in relation to a person who has died-
- (a) subsection (2)(a)(i) shall not apply in relation to the person;
- (b) the court shall not make a confiscation order against the person unless it is satisfied that the person has died. (Added 89 of 1995 s. 3)
- (9) Where subsection (7) is applicable in relation to a person who has absconded, the court shall not make a confiscation order against the person unless it is satisfied that-
- (a) the person has absconded; and
- (b) in the case of-
- (i) a person who is known to be outside Hong Kong and whose exact whereabouts are known-
- (A) reasonable steps have been taken, but have been unsuccessful, to obtain the return of that person to Hong Kong for the purposes of the proceedings concerned; and
- (B) notice of those proceedings was given to that person in sufficient time to enable him to defend them;

- (ii) subject to subsection (9A), a person whose exact whereabouts are not known-
- (A) reasonable steps have been taken to ascertain the person's whereabouts (including, if appropriate, a step mentioned in paragraph (a), (b) or (c) of rule 5(1) of Order 65 of the Rules of the High Court (Cap 4 sub. leg. A)); and
 - (B) notice of those proceedings, addressed to that person, has been published in a Chinese language newspaper, and an English language newspaper, circulating generally in Hong Kong. (Replaced 26 of 2002 s. 2)
- (Added 89 of 1995 s. 3)
- (9A) Where subsection (9)(b)(ii) is applicable, and notwithstanding that the court is satisfied as mentioned in that subsection that actions have been taken, the court may, if it is satisfied that it is in the interests of justice to do so, require that notice of the proceedings mentioned in that subsection be given to the person mentioned in that subsection in such additional manner as the court may direct. (Added 26 of 2002 s. 2)
- (10) For the purposes of subsection (2)(b)(ii) or (c)(iii), information may be furnished to the court after the person has died or absconded, as the case may be. (Added 89 of 1995 s. 3)
- (11) For the purposes of any Ordinance conferring rights of appeal in criminal cases, a confiscation order made against a person shall be deemed to be a sentence passed on that person in respect of the offence or offences concerned and, in the case of any such person who has died (whether before or after the making of such order), his personal representative may act on his behalf for those purposes. (Added 89 of 1995 s. 3)
- (12) It is hereby declared that the standard of proof required to determine any question arising under this Ordinance as to-
- (a) whether a person has benefited from drug trafficking; or
 - (b) the amount to be recovered in his case in pursuance of a confiscation order,
- shall be on the balance of probabilities. (Added 89 of 1995 s. 3)
- (13) The fact that under subsection (2)(b)(ii) or (c)(iii) the court is satisfied that a person could have been convicted in respect of the offence, or as the case may be, the offences concerned shall not be admissible in evidence in any proceedings for an offence. (Added 89 of 1995 s. 3)
- (14) For the avoidance of doubt, it is hereby declared that where an application is made for a confiscation order in any case where subsection (1)(a)(ii)(A) is applicable, the personal representatives of the deceased person concerned shall, for the purposes of opposing the application, be entitled to be heard on the application and to call, examine and cross-examine any witness. (Added 89 of 1995 s. 3)
- (15) Where-
- (a) before the commencement of the Drug Trafficking (Recovery of Proceeds) (Amendment) Ordinance 1995 (89 of 1995), proceedings for one or more drug trafficking offences have been instituted against a person but have not been concluded because that person has absconded; and
 - (b) immediately before that commencement, any realisable property of that person is the subject of a charging order or restraint order,
- then the provisions of this Ordinance as amended by that Ordinance shall apply in relation to that person as they would apply in relation to a person against whom, on or after that commencement, proceedings for one or more drug trafficking offences have been instituted but have not been concluded because that last-mentioned person has absconded. (Added 89 of 1995 s. 3)
- (16) Where-
- (a) before the commencement of the Drug Trafficking (Recovery of Proceeds) (Amendment) Ordinance 1995 (89 of 1995)-
 - (i) a person has been convicted of one or more drug trafficking offences;
 - (ii) an application for a confiscation order has been made in respect of the person; and
 - (iii) the person has absconded before that application has been concluded;
 and
 - (b) immediately before that commencement, and realisable property of that person is the subject of a charging order or restraint order,
- then the provisions of this Ordinance as amended by that Ordinance shall apply in relation to

that person as they would apply in relation to a person to whom subsection (7) is applicable because he has absconded. (Added 89 of 1995 s. 3)

- (17) Where subsection (1)(a)(ii)(A) or (B) is applicable, the reference in that subsection to "one or more drug trafficking offences" includes any offence previously specified in Schedule 1, and the other provisions of this section and this Ordinance (including paragraphs (b) to (e) of the definition of "drug trafficking offence" in section 2(1) and any subsidiary legislation) shall be construed accordingly. (Added 26 of 2002 s. 2)

[cf. 1986 c. 32 s. 1 U.K.]

Section:	4	Assessing the proceeds of drug trafficking	L.N. 145 of 2002	01/01/2003
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- (1) For the purposes of this Ordinance-
- (a) a person's proceeds of drug trafficking are-
- (i) any payments or other rewards received by him at any time (whether before or after 1 December 1989) in connection with drug trafficking carried on by him or another;
- (ii) any property derived or realised, directly or indirectly, by him from any of the payments or other rewards; and
- (iii) any pecuniary advantage obtained in connection with drug trafficking carried on by him or another; and
- (b) the value of the person's proceeds of drug trafficking is the aggregate of the values of-
- (i) the payments or other rewards;
- (ii) that property; and
- (iii) that pecuniary advantage. (Replaced 87 of 1997 s. 36)
- (2) The Court of First Instance or the District Court, as the case may be, may, for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the following assumptions, except to the extent that the defendant (or, in the case of a defendant who has died, his personal representative on his behalf) shows that any of the assumptions are incorrect in his case. (Amended 89 of 1995 s. 4; 25 of 1998 s. 2)
- (3) Those assumptions are-
- (a) that any property appearing to the court-
- (i) to have been held by him at any time-
- (A) since his conviction; or
- (B) where section 3(1)(a)(ii) is applicable, since the application was made for a confiscation order in his case,
- as the case may be; or (Replaced 89 of 1995 s. 4)
- (ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him, was received by him, at the earliest time at which he appears to the court to have held it, as his proceeds of drug trafficking;
- (b) that any expenditure of his since the beginning of that period was met out of his proceeds of drug trafficking; and
- (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as his proceeds of drug trafficking, he received the property free of any other interests in it. (Amended 89 of 1995 s. 4)
- (4) (Repealed 26 of 2002 s. 2)
- (5) For the purpose of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order, or an order under section 8(7) of the Organized and Serious Crimes Ordinance (Cap 455), has previously been made against him, the court shall leave out of account any of his proceeds of drug trafficking that are shown to the court to have been taken into account in determining the amount to be recovered under that order. (Amended 82 of 1994 s. 36)

[cf. 1986 c. 32 s. 2 U.K.]

Section:	5	Statements relating to proceeds of drug trafficking	L.N. 145 of 2002	01/01/2003
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- (1) Where an application is made for a confiscation order, the prosecutor may tender to the Court of First Instance or the District Court, as the case may be, a statement of matters relevant to any of the following- (Amended 25 of 1998 s. 2)
 - (a) where section 3(1)(a)(ii) is applicable, determining whether the defendant could have been convicted in respect of the offence, or as the case may be, the offences concerned;
 - (b) determining whether the defendant has benefited from drug trafficking;
 - (c) assessing the value of the defendant's proceeds of drug trafficking. (Replaced 89 of 1995 s. 5)
- (1A) Where any statement has been tendered under subsection (1)-
 - (a) the prosecutor may at any time tender to the court a further such statement; and
 - (b) the court may at any time require the prosecutor to tender to it a further such statement within such period as it may direct. (Added 89 of 1995 s. 5)
- (1B) Where any statement has been tendered under subsection (1) and the court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant-
 - (a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement; and
 - (b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely. (Added 89 of 1995 s. 5)
- (1C) Where the court has given a direction under this section, it may at any time vary it by giving a further direction. (Added 89 of 1995 s. 5)
- (2) Where the defendant accepts to any extent any allegation in any statement tendered under subsection (1), the court may, for the purposes of-
 - (a) where section 3(1)(a)(ii) is applicable, determining whether the defendant could have been convicted in respect of the offence, or as the case may be, the offences concerned;
 - (b) determining whether the defendant has benefited from drug trafficking; or
 - (c) assessing the value of his proceeds of drug trafficking, treat his acceptance as conclusive of the matters to which the allegation relates. (Replaced 89 of 1995 s. 5)
- (3) If the defendant fails in any respect to comply with a requirement under subsection (1B) he may be treated for the purposes of this section as accepting every allegation in the statement apart from- (Amended 89 of 1995 s. 5)
 - (a) any allegation in respect of which he has complied with the requirement; (Replaced 89 of 1995 s. 5)
 - (b) where section 3(1)(a)(ii) is applicable, any allegation that he could have been convicted in respect of the offence, or as the case may be, the offences concerned; (Replaced 89 of 1995 s. 5)
 - (c) any allegation that he has benefited from drug trafficking; and (Added 89 of 1995 s. 5)
 - (d) any allegation that any payment or other reward was received by him in connection with drug trafficking carried on by him or another. (Added 89 of 1995 s. 5)
- (4) Where-
 - (a) the defendant tenders to the court a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
 - (b) the prosecutor accepts to any extent any allegation in the statement, the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which the acceptance relates.
- (5) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this section in writing in a form acceptable to the court. (Replaced 89 of 1995 s. 5)
- (6) No acceptance by the defendant under this section that-
 - (a) where section 3(1)(a)(ii) is applicable, he could have been convicted in respect of the offence, or as the case may be, the offences concerned; or
 - (b) any payment or other reward was received by him in connection with drug trafficking carried on by him or another,

- shall be admissible in evidence in any proceedings for an offence. (Replaced 89 of 1995 s. 5)
- (7) In any proceedings on an application made for a confiscation order where section 3(1)(a)(ii) or (7) is applicable-
- (a) if the defendant has died, subsection (1B) shall have effect as if it required a copy of the statement tendered under subsection (1) to be served on the defendant's personal representative;
- (b) if the defendant has absconded and section 3(2)(c)(ii)(A) or (9)(b)(i) is not applicable to him, this section shall have effect as if a copy of the statement tendered under subsection (1) had been served on the defendant. (Added 89 of 1995 s. 5)
- (8) For the avoidance of doubt, it is hereby declared that, where section 3(1)(a)(ii) is applicable, this section shall not prejudice the generality of section 3(10). (Added 89 of 1995 s. 5)
- (9) For the avoidance of doubt, it is hereby declared that an allegation may be accepted under this section, and may always have been so accepted, whether or not subsection (7)(a) or (b) is applicable to the defendant, and subsection (3) shall be construed accordingly. (Added 26 of 2002 s. 2)

[cf. 1986 c. 32 s. 3 U.K.]

Section:	6	Amount to be recovered under confiscation order	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

- (1) Subject to subsection (3), the amount to be recovered in the defendant's case under the confiscation order shall be the amount the Court of First Instance or the District Court, as the case may be, assesses to be the value of the defendant's proceeds of drug trafficking. (Amended 25 of 1998 s. 2)
- (2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 5 or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).
- (3) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of his proceeds of drug trafficking, the amount to be recovered in the defendant's case under the confiscation order shall be-
- (a) the amount appearing to the court to be so realised; or
- (b) a nominal amount, where it appears to the court (on the information available to it at the time) that the amount that might be so realised is nil. (Amended 89 of 1995 s. 6)

[cf. 1986 c. 32 s. 4 U.K.]

Section:	6A	Interest on amounts to be recovered under confiscation orders	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

- (1) The amount to be recovered under a confiscation order shall be treated as a judgment debt for the purposes of-
- (a) where the order was made by the Court of First Instance, section 49 of the High Court Ordinance (Cap 4); (Amended 25 of 1998 s. 2)
- (b) where the order was made by the District Court, section 50 of the District Court Ordinance (Cap 336),
- and, for those purposes, the date of the confiscation order shall be treated as the date of the judgment debt.
- (2) Where by virtue of subsection (1) any interest accrues on the amount to be recovered under a confiscation order, the defendant shall be liable to pay that interest and the amount of the

interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.

(Added 89 of 1995 s. 7)

Section:	7	Definition of principal terms used	37 of 1998 s. 8	20/11/1998
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- (1) In this Ordinance, "realisable property" (可現變財產) means, subject to subsection (2)-
 - (a) any property held by the defendant; (Amended 89 of 1995 s. 8)
 - (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance; and (Amended 89 of 1995 s. 8)
 - (c) any property that is subject to the effective control of the defendant. (Added 89 of 1995 s. 8)
- (2) Property is not realisable property if-
 - (a) an order under section 102 or 103 of the Criminal Procedure Ordinance (Cap 221); or
 - (b) an order under section 38F or 56 of the Dangerous Drugs Ordinance (Cap 134), is in force in respect of the property.
- (3) For the purposes of this Ordinance the amount that might be realised at the time a confiscation order is made against the defendant is- (Amended 89 of 1995 s. 8)
 - (a) the total of the values at that time of all the realisable property held by the defendant, less
 - (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations, together with the total of the values at that time of all gifts caught by this Ordinance.
- (4) Subject to the following subsections, for the purposes of this Ordinance the value of property (other than cash) in relation to any person holding the property-
 - (a) where any other person holds an interest in the property, is-
 - (i) the market value of the first mentioned person's beneficial interest in the property, less
 - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and
 - (b) in any other case, is its market value.
- (5) Subject to subsection (10), references in this Ordinance to the value at any time (referred to in subsection (6) as "the material time" (關鍵時間)) of a gift caught by this Ordinance or of any payment or reward are references to-
 - (a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
 - (b) where subsection (6) applies, the value there mentioned, whichever is the greater.
- (6) Subject to subsection (10), if at the material time the recipient holds-
 - (a) the property which he received (not being cash); or
 - (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,
 the value referred to in subsection (5)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received, but disregarding in either case any charging order.
- (7) For the purposes of subsection (3), an obligation has priority at any time if it is an obligation of the defendant to-
 - (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
 - (b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts.
- (8) In subsection (7)(b) "the preferential debts" (優先債項)-
 - (a) in relation to bankruptcy, means the debts to be paid in priority under section 38 of the Bankruptcy Ordinance (Cap 6) (assuming the date of the confiscation order to be the date

- of filing of the petition and of the bankruptcy order made under that Ordinance); and (Amended 37 of 1998 s. 8)
- (b) in relation to winding up, means the debts to be paid under section 265 of the Companies Ordinance (Cap 32) (assuming the date of the confiscation order to be the date of commencement of the winding up and the relevant date for the purpose of that section).
- (9) A gift (including a gift made before the commencement of this Ordinance) is caught by this Ordinance if-
- (a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him; or
- (b) it was made by the defendant at any time and was a gift of property-
- (i) received by the defendant in connection with drug trafficking carried on by him or another; or
- (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.
- (10) For the purposes of this Ordinance-
- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
- (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.
- (11) For the purposes of subsection (1)-
- (a) property, or an interest in property, may be subject to the effective control of the defendant whether or not the defendant has-
- (i) a legal or equitable estate or interest in the property; or
- (ii) a right, power or privilege in connection with the property;
- (b) without limiting the generality of any other provision of this Ordinance, in determining-
- (i) whether or not property, or an interest in property, is subject to the effective control of the defendant; or
- (ii) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of the defendant, regard may be had to-
- (A) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;
- (B) a trust that has a relationship to the property; and
- (C) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in subparagraph (A) or trusts of the kind referred to in subparagraph (B), and other persons. (Added 89 of 1995 s. 8)
- (12) Where a person obtains a pecuniary advantage in connection with drug trafficking carried on by him or another, he is to be treated for the purposes of this Ordinance as if he had obtained in connection with that drug trafficking a sum of money equal to the value of the advantage, and the other provisions of this Ordinance shall be construed accordingly. (Added 87 of 1997 ss. 1(2) & 36)

(Enacted 1989)

[cf. 1986 c. 32 s. 5 U.K.]

Section:	8	Application of procedure for enforcing confiscation orders	L.N. 145 of 2002	01/01/2003
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PART III

ENFORCEMENT, ETC. OF CONFISCATION ORDERS

- (1) Subject to this section, where the Court of First Instance or the District Court, as the case may be, makes a confiscation order- (Amended 89 of 1995 s. 9; 25 of 1998 s. 2)
 - (a) the court shall also make an order-
 - (i) subject to subsection (1A), fixing the period within which the amount he is liable to pay under the confiscation order shall be duly paid; and
 - (ii) fixing a term of imprisonment which the defendant is to serve if any of that amount is not duly paid within that period (including paid by way of being recovered); and (Replaced 26 of 2002 s. 2)
 - (b) section 114(1), (3), (4), (5), (6) and (7) of the Criminal Procedure Ordinance (Cap 221) shall apply as if-
 - (i) that amount were a fine imposed upon him by the court; and
 - (ii) the term of imprisonment fixed under this section were a term fixed under section 114(1)(c) of that Ordinance.
- (1A) The court shall not under subsection (1)(a)(i) fix a period longer than 6 months unless it is satisfied that there are special circumstances which justify it doing so. (Added 26 of 2002 s. 2)
- (2) The terms set out in the second column of the following table shall be the maximum terms of imprisonment under subsection (1) applicable respectively to the amounts set out opposite thereto.

TABLE

An amount not exceeding \$200000	12 months
An amount exceeding \$200000 but not exceeding \$500000	18 months
An amount exceeding \$500000 but not exceeding \$1 million	2 years
An amount exceeding \$1 million but not exceeding \$2.5 million	3 years
An amount exceeding \$2.5 million but not exceeding \$10 million	5 years
An amount exceeding \$10 million	10 years

- (3) Subsections (1) and (2) shall apply in relation to the District Court. (Replaced 89 of 1995 s. 9)
- (3A) For the avoidance of doubt, it is hereby declared that no limitation on the jurisdiction of the District Court as to the imposition of penalties set out in section 82 of the District Court Ordinance (Cap 336) shall be construed so as to prejudice the operation of subsection (3). (Added 89 of 1995 s. 9)
- (4) Where the defendant-
 - (a) becomes liable to serve a term of imprisonment fixed under this section in respect of a confiscation order; and
 - (b) is also liable to serve a term of imprisonment or detention in respect of the offence or offences concerned,
 the term of imprisonment mentioned in paragraph (a) shall not begin to run until after the end of the term of imprisonment or detention mentioned in paragraph (b).
- (5) For the purposes of subsection (4)-
 - (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and
 - (b) there shall be disregarded-
 - (i) any sentence suspended under section 109B of the Criminal Procedure Ordinance (Cap 221) which has not taken effect at the time the defendant becomes liable to a term of imprisonment under this section; and
 - (ii) any term of imprisonment fixed under section 114(1) of the Criminal Procedure Ordinance (Cap 221) for which the defendant has not at that time been committed.
- (6) Sections 86 and 109A of the Criminal Procedure Ordinance (Cap 221) shall not apply in relation to fixing a term of imprisonment under this section. (Amended 89 of 1995 s. 9)
- (7) This section shall not apply in relation to a confiscation order where section 3(1)(a)(ii) or (7) is applicable. (Added 89 of 1995 s. 9)
- (8) At the end of each day's sitting of the Court of First Instance or the District Court, the Registrar of the High Court or District Court, as the case may be, shall deliver (or cause to be delivered) to the Commissioner of Correctional Services a certificate, in the form specified in Schedule 3,

in respect of each term of imprisonment fixed under this section. (Added 89 of 1995 s. 9. Amended 25 of 1998 s. 2)

- (9) A certificate referred to in subsection (8) shall be a sufficient warrant to the Commissioner of Correctional Services for receiving into his custody the defendant named in the certificate and for carrying into effect the term of imprisonment fixed under this section in respect of that defendant. (Added 89 of 1995 s. 9)

[cf. 1986 c. 32 s. 6 U.K.]

Section:	9	Cases in which restraint orders and charging orders may be made	L.N. 145 of 2002	01/01/2003
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- (1) The powers conferred on the Court of First Instance by sections 10(1) and 11(1) are exercisable where-
- (a) proceedings have been instituted in Hong Kong against the defendant for a drug trafficking offence or-
 - (i) and application for a confiscation order has been made in respect of the defendant where section 3(1)(a)(ii) or (7) is applicable; or
 - (ii) an application has been made under section 15(1A) in respect of a confiscation order made against the defendant; (Replaced 89 of 1995 s. 10)
 - (b) the proceedings have not, or the application has not, as the case may be, been concluded; (Replaced 89 of 1995 s. 10. Amended 26 of 2002 s. 2)
 - (ba) subject to subsection (1A), if section 2(11)(aa) is applicable to an offence, the Court of First Instance is satisfied that, in all the circumstances of the case, there is reasonable cause to believe that the defendant may be charged with the offence after further investigation is carried out; and (Added 26 of 2002 s. 2)
 - (c) the Court of First Instance is satisfied that there is reasonable cause to believe-
 - (i) in the case of an application referred to in paragraph (a)(ii), that the Court of First Instance will be satisfied as specified in section 15(1A);
 - (ii) in any other case, that the defendant has benefited from drug trafficking. (Replaced 89 of 1995 s. 10)
- (1A) Subject to subsection (1B), where a power conferred on the Court of First Instance by section 10(1) or 11(1) is exercisable only on the ground mentioned in subsection (1)(ba), then the Court of First Instance shall specify a date on which any restraint order or charging order arising from that ground shall expire, being a date-
- (a) subject to paragraph (b), not later than is reasonably necessary for the purposes of the investigation concerned mentioned in subsection (1)(ba); and
 - (b) in any case, not later than 6 months after the date on which that order is made. (Added 26 of 2002 s. 2)
- (1B) The Court of First Instance may extend a restraint order or charging order mentioned in subsection (1A)-
- (a) on the ground only that the Court of First Instance is satisfied that the defendant will be charged with the offence concerned after further investigation is carried out;
 - (b) subject to paragraph (c), not longer than is reasonably necessary for the purposes of that investigation; and
 - (c) in any case, for not more than 6 months. (Added 26 of 2002 s. 2)
- (2) Those powers are also exercisable where the Court of First Instance is satisfied-
- (a) that whether by the laying of an information or otherwise, a person is to be charged in Hong Kong with a drug trafficking offence; and
 - (b) that there is reasonable cause to believe that he has benefited from drug trafficking.
- (3) For the purposes of sections 10 and 11, in relation to the exercise of those powers at any time before proceedings have been instituted-
- (a) references in this Ordinance to the defendant shall be construed as references to the person referred to in subsection (2)(a);
 - (b) references in this Ordinance to the prosecutor shall be construed as references to the person who the Court of First Instance is satisfied is to have the conduct of the case for the

- prosecution in the proposed proceedings; and
- (c) references in this Ordinance to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2)(a) for a drug trafficking offence.
- (4) Where the Court of First Instance has made an order under section 10(1) or 11(1) by virtue of subsection (2), the Court of First Instance shall discharge the order if proceedings in respect of the offence are not instituted within such time as the Court of First Instance considers reasonable.

(Amended 25 of 1998 s. 2)
[cf. 1986 c. 32 s. 7 U.K.]

Section:	10	Restraint orders	L.N. 145 of 2002	01/01/2003
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- (1) The Court of First Instance may by order (in this Ordinance referred to as a "restraint order" (限制令)) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order. (Amended 25 of 1998 s. 2)
- (2) A restraint order may apply-
- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
 - (b) to realisable property held by a specified person, being property transferred to him after the making of the order.
- (3) This section shall not have effect in relation to any property for the time being subject to a charge under section 11.
- (4) A restraint order-
- (a) may be made only on an application by the prosecutor;
 - (b) may be made on an ex parte application to a judge in chambers; and
 - (c) shall provide for notice to be given to persons affected by the order.
- (5) A restraint order-
- (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged on the conclusion of the proceedings or application concerned. (Replaced 89 of 1995 s. 11)
- (6) An application for the discharge or variation of a restraint order may be made by any person affected by it.
- (7) Where the Court of First Instance has made a restraint order, the Court of First Instance may at any time appoint a receiver-
- (a) to take possession of any realisable property; and
 - (b) in accordance with the directions of the Court of First Instance, to manage or otherwise deal with any property in respect of which he is appointed, subject to such exceptions and conditions as may be specified by the Court of First Instance; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver. (Amended 25 of 1998 s. 2)
- (8) (Repealed 89 of 1995 s. 11)
- (9) Where the Court of First Instance has made a restraint order, an authorized officer may, for the purpose of preventing any realisable property being removed from Hong Kong, seize the property. (Amended 25 of 1998 s. 2)
- (10) Property seized under subsection (9) shall be dealt with in accordance with the directions of the Court of First Instance. (Amended 25 of 1998 s. 2)
- (11) Where any property specified in a restraint order is immovable property the order shall, for the purposes of the Land Registration Ordinance (Cap 128)-
- (a) be deemed to be an instrument affecting land; and
 - (b) be registrable as such in the Land Registry under that Ordinance in such manner as the Land Registrar thinks fit. (Amended 8 of 1993 ss. 2 & 3)
- (12) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a restraint order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so, documents, or copies of documents, or any other

- information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property. (Added 26 of 2002 s. 2)
- (13) A person who receives a notice under subsection (12) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the restraint order concerned. (Added 26 of 2002 s. 2)
 - (14) A disclosure made in order to comply with a requirement under subsection (12)-
 - (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
 - (b) shall not render the person who made it liable in damages for any loss arising out of-
 - (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure. (Added 26 of 2002 s. 2)
 - (15) Any person who contravenes subsection (13) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year. (Added 26 of 2002 s. 2)
 - (16) A person who knowingly deals in any realisable property in contravention of a restraint order commits an offence. (Added 26 of 2002 s. 2)
 - (17) A person who commits an offence under subsection (16) is liable-
 - (a) on conviction upon indictment to a fine of \$500000 or to the value of the realisable property the subject of the restraint order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or
 - (b) on summary conviction to a fine of \$250000 and to imprisonment for 2 years. (Added 26 of 2002 s. 2)

[cf. 1986 c. 32 s. 8 U.K.]

Section:	11	Charging orders in respect of land, securities, etc.	L.N. 145 of 2002	01/01/2003
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- (1) The Court of First Instance may make a charging order on realisable property for securing the payment to the Government-
 - (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
 - (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.
- (2) For the purposes of this Ordinance, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Government.
- (3) A charging order-
 - (a) may be made only on an application by the prosecutor;
 - (b) may be made on an ex parte application to a judge in chambers;
 - (c) shall provide for notice to be given to persons affected by the order; and
 - (d) may be made subject to such conditions as the Court of First Instance thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.
- (4) Subject to subsection (6), a charge may be imposed by a charging order only on-
 - (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance-
 - (i) in any asset of a kind specified in Schedule 2; or
 - (ii) under any trust; or
 - (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first mentioned trust.
- (5) In any case where a charge is imposed by a charging order on any interest in an asset of a kind

specified in Schedule 2, the Court of First Instance may provide for the charge to extend to any interest, dividend or other distribution payable and any bonus issue in respect of the asset.

- (6) In relation to a charging order, the Court of First Instance-
 - (a) may make an order discharging or varying it; and
 - (b) shall make an order discharging the charging order-
 - (i) on the conclusion of the proceedings or application concerned; or
 - (ii) on payment into the Court of First Instance of the amount payment of which is secured by the charge. (Replaced 89 of 1995 s. 12)
- (7) An application for the discharge or variation of a charging order may be made by any person affected by it.
- (8) Subject to the provisions of this Ordinance, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustee, by writing under his hand.
- (9) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a charging order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so, documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property. (Added 26 of 2002 s. 2)
- (10) A person who receives a notice under subsection (9) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the charging order concerned. (Added 26 of 2002 s. 2)
- (11) A disclosure made in order to comply with a requirement under subsection (9)-
 - (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
 - (b) shall not render the person who made it liable in damages for any loss arising out of-
 - (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure. (Added 26 of 2002 s. 2)
- (12) Any person who contravenes subsection (10) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year. (Added 26 of 2002 s. 2)
- (13) A person who knowingly deals in any realisable property in contravention of a charging order commits an offence. (Added 26 of 2002 s. 2)
- (14) A person who commits an offence under subsection (13) is liable-
 - (a) on conviction upon indictment to a fine of \$500000 or to the value of the realisable property the subject of the charging order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or
 - (b) on summary conviction to a fine of \$250000 and to imprisonment for 2 years. (Added 26 of 2002 s. 2)

(Amended 25 of 1998 s. 2)
[cf. 1986 c. 32 s. 9 U.K.]

Section:	12	Realisation of property	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

- (1) Where-
 - (a) in proceedings instituted for a drug trafficking offence, a confiscation order is made (including any case where section 3(1)(a)(ii) or (7) is applicable); (Amended 89 of 1995 s. 13)
 - (b) the order is not subject to appeal or review within the meaning of section 2(13); and
 - (c) the proceedings have not been concluded,
 the Court of First Instance may, on an application by the prosecutor, exercise the powers

- conferred by subsections (2) to (6).
- (2) The Court of First Instance may appoint a receiver in respect of realisable property.
 - (3) The Court of First Instance may empower a receiver appointed under subsection (2), under section 10 or in pursuance of a charging order-
 - (a) to enforce any charge imposed under section 11 on realisable property or on any interest, dividend or other distribution payable and any bonus issue in respect of such property; and
 - (b) in relation to any realisable property other than property for the time being subject to a charge under section 11, to take possession of the property subject to such conditions or exceptions as may be specified by the Court of First Instance.
 - (4) The Court of First Instance may order any person having possession of realisable property to give possession of it to any such receiver.
 - (5) The Court of First Instance may empower any such receiver to realise any realisable property in such manner as the Court of First Instance may direct.
 - (6) The Court of First Instance may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Ordinance as the Court of First Instance may direct and the Court of First Instance may, on the payment being made, by order transfer, grant or extinguish any interest in the property.
 - (7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 11.
 - (8) The Court of First Instance shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court of First Instance.

(Amended 25 of 1998 s. 2)
[cf. 1986 c. 32 s. 11 U.K.]

Section:	13	Application of proceeds of realisation and other sums	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

- (1) Subject to subsection (2), the following sums in the hands of a receiver appointed under section 10 or 12 or in pursuance of a charging order, that is-
 - (a) the proceeds of the enforcement of any charge imposed under section 11;
 - (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 10 or 12; and
 - (c) any other sums, being property held by the defendant,
 shall first be applied in payment of such expenses incurred by a person acting as an insolvency officer as are payable under section 18(2) and then shall, after such payments (if any) as the Court of First Instance may direct have been made out of those sums (Amended 25 of 1998 s.2)
 - (i) be payable to the Registrar; and
 - (ii) be applied on the defendant's behalf towards the satisfaction of the confiscation order in the manner provided by subsection (3).
- (2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums-
 - (a) among such of those who held property which has been realised under this Ordinance; and
 - (b) in such proportions,
 as the Court of First Instance may direct after giving a reasonable opportunity for such persons to make representations to the Court of First Instance. (Amended 25 of 1998 s. 2)
- (3) The receipt of any sum by the Registrar on account of an amount payable under a confiscation order shall reduce the amount so payable, but the Registrar shall apply the sum received for the purposes specified in this section and in the order so specified.
- (4) The Registrar shall first pay any expenses incurred by a person acting as an insolvency officer and payable under section 18(2) but not already paid under subsection (1).

- (5) If the sum was paid to the Registrar by a receiver appointed under section 10 or 12 or in pursuance of a charging order the Registrar shall next pay the receiver's remuneration and expenses.
- (6) After making-
 - (a) any payment required by subsection (4); and
 - (b) in a case to which subsection (5) applies, any payment required by that subsection,
 the Registrar shall reimburse any amount paid under section 19(2).
- (7) Any balance in the hands of the Registrar after he has made all payments required by the foregoing subsections shall be paid into the general revenue. (Amended 89 of 1995 s. 14)
[cf. 1986 c. 32 s. 12 U.K.]

Section:	14	Exercise of powers by Court of First Instance or receiver	25 of 1998 s. 2	01/07/1997
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Expanded Cross Reference:

10,11,12,13

Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

- (1) The following subsections apply to the powers conferred on the Court of First Instance by sections 10 to 13, or on a receiver appointed under section 10 or 12 or in pursuance of a charging order. <* Note - Exp. X-Ref.: Sections 10, 11, 12, 13 *> (Amended 25 of 1998 s. 2)
- (2) Subject to subsections (3), (4), (5) and (6), the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.
- (3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.
- (4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.
- (5) An order may be made or other action taken in respect of a debt owed by the Government.
- (6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.
[cf. 1986 c. 32 s. 13 U.K.]

Section:	15	Variation of confiscation orders	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

- (1) If, on an application by the prosecutor or the defendant (or, in the case of a defendant who has died, his personal representative on his behalf) in respect of a confiscation order, the Court of First Instance is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order, the Court of First Instance shall make an order- (Amended 89 of 1995 s. 15)
 - (a) substituting for the amount to be recovered under the confiscation order such lesser amount as the Court of First Instance thinks just in all the circumstances of the case; and
 - (b) substituting for the term of imprisonment fixed under section 8 in respect of the amount to be recovered under the confiscation order a shorter term determined in accordance with that section in respect of the lesser amount.
- (1A) If, on an application by the prosecutor made in respect of a confiscation order, the Court of First Instance is satisfied that any of the conditions referred to in subsection (1B) are fulfilled, the Court of First Instance may make an order-
 - (a) substituting for the amount to be recovered under the confiscation order such greater

- amount as the Court of First Instance thinks just in all the circumstances of the case; and
- (b) substituting for the term of imprisonment fixed under section 8 in respect of the amount to be recovered under the confiscation order a greater term determined in accordance with that section in respect of the greater amount. (Added 89 of 1995 s. 15)
- (1B) The conditions referred to in subsection (1A) are-
- (a) the value of the defendant's proceeds of drug trafficking was greater than the value of the defendant's proceeds of drug trafficking assessed by the Court of First Instance or the District Court, as the case may be, at the time of the making of the confiscation order;
- (b) the prosecutor becomes aware of realisable property, the existence of which was not known to him at the time of the making of the confiscation order;
- (c) the amount realised from the defendant's proceeds of drug trafficking is greater than the amount the Court of First Instance or the District Court, as the case may be, assessed to be the amount to be recovered under the confiscation order. (Added 89 of 1995 s. 15)
- (2) For the purposes of this section- (Amended 89 of 1995 s. 15)
- (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the Court of First Instance shall take into account the extent to which any property held by him may be distributed among creditors; and
- (b) the Court of First Instance may disregard any inadequacy in the realisable property which appears to the Court of First Instance to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Ordinance from any risk of realisation under this Ordinance.
- (3) No application shall be entertained by the Court of First Instance under subsection (1A) if it is made after the end of the period of 6 years beginning with the date on which the confiscation order concerned was made. (Added 89 of 1995 s. 15)

(Amended 25 of 1998 s. 2)

[cf. 1986 c. 32 s. 14 U.K.]

Section:	16	Bankruptcy of defendants, etc.	L.N. 158 of 1998	01/04/1998
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

- (1) Where a person who holds realisable property is adjudged bankrupt-
- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and
- (b) any proceeds of property realised by virtue of section 10(7) or 12(5) or (6) for the time being in the hands of a receiver appointed under section 10 or 12, are excluded from the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6).
- (2) Where a person has been adjudged bankrupt, the powers conferred on the Court of First Instance by sections 10 to 13 shall not be exercised in relation to-
- (a) property for the time being comprised in the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6); and
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 30A(9) of the Bankruptcy Ordinance (Cap 6). (Amended 76 of 1996 s. 87)
- (3) Nothing in the Bankruptcy Ordinance (Cap 6) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Court of First Instance by sections 10 to 13. (Amended 25 of 1998 s. 2)
- (4) Subsection (2) does not affect the enforcement of a charging order-
- (a) made before the order adjudging the person bankrupt; or
- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.
- (5) Where, in the case of a debtor, an interim receiver stands appointed under section 13 of the

Bankruptcy Ordinance (Cap 6) and any property of the debtor is subject to a restraint order, the powers conferred on the interim receiver by virtue of that Ordinance do not apply to property for the time being subject to the restraint order.

- (6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Ordinance-
- (a) a court shall not make an order under-
- (i) section 49 or 50 of the Bankruptcy Ordinance (Cap 6); or (Amended 76 of 1996 s. 87)
 - (ii) section 60 of the Conveyancing and Property Ordinance (Cap 219),
- in respect of the making of a gift at any time when-
- (A) proceedings for a drug trafficking offence have been instituted against him but have not been concluded;
 - (B) an application-
 - (I) for a confiscation order has been made in respect of the person where section 3(1)(a)(ii) or (7) is applicable; or
 - (II) has been made under section 15(1A) in respect of a confiscation order made against the person,
 and the application has not been concluded; or
 - (C) property of the person to whom the gift was made is subject to a restraint order or charging order; and
- (b) any order made under any of the sections referred to in paragraph (a)(i) or (ii) after the conclusion of the proceedings or application shall take into account any realisation under this Ordinance of property held by the person to whom the gift was made. (Replaced 89 of 1995 s. 16)

[cf. 1986 c. 32 s. 15 U.K.]

Section:	17	Winding up of company holding realisable property	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

- (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to-
- (a) property for the time being subject to a restraint order made before the relevant time; and
 - (b) any proceeds of property realised by virtue of section 10(7) or 12(5) or (6) for the time being in the hands of a receiver appointed under section 10 or 12.
- (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Court of First Instance by sections 10 to 13 shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable-
- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
 - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- (3) Nothing in the Companies Ordinance (Cap 32) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Court of First Instance by sections 10 to 13.
- (3A) Subsection (3) shall apply to any proceedings relating to an appeal, further appeal or review against any exercise of the powers referred to in that subsection as if the court hearing the appeal, further appeal or review, as the case may be, were the Court of First Instance. (Added 89 of 1995 s. 17)
- (4) Subsection (2) does not affect the enforcement of a charging order made before the relevant

time or on property which was subject to a restraint order at the relevant time.

(5) In this section-

"company" (公司) means any company which may be wound up under the Companies Ordinance (Cap 32); and

"the relevant time" (有關時間) means-

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the Court of First Instance, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

(Amended 25 of 1998 s. 2)

[cf. 1986 c. 32 s. 17 U.K.]

Section:	18	Insolvency officers dealing with property subject to restraint order	30/06/1997
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(1) Without prejudice to the generality of any provision contained in the Bankruptcy Ordinance (Cap 6), the Companies Ordinance (Cap 32) or any other Ordinance, where-

- (a) any insolvency officer seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of that property,

he shall not be liable to any other person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence; and the insolvency officer shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(2) Any insolvency officer who incurs expenses-

- (a) in respect of such property as is mentioned in subsection (1)(a) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
- (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 13(1) or (3).

(3) In this section "insolvency officer" (債務處理人) means-

- (a) the Official Receiver; or
- (b) any person acting as-
 - (i) a receiver, interim receiver, special manager or trustee appointed under the Bankruptcy Ordinance (Cap 6); or
 - (ii) a liquidator, provisional liquidator or special manager appointed under the Companies Ordinance (Cap 32).

(Enacted 1989)

[cf. 1986 c. 32 s. 17A U.K.]

Section:	19	Receivers: supplementary provisions	30/06/1997
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(1) Where a receiver appointed under section 10 or 12 or in pursuance of a charging order takes any action-

- (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property;
 - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,
- he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.
- (2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 13(3), be paid by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

(Enacted 1989)
[cf. 1986 c. 32 s. 18 U.K.]

Section:	20	Order to make material available	30/06/1997
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PART IV

INVESTIGATIONS INTO DRUG TRAFFICKING

- (1) An authorized officer may, for the purpose of an investigation into drug trafficking, apply to a court for an order under subsection (2) in relation to particular material or material of a particular description.
- (2) Subject to section 23(10), the court may, if on such an application it is satisfied that the conditions in subsection (4) are fulfilled, make an order-
 - (a) that the person who appears to the court to be in possession or control of the material to which the application relates shall-
 - (i) produce the material to an authorized officer for him to take away; or
 - (ii) give an authorized officer access to it, within such period as the order may specify;
 - (b) that the person who appears to the court likely to come into possession or control of the material to which the application relates shall, when the person comes into possession or control of any such material-
 - (i) produce the material to an authorized officer for him to take away; or
 - (ii) give an authorized officer access to it, within such period as the order may specify; or
 - (c) in terms both of paragraphs (a) and (b). (Replaced 89 of 1995 s. 18)
- (2A) An order under subsection (2), in so far as it is in terms of paragraph (b) of that subsection, shall cease to have effect upon the expiration of 3 months after the day on which the order is made, or upon the expiration of such lesser period, if any, as is specified in the order for the purpose, but nothing in this subsection shall-
 - (a) affect any obligation incurred under that order prior to its expiration;
 - (b) prevent, in relation to the person required to comply with that order, any further order being made under that subsection in respect of that person (including before the expiration of that first-mentioned order). (Added 89 of 1995 s. 18)
- (3) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (4) The conditions referred to in subsection (2) are-
 - (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
 - (b) that there are reasonable grounds for believing that the material to which the application relates-
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege; and

- (c) that there are reasonable grounds for believing that it is in the public interest, having regard-
 - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) to the circumstances under which the person-
 - (A) in possession or control of the material holds or controls it, as the case may be; or
 - (B) likely to come into possession or control of the material will hold or control it, as the case may be, if he comes into such possession or control,
 as the case may be. (Replaced 89 of 1995 s. 18)
 that the material should be produced or that access to it should be given.
- (5) Where a court makes an order under subsection (2)(a)(ii) or (b)(ii) in relation to material on any premises it may, on the same or a subsequent application of an authorized officer, order any person who appears to him to be entitled to grant entry to the premises to allow an authorized officer to enter the premises to obtain access to the material. (Amended 89 of 1995 s. 18)
- (6) Rules of court may provide for-
 - (a) the discharge and variation of orders under this section; and
 - (b) proceedings relating to such orders.
- (7) Where the material to which an application under this section relates consists of information contained in or accessible by means of any data equipment-
 - (a) an order under subsection (2)(a)(i) or (b)(i) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and (Amended 89 of 1995 s. 18)
 - (b) an order under subsection (2)(a)(ii) or (b)(ii) shall have effect as an order to give access to the material in a form in which it is visible and legible. (Amended 89 of 1995 s. 18)
- (8) In subsection (7), "data equipment" (數據設備) means any equipment which-
 - (a) automatically processes information;
 - (b) automatically records or stores information;
 - (c) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment (wherever situated);
 - (d) can be used to retrieve information, whether the information is recorded or stored in the equipment itself or in other equipment (wherever situated).
- (9) An order under subsection (2)-
 - (a) shall not confer any right to production of, or access to, items subject to legal privilege;
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and
 - (c) may be made in relation to material in the possession of a public body as defined in section 23.

(Enacted 1989)
[cf. 1986 c. 32 s. 27 U.K.]

Section:	21	Authority for search	30/06/1997
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- (1) An authorized officer may, for the purpose of an investigation into drug trafficking, apply to a court for a warrant under this section in relation to specified premises.
- (2) On such application the court may issue a warrant authorizing an authorized officer to enter and search the premises if it is satisfied-
 - (a) that an order made under section 20 in relation to material on the premises has not been complied with; or
 - (b) that the conditions in subsection (3) are fulfilled; or
 - (c) that the conditions in subsection (4) are fulfilled.
- (3) The conditions referred to in subsection (2)(b) are-
 - (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking; and
 - (b) that the conditions in section 20(4)(b) and (c) are fulfilled in relation to any material on the premises; and
 - (c) that it would not be appropriate to make an order under that section in relation to the

- material because-
- (i) it is not practicable to communicate with any person entitled to produce the material; or
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer could secure immediate access to the material.
- (4) The conditions referred to in subsection (2)(c) are-
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking; and
 - (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularized; and
 - (c) that-
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises; or
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer arriving at the premises could secure immediate entry to them.
- (5) Where an authorized officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.
- (6) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under this section commits an offence and is liable-
- (a) on conviction upon indictment to a fine of \$250000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine of \$50000 and to imprisonment for 6 months.
- (7) Notwithstanding section 83 of the Interpretation and General Clauses Ordinance (Cap 1), but subject to this section, a warrant may be issued under this section authorizing entry to premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material. (Added 88 of 1995 s. 5)

(Enacted 1989)
[cf. 1986 c. 32 s. 28 U.K.]

Section:	22	Supplementary provisions to sections 20 and 21	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

- (1) An authorized officer may photograph or make copies of any material-
 - (a) produced or to which access is given under section 20; or
 - (b) seized under section 21.
- (2) In sections 20 and 21-
 - "court" (法庭) means the Court of First Instance and the District Court; (Amended 25 of 1998 s.2)
 - "items subject to legal privilege" (享有法律特權的品目) means-
 - (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
 - (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings

- and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made-
- (i) in connection with the giving of legal advice; or
- (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,
- when they are in the possession of a person who is entitled to possession of them, but excluding, in any case, any communications or item held with the intention of furthering a criminal purpose;
- "premises" (房產) includes any place and, in particular, includes-
- (a) any vehicle, vessel, aircraft, hovercraft or offshore structure; and
- (b) any tent or movable structure.

[cf. 1986 c. 32 s. 29 U.K.]

Section:	23	Disclosure of information held by public bodies	25 of 1998; 15 of 1999	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2; 15 of 1999 s. 3

- (1) Subject to subsection (4), the Court of First Instance may, on an application by the prosecutor, order any material mentioned in subsection (3) which is in the possession of a public body to be produced to the Court of First Instance within such period as the Court of First Instance may specify.
- (2) The power to make an order under subsection (1) is exercisable if-
- (a) the powers conferred on the Court of First Instance by sections 10(1) and 11(1) are exercisable by virtue of section 9(1); or
- (b) those powers are exercisable by virtue of section 9(2) and the Court of First Instance has made a restraint or charging order which has not been discharged,
- but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), section 9(3) shall apply for the purposes of this section as it applies for the purposes of sections 10 and 11.
- (3) The material referred to in subsection (1) is any material which-
- (a) has been submitted to an officer of a public body by the defendant or by a person who has at any time held property which was realisable property;
- (b) has been made by an officer of a public body in relation to the defendant or such a person; or
- (c) is correspondence which passed between an officer of a public body and the defendant or such a person,
- and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the body concerned.
- (4) An order under subsection (1) shall not require the production of any material unless it appears to the Court of First Instance that the material is likely to contain information that would facilitate the exercise of the powers conferred on the Court of First Instance by sections 10 to 12 or on a receiver appointed under section 10 or 12 or in pursuance of a charging order.
- (5) The Court of First Instance may by order authorize the disclosure to such a receiver of any material produced under subsection (1) or any part of such material; but the Court of First Instance shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the public body to make representations to the Court of First Instance.
- (6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Ordinance of the receiver or the Court of First Instance.
- (7) The Court of First Instance may by order authorize the disclosure to an authorized officer of any material produced under subsection (1) or any part of such material; but the Court of First Instance shall not make an order under this subsection unless-
- (a) a reasonable opportunity has been given for an officer of the public body to make

- representations to the Court of First Instance; and
- (b) it appears to the Court of First Instance that the material is likely to be of substantial value in exercising functions relating to drug trafficking.
- (8) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to drug trafficking.
- (9) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.
- (10) An order under subsection (1) and, in the case of material in the possession of a public body, an order under section 20(2) may require any officer of the public body (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the Government. (Amended 15 of 1999 s. 3)
- (11) In this section "public body" (公共機構) means-
- (a) any Government department; and
- (b) any body specified by the Chief Executive under subsection (12). (Amended 15 of 1999 s.3)
- (12) The Chief Executive may, by notice in the Gazette, specify a body to be a public body for the purposes of this section. (Amended 15 of 1999 s. 3)

(Amended 25 of 1998 s. 2)
[cf. 1986 c. 32 s. 30 U.K.]

Section:	24	Offence of prejudicing investigation		30/06/1997
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- (1) Where, in relation to an investigation into drug trafficking, an order under section 20 has been made or has been applied for and has not been refused or a warrant under section 21 has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation commits an offence.
- (2) In proceedings against a person for an offence under this section, it is a defence to prove-
- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation;
or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.
- (3) A person who commits an offence under this section is liable-
- (a) on conviction upon indictment to a fine of \$500000 and to imprisonment for 3 years; or
- (b) on summary conviction to a fine of \$100000 and to imprisonment for 1 year.

(Enacted 1989)
[cf. 1986 c. 32 s. 31 U.K.]

Section:	24A	Interpretation	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

PART IVA

DETENTION OF CERTAIN SEIZED PROPERTY

In this Part, unless the context otherwise requires-

"court" (法院) means the Court of First Instance and the District Court; (Amended 25 of 1998 s. 2)

"exported" (輸出), in relation to any property, includes the property being brought to any place in Hong Kong for the purpose of being exported;

"seized property" (經扣押的財產) means any property seized under section 52 of the Dangerous Drugs Ordinance (Cap 134) on the ground that it is suspected to be specified property;

"specified property" (指明財產) means any property specified in Schedule 4-

- (a) being imported into or exported from Hong Kong; and
- (b) which-
 - (i) in whole or in part directly or indirectly represents any person's proceeds of drug trafficking;
 - (ii) has been used in drug trafficking; or
 - (iii) is intended for use in drug trafficking;

"working day" (工作日) means any day other than a public holiday or a gale warning day within the meaning of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap 62).
(Part IVA added 89 of 1995 s. 19)

Section:	24B	Seized property may be detained		30/06/1997
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An authorized officer may, in accordance with the provisions of this Part, detain any seized property.
(Part IVA added 89 of 1995 s. 19)

Section:	24C	Period for which seized property may be detained		30/06/1997
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- (1) Seized property shall not be detained for a period of more than 10 working days in the case of such property being imported into Hong Kong, or 7 working days in the case of such property being exported from Hong Kong, unless, before the expiration of that period, the continued detention of such property is authorized by an order under subsection (2).
- (2) A court may, upon application made to it by an authorized officer, by order authorize the continued detention of seized property where it is satisfied that-
 - (a) there are reasonable grounds for suspecting that such property is specified property; and
 - (b) such detention of such property is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in Hong Kong or elsewhere) of proceedings-
 - (i) against any person in relation to an offence with which such property is connected; or
 - (ii) which may result in the forfeiture or other confiscation of such property.
- (3) An order under subsection (2) shall authorize the continued detention of the seized property to which it relates for such period, not exceeding 3 months beginning with the date of the order, as is specified in the order and a court, upon application made to it by an authorized officer and if satisfied as to the matters referred to in subsection (2)(a) and (b), may thereafter from time to time by order authorize the further detention of such property but so that-
 - (a) no period of detention specified in an order under this subsection shall exceed 3 months beginning with the date of the order; and
 - (b) the total period of detention shall not exceed 2 years from the date of the order under subsection (2).
- (4) At any time while seized property is being detained by an order under subsection (2) or (3) a court may direct its release if satisfied-
 - (a) on an application made by-
 - (i) the person from whom it was seized;
 - (ii) a person by or on whose behalf it was being imported or exported; or
 - (iii) a person who otherwise has an interest in it,
 that there are no, or are no longer, any such grounds for its detention as are referred to in subsection (2); or
 - (b) on an application made by an authorized officer, that its detention is no longer justified.
- (5) If, at any time when any seized property is being detained by virtue of an order under subsection (2) or (3), proceedings are instituted (whether in Hong Kong or elsewhere)-
 - (a) against any person in relation to an offence with which such property is connected; or
 - (b) which may result in the forfeiture or other confiscation of such property,
 such property shall not be released until such proceedings have been concluded.
- (6) The Legislative Council may, by resolution, amend subsection (1) by substituting another period for any period specified therein.

(Part IVA added 89 of 1995 s. 19)

Section:	24D	Forfeiture	L.N. 362 of 1997	01/07/1997
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- (1) While any seized property is detained under section 24C(2) or (3), a court may, if satisfied on an application made by or on behalf of the Secretary for Justice that such property- (Amended L.N. 362 of 1997)
 - (a) in whole or in part directly or indirectly represents any person's proceeds of drug trafficking;
 - (b) has been used in drug trafficking; or
 - (c) is intended for use in drug trafficking,order, subject to subsection (2), the forfeiture of such property.
- (2) Where a court proposes to make an order under subsection (1) in respect of any seized property where paragraph (a) of that subsection is applicable, the court shall specify in the order so much, if any, of such property in respect of which the court is not satisfied that it directly or indirectly represents any person's proceeds of drug trafficking.
- (3) An order may be made under this section whether or not proceedings are brought against any person for an offence with which the seized property concerned is connected.
- (4) The standard of proof on an application under this section shall be on the balance of probabilities.

(Part IVA added 89 of 1995 s. 19)

Section:	24E	Interest		30/06/1997
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Seized property which is money and which is detained in pursuance of an order under section 24C(2) or (3) shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing thereon shall be added to such property on its forfeiture or release.

(Part IVA added 89 of 1995 s. 19)

Section:	24F	Procedure		30/06/1997
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- (1) An order under section 24C(2) shall provide for notice to be given to persons affected by the order.
- (2) Provision may be made by rules of court-
 - (a) with respect to applications to any court under this Part;
 - (b) with respect to the division, conversion or disposal of seized property for the purposes of satisfying an order under section 24D(1) to which it is subject where-
 - (i) section 24D(2) is applicable; and
 - (ii) such property is not readily divisible for those purposes;
 - (c) generally with respect to the procedure under this Part before any court.
- (3) Subsection (2) is without prejudice to the generality of any existing power to make rules.

(Part IVA added 89 of 1995 s. 19)

Section:	25	Dealing with property known or believed to represent proceeds of drug trafficking		30/06/1997
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PART V

PROHIBITED ACTS IN RELATION TO PROCEEDS OF DRUG TRAFFICKING

(Replaced 89 of 1995 s. 20)

- (1) Subject to section 25A, a person commits an offence if, knowing or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents any person's proceeds of drug trafficking, he deals with that property.
- (2) In proceedings against a person for an offence under subsection (1), it is a defence to prove

that-

- (a) he intended to disclose to an authorized officer such knowledge, suspicion or matter as is mentioned in section 25A(1) in relation to the act in contravention of subsection (1) concerned; and
 - (b) there is reasonable excuse for his failure to make disclosure in accordance with section 25A(2).
- (3) A person who commits an offence under subsection (1) is liable-
- (a) on conviction upon indictment to a fine of \$5000000 and to imprisonment for 14 years; or
 - (b) on summary conviction to a fine of \$500000 and to imprisonment for 3 years.

(Replaced 89 of 1995 s. 21)

Section:	25A	Disclosure of knowledge or suspicion that property represents proceeds, etc. of drug trafficking	L.N. 173 of 2004	07/01/2005
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- (1) Where a person knows or suspects that any property-
 - (a) in whole or in part directly or indirectly represents any person's proceeds of;
 - (b) was used in connection with; or
 - (c) is intended to be used in connection with,drug trafficking, he shall as soon as it is reasonable for him to do so disclose that knowledge or suspicion, together with any matter on which that knowledge or suspicion is based, to an authorized officer.
- (2) If a person who has made a disclosure referred to in subsection (1) does any act in contravention of section 25(1) (whether before or after such disclosure), and the disclosure relates to that act, he does not commit an offence under that section if-
 - (a) that disclosure is made before he does that act and he does that act with the consent of an authorized officer; or
 - (b) that disclosure is made-
 - (i) after he does that act;
 - (ii) on his initiative; and
 - (iii) as soon as it is reasonable for him to make it.
- (3) A disclosure referred to in subsection (1)-
 - (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
 - (b) shall not render the person who made it liable in damages for any loss arising out of-
 - (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.
- (4) In the case of a person who was in employment at the relevant time, this section shall have effect in relation to disclosures to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as it has effect in relation to disclosures to an authorized officer.
- (5) A person commits an offence if, knowing or suspecting that a disclosure has been made under subsection (1) or (4), he discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.
- (6) In proceedings against a person for an offence under subsection (5), it is a defence to prove-
 - (a) that he did not know or suspect that the disclosure concerned was likely to be prejudicial in the way referred to in that subsection; or
 - (b) that he had lawful authority or reasonable excuse for making that disclosure.
- (7) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.
- (8) A person who commits an offence under subsection (5) is liable-
 - (a) on conviction upon indictment to a fine of \$500000 and to imprisonment for 3 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.
- (9) Information obtained under or by virtue of a disclosure referred to in subsection (1) may be

disclosed-

- (a) by any authorized officer to the Department of Justice, the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department, and the Independent Commission Against Corruption, for the purpose of combating drug trafficking; and
 - (b) by any authorized officer to the authorities or persons responsible for investigating or preventing drug trafficking, or handling the disclosure of knowledge or suspicion on property relating to drug trafficking, of any place outside Hong Kong which the authorized officer thinks fit, for the purpose of combating drug trafficking. (Added 21 of 2004 s. 24)
- (10) Subsection (9) is without prejudice to any other right to disclose information obtained under or by virtue of a disclosure referred to in subsection (1) that may exist apart from subsection (9). (Added 21 of 2004 s. 24)

(Added 89 of 1995 s. 21)

Section:	26	Restriction on revealing disclosure under section 25A	L.N. 362 of 1997	01/07/1997
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- (1) Subject to subsection (2), no witness in any civil or criminal proceedings shall be obliged-
 - (a) to reveal that a disclosure was made under section 25A(1) or (4); (Amended 89 of 1995 s. 22)
 - (b) to reveal the identity of any person as the person making the disclosure; or
 - (c) to answer any question if the answer would lead, or would tend to lead, to the revealing of any fact or matter referred to in paragraph (a) or (b).
- (2) Subsection (1) shall not apply in any proceedings-
 - (a) for an offence under section 25 or 25A or this section; or (Amended 89 of 1995 s. 22)
 - (b) where the court is of the opinion that justice cannot fully be done between the parties without revealing the disclosure or the identity of any person as the person making the disclosure.
- (3) Subject to subsections (4), (5) and (6), no person shall publish or broadcast any information so as to reveal or suggest-
 - (a) that a disclosure was made under section 25A(1) or (4); or (Amended 89 of 1995 s. 22)
 - (b) the identity of any person as the person making the disclosure.
- (4) In subsection (3) "information" (資料)-
 - (a) includes a report of any civil or criminal proceedings;
 - (b) does not include information published for statistical purposes by, or under the authority of, the Government.
- (5) Subsection (3) shall not apply in respect of proceedings-
 - (a) against the person making the disclosure for an offence under section 25 or 25A; or (Amended 89 of 1995 s. 22)
 - (b) for an offence under this section.
- (6) The court or a magistrate may, if satisfied that it is in the interests of justice to do so, by order dispense with the requirements of subsection (3) to such extent as may be specified in the order.
- (7) If information is published or broadcast in contravention of subsection (3), each of the following persons-
 - (a) in the case of publication as part of a newspaper or periodical publication, any proprietor, editor, publisher and distributor thereof;
 - (b) in the case of a publication otherwise than as part of a newspaper or periodical publication, any person who publishes it and any person who distributes it;
 - (c) in the case of a broadcast, any person who broadcasts the information and, if the information is contained in a programme, any person who transmits or provides the programme and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical publication,commits an offence and is liable on conviction to a fine of \$50000 and to imprisonment for 6 months.
- (8) Proceedings for an offence under this section shall not be instituted except with the consent of the Secretary for Justice. (Amended L.N. 362 of 1997)

- (9) In this section-
 "broadcast" (廣播) includes broadcast by radio, film, videotape or television;
 "publish" (出版) means publish in writing.

(Enacted 1989)

Section:	27	Compensation	L.N. 362 of 1997; 25 of 1998	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

PART VI

MISCELLANEOUS

(Added 89 of 1995 s. 23)

- (1) If an investigation is begun against a person for a drug trafficking offence or offences and any of the following circumstances occur, namely-
- (a) no proceedings are instituted against that person;
 - (b) proceedings are instituted against that person but do not result in his conviction for any drug trafficking offence (including any proceedings referred to in section 3(1)(a)(ii) where no confiscation order is made against that person); (Amended 89 of 1995 s. 24)
 - (ba) that person absconds after proceedings are instituted against him and subsequently-
 - (i) he ceases to be an absconder; and
 - (ii) either-
 - (A) those proceedings are continued or reinstated but do not result in his conviction for any drug trafficking offence; or
 - (B) those proceedings are not continued or reinstated within a reasonable period after it is known to the Secretary for Justice that he has ceased to be an absconder; or (Added 89 of 1995 s. 24. Amended L.N. 362 of 1997)
 - (c) proceedings are instituted against that person and he is convicted of one or more drug trafficking offences, but-
 - (i) the conviction or convictions concerned are quashed; or
 - (ii) he is granted a pardon in respect of the conviction or convictions concerned,
 the Court of First Instance may, on application by a person who held property which was realisable property (or, in the case of such a person who has died, his personal representative on his behalf), order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order. (Amended 89 of 1995 s. 24)
- (2) The Court of First Instance shall not order compensation to be paid under subsection (1) unless it is satisfied-
- (a) subject to subsection (3A), that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences concerned; and (Amended 89 of 1995 s. 24)
 - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order of the Court of First Instance under sections 10 to 12.
- (3) Subject to subsection (3A), the Court of First Instance shall not order compensation to be paid under subsection (1) in any case where it appears to the Court of First Instance that the investigation would have been continued, or the proceedings would have been instituted or continued, as the case may be, if the serious default had not occurred. (Amended 89 of 1995 s. 24)
- (3A) Subsections (2)(a) and (3) shall not apply to any case to which subsection (1)(ba) is applicable. (Added 89 of 1995 s. 24)
- (4) Without prejudice to subsection (1), where-
- (a) a disclosure is made by any person in accordance with section 25A(2) in relation to any

- property; (Amended 89 of 1995 s. 24)
- (b) in consequence of the disclosure and for the purposes of an investigation or prosecution in respect of a drug trafficking offence or offences any act is done or omitted to be done in relation to that property; and
 - (c) no proceedings are instituted against any person in respect of that offence or offences or no order is made by the Court of First Instance under section 10 or 11 in relation to that property,
- the Court of First Instance may, on application by a person who held the property, order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.
- (5) The Court of First Instance shall not order compensation to be paid under section (4) unless it is satisfied-
 - (a) that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences concerned and that, but for that default, the act or omission referred to in subsection (4)(b) would not have occurred; and
 - (b) the applicant has, in consequence of the act or omission referred to in subsection (4)(b), suffered loss in relation to the property.
 - (5A) Without prejudice to either subsection (1) or (4), where-
 - (a) any property is seized under section 52 of the Dangerous Drugs Ordinance (Cap 134) on the ground that it is suspected to be specified property within the meaning of Part IVA; and
 - (b) subsequently, none of the following events occurs-
 - (i) the property is forfeited under section 24D;
 - (ii) proceedings are instituted (whether in Hong Kong or elsewhere)-
 - (A) against any person in relation to an offence with which the property is connected; or
 - (B) which may result in the forfeiture or other confiscation of the property,

the Court of First Instance may, on application by a person who held the property, order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order. (Added 89 of 1995 s. 24)

 - (5B) The Court of First Instance shall not order compensation to be paid under subsection (5A) unless it is satisfied that-
 - (a) there has been some serious default on the part of any person concerned with the seizure or detention of the property concerned; and
 - (b) the applicant has, in consequence of such seizure or detention, suffered loss in relation to the property. (Added 89 of 1995 s. 24)
 - (6) The amount of compensation to be paid under this section shall be such as the Court of First Instance thinks just in all the circumstances of the case.

(Amended 25 of 1998 s. 2)
[cf. 1986 c. 32 s. 19 U.K.]

Section:	28	Enforcement of external confiscation orders	L.N. 145 of 2002	01/01/2003
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- (1) The Chief Executive in Council may, with the approval of the Legislative Council, by order- (Amended 15 of 1999 s. 3)
 - (a) direct in relation to a country, territory or place outside Hong Kong designated by the order ("a designated country") that this Ordinance as modified in the order shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there; (Amended 15 of 1999 s. 3, 26 of 2002 s. 2)
 - (b) make-
 - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order; and
 - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 29; and

- (iii) such incidental, consequential and transitional provision, as appears to him to be expedient; and
 - (c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds arising out of action taken in the designated country with a view to satisfying a confiscation order and which are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified.
 - (2) An order under this section may make different provision for different cases or classes of case.
 - (3) The power to make an order under this section includes power to modify this Ordinance in such a way as to confer power on a person to exercise a discretion.
 - (3A) An order under this section shall not operate, or be construed, to prevent a designated country from making a request under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525), including a request under section 27 of that Ordinance. (Added 87 of 1997 s. 36)
 - (4) In this section and section 29-
"external confiscation order" (外地沒收令) means an order made by a court in a designated country for the purpose of-
 - (a) recovering (including forfeiting and confiscating)-
 - (i) payments or other rewards received in connection with drug trafficking or their value;
 - (ii) property derived or realised, directly or indirectly, from payments or other rewards received in connection with drug trafficking or the value of such property; or
 - (iii) property used or intended to be used in connection with drug trafficking or the value of such property; or
 - (b) depriving a person of a pecuniary advantage obtained in connection with drug trafficking, and whether the proceedings which gave rise to that order are criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or property; (Replaced 87 of 1997 s. 36)
- "modifications" (修改) includes additions, alterations and omissions.

(Enacted 1989)
[cf. 1986 c. 32 s. 26 U.K.]

Section:	29	Registration of external confiscation orders	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

- (1) On an application made by or on behalf of the government of a designated country, the Court of First Instance may register an external confiscation order made there if-
 - (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
 - (b) it is satisfied, where any person against whom, or in relation to whose property, the order is made does not appear in the proceedings, that he received notice of the proceedings, in accordance with the law of the designated country, in sufficient time to enable him to defend them; and (Replaced 89 of 1995 s. 26)
 - (c) it is of the opinion that enforcing the order in Hong Kong would not be contrary to the interests of justice.
- (2) In subsection (1) "appeal" (上訴) includes-
 - (a) any proceedings by way of discharging or setting aside a judgment; and
 - (b) an application for a new trial or a stay of execution.
- (3) The Court of First Instance shall cancel the registration of an external confiscation order if it appears to the Court of First Instance that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

(Amended 25 of 1998 s. 2)
[cf. 1986 c. 32 s. 26A U.K.]

Section:	30	Evidence of corresponding law		30/06/1997
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Section 43 of the Dangerous Drugs Ordinance (Cap 134) shall apply in relation to proceedings under this Ordinance as it applies in relation to proceedings for an offence under that Ordinance.

(Enacted 1989)

Section:	31	Amendment of Schedules	15 of 1999	01/07/1997
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Remarks:

Amendments retroactively made - see 15 of 1999 s. 3

(1) The Chief Executive in Council may, by order, amend Schedule 1, 2 or 3. (Amended 15 of 1999 s. 3)

(2) The Legislative Council may, by resolution, amend Schedule 4.

(Replaced 89 of 1995 s. 27)

Schedule:	1	DRUG TRAFFICKING OFFENCES	L.N. 145 of 2002	01/01/2003
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[sections 2 & 3]

(Replaced 26 of 2002 s. 2)

Offence	Description*
section 4(1), Dangerous Drugs Ordinance (Cap 134)	trafficking in a dangerous drug
section 4A, Dangerous Drugs Ordinance (Cap 134)	trafficking in purported dangerous drug
section 5(1), Dangerous Drugs Ordinance (Cap 134)	supplying or procuring a dangerous drug to or for unauthorized persons
section 6(1), Dangerous Drugs Ordinance (Cap 134)	manufacturing a dangerous drug
section 9(1), (2) and (3), Dangerous Drugs Ordinance (Cap 134)	cultivating, supplying, procuring, dealing in, importing, exporting, or possessing cannabis plant or opium poppy
section 35, Dangerous Drugs Ordinance (Cap 134)	keeping or managing a divan for the taking of dangerous drugs
section 37, Dangerous Drugs Ordinance (Cap 134)	permitting premises to be used for unlawful trafficking, manufacturing or storage of dangerous drugs
section 40(1)(c), Dangerous Drugs Ordinance (Cap 134)	aiding, etc. offence under a corresponding law
section 25, Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405)	dealing with property known or believed to represent the proceeds of drug trafficking

*Note: The short description of offences in this Schedule is for ease of reference only.

(Amended 52 of 1992 s. 12; 89 of 1995 s. 28)

Schedule:	2	ASSETS ON WHICH A CHARGING ORDER MAY BE IMPOSED	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

[section 11]

1. Land in Hong Kong.
2. Securities of any of the following kinds-
 - (a) Government stock;
 - (b) stock of any body incorporated in Hong Kong;
 - (c) stock of any body incorporated outside Hong Kong or of any state or territory outside

- Hong Kong, being stock registered in a register kept at any place within Hong Kong;
- (d) units of any unit trust in respect of which a register of the unit holders is kept at any place within Hong Kong.

3. In this Schedule-

- (a) the terms "Government stock" (政府證券) and "land" (土地) have the same meaning as in section 2 of the High Court Ordinance (Cap 4); (Amended 25 of 1998 s. 2)
- (b) the terms "stock" (股份) and "unit trust" (單位信託基金) have the same meaning as in section 20A of that Ordinance.

Schedule:	3	CERTIFICATE OF SENTENCE IN RESPECT OF TERM OF IMPRISONMENT FIXED UNDER SECTION 8 OF THE DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE (CAP 405)	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

[sections 8(8) & 31]

To the Commissioner of Correctional Services.

Whereas the Court of First Instance/District Court*-

- (a) on the day of 19-
- (i) sentenced(name of defendant) in respect of the drug trafficking offence/offences*, within the meaning of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405), of
 (particulars of offence/offences*); and
- * (ii) imposed a period of imprisonment/detention* of months/years* in respect of that offence/those offences*; and
- (b) on the day of 19 made a confiscation order under section 3(6)(a) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) that that defendant pay the amount of \$:

This is to certify that on the day of 19 the Court of First Instance/District Court* made an order under section 8 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) fixing a term of imprisonment of months/years* which that person is to serve if any of the amount to be paid under that confiscation order is not paid or recovered on or before the day of 19

Dated this day of 19

.....
 Registrar of the
 High Court/District Court*.

* Delete where inapplicable.

Note: Section 8(4) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) provides that where a person becomes liable to serve a term of imprisonment fixed under section 8 of that Ordinance in respect of a confiscation order and is also liable to serve a term of imprisonment (or detention) in respect of the drug trafficking offence or offences concerned, that first-mentioned term of imprisonment shall not begin to run until after the end of that second-mentioned term of imprisonment (or detention).

(Schedule 3 added 89 of 1995 s. 29. Amended 25 of 1998 s. 2)

Schedule:	4	SPECIFIED PROPERTY		30/06/1997
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[sections 24A & 31]

1. Money (which term shall include coins and notes in any currency) amounting to not less than \$125000.

(Added 89 of 1995 s. 29)

(Date of download: 16/08/2007)

Chapter:	455	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number	Version Date
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		Long title	L.N. 145 of 2002	01/01/2003
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An Ordinance to create new powers of investigation into organized crimes and certain other offences and into the proceeds of crime of certain offenders; provide for the confiscation of proceeds of crime; make provision in respect of the sentencing of certain offenders; create offences relating to the proceeds of crime or property representing the proceeds of crime; and for ancillary and connected matters.

(Enacted 1994. Amended 26 of 2002 s. 3)

- | | | | |
|--|---|-----------------|--------------------------|
| [Sections 2, 25 to 27, 30, 32 to 35 and Schedules 1 and 2 | } | 2 December 1994 | <i>L.N. 651 of 1994</i> |
| The Ordinance, other than sections 2, 25 to 27, 30, 32 to 35 and Schedules 1 and 2 | } | 28 April 1995 | <i>L.N. 157 of 1995]</i> |

(Originally 82 of 1994)

Section:	1	Short title		30/06/1997
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PART I

PRELIMINARY

- (1) This Ordinance may be cited as the Organized and Serious Crimes Ordinance.
- (2) (Omitted as spent)

(Enacted 1994)

Section:	2	Interpretation	L.N. 145 of 2002	01/01/2003
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- (1) In this Ordinance, unless the context otherwise requires-
"absconded" (潛逃), in relation to a person, includes absconded for any reason whatsoever, and whether or not, before absconding, the person had been-
 - (a) taken into custody; or
 - (b) released on bail; (Added 90 of 1995 s. 2)"authorized officer" (獲授權人) means-
 - (a) any police officer;
 - (b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342); and
 - (c) any other person authorized in writing by the Secretary for Justice for the purposes of this Ordinance; (Amended L.N. 362 of 1997)"confiscation order" (沒收令) means an order made under section 8(7);

"dealing" (處理), in relation to property referred to in section 15(1) or 25, includes-

- (a) receiving or acquiring the property;
- (b) concealing or disguising the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
- (c) disposing of or converting the property;
- (d) bringing into or removing from Hong Kong the property;
- (e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise); (Added 90 of 1995 s. 2)

"defendant" (被告人) means a person against whom proceedings have been instituted for a specified offence (whether or not he has been convicted of that offence);

"insolvency officer" (債務處理人) means-

- (a) the Official Receiver; or
- (b) any person acting as-
 - (i) a receiver, interim receiver, special manager or trustee appointed under the Bankruptcy Ordinance (Cap 6); or
 - (ii) a liquidator, provisional liquidator or special manager appointed under the Companies Ordinance (Cap 32);

"interest" (權益), in relation to property, includes right;

"items subject to legal privilege" (享有法律特權的品目) means-

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made-
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,when they are in the possession of a person who is entitled to possession of them, but excludes any such communications or items held with the intention of furthering a criminal purpose;

"material" (物料) includes any book, document or other record in any form whatsoever, and any article or substance;

"organized crime" (有組織罪行) means a Schedule 1 offence that-

- (a) is connected with the activities of a particular triad society;
- (b) is related to the activities of 2 or more persons associated together solely or partly for the purpose of committing 2 or more acts, each of which is a Schedule 1 offence and involves substantial planning and organization; or
- (c) is committed by 2 or more persons, involves substantial planning and organization and involves-
 - (i) loss of the life of any person, or a substantial risk of such a loss;
 - (ii) serious bodily or psychological harm to any person, or a substantial risk of such harm;
 - or
 - (iii) serious loss of liberty of any person;

"premises" (處所) includes any place and, in particular, includes-

- (a) any vehicle, vessel, aircraft, hovercraft or offshore structure; and
- (b) any tent or movable structure;

"property" (財產) includes both movable and immovable property within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1);

"Registrar" (司法常務官) means the Registrar of the High Court; (Amended 25 of 1998 s. 2)

"reward" (酬賞) includes a pecuniary advantage;

"Schedule 1 offence" (附表1所列罪行) means-

- (a) any of the offences specified in Schedule 1;
- (b) conspiracy to commit any of those offences;
- (c) inciting another to commit any of those offences;
- (d) attempting to commit any of those offences;
- (e) aiding, abetting, counselling or procuring the commission of any of those offences;

"society" (社團) has the same meaning as in section 2(1) of the Societies Ordinance (Cap 151);

"specified offence" (指明的罪行) means-

- (a) any of the offences specified in Schedule 1 or Schedule 2;
- (b) conspiracy to commit any of those offences;
- (c) inciting another to commit any of those offences;
- (d) attempting to commit any of those offences;
- (e) aiding, abetting, counselling or procuring the commission of any of those offences.

"triad society" (三合會) includes any society which-

- (a) uses any ritual commonly used by triad societies, any ritual closely resembling any such ritual or any part of any such ritual; or
- (b) adopts or makes use of any triad title or nomenclature;

- (2) For the purpose of the definition of "organized crime" (有組織罪行) in subsection (1)-
 - (a) a conspiracy to commit a Schedule 1 offence involves a matter referred to in paragraph (c)(i) to (iii) of that definition if the pursuit of the agreed course of conduct would at some stage involve that matter;
 - (b) an attempt or incitement to commit a Schedule 1 offence involves a matter referred to in paragraph (c)(i) to (iii) of that definition if what the person attempting or inciting the commission had in view would involve that matter.
- (3) The expressions listed in the left-hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Ordinance listed in the right-hand column in relation to those expressions.

Expression	Relevant provision
Charging order (押記令)	Section 16(2)
Gift caught by this Ordinance (受本條例限制的饋贈)	Section 12(9)
Making a gift (作出饋贈)	Section 12(10)
Realisable property (可變現財產)	Section 12(1)
Restraint order (限制令)	Section 15(1)
Value of gift, payment or reward (饋贈、付款或酬賞的價值)	Section 12
Value of property (財產的價值)	Section 12(4)

(Amended 90 of 1995 s. 2)

- (4) This Ordinance applies to property whether it is situated in Hong Kong or elsewhere.
- (5) References in this Ordinance (except in sections 25 and 25A) to offences or organized crimes include a reference to offences or organized crimes committed before the commencement of this Ordinance; but nothing in this Ordinance imposes any duty or confers any power on any court in or in connection with proceedings against a person for an offence instituted before the commencement of this Ordinance. (Amended 90 of 1995 s. 2)
- (6) For the purposes of this Ordinance-
 - (a) a person's proceeds of an offence are-
 - (i) any payments or other rewards received by him at any time (whether before or after 2 December 1994) in connection with the commission of that offence;
 - (ii) any property derived or realised, directly or indirectly, by him from any of the payments or other rewards; and
 - (iii) any pecuniary advantage obtained in connection with the commission of that offence;
 - (b) the value of the person's proceeds of that offence is the aggregate of the values of-
 - (i) the payments or other rewards;

- (ii) that property; and
 - (iii) that pecuniary advantage. (Replaced 87 of 1997 s. 36)
- (7) For the purposes of this Ordinance-
 - (a) a person's proceeds of organized crime are-
 - (i) any payments or other rewards received by him at any time (whether before or after 2 December 1994) in connection with the commission of one or more organized crimes;
 - (ii) any property derived or realised, directly or indirectly, by him from any of the payments or other rewards; and
 - (iii) any pecuniary advantage obtained in connection with the commission of one or more organized crimes;
 - (b) the value of the person's proceeds of organized crime is the aggregate of the values of-
 - (i) the payments or other rewards;
 - (ii) that property; and
 - (iii) that pecuniary advantage. (Replaced 87 of 1997 s. 36)
- (8) For the purposes of this Ordinance, a person who has at any time (whether before or after the commencement of this Ordinance) received any payment or other reward in connection with the commission of an offence or an organized crime has benefited from that offence or organized crime, as the case may be.
- (9) References in this Ordinance to property received in connection with the commission of an offence or organized crime include a reference to property received both in that connection and in some other connection.
- (10) Subsections (11) to (17) shall have effect for the interpretation of this Ordinance.
- (11) Property is held by any person if he holds any interest in it.
- (12) References to property held by a person include a reference to property vested in his trustee in bankruptcy or in a liquidator.
- (13) References to an interest held by a person beneficially in property include, where the property is vested in his trustee in bankruptcy or in a liquidator, a reference to an interest which would be held by him beneficially if the property were not so vested.
- (14) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.
- (15) Proceedings for an offence are instituted-
 - (a) when a magistrate issues a warrant or summons under section 72 of the Magistrates Ordinance (Cap 227) in respect of the offence;
 - (aa) when a person has been arrested for the offence and released on bail or has refused bail; (Added 26 of 2002 s. 3)
 - (b) when a person is charged with the offence after being taken into custody without a warrant; or
 - (c) when an indictment is preferred by the direction or with the consent of a judge under section 24A(1)(b) of the Criminal Procedure Ordinance (Cap 221), and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.
- (16) Proceedings for an offence are concluded on the occurrence of one of the following events-
 - (a) the discontinuance of the proceedings whether by entry of a nolle prosequi or otherwise;
 - (b) an order or verdict acquitting the defendant, not being an order or verdict which is subject to appeal or review within the meaning of subsection (17);
 - (c) the quashing of his conviction for the offence except where, under section 83E of the Criminal Procedure Ordinance (Cap 221), an order is made that he be retried;
 - (d) the grant of the Chief Executive's pardon in respect of the conviction for the offence; (Amended 13 of 1999 s. 3)
 - (e) the court or magistrate sentencing or otherwise dealing with him in respect of his conviction for the offence where the Secretary for Justice either does not apply for a confiscation order, or applies for a confiscation order and the order is not made; or (Amended L.N. 362 of 1997)
 - (f) the satisfaction of a confiscation order made in the proceedings (whether by payment of

- the amount due under the order or by the defendant serving imprisonment in default).
- (16A) An application for a confiscation order made in respect of a defendant where section 8(1)(a)(ii) or (7A) is applicable is concluded-
- (a) if the Court of First Instance or the District Court decides not to make such an order, when it makes that decision; or (Amended 25 of 1998 s. 2)
 - (b) if such an order is made as a result of that application, when the order is satisfied. (Added 90 of 1995 s. 2)
- (16B) An application under section 20(1A) in respect of a confiscation order made against a defendant is concluded-
- (a) if the Court of First Instance decides not to vary that order, when it makes that decision; or
 - (b) if the Court of First Instance varies that order as a result of that application, when the order is satisfied. (Added 90 of 1995 s. 2. Amended 25 of 1998 s. 2)
- (17) An order or verdict (including an order or verdict of acquittal) is subject to appeal or review so long as an appeal, further appeal or review is pending against the order or verdict; and for this purpose an appeal, further appeal or review shall be treated as pending (where one is competent but has not been instituted) until-
- (a) (Repealed 79 of 1995 s. 50)
 - (b) the expiration of the time prescribed for instituting the appeal, further appeal or review. (Amended 79 of 1995 s. 50)
- (18) Subject to subsection (19), nothing in this Ordinance shall require the disclosure of any items subject to legal privilege. (Added 26 of 2002 s. 3)
- (19) Subsection (18) shall not prejudice the operation of sections 3, 4 and 5. (Added 26 of 2002 s. 3)

(Enacted 1994)
[cf. 1986 c. 32 s. 38 U.K.]

Section:	3	Requirement to furnish information or produce material	L.N. 362 of 1997; 25 of 1998	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

PART II

POWERS OF INVESTIGATION

- (1) The Secretary for Justice may, for the purpose of an investigation into an organized crime, make an ex parte application to the Court of First Instance for an order under subsection (2) in relation to a particular person or to persons of a particular description. (Amended L.N. 362 of 1997; 25 of 1998 s. 2)
- (2) The Court of First Instance may, if on such an application it is satisfied that the conditions in subsection (4)(a), (b) and (d) or subsection (4)(a), (c) and (d) are fulfilled, make an order complying with subsection (3) in respect of the particular person, or persons of the particular description, to whom the application relates. (Amended 25 of 1998 s. 2)
- (3) An order under subsection (2) shall-
- (a) give particulars of the organized crime under investigation;
 - (b) identify the particular person, or state the particular description of persons, in respect of whom the order is made;
 - (c) authorize the Secretary for Justice to require the person or persons in respect of whom the order is made-
 - (i) to answer questions or otherwise furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to the investigation; or
 - (ii) to produce any material that reasonably appears to the Secretary for Justice to relate to any matter relevant to the investigation, or any material of a class that reasonably appears to him so to relate,

- or both; and (Amended L.N. 362 of 1997)
- (d) contain such other terms (if any) as the Court of First Instance considers appropriate in the public interest, but nothing in this paragraph shall be construed as authorizing the court to order the detention of any person in custody without that person's consent. (Amended 25 of 1998 s. 2)
- (4) The conditions referred to in subsection (2) are-
- (a) that there are reasonable grounds for suspecting that the organized crime under investigation has been committed;
 - (b) where the application relates to a particular person, that there are reasonable grounds for suspecting that the person has information, or is in possession of material, likely to be relevant to the investigation;
 - (c) where the application relates to persons of a particular description, that-
 - (i) there are reasonable grounds for suspecting that some or all persons of that description have such information or are in possession of such material; and
 - (ii) the organized crime could not effectively be investigated if the application was required to relate to a particular person, whether because of the urgency of the investigation, the need to keep the investigation confidential or the difficulty in identifying a particular person who has relevant information or material;
 - (d) that there are reasonable grounds for believing that it is in the public interest, having regard-
 - (i) to the seriousness of the organized crime under investigation;
 - (ii) to whether or not the organized crime could be effectively investigated if an order under subsection (2) is not made;
 - (iii) to the benefit likely to accrue to the investigation if the information is disclosed or the material obtained; and
 - (iv) to the circumstances under which the person or persons may have acquired, or may hold, the information or material (including any obligation of confidentiality in respect of the information or material and any family relationship with a person to whom the information or material relates),
 that an order under subsection (2) should be made in respect of that person or those persons.
- (5) Where an order under subsection (2) authorizes the Secretary for Justice to require a person to answer questions or otherwise furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to an investigation, the Secretary for Justice may by one, or more than one, notice in writing served on that person require him to attend before an authorized officer at a specified time and place, or at specified times and places, and answer questions or otherwise furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to the investigation. (Amended L.N. 362 of 1997)
- (6) Where an order under subsection (2) authorizes the Secretary for Justice to require a person to produce any material that reasonably appears to the Secretary for Justice to relate to any matter relevant to an investigation, or any material of a class that reasonably appears to him so to relate, the Secretary for Justice may by one, or more than one, notice in writing served on that person require him to produce at a specified time and place, or at specified times and places, any specified material that reasonably appears to him so to relate or any material of a specified class that reasonably appears to him so to relate. (Amended L.N. 362 of 1997)
- (7) A notice in writing imposing a requirement on a person under subsection (5) or (6) shall-
- (a) state that a court order has been made under this section and include-
 - (i) the date of the order;
 - (ii) the particulars of the organized crime under investigation;
 - (iii) where the order is made in respect of that particular person, a statement to that effect;
 - (iv) where the order is made in respect of persons of a particular description and that person is of that particular description, a statement to that effect;
 - (v) a statement of the authorization given to the Secretary for Justice by the order; and
 (Amended L.N. 362 of 1997)
 - (vi) a statement of any other terms of the order relevant to that person;

- (b) have annexed to it a copy of the order made under this section, but there may be excluded from such copy-
 - (i) any reference in the order to a particular person other than that person, or to persons of a particular description not including that person; and
 - (ii) any details in the order that relate only to such particular person or persons of a particular description; and
- (c) be substantially in the form specified in Schedule 4 in relation to such notice and in addition shall set out or have annexed to it subsections (8) to (10) and section 7.
- (8) An authorized officer may photograph or make copies of any material produced in compliance with a requirement under this section.
- (9) A person shall not under this section be required to furnish any information or produce any material relating to items subject to legal privilege, except that a lawyer may be required to furnish the name and address of his client.
- (10) An order under subsection (2), and a notice in writing imposing a requirement under subsection (5) or (6), may be made in relation to information held by, and material in the possession of, a public body as defined in section 28.
- (11) A person is not excused from furnishing information or producing any material required under this section on the ground that to do so-
 - (a) might tend to incriminate him; or
 - (b) would breach an obligation as to secrecy or another restriction upon the disclosure of information or material imposed by statute or otherwise.
- (12) A statement by a person in response to a requirement imposed by virtue of this section may not be used against him in criminal proceedings against him except as follows-
 - (a) in evidence in proceedings under subsection (14) or section 36 of the Crimes Ordinance (Cap 200); or
 - (b) for the purpose of impeaching his credibility in proceedings in respect of any offence where in giving evidence he makes a statement inconsistent with it.
- (13) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year.
- (14) Any person who, in purported compliance with a requirement under this section-
 - (a) makes a statement that he knows to be false or misleading in a material particular; or
 - (b) recklessly makes a statement that is false or misleading in a material particular, commits an offence and is liable-
 - (i) on conviction upon indictment to a fine of \$500000 and to imprisonment for 3 years; or
 - (ii) on summary conviction to a fine at level 6 and to imprisonment for 1 year.
- (15) Where an order under subsection (2) has been made the Secretary for Justice, or a person authorized in writing by the Secretary for Justice for the purpose of this subsection, may, after satisfying any conditions that may be prescribed by rules of court in this respect, obtain a copy of the order; but subject to the foregoing part of this subsection and to subsection (7)(b), no person is entitled to obtain a copy of the order or any part of the order. (Amended L.N. 362 of 1997)
- (16) Where a requirement imposed on a person under this section relates to material which consists of information recorded otherwise than in legible form-
 - (a) the requirement shall have effect as a requirement to produce the material in a form in which it can be taken away;
 - (b) an authorized officer may by notice in writing served on the person require the person to produce at a specified time and place, or at specified times and places, the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the requirement to produce the material in the form in which it is recorded.
- (17) An application for the discharge or variation of an order made under this section may be made by any person on whom a requirement is imposed under the order.
- (18) Rules of court-
 - (a) shall provide for applications by any person on whom a requirement is imposed under an

- order made under this section for the discharge or variation of such order;
- (b) may provide for-
 - (i) proceedings relating to orders under this section;
 - (ii) conditions that must be satisfied before a person (including the Secretary for Justice) referred to in subsection (15) may obtain a copy of such order. (Amended 90 of 1995 s. 3; L.N. 362 of 1997)
- (19) The Secretary for Security shall prepare a code of practice in connection with-
- (a) the exercise of any of the powers conferred; and
 - (b) the discharge of any of the duties imposed,
- by this section, and any such code shall be laid before the Legislative Council and shall not be promulgated until the code has been approved by the Legislative Council.

(Enacted 1994)

Section:	4	Order to make material available	L.N. 362 of 1997; 25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) The Secretary for Justice or an authorized officer may, for the purpose of an investigation into-
 - (a) an organized crime; or
 - (b) the proceeds of organized crime of any person who has committed or is suspected of having committed an organized crime; or
 - (c) the proceeds of a specified offence of any person who has committed, or is suspected of having committed, that specified offence,
 make an ex parte application to the Court of First Instance for an order under subsection (2) in relation to particular material or material of a particular description, whether in Hong Kong or, in the case of an application by the Secretary for Justice, elsewhere. (Amended L.N. 362 of 1997; 25 of 1998 s. 2)
- (2) Subject to subsection (5) and section 28(10), the court may, if on such an application it is satisfied that the conditions in subsection (4)(a), (c) and (d) or subsection (4)(b), (c) and (d) are fulfilled, make an order that the person who appears to the court to be in possession or control of the material to which the application relates shall-
 - (a) produce the material to an authorized officer for him to take away; or
 - (b) give an authorized officer access to it,
 within such period as the order may specify.
- (3) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (4) The conditions referred to in subsection (2) are-
 - (a) where the investigation is into an organized crime, that there are reasonable grounds for suspecting that the organized crime has been committed;
 - (b) where the investigation is into the proceeds of organized crime or a specified offence of a person-
 - (i) that the person has committed an organized crime or that specified offence, or that there are reasonable grounds for suspecting that he has committed an organized crime or that specified offence; and
 - (ii) that there are reasonable grounds for suspecting that the person has benefited from organized crime or that specified offence;
 - (c) that there are reasonable grounds for believing that the material to which the application relates-
 - (i) is likely to be relevant to the investigation for the purpose of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege;
 - (d) that there are reasonable grounds for believing that it is in the public interest, having

- regard-
- (i) to the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) to the circumstances under which the person in possession or control of the material holds or controls it, as the case may be, (Amended 90 of 1995 s. 4)
- that the material should be produced or that access to it should be given.
- (5) Where an application under subsection (1) relates to material of a particular description, an order under subsection (2) shall only be made where an application in relation to particular material is not reasonably practicable.
 - (6) Where a court makes an order under subsection (2)(b) in relation to material on any premises it may, on the same or a subsequent application of an authorized officer, order any person who appears to it to be entitled to grant entry to the premises to allow an authorized officer to enter the premises to obtain access to the material.
 - (7) An application for the discharge or variation of an order made under subsection (2) or (6) may be made by any person who is subject to the order.
 - (8) Rules of court-
 - (a) shall provide for applications by any person who is subject to an order made under this section for the discharge or variation of such order;
 - (b) may provide for proceedings relating to orders under this section.
 - (9) Where material to which an application under this section relates consists of information recorded otherwise than in legible form-
 - (a) an order under subsection (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away; and
 - (b) an order under subsection (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.
 - (10) Where an order made under subsection (2)(a) relates to information recorded otherwise than in legible form, an authorized officer may by notice in writing require the person to produce the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the order to produce the material in the form in which it was recorded.
 - (11) An order under subsection (2)-
 - (a) shall not confer any right to production of, or access to, items subject to legal privilege; and
 - (b) may be made in relation to material in the possession or control of a public body as defined in section 28. (Amended 90 of 1995 s. 4)
 - (12) A person is not excused from producing any material in relation to which an order under subsection (2) is made on the ground that to do so-
 - (a) might tend to incriminate him; or
 - (b) would breach an obligation as to secrecy or another restriction upon the disclosure of information imposed by statute or otherwise.
 - (13) Any person who without reasonable excuse fails to comply with an order made under subsection (2) commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year.
 - (14) An authorized officer may photograph or make copies of any material produced under this section.

(Enacted 1994)
[cf. 1986 c. 32 s. 27 U.K.]

Section:	5	Authority for search	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) An authorized officer may, for the purpose of an investigation into-
 - (a) an organized crime;
 - (b) the proceeds of organized crime of any person who has committed or is suspected of

- having committed an organized crime;
- (c) the proceeds of a specified offence of any person who has committed, or is suspected of having committed, that specified offence,
- apply to the Court of First Instance or the District Court for a warrant under this section in relation to specified premises. (Amended 25 of 1998 s. 2)
- (2) On such application the court may issue a warrant authorizing an authorized officer to enter and search the premises if it is satisfied-
- (a) that a requirement imposed under section 3(6) in relation to material on the premises has not been complied with; or
- (b) that an order made under section 4 in relation to material on the premises has not been complied with; or
- (c) that the conditions in subsection (3)(a), (c) and (d) or subsection (3)(b), (c) and (d) are fulfilled; or
- (d) that the conditions in subsection (4)(a), (c) and (d) or subsection (4)(b), (c) and (d) are fulfilled.
- (3) The conditions referred to in subsection (2)(c) are-
- (a) where the investigation is into an organized crime, that there are reasonable grounds for suspecting that the organized crime has been committed;
- (b) where the investigation is into the proceeds of organized crime or a specified offence of a person-
- (i) that the person has committed an organized crime or that specified offence, or that there are reasonable grounds for suspecting that he has committed an organized crime or that specified offence; and
- (ii) that there are reasonable grounds for suspecting that the person has benefited from organized crime or that specified offence;
- (c) that the conditions in section 4(4)(c) and (d) are fulfilled in relation to any material on the premises;
- (d) that it would not be appropriate to make an order under that section in relation to the material because-
- (i) it is not practicable to communicate with any person entitled to produce the material; or
- (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
- (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer could secure immediate access to the material.
- (4) The conditions referred to in subsection (2)(d) are-
- (a) where the investigation is into an organized crime, that there are reasonable grounds for suspecting that the organized crime has been committed;
- (b) where the investigation is into the proceeds of organized crime or a specified offence of a person-
- (i) that the person has committed an organized crime or that specified offence, or that there are reasonable grounds for suspecting that he has committed an organized crime or that specified offence; and
- (ii) that there are reasonable grounds for suspecting that the person has benefited from organized crime or that specified offence;
- (c) that there are reasonable grounds for suspecting that there is on the premises material which is likely to be relevant to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularized;
- (d) that-
- (i) it is not practicable to communicate with any person entitled to grant entry to the premises; or
- (ii) entry to the premises will not be granted unless a warrant is produced; or
- (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer arriving at the premises could secure immediate entry to them.
- (5) Where an authorized officer has entered premises in the execution of a warrant issued under

this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be relevant to the investigation for the purpose of which the warrant was issued.

- (6) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under this section commits an offence and is liable-
 - (a) on conviction upon indictment to a fine of \$250000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (7) An authorized officer may photograph or make copies of any material seized under this section.
- (8) Notwithstanding section 83 of the Interpretation and General Clauses Ordinance (Cap 1), but subject to this section, a warrant may be issued under this section authorizing entry to premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material. (Added 88 of 1995 s. 6)

(Enacted 1994)
[cf. 1986 c. 32 s. 28 U.K.]

Section:	6	Disclosure of information obtained under section 3, 4 or 5	L.N. 362 of 1997	01/07/1997
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- (1) Where any information subject to an obligation of secrecy under the Inland Revenue Ordinance (Cap 112) has been obtained from the Commissioner of Inland Revenue or any officer of the Inland Revenue Department under or by virtue of section 3, 4 or 5, that information may be disclosed by any authorized officer to the Secretary for Justice for the purposes of-
 - (a) any prosecution of a specified offence;
 - (b) any application for a confiscation order; or
 - (c) any application for an order under section 15(1) or 16(1),
 but may not otherwise be disclosed.
- (2) Subject to subsection (1), information obtained by any person under or by virtue of section 3, 4 or 5 may be disclosed by any authorized officer-
 - (a) to the Department of Justice, the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department, and the Independent Commission Against Corruption; and
 - (b) where the information appears to the Secretary for Justice to be likely to assist any corresponding person or body to discharge its functions, to that person or body.
- (3) Subsection (2) is without prejudice to any other right to disclose information obtained under or by virtue of section 3, 4 or 5 that may exist apart from subsection (2).
- (4) In this section, "corresponding person or body" (相應的人員或機構) means any person who or body which, in the opinion of the Secretary for Justice, has under the law of a place outside Hong Kong, functions corresponding to any of the functions of any body mentioned in subsection (2)(a).

(Enacted 1994. Amended L.N. 362 of 1997)

Section:	7	Offence of prejudicing investigation		30/06/1997
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- (1) Where an order under section 3 or 4 has been made or has been applied for and has not been refused or a warrant under section 5 has been issued, a person who, knowing or suspecting that the investigation in relation to which the order has been made or applied for or the warrant has been issued is taking place-
 - (a) without lawful authority or reasonable excuse makes any disclosure intending to prejudice the investigation; or
 - (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of any material-
 - (i) knowing or suspecting that the material is likely to be relevant to the investigation; and
 - (ii) intending to conceal the facts disclosed by the material from persons carrying out the investigation,

commits an offence.

- (2) Where a person has been arrested in connection with an investigation specified in subsection (1), that subsection shall not apply as regards any disclosure in respect of the investigation made after such arrest.
- (3) A person who commits an offence under this section is liable-
 - (a) on conviction upon indictment to a fine and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine of \$500000 and to imprisonment for 3 years.

(Enacted 1994)

[cf. 1986 c. 32 s. 31 U.K.]

Section:	8	Confiscation orders	L.N. 145 of 2002	01/01/2003
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PART III

CONFISCATION OF PROCEEDS OF CRIME

- (1) Where-
 - (a) either-
 - (i) in proceedings before the Court of First Instance or the District Court a person is to be sentenced in respect of one or more specified offences and has not previously been sentenced in respect of his conviction for the offence or, as the case may be, any of the offences concerned; or
 - (ii) proceedings for one or more specified offences have been instituted against a person but have not been concluded because the person-
 - (A) has died; or
 - (B) has absconded; and
 - (b) an application is made by or on behalf of the Secretary for Justice for a confiscation order, (Amended L.N. 362 of 1997)
- the Court of First Instance or the District Court, as the case may be, shall act as follows. (Replaced 90 of 1995 s. 6. Amended 25 of 1998 s. 2)
- (2) (Repealed 90 of 1995 s. 6)
 - (3) The court shall-
 - (a) where subsection (1)(a)(i) is applicable-
 - (i) first determine, if the prosecution so requests, whether the specified offence or any of the specified offences of which the person stands convicted is an organized crime;
 - (ii) then, or where no request has been made under subparagraph (i), first-
 - (A) impose on the person such period of imprisonment or detention (if any) as is appropriate in respect of the offence or, as the case may be, the offences concerned;
 - (B) make such order or orders (other than a confiscation order) in relation to sentence as is appropriate in respect of the offence or, as the case may be, the offences concerned, and such order or orders may be or include any order-
 - (I) imposing any fine on the person;
 - (II) involving any payment by the person; or
 - (III) under section 38F or 56 of the Dangerous Drugs Ordinance (Cap 134), or under section 72, 84A, 102 or 103 of the Criminal Procedure Ordinance (Cap 221);
 - (b) where subsection (1)(a)(ii)(A) is applicable-
 - (i) first be satisfied that-
 - (A) the person has died; and
 - (B) having regard to all relevant matters before it, the person could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (ii) then, where the court is satisfied under subparagraph (i), determine, if the prosecution so requests, whether the offence or any of the offences concerned could have been an organized crime;
 - (c) where subsection (1)(a)(ii)(B) is applicable-
 - (i) first be satisfied that-

- (A) the person has absconded and that not less than 6 months have elapsed beginning with the date which is, in the opinion of the court, the date on which the person absconded;
 - (B) in the case of-
 - (I) a person who is known to be outside Hong Kong and whose exact whereabouts are known-
 - (aa) reasonable steps have been taken, but have been unsuccessful, to obtain the return of that person to Hong Kong for the purposes of the proceedings concerned;
 - (bb) if that person is in custody outside Hong Kong for purposes other than the purposes referred to in sub-sub-sub-paragraph (aa), he is in such custody by virtue of conduct which would constitute an indictable offence if it had occurred in Hong Kong; and
 - (cc) notice of those proceedings was given to that person in sufficient time to enable him to defend them;
 - (II) subject to subsection (3A), a person whose exact whereabouts are not known, reasonable steps have been taken to ascertain the person's whereabouts (including, if appropriate, a step mentioned in paragraph (a), (b) or (c) or rule 5(1) of Order 65 of the Rules of the High Court (Cap 4 sub. leg. A)) and notice of those proceedings, addressed to that person, has been published in a Chinese language newspaper, and an English language newspaper, circulating generally in Hong Kong; and (Replaced 26 of 2002 s. 3)
 - (C) having regard to all relevant matters before it, the person could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (ii) then, where the court is satisfied under subparagraph (i), determine, if the prosecution so requests, whether the offence or any of the offences concerned could have been an organized crime. (Replaced 90 of 1995 s. 6)
- (3A) Where subsection (3)(c)(i)(B)(II) is applicable, and notwithstanding that the court is satisfied as mentioned in that subsection that actions have been taken, the court may, if it is satisfied that it is in the interests of justice to do so, require that notice of the proceedings mentioned in that subsection be given to the person mentioned in that subsection in such additional manner as the court may direct. (Added 26 of 2002 s. 3)
- (4) The court shall then determine-
- (a) where subsection (1)(a)(i) is applicable, whether the person has benefited from the specified offence or from that offence taken together with any specified offence of which he is convicted in the same proceedings, or which the court proposes to take or has taken into consideration in determining his sentence;
 - (b) where subsection (1)(a)(ii) is applicable, whether the person has benefited from the specified offence of which the court is satisfied that he could have been convicted or from that offence taken together with any specified offence of which the court is satisfied that he could have been convicted in the same proceedings or which the court could have taken into consideration in determining his sentence if he had not died or absconded, as the case may be,
- and, if he has, whether his proceeds of that specified offence or offences are in total at least \$100000. (Replaced 90 of 1995 s. 6)
- (5) If the court has determined-
- (a) where subsection (1)(a)(i) is applicable-
 - (i) under subsection (3)(a)(i), that the specified offence or any of the specified offences of which the person stands convicted is an organized crime; and
 - (ii) under subsection (4), that his proceeds of the specified offence or offences referred to in that subsection are in total at least the amount specified in that subsection;
 - (b) where subsection (1)(a)(ii) is applicable-
 - (i) under subsection (3)(b)(ii) or (c)(ii), as the case may be, that the specified offence or any of the specified offences concerned could have been an organized crime; and
 - (ii) under subsection (4), that his proceeds of the specified offence or offences referred to in

- that subsection are in total at least the amount specified in that subsection, the court shall then determine whether the person has benefited from organized crime. (Replaced 90 of 1995 s. 6)
- (6) If the court determines that his proceeds of the specified offence or offences are in total at least the amount specified in subsection (4), the court shall determine in accordance with section 11 the amount to be recovered in his case by virtue of this section.
- (7) The court shall then, in respect of the offence or offences concerned, order the person to pay-
- (a) that amount; or
 - (b) without prejudice to the generality of paragraph (a), such proportion of that amount as it thinks fits after taking into account any order or orders provided for or referred to in subsection (3)(a)(ii)(B)(I), (II) or (III) which has or have been made in respect of the person. (Replaced 90 of 1995 s. 6)
- (7A) Where-
- (a) a person has been convicted of one or more specified offences;
 - (b) an application for a confiscation order has been made in respect of the person; and
 - (c) the person has died or absconded before that application has been concluded,
- then that application may still be concluded notwithstanding that death or abscondment, as the case may be. (Added 90 of 1995 s. 6)
- (7B) Where subsection (7A) is applicable in relation to a person who has died-
- (a) subsection (3)(a)(ii)(A) shall not apply in relation to the person;
 - (b) the court shall not make a confiscation order against the person unless it is satisfied that the person has died. (Added 90 of 1995 s. 6)
- (7C) Where subsection (7A) is applicable in relation to a person who has absconded, the court shall not make a confiscation order against the person unless it is satisfied that-
- (a) the person has absconded; and
 - (b) in the case of-
 - (i) a person who is known to be outside Hong Kong and whose exact whereabouts are known-
 - (A) reasonable steps have been taken, but have been unsuccessful, to obtain the return of that person to Hong Kong for the purposes of the proceedings concerned; and
 - (B) notice of those proceedings was given to that person in sufficient time to enable him to defend them;
 - (ii) subject to subsection (7D), a person whose exact whereabouts are not known-
 - (A) reasonable steps have been taken to ascertain the person's whereabouts (including, if appropriate, a step mentioned in paragraph (a), (b) or (c) of rule 5(1) of Order 65 of the Rules of the High Court (Cap 4 sub. leg. A)); and
 - (B) notice of those proceedings, addressed to that person, has been published in a Chinese language newspaper, and an English language newspaper, circulating generally in Hong Kong. (Replaced 26 of 2002 s. 3)
- (7D) Where subsection (7C)(b)(ii) is applicable, and notwithstanding that the court is satisfied as mentioned in that subsection that actions have been taken, the court may, if it is satisfied that it is in the interests of justice to do so, require that notice of the proceedings mentioned in that subsection be given to the person mentioned in that subsection in such additional manner as the court may direct. (Added 26 of 2002 s. 3)
- (8) For the purposes of subsection (3)(b)(i)(B) or (ii) or (c)(i)(C) or (ii), information may be furnished to the court after the person has died or absconded, as the case may be. (Replaced 90 of 1995 s. 6)
- (8A) For the purposes of any Ordinance conferring rights of appeal in criminal cases, a confiscation order made against a person shall be deemed to be a sentence passed on that person in respect of the offence or offences concerned and, in the case of any such person who has died (whether before or after the making of such order), his personal representative may act on his behalf for those purposes. (Added 90 of 1995 s. 6)
- (8B) It is hereby declared that the standard of proof required to determine any question arising under this Ordinance as to-
- (a) whether a person has benefited from a specified offence or offences;

- (b) whether a person has benefited from organized crime; or
 - (c) the amount to be recovered in his case in pursuance of a confiscation order, shall be on the balance of probabilities. (Added 90 of 1995 s. 6)
- (8C) The fact that-
- (a) under subsection (3)(b)(i)(B) or (c)(i)(C) the court is satisfied that a person could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (b) under subsection (3)(b)(ii) or (c)(ii) the court determines that the offence or any of the offences referred to in subsection (3)(b)(i)(B) or (c)(i)(C) could have been an organized crime,
- shall not be admissible in evidence in any proceedings for an offence. (Added 90 of 1995 s. 6)
- (8D) For the avoidance of doubt, it is hereby declared that where an application is made for a confiscation order in any case where subsection (1)(a)(ii)(A) is applicable, the personal representatives of the deceased person concerned shall, for the purposes of opposing the application, be entitled to be heard on the application and to call, examine and cross-examine any witness. (Added 90 of 1995 s. 6)
- (8E) Where-
- (a) before the commencement of the Organized and Serious Crimes (Amendment) Ordinance 1995 (90 of 1995), proceedings for one or more specified offences have been instituted against a person but have not been concluded because that person has absconded; and
 - (b) immediately before that commencement, any realisable property of that person is the subject of a charging order or restraint order,
- then the provisions of this Ordinance as amended by that Ordinance shall apply in relation to that person as they would apply in relation to a person against whom, on or after that commencement, proceedings for one or more specified offences have been instituted but have not been concluded because that last-mentioned person has absconded. (Added 90 of 1995 s. 6)
- (8F) Where-
- (a) before the commencement of the Organized and Serious Crimes (Amendment) Ordinance 1995 (90 of 1995)-
 - (i) a person has been convicted of one or more specified offences;
 - (ii) an application for a confiscation order has been made in respect of the person; and
 - (iii) the person has absconded before that application has been concluded; and
 - (b) immediately before that commencement, any realisable property of that person is the subject of a charging order or restraint order,
- then the provisions of this Ordinance as amended by that Ordinance shall apply in relation to that person as they would apply in relation to a person to whom subsection (7A) is applicable because he has absconded. (Added 90 of 1995 s. 6)
- (9) For the purposes of-
- (a) subsection (3)(a)(i), (b)(ii) or (c)(ii), the court shall only have regard to evidence such as would be admissible in criminal proceedings;
 - (b) subsection (3)(a)(i), the court shall only make a determination that a specified offence is an organized crime if it is so satisfied beyond reasonable doubt. (Amended 90 of 1995 s. 6)
- (10) Where subsection (1)(a)(ii)(A) or (B) is applicable, the reference in that subsection to "one or more specified offences" includes any offence previously specified in Schedule 1 or 2, and the other provisions of this section and this Ordinance (including paragraphs (b) to (e) of the definition of "specified offence" in section 2(1) and any subsidiary legislation) shall be construed accordingly. (Added 26 of 2002 s. 3)

(Enacted 1994)

[cf. 1986 c. 32 s. 1 U.K.; 1988 c. 33 s. 72 U.K.]

Section:	9	Assessing the proceeds of crime	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) The Court of First Instance or the District Court, as the case may be, may, for the purpose of

determining whether- (Amended 25 of 1998 s. 2)

(a) where section 8(1)(a)(i) is applicable, a person convicted of a specified offence and found to have committed an organized crime;

(b) where section 8(1)(a)(ii)(A) or (B) is applicable, a person whom the court is satisfied that he could have been convicted of a specified offence being an offence which the court determines that it could have been an organized crime,

has benefited from organized crime, and if he has, of assessing the value of his proceeds of organized crime, make the following assumptions, except to the extent that the defendant (or, in the case of a defendant who has died, his personal representative on his behalf) shows that any of the assumptions are incorrect in his case. (Replaced 90 of 1995 s. 7)

(2) Those assumptions are-

(a) that any property appearing to the court-

(i) to have been held by him at any time-

(A) since his conviction; or

(B) where section 8(1)(a)(ii) is applicable, since the application was made for a confiscation order in his case,

as the case may be; or (Replaced 90 of 1995 s. 7)

(ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him,

was received by him, at the earliest time at which he appears to the court to have held it, as his proceeds of organized crime; (Amended 90 of 1995 s. 7)

(b) that any expenditure of his since the beginning of that period was met out of his proceeds of organized crime; and (Amended 90 of 1995 s. 7)

(c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as his proceeds of organized crime, he received the property free of any other interests in it. (Amended 90 of 1995 s. 7)

(3) For the purpose of assessing the value of the defendant's proceeds of organized crime in a case where a confiscation order, or an order under section 3(6) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405), has previously been made against him, the court shall leave out of account any proceeds of organized crime that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

(Enacted 1994)

[cf. 1986 c. 32 s. 2 U.K.]

Section:	10	Statements, etc. relevant to making confiscation order	L.N. 145 of 2002	01/01/2003
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(1) Where an application is made for a confiscation order, the prosecutor may tender to the Court of First Instance or the District Court, as the case may be, a statement of matters relevant to any of the following- (Amended 25 of 1998 s. 2)

(a) where section 8(1)(a)(ii) is applicable, determining-

(i) whether the defendant could have been convicted in respect of the offence or, as the case may be, the offences concerned;

(ii) whether the offence or any of the offences concerned could have been an organized crime;

(b) determining whether the defendant has benefited from a specified offence or an organized crime;

(c) assessing the value of the defendant's proceeds of a specified offence or an organized crime. (Replaced 90 of 1995 s. 8)

(1A) Where any statement has been tendered under subsection (1)-

(a) the prosecutor may at any time tender to the court a further such statement; and

(b) the court may at any time require the prosecutor to tender to it a further such statement within such period as it may direct. (Added 90 of 1995 s. 8)

(1B) Where any statement has been tendered under subsection (1) and the court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant-

- (a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement; and
 - (b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely. (Added 90 of 1995 s. 8)
- (1C) Where the court has given a direction under this section, it may at any time vary it by giving a further direction. (Added 90 of 1995 s. 8)
- (2) Where the defendant accepts to any extent any allegation in any statement tendered under subsection (1), the court may, for the purposes of-
- (a) where section 8(1)(a)(ii) is applicable, determining-
 - (i) whether the defendant could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (ii) whether the offence or any of the offences concerned could have been an organized crime;
 - (b) determining whether the defendant has benefited from a specified offence or an organized crime; or
 - (c) assessing the value of his proceeds of a specified offence or an organized crime, treat his acceptance as conclusive of the matters to which the allegation relates. (Replaced 90 of 1995 s. 8)
- (3) If the defendant fails in any respect to comply with a requirement under subsection (1B), he may be treated for the purposes of this section as accepting every allegation in the statement apart from-
- (a) any allegation in respect of which he has complied with the requirement; (Replaced 90 of 1995 s. 8)
 - (b) where section 8(1)(a)(ii) is applicable-
 - (i) any allegation that he could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (ii) any allegation that the offence or any of the offences concerned could have been an organized crime; (Replaced 90 of 1995 s. 8)
 - (c) any allegation that he has benefited from a specified offence or organized crime; and (Added 90 of 1995 s. 8)
 - (d) any allegation that any payment or other reward was received by him in connection with the commission of a specified offence or an organized crime. (Added 90 of 1995 s. 8)
- (4) Where-
- (a) the defendant tenders to the court a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
 - (b) the prosecutor accepts to any extent any allegation in the statement, the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.
- (5) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this section in writing in a form acceptable to the court. (Replaced 90 of 1995 s. 8)
- (6) No acceptance by the defendant under this section that-
- (a) where section 8(1)(a)(ii) is applicable-
 - (i) he could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (ii) the offence or any of the offences concerned could have been an organized crime; or
 - (b) any payment or other reward was received by him in connection with the commission of a specified offence or an organized crime,
- shall be admissible in evidence in any proceedings for an offence. (Replaced 90 of 1995 s. 8)
- (7) In any proceedings on an application made for a confiscation order where section 8(1)(a)(ii) or (7A) is applicable-
- (a) if the defendant has died, subsection (1B) shall have effect as if it required a copy of the statement tendered under subsection (1) to be served on the defendant's personal representative;
 - (b) if the defendant has absconded and section 8(3)(c)(i)(B)(I) or (7C)(b)(i) is not applicable to him, this section shall have effect as if a copy of the statement tendered under subsection

- (1) had been served on the defendant. (Added 90 of 1995 s. 8)
- (8) For the avoidance of doubt, it is hereby declared that, where section 8(1)(a)(ii) is applicable, this section shall not prejudice the generality of section 8(8). (Added 90 of 1995 s. 8)
- (9) For the avoidance of doubt, it is hereby declared that an allegation may be accepted under this section, and may always have been so accepted, whether or not subsection (7)(a) or (b) is applicable to the defendant, and subsection (3) shall be construed accordingly. (Added 26 of 2002 s. 3)

(Enacted 1994)
[cf. 1986 c. 32 s. 3 U.K.]

Section:	11	Amount to be recovered under confiscation order	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) Subject to subsection (3), the amount to be recovered in the defendant's case under the confiscation order shall be the amount the Court of First Instance or the District Court, as the case may be, assesses to be the value of the defendant's proceeds of any specified offence to which section 8(4) applies or, where the court has determined under section 8(3)(a)(i) that a specified offence is an organized crime or under section 8(3)(b)(ii) or (c)(ii) that a specified offence could have been an organized crime, all organized crime which he has committed. (Amended 90 of 1995 s. 9; 25 of 1998 s. 2)
- (2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 10 or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).
- (3) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the defendant's proceeds for the purpose of subsection (1), the amount to be recovered in the defendant's case under the confiscation order shall be-
- (a) the amount appearing to the court to be so realised; or
- (b) a nominal amount, where it appears to the court (on the information available to it at the time) that the amount that might be so realised is nil. (Amended 90 of 1995 s. 9)

(Enacted 1994)
[cf. 1986 c. 32 s. 4 U.K.]

Section:	11A	Interest on amounts to be recovered under confiscation orders	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) The amount to be recovered under a confiscation order shall be treated as a judgment debt for the purposes of-
- (a) where the order was made by the Court of First Instance, section 49 of the High Court Ordinance (Cap 4); (Amended 25 of 1998 s. 2)
- (b) where the order was made by the District Court, section 50 of the District Court Ordinance (Cap 336),
- and, for those purposes, the date of the confiscation order shall be treated as the date of the judgment debt.
- (2) Where by virtue of subsection (1) any interest accrues on the amount to be recovered under a confiscation order, the defendant shall be liable to pay that interest and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.

Section:	12	Definition of principal terms used	37 of 1998	20/11/1998
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- (1) In this Ordinance, "realisable property" (可變現財產) means, subject to subsection (2)-
- (a) any property held by the defendant; (Amended 90 of 1995 s. 11)
 - (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance; and (Amended 90 of 1995 s. 11)
 - (c) any property that is subject to the effective control of the defendant. (Added 90 of 1995 s. 11)
- (2) Property is not realisable property if-
- (a) an order under section 102 or 103 of the Criminal Procedure Ordinance (Cap 221);
 - (b) an order under section 38F or 56 of the Dangerous Drugs Ordinance (Cap 134); or
 - (c) an order under section 12AA(1) of the Prevention of Bribery Ordinance (Cap 201),
- is in force in respect of the property.
- (3) For the purposes of this Ordinance the amount that might be realised at the time a confiscation order is made against the defendant is- (Amended 90 of 1995 s. 11)
- (a) the total of the values at that time of all the realisable property held by the defendant, less
 - (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,
- together with the total of the values at that time of all gifts caught by this Ordinance.
- (4) Subject to subsections (5) to (10), for the purposes of this Ordinance the value of property (other than cash) in relation to any person holding the property-
- (a) where any other person holds an interest in the property, is-
 - (i) the market value of the first-mentioned person's beneficial interest in the property, less
 - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and
 - (b) in any other case, is its market value.
- (5) Subject to subsection (10), references in this Ordinance to the value at any time (referred to in subsection (6) as "the material time" (關鍵時間)) of a gift caught by this Ordinance or of any payment or reward are references to-
- (a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
 - (b) where subsection (6) applies, the value there mentioned,
- whichever is the greater.
- (6) Subject to subsection (10), if at the material time the recipient holds-
- (a) the property which he received (not being cash); or
 - (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,
- the value referred to in subsection (5)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b), so far as it so represents the property which he received, but disregarding in either case any charging order.
- (7) For the purposes of subsection (3), an obligation has priority at any time if it is an obligation of the defendant to-
- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
 - (b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts.
- (8) In subsection (7)(b) "the preferential debts" (優先債項)-
- (a) in relation to bankruptcy, means the debts to be paid in priority under section 38 of the Bankruptcy Ordinance (Cap 6) (assuming the date of the confiscation order to be the date of filing of the petition and of the bankruptcy order made under that Ordinance); and

- (Amended 37 of 1998 s. 11)
- (b) in relation to winding up, means the debts to be paid under section 265 of the Companies Ordinance (Cap 32) (assuming the date of the confiscation order to be the date of commencement of the winding up and the relevant date for the purpose of that section).
- (9) A gift (including a gift made before the commencement of this Ordinance) is caught by this Ordinance if-
- (a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him; or
 - (b) it was made by the defendant at any time and was a gift of property received by the defendant in connection with a specified offence or an organized crime committed by him or another; or
 - (c) it was made by the defendant at any time and was a gift of property which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.
- (10) For the purposes of this Ordinance-
- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
 - (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.
- (11) For the purposes of subsection (1)-
- (a) property, or an interest in property, may be subject to the effective control of the defendant whether or not the defendant has-
 - (i) a legal or equitable estate or interest in the property; or
 - (ii) a right, power or privilege in connection with the property;
 - (b) without limiting the generality of any other provision of this Ordinance, in determining-
 - (i) whether or not property, or an interest in property, is subject to the effective control of the defendant; or
 - (ii) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of the defendant,
 regard may be had to-
 - (A) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;
 - (B) a trust that has a relationship to the property; and
 - (C) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in subparagraph (A) or trusts of the kind referred to in subparagraph (B), and other persons. (Added 90 of 1995 s. 11)
- (12) Where a person obtains a pecuniary advantage in connection with the commission of an offence, or the commission of one or more organized crimes, he is to be treated for the purposes of this Ordinance as if he had obtained in connection with that offence or those crimes, as the case may be, a sum of money equal to the value of that advantage, and the other provisions of this Ordinance shall be construed accordingly. (Added 87 of 1997 s. 36)

(Enacted 1994)
[cf. 1986 c. 32 s. 5 U.K.]

Section:	13	Application of procedure for enforcing confiscation orders	L.N. 145 of 2002	01/01/2003
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PART IV

ENFORCEMENT, ETC. OF CONFISCATION ORDERS

- (1) Subject to this section, where the Court of First Instance or the District Court, as the case may be, makes a confiscation order- (Amended 90 of 1995 s. 12; 25 of 1998 s. 2)
 - (a) the court shall also make an order-
 - (i) subject to subsection (1A), fixing the period within which the amount he is liable to pay under the confiscation order shall be duly paid; and
 - (ii) fixing a term of imprisonment which the defendant is to serve if any of that amount is not duly paid within that period (including paid by way of being recovered); and (Replaced 26 of 2002 s. 3)
 - (b) section 114(1), (3), (4), (5), (6) and (7) of the Criminal Procedure Ordinance (Cap 221) shall apply as if-
 - (i) that amount were a fine imposed upon him by the court; and
 - (ii) the term of imprisonment fixed under this section were a term fixed under section 114(1)(c) of that Ordinance.
- (1A) The court shall not under subsection (1)(a)(i) fix a period longer than 6 months unless it is satisfied that there are special circumstances which justify it doing so. (Added 26 of 2002 s. 3)
- (2) The terms set out in column 2 of the following table shall be the maximum terms of imprisonment under subsection (1) applicable respectively to the amounts set out opposite thereto.

TABLE

An amount not exceeding \$200000	12 months
An amount exceeding \$200000 but not exceeding \$500000	18 months
An amount exceeding \$500000 but not exceeding \$1 million	2 years
An amount exceeding \$1 million but not exceeding \$2.5 million	3 years
An amount exceeding \$2.5 million but not exceeding \$10 million	5 years
An amount exceeding \$10 million	10 years

- (3) Subsections (1) and (2) shall apply in relation to the District Court. (Replaced 90 of 1995 s. 12)
- (3A) For the avoidance of doubt, it is hereby declared that no limitation on the jurisdiction of the District Court as to the imposition of penalties set out in section 82 of the District Court Ordinance (Cap 336) shall be construed so as to prejudice the operation of subsection (3). (Added 90 of 1995 s. 12)
- (4) Where the defendant-
 - (a) becomes liable to serve a term of imprisonment fixed under this section in respect of a confiscation order; and
 - (b) is also liable to serve a term of imprisonment or detention in respect of the offence or offences concerned,
 the term of imprisonment mentioned in paragraph (a) shall not begin to run until after the end of the term of imprisonment or detention mentioned in paragraph (b).
- (5) For the purposes of subsection (4)-
 - (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and
 - (b) there shall be disregarded-
 - (i) any sentence suspended under section 109B of the Criminal Procedure Ordinance (Cap 221) which has not taken effect at the time the defendant becomes liable to a term of imprisonment under this section; and
 - (ii) any term of imprisonment fixed under section 114(1) of the Criminal Procedure Ordinance (Cap 221) for which the defendant has not at that time been committed.
- (6) Sections 86 and 109A of the Criminal Procedure Ordinance (Cap 221) shall not apply in relation to fixing a term of imprisonment under this section. (Amended 90 of 1995 s. 12)
- (7) This section shall not apply in relation to a confiscation order where section 8(1)(a)(ii) or (7A) is applicable. (Added 90 of 1995 s. 12)
- (8) At the end of each day's sitting of the Court of First Instance or the District Court, the Registrar

of the High Court or District Court, as the case may be, shall deliver (or cause to be delivered) to the Commissioner of Correctional Services a certificate, in the form specified in Schedule 5, in respect of each term of imprisonment fixed under this section. (Added 90 of 1995 s. 12. Amended 25 of 1998 s. 2)

- (9) A certificate referred to in subsection (8) shall be a sufficient warrant to the Commissioner of Correctional Services for receiving into his custody the defendant named in the certificate and for carrying into effect the term of imprisonment fixed under this section in respect of that defendant. (Added 90 of 1995 s. 12)

(Enacted 1994)
[cf. 1986 c. 32 s. 6 U.K.]

Section:	14	Cases in which restraint orders and charging orders may be made	L.N. 145 of 2002	01/01/2003
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- (1) The powers conferred on the Court of First Instance by sections 15(1) and 16(1) are exercisable where-
- (a) proceedings have been instituted in Hong Kong against the defendant for a specified offence or-
 - (i) an application for a confiscation order has been made in respect of the defendant where section 8(1)(a)(ii) or (7A) is applicable; or
 - (ii) an application has been made under section 20(1A) in respect of a confiscation order made against the defendant; (Replaced 90 of 1995 s. 13)
 - (b) the proceedings have not, or the application has not, as the case may be, been concluded; (Replaced 90 of 1995 s. 13. Amended 26 of 2002 s. 3)
 - (ba) subject to subsection (1A), if section 2(15)(aa) is applicable to an offence, the Court of First Instance is satisfied that, in all the circumstances of the case, there is reasonable cause to believe that the defendant may be charged with the offence after further investigation is carried out; and (Added 26 of 2002 s. 3)
 - (c) the Court of First Instance is satisfied that there is reasonable cause to believe-
 - (i) in the case of an application referred to in paragraph (a)(ii), that the Court of First Instance will be satisfied as specified in section 20(1A);
 - (ii) in any other case, that the defendant has benefited from that specified offence. (Replaced 90 of 1995 s. 13)
- (1A) Subject to subsection (1B), where a power conferred on the Court of First Instance by section 15(1) or 16(1) is exercisable only on the ground mentioned in subsection (1)(ba), then the Court of First Instance shall specify a date on which any restraint order or charging order arising from that ground shall expire, being a date-
- (a) subject to paragraph (b), not later than is reasonably necessary for the purposes of the investigation concerned mentioned in subsection (1)(ba); and
 - (b) in any case, not later than 6 months after the date on which that order is made. (Added 26 of 2002 s. 3)
- (1B) The Court of First Instance may extend a restraint order or charging order mentioned in subsection (1A)-
- (a) on the ground only that the Court of First Instance is satisfied that the defendant will be charged with the offence concerned after further investigation is carried out;
 - (b) subject to paragraph (c), not longer than is reasonably necessary for the purposes of that investigation; and
 - (c) in any case, for not more than 6 months. (Added 26 of 2002 s. 3)
- (2) Those powers are also exercisable where the Court of First Instance is satisfied-
- (a) that, whether by the laying of an information or otherwise, a person is to be charged with a specified offence; and
 - (b) that there is reasonable cause to believe that he has benefited from that specified offence.
- (3) For the purposes of sections 15 and 16, in relation to the exercise of those powers at any time before proceedings have been instituted, references in this Ordinance-
- (a) to the defendant shall be construed as references to the person referred to in subsection

- (2)(a);
 - (b) to the prosecutor shall be construed as references to the person who the Court of First Instance is satisfied is to have the conduct of the case for the prosecution in the proposed proceedings; and
 - (c) to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2)(a) for a specified offence.
- (4) Where the Court of First Instance has made an order under section 15(1) or 16(1) by virtue of subsection (2), the Court of First Instance shall discharge the order if proceedings in respect of the offence are not instituted within such time as the Court of First Instance considers reasonable.

(Enacted 1994. Amended 25 of 1998 s. 2)
[cf. 1986 c. 32 s. 7 U.K.]

Section:	15	Restraint orders	L.N. 145 of 2002	01/01/2003
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- (1) The Court of First Instance may by order (referred to in this Ordinance as a "restraint order" (限制令)) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order. (Amended 25 of 1998 s. 2)
- (2) A restraint order may apply-
 - (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
 - (b) to realisable property held by a specified person, being property transferred to him after the making of the order.
- (3) This section shall not have effect in relation to any property for the time being subject to a charge under section 16.
- (4) A restraint order-
 - (a) may be made only on an application by the prosecutor;
 - (b) may be made on an ex parte application to a judge in chambers; and
 - (c) shall provide for notice to be given to persons affected by the order.
- (5) A restraint order-
 - (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged on the conclusion of the proceedings or application concerned. (Replaced 90 of 1995 s. 14)
- (6) An application for the discharge or variation of a restraint order may be made by any person affected by it.
- (7) Where the Court of First Instance has made a restraint order, the Court of First Instance may at any time appoint a receiver-
 - (a) to take possession of any realisable property; and
 - (b) in accordance with the directions of the Court of First Instance, to manage or otherwise deal with any property in respect of which he is appointed, subject to such exceptions and conditions as may be specified by the Court of First Instance; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver. (Amended 25 of 1998 s. 2)
- (8) (Repealed 90 of 1995 s. 14)
- (9) Where the Court of First Instance has made a restraint order, an authorized officer may, for the purpose of preventing any realisable property being removed from Hong Kong, seize the property. (Amended 25 of 1998 s. 2)
- (10) Property seized under subsection (9) shall be dealt with in accordance with the directions of the Court of First Instance. (Amended 25 of 1998 s. 2)
- (11) Where any property specified in a restraint order is immovable property the order shall, for the purposes of the Land Registration Ordinance (Cap 128)-
 - (a) be deemed to be an instrument affecting land; and
 - (b) be registrable as such in the Land Registry under that Ordinance in such manner as the Land Registrar thinks fit.

- (12) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a restraint order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so, documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property. (Added 26 of 2002 s. 3)
- (13) A person who receives a notice under subsection (12) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the restraint order concerned. (Added 26 of 2002 s. 3)
- (14) A disclosure made in order to comply with a requirement under subsection (12)-
 - (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
 - (b) shall not render the person who made it liable in damages for any loss arising out of-
 - (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure. (Added 26 of 2002 s. 3)
- (15) Any person who contravenes subsection (13) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year. (Added 26 of 2002 s. 3)
- (16) A person who knowingly deals in any realisable property in contravention of a restraint order commits an offence. (Added 26 of 2002 s. 3)
- (17) A person who commits an offence under subsection (16) is liable-
 - (a) on conviction upon indictment to a fine of \$500000 or to the value of the realisable property the subject of the restraint order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or
 - (b) on summary conviction to a fine of \$250000 and to imprisonment for 2 years. (Added 26 of 2002 s. 3)

(Enacted 1994)
[cf. 1986 c. 32 s. 8 U.K.]

Section:	16	Charging orders in respect of land, securities, etc.	L.N. 145 of 2002	01/01/2003
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- (1) The Court of First Instance may make a charging order on realisable property for securing the payment to the Government- (Amended 25 of 1998 s. 2)
 - (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
 - (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.
- (2) For the purposes of this Ordinance, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Government.
- (3) A charging order-
 - (a) may be made only on an application by the prosecutor;
 - (b) may be made on an ex parte application to a judge in chambers;
 - (c) shall provide for notice to be given to persons affected by the order; and
 - (d) may be made subject to such conditions as the Court of First Instance thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective. (Amended 25 of 1998 s. 2)
- (4) Subject to subsection (6), a charge may be imposed by a charging order only on-
 - (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance-
 - (i) in any asset of a kind specified in Schedule 3; or
 - (ii) under any trust; or
 - (b) any interest in realisable property held by a person as trustee of a trust if the interest is in

- such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first mentioned trust.
- (5) In any case where a charge is imposed by a charging order on any interest in an asset of a kind specified in Schedule 3, the Court of First Instance may provide for the charge to extend to any interest, dividend or other distribution payable and any bonus issue in respect of the asset. (Amended 25 of 1998 s. 2)
 - (6) In relation to a charging order, the Court of First Instance-
 - (a) may make an order discharging or varying it; and
 - (b) shall make an order discharging the charging order-
 - (i) on the conclusion of the proceedings or application concerned; or
 - (ii) on payment into the Court of First Instance of the amount payment of which is secured by the charge. (Replaced 90 of 1995 s. 15. Amended 25 of 1998 s. 2)
 - (7) An application for the discharge or variation of a charging order may be made by any person affected by it.
 - (8) Subject to the provisions of this Ordinance, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustee, by writing under his hand.
 - (9) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a charging order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so, documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property. (Added 26 of 2002 s. 3)
 - (10) A person who receives a notice under subsection (9) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the charging order concerned. (Added 26 of 2002 s. 3)
 - (11) A disclosure made in order to comply with a requirement under subsection (9)-
 - (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
 - (b) shall not render the person who made it liable in damages for any loss arising out of-
 - (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure. (Added 26 of 2002 s. 3)
 - (12) Any person who contravenes subsection (10) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year. (Added 26 of 2002 s. 3)
 - (13) A person who knowingly deals in any realisable property in contravention of a charging order commits an offence. (Added 26 of 2002 s. 3)
 - (14) A person who commits an offence under subsection (13) is liable-
 - (a) on conviction upon indictment to a fine of \$500000 or to the value of the realisable property the subject of the charging order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or
 - (b) on summary conviction to a fine of \$250000 and to imprisonment for 2 years. (Added 26 of 2002 s. 3)

(Enacted 1994)
[cf. 1986 c. 32 s. 9 U.K.]

Section:	17	Realisation of property	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) Where-
 - (a) a confiscation order is made (including any case where section 8(1)(a)(ii) or (7A) is

- applicable); (Amended 90 of 1995 s. 16)
- (b) the order is not subject to appeal or review within the meaning of section 2(17); and
- (c) the proceedings in which it was made have not been concluded,
- the Court of First Instance may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6).
- (2) The Court of First Instance may appoint a receiver in respect of realisable property.
- (3) The Court of First Instance may empower a receiver appointed under subsection (2), under section 15 or in pursuance of a charging order-
- (a) to enforce any charge imposed under section 16 on realisable property or on any interest, dividend or other distribution payable and any bonus issue in respect of such property; and
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 16, to take possession of the property subject to such conditions or exceptions as may be specified by the Court of First Instance.
- (4) The Court of First Instance may order any person having possession of realisable property to give possession of it to any such receiver.
- (5) The Court of First Instance may empower any such receiver to realise any realisable property in such manner as the Court of First Instance may direct.
- (6) The Court of First Instance may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Ordinance as the Court of First Instance may direct and the Court of First Instance may, on the payment being made, by order transfer, grant or extinguish any interest in the property.
- (7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 16.
- (8) The Court of First Instance shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court of First Instance.

(Enacted 1994. Amended 25 of 1998 s. 2)
[cf. 1986 c. 32 s. 11 U.K.]

Section:	18	Application of proceeds of realisation and other sums	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) Subject to subsection (2), the following sums in the hands of a receiver appointed under section 15 or 17 or in pursuance of a charging order, that is-
- (a) the proceeds of the enforcement of any charge imposed under section 16;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 15 or 17; and
- (c) any other sums, being property held by the defendant,
- shall first be applied in payment of such expenses incurred by a person acting as an insolvency officer as are payable under section 23(2) and then shall, after such payments (if any) as the Court of First Instance may direct have been made out of those sums- (Amended 25 of 1998 s.2)
- (i) be payable to the Registrar; and
- (ii) be applied on the defendant's behalf towards the satisfaction of the confiscation order in the manner provided by subsection (3).
- (2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums-
- (a) among such of those who held property which has been realised under this Ordinance; and
- (b) in such proportions,
- as the Court of First Instance may direct after giving a reasonable opportunity for such persons to make representations to the Court of First Instance. (Amended 25 of 1998 s. 2)

- (3) The receipt of any sum by the Registrar on account of an amount payable under a confiscation order shall reduce the amount so payable, but the Registrar shall apply the sum received for the purposes specified in this section and in the order so specified.
- (4) The Registrar shall first pay any expenses incurred by a person acting as an insolvency officer and payable under section 23(2) but not already paid under subsection (1).
- (5) If the sum was paid to the Registrar by a receiver appointed under section 15 or 17 or in pursuance of a charging order, the Registrar shall next pay the receiver's remuneration and expenses.
- (6) After making-
 - (a) any payment required by subsection (4); and
 - (b) in a case to which subsection (5) applies, any payment required by that subsection, the Registrar shall reimburse any amount paid under section 24(2).
- (7) Any balance in the hands of the Registrar after he has made all payments required by the foregoing subsections shall be paid into the general revenue. (Amended 90 of 1995 s. 17)

(Enacted 1994)

[cf. 1986 c. 32 s. 12 U.K.]

Section:	19	Exercise of powers by Court of First Instance or receiver	25 of 1998 s. 2	01/07/1997
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Expanded Cross Reference:

15, 16, 17, 18

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) This section applies to the powers conferred on the Court of First Instance by sections 15 to 18, or on a receiver appointed under section 15 or 17 or in pursuance of a charging order. (Amended 25 of 1998 s. 2) < * Note - Exp. X-Ref.: Sections 15, 16, 17, 18 * >
- (2) Subject to subsections (3), (4), (5) and (6), the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.
- (3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.
- (4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.
- (5) An order may be made or other action taken in respect of a debt owed by the Government.
- (6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

(Enacted 1994)

[cf. 1986 c. 32 s. 13 U.K.]

Section:	20	Variation of confiscation orders	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) If, on an application by the prosecutor or the defendant (or, in the case of a defendant who has died, his personal representative on his behalf) in respect of a confiscation order, the Court of First Instance is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order, the Court of First Instance shall make an order- (Amended 90 of 1995 s. 19)
 - (a) substituting for the amount to be recovered under the confiscation order such lesser

- amount as the Court of First Instance thinks just in all the circumstances of the case; and
- (b) substituting for the term of imprisonment fixed under section 13 in respect of the amount to be recovered under the confiscation order a shorter term determined in accordance with that section in respect of the lesser amount.
- (1A) If, on an application by the prosecutor made in respect of a confiscation order, the Court of First Instance is satisfied that any of the conditions referred to in subsection (1B) are fulfilled, the Court of First Instance may make an order-
- (a) substituting for the amount to be recovered under the confiscation order such greater amount as the Court of First Instance thinks just in all the circumstances of the case; and
- (b) substituting for the term of imprisonment fixed under section 13 in respect of the amount to be recovered under the confiscation order a greater term determined in accordance with that section in respect of the greater amount. (Added 90 of 1995 s. 19)
- (1B) The conditions referred to in subsection (1A) are-
- (a) the value of the defendant's proceeds of any specified offence or offences or organized crime was greater than the value of the defendant's proceeds of the specified offence or offences or organized crime, as the case may be, assessed by the Court of First Instance or the District Court, as the case may be, at the time of the making of the confiscation order;
- (b) the prosecutor becomes aware of realisable property, the existence of which was not known to him at the time of the making of the confiscation order;
- (c) the amount realised from the defendant's proceeds of the specified offence or offences or organized crime, as the case may be, is greater than the amount the Court of First Instance or the District Court, as the case may be, assessed to be the amount to be recovered under the confiscation order. (Added 90 of 1995 s. 19)
- (2) For the purposes of this section- (Amended 90 of 1995 s. 19)
- (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the Court of First Instance shall take into account the extent to which any property held by him may be distributed among creditors; and
- (b) the Court of First Instance may disregard any inadequacy in the realisable property which appears to the Court of First Instance to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Ordinance from any risk of realisation under this Ordinance.
- (3) No application shall be entertained by the Court of First Instance under subsection (1A) if it is made after the end of the period of 6 years beginning with the date on which the confiscation order concerned was made. (Added 90 of 1995 s. 19)

(Enacted 1994. Amended 25 of 1998 s. 2)
[cf. 1986 c. 32 s. 14 U.K.]

Section:	21	Bankruptcy of defendant, etc.	L.N. 158 of 1998	01/04/1998
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Expanded Cross Reference:

15, 16, 17, 18

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) Where a person who holds realisable property is adjudged bankrupt-
- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and
- (b) any proceeds of property realised by virtue of section 15(7) or 17(5) or (6) for the time being in the hands of a receiver appointed under section 15 or 17, are excluded from the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6).
- (2) Where a person has been adjudged bankrupt, the powers conferred on the Court of First Instance by sections 15 to 18 shall not be exercised in relation to- <* Note - Exp. X-Ref.:

Sections 15, 16, 17, 18 *> (Amended 25 of 1998 s. 2)

- (a) property for the time being comprised in the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6); and
 - (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 30A(9) of the Bankruptcy Ordinance (Cap 6). (Amended 76 of 1996 s. 97)
- (3) Nothing in the Bankruptcy Ordinance (Cap 6) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Court of First Instance by sections 15 to 18. <* Note - Exp. X-Ref.: Sections 15, 16, 17, 18 *> (Amended 25 of 1998 s. 2)
- (4) Subsection (2) does not affect the enforcement of a charging order-
- (a) made before the order adjudging the person bankrupt; or
 - (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.
- (5) Where, in the case of a debtor, an interim receiver stands appointed under section 13 of the Bankruptcy Ordinance (Cap 6) and any property of the debtor is subject to a restraint order, the powers conferred on the interim receiver by virtue of that Ordinance do not apply to property for the time being subject to the restraint order.
- (6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Ordinance-
- (a) a court shall not make an order under-
 - (i) section 49 or 50 of the Bankruptcy Ordinance (Cap 6); or (Amended 76 of 1996 s. 97)
 - (ii) section 60 of the Conveyancing and Property Ordinance (Cap 219),
 in respect of the making of a gift at any time when-
 - (A) proceedings for a specified offence have been instituted against him but have not been concluded;
 - (B) an application-
 - (I) for a confiscation order has been made in respect of the person where section 8(1)(a)(ii) or (7A) is applicable; or
 - (II) has been made under section 20(1A) in respect of a confiscation order made against the person,
 and the application has not been concluded; or
 - (C) property of the person to whom the gift was made is subject to a restraint order or charging order; and (Replaced 90 of 1995 s. 20)
 - (b) any order made under any of the sections referred to in paragraph (a)(i) or (ii) after the conclusion of the proceedings or application shall take into account any realisation under this Ordinance of property held by the person to whom the gift was made. (Replaced 90 of 1995 s. 20)

(Enacted 1994)

[cf. 1986 c. 32 s. 15 U.K.]

Section:	22	Winding up of company holding realisable property	25 of 1998	01/07/1997
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Expanded Cross Reference:

15, 16, 17, 18

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

- (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to-
- (a) property for the time being subject to a restraint order made before the relevant time; and
 - (b) any proceeds of property realised by virtue of section 15(7) or 17(5) or (6) for the time

- being in the hands of a receiver appointed under section 15 or 17.
- (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Court of First Instance by sections 15 to 18 shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable- <* Note - Exp. X-Ref.: Sections 15, 16, 17, 18 *> (Amended 25 of 1998 s. 2)
 - (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
 - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
 - (3) Nothing in the Companies Ordinance (Cap 32) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Court of First Instance by sections 15 to 18. <* Note - Exp. X-Ref.: Sections 15, 16, 17, 18 *> (Amended 25 of 1998 s. 2)
 - (3A) Subsection (3) shall apply to any proceedings relating to an appeal, further appeal or review against any exercise of the powers referred to in that subsection as if the court hearing the appeal, further appeal or review, as the case may be, were the Court of First Instance. (Added 90 of 1995 s. 21. Amended 25 of 1998 s. 2)
 - (4) Subsection (2) does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.
 - (5) In this section-

"company" (公司) means any company which may be wound up under the Companies Ordinance (Cap 32);

"the relevant time" (有關時間) means-

 - (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
 - (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the Court of First Instance, such a resolution had been passed by the company, the time of the passing of the resolution; and (Amended 25 of 1998 s. 2)
 - (c) in any other case where such an order has been made, the time of the making of the order.

(Enacted 1994)

[cf. 1986 c. 32 s. 17 U.K.]

Section:	23	Insolvency officers dealing with property subject to restraint order		30/06/1997
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- (1) Without prejudice to the generality of any provision contained in the Bankruptcy Ordinance (Cap 6), the Companies Ordinance (Cap 32) or any other Ordinance, where-
 - (a) any insolvency officer seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
 - (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of that property,

he shall not be liable to any other person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence; and the insolvency officer shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.
- (2) Any insolvency officer who incurs expenses-
 - (a) in respect of such property as is mentioned in subsection (1)(a) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being

subject to a restraint order; or
 (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,
 shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 18(1) or (4).

(Enacted 1994)
 [cf. 1986 c. 32 s. 17A U.K.]

Section:	24	Receivers: supplementary provisions		30/06/1997
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- (1) Where a receiver appointed under section 15 or 17 or in pursuance of a charging order takes any action-
- (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property;
 - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,
- he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.
- (2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 18(5), be paid by the prosecutor or, in a case where proceedings for a specified offence are not instituted, by the person on whose application the receiver was appointed.

(Enacted 1994)
 [cf. 1986 c. 32 s. 18 U.K.]

Section:	24A	Interpretation	L.N. 12 of 2003	01/04/2003
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PART IVA

REMITTANCE AGENTS AND MONEY CHANGERS

In this Part and Schedule 6, unless the context otherwise requires-

"certificate of identity" (身分證明書), "document of identity" (簽證身分書), "identity card" (身分證) and "travel document" (旅行證件) have the meanings respectively assigned to them under section 2 of the Immigration Ordinance (Cap 115);

"currency" (貨幣), "exchange transaction" (兌換交易) and "money changer" (貨幣兌換商) have the meanings respectively assigned to them under section 2 of the Money Changers Ordinance (Cap 34);

"money" (金錢) means money in whatever form or currency;

"premises" (處所) includes place;

"record" (紀錄) includes, in addition to a record in writing-

- (a) a disc, tape or other device in which data other than visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the disc, tape or other device; and
- (b) a film, tape or other device in which visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the film, tape or other device;

"remittance agent" (匯款代理人)-

- (a) subject to paragraph (b), means a person who provides a service to another person or persons as a business, of one or more of the following-
 - (i) sending, or arranging for the sending of, money to;
 - (ii) receiving, or arranging for the receipt of, money from; or
 - (iii) arranging for the receipt of money in,

- a place outside Hong Kong;
- (b) does not include-
- (i) an authorized institution within the meaning of the Banking Ordinance (Cap 155);
 - (ii) an authorized insurer or authorized insurance broker within the meaning of the Insurance Companies Ordinance (Cap 41);
 - (iii) a corporation licensed under Part V of the Securities and Futures Ordinance (Cap 571) to carry on a business in any regulated activity within the meaning of Schedule 5 to that Ordinance or the licensed representative of such corporation within the meaning of that Ordinance; (Replaced 5 of 2002 s. 407)
 - (iv) (Repealed 5 of 2002 s. 407)
- "remittance transaction" (匯款交易) means a service falling within paragraph (a) of the definition of "remittance agent".

(Part IVA added 8 of 2000 s. 2)

Section:	24B	Register of remittance agents and money changers	L.N. 81 of 2000	01/06/2000
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- (1) The Secretary for Security shall, by notice in the Gazette-
 - (a) appoint a public officer to be the responsible officer for the purposes of this section;
 - (b) specify an address to which a notice required to be given under this section to the responsible officer shall be sent.
- (2) The responsible officer shall maintain a register, in such form as he thinks fit, containing-
 - (a) the name of every remittance agent and the address of every premises in Hong Kong at which a remittance agent provides, whether in whole or in part and whether or not any other activity is carried on in the premises, a service as a remittance agent;
 - (b) the name of every money changer and the address of every premises in Hong Kong at which a money changer carries on, whether in whole or in part and whether or not any other activity is carried on in the premises, business as a money changer; and
 - (c) such other particulars of remittance agents and money changers as the responsible officer thinks fit.
- (3) The register shall be kept at such place as is notified by the responsible officer by notice in the Gazette.
- (4) A person who is already, immediately before the commencement of this section, a remittance agent or money changer shall, not later than 3 months after that commencement, send a notice in writing to the responsible officer at the specified address stating, in the case of a remittance agent, the particulars required to be included in the register under subsection (2)(a) and, in the case of a money changer, the particulars required to be included in the register under subsection (2)(b).
- (5) A person who becomes a remittance agent or money changer on or after the commencement of this section shall, not later than 1 month after so becoming a remittance agent or money changer, as the case may be, send a notice in writing to the responsible officer at the specified address stating, in the case of a remittance agent, the particulars required to be included in the register under subsection (2)(a) and, in the case of a money changer, the particulars required to be included in the register under subsection (2)(b).
- (6) Where a person ceases to be a remittance agent or money changer, or any particulars given by the person to the responsible officer under subsection (4) or (5) changes subsequent to the original submission, then the person shall not later than 3 months after the event send a notice in writing to the responsible officer at the specified address informing the responsible officer of his ceasing to be a remittance agent or money changer, or of such change, as the case may be.
- (7) Any person may, with effect from such date and during such hours as shall be notified by the responsible officer by notice in the Gazette-
 - (a) inspect the register;
 - (b) with the consent of the responsible officer, obtain a copy of an entry in the register or an extract from the register.
- (8) A person who, without reasonable excuse, contravenes subsection (4), (5) or (6) commits an

offence and is liable on conviction to a fine at level 5.

- (9) A person who sends any particulars under subsection (4), (5) or (6) which are false in a material particular commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.
- (10) In this section-
- "register" (紀錄冊) means the register maintained under subsection (2);
- "responsible officer" (負責人員) means the responsible officer appointed under subsection (1)(a);
- "specified address" (指明地址) means the address specified under subsection (1)(b).

(Part IVA added 8 of 2000 s. 2)

Section:	24C	Duty on remittance agents and money changers to keep records	L.N. 262 of 2006	26/01/2007
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- (1) This section shall not apply to a remittance transaction or exchange transaction which is less than \$8000 in value or an equivalent amount in any other currency. (Amended L.N. 262 of 2006)
- (2) A remittance agent shall-
- (a) not complete a remittance transaction unless the remittance agent keeps a record of-
- (i) if the transaction falls within paragraph (a)(i) of the definition of "remittance agent" in section 24A, the particulars specified in Part 1 of Schedule 6;
- (ii) if the transaction falls within paragraph (a)(ii) of the definition of "remittance agent" in section 24A, the particulars specified in Part 2 of Schedule 6;
- (iii) if the transaction falls within paragraph (a)(iii) of the definition of "remittance agent" in section 24A, the particulars specified in Part 3 of Schedule 6;
- (b) verify the name and identity of the instructor or recipient referred to in the particulars, as the case may be, by reference to his certificate of identity, document of identity, identity card or travel document, if such instructor or recipient appears in person; and
- (c) keep that record for not less than 6 years after the date of the transaction notwithstanding that the remittance agent may have ceased his business subsequent to the transaction.
- (3) A money changer shall-
- (a) not complete an exchange transaction (and notwithstanding section 3(1)(c) of the Money Changers Ordinance (Cap 34)) unless the money changer keeps a record of the particulars specified in Part 4 of Schedule 6;
- (b) verify the name and identity of the client referred to in the particulars by reference to his certificate of identity, document of identity, identity card or travel document, if such client appears in person; and
- (c) keep that record for not less than 6 years after the date of the transaction notwithstanding that the money changer may have ceased his business subsequent to the transaction.
- (4) A remittance agent who contravenes subsection (2), or a money changer who contravenes subsection (3), commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 3 months.
- (5) The Secretary for Security may, by notice in the Gazette, amend-
- (a) the amount specified in subsection (1);
- (b) Schedule 6.

(Part IVA added 8 of 2000 s. 2)

Section:	24D	Criminal liability	L.N. 81 of 2000	01/06/2000
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- (1) If a person employed by a remittance agent does an act which would be an offence under section 24C(4) if done by a remittance agent, each of the following persons is guilty of that offence as if he were a remittance agent who had committed the offence and each person is liable to the penalty prescribed for the offence-
- (a) the person employed by the remittance agent, unless the person shows that he exercised reasonable diligence to avoid the commission of the offence;
- (b) the remittance agent, unless the remittance agent took reasonable steps to prevent the

- commission of the offence; and
- (c) where the employer of the person is a corporation, each director, manager, secretary and other similar officer of the corporation and any person purporting to act in any of those capacities unless he took reasonable steps to prevent the commission of the offence.
- (2) Subject to subsection (3), for the purposes of this section, a person is deemed to be a director of a corporation if he occupies the position of a director by whatever name he may be called or is a person in accordance with whose directions or instructions a director of the corporation acts.
- (3) A person shall not, by reason only that a director of the corporation acts on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions a director acts.
- (4) If a partner in a partnership of remittance agents commits an offence under section 24C(4) and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any other partner of the partnership, that other partner shall be guilty of the like offence.
- (5) This section shall apply to and in relation to a money changer as it applies to and in relation to a remittance agent as if any reference in subsections (1) to (4) to a remittance agent were a reference to a money changer.

(Part IVA added 8 of 2000 s. 2)

Section:	24E	Power of authorized officers to enter premises and inspect books, etc.	L.N. 81 of 2000	01/06/2000
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- (1) Subject to subsection (6), where an authorized officer has a reasonable suspicion that a remittance agent has committed an offence under this Part (in this section referred to as the "suspected offence" (嫌疑罪行)), he may, with such assistants as may be necessary, enter any premises where the activities of the remittance agent are being carried on and may demand the production of and inspect the remittance agent's records relating to any remittance transaction carried out by the remittance agent or relating to his activities as a remittance agent, and may take notes, copies or extracts thereof or therefrom.
- (2) Where pursuant to subsection (1) an authorized officer has entered any premises where the activities of a remittance agent are being carried on, he may seize any records relating to any remittance transaction carried out by the remittance agent or relating to his activities as a remittance agent that the officer reasonably believes to be related to the suspected offence.
- (3) Any records seized under subsection (2) shall, as soon as practicable after such seizure, be delivered to the Commissioner of Police or the Commissioner of Customs and Excise, or to some person nominated by either Commissioner in that behalf, by the authorized officer who seized them.
- (4) Where any records seized under subsection (2) are delivered in accordance with subsection (3) to the Commissioner of Police or the Commissioner of Customs and Excise, or to some person nominated by either Commissioner in that behalf, the Commissioner of Police, the Commissioner of Customs and Excise or that person, as the case may be, shall, if no prosecution is instituted within 6 months after such delivery in respect of the suspected offence to which they relate, return, or arrange for the return of, such records to the remittance agent from whom they were so seized.
- (5) This section shall apply to and in relation to a money changer as it applies to and in relation to a remittance agent as if any reference in subsections (1) to (4)-
- (a) to a remittance agent were a reference to a money changer;
- (b) to a remittance transaction were a reference to an exchange transaction.
- (6) An authorized officer shall not exercise his power under subsection (1) in respect of premises which are domestic premises except pursuant to a warrant issued under subsection (7).
- (7) A magistrate may, if satisfied by information upon oath that there are reasonable grounds for the suspected offence, issue a warrant authorizing an authorized officer, with such assistants as may be necessary, to exercise his power under subsection (1) in respect of any domestic premises where the activities of the remittance agent concerned are being carried on.
- (8) In this section, "domestic premises" (住宅處所) means any premises or place used exclusively for

residential purposes and constituting a separate household unit.

(Part IVA added 8 of 2000 s. 2)

Section:	25	Dealing with property known or believed to represent proceeds of indictable offence		30/06/1997
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PART V

MISCELLANEOUS

- (1) Subject to section 25A, a person commits an offence if, knowing or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents any person's proceeds of an indictable offence, he deals with that property.
- (2) In proceedings against a person for an offence under subsection (1), it is a defence to prove that-
 - (a) he intended to disclose to an authorized officer such knowledge, suspicion or matter as is mentioned in section 25A(1) in relation to the act in contravention of subsection (1) concerned; and
 - (b) there is reasonable excuse for his failure to make disclosure in accordance with section 25A(2).
- (3) A person who commits an offence under subsection (1) is liable-
 - (a) on conviction upon indictment to a fine of \$5000000 and to imprisonment for 14 years; or
 - (b) on summary conviction to a fine of \$500000 and to imprisonment for 3 years.
- (4) In this section and section 25A, references to an indictable offence include a reference to conduct which would constitute an indictable offence if it had occurred in Hong Kong.

(Enacted 1994. Replaced 90 of 1995 s. 22)

Section:	25A	Disclosure of knowledge or suspicion that property represents proceeds, etc. of indictable offence	L.N. 173 of 2004	07/01/2005
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- (1) Where a person knows or suspects that any property-
 - (a) in whole or in part directly or indirectly represents any person's proceeds of;
 - (b) was used in connection with; or
 - (c) is intended to be used in connection with,an indictable offence, he shall as soon as it is reasonable for him to do so disclose that knowledge or suspicion, together with any matter on which that knowledge or suspicion is based, to an authorized officer.
- (2) If a person who has made a disclosure referred to in subsection (1) does any act in contravention of section 25(1) (whether before or after such disclosure), and the disclosure relates to that act, he does not commit an offence under that section if-
 - (a) that disclosure is made before he does that act and he does that act with the consent of an authorized officer; or
 - (b) that disclosure is made-
 - (i) after he does that act;
 - (ii) on his initiative; and
 - (iii) as soon as it is reasonable for him to make it.
- (3) A disclosure referred to in subsection (1)-
 - (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
 - (b) shall not render the person who made it liable in damages for any loss arising out of-
 - (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.
- (4) In the case of a person who was in employment at the relevant time, this section shall have

effect in relation to disclosures to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as it has effect in relation to disclosures to an authorized officer.

- (5) A person commits an offence if, knowing or suspecting that a disclosure has been made under subsection (1) or (4), he discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.
- (6) In proceedings against a person for an offence under subsection (5), it is a defence to prove-
 - (a) that he did not know or suspect that the disclosure concerned was likely to be prejudicial in the way referred to in that subsection; or
 - (b) that he had lawful authority or reasonable excuse for making that disclosure.
- (7) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.
- (8) A person who commits an offence under subsection (5) is liable-
 - (a) on conviction upon indictment to a fine of \$500000 and to imprisonment for 3 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.
- (9) Information obtained under or by virtue of a disclosure referred to in subsection (1) may be disclosed-
 - (a) by any authorized officer to the Department of Justice, the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department, and the Independent Commission Against Corruption, for the purpose of combating crime; and
 - (b) by any authorized officer to the authorities or persons responsible for investigating or preventing crime, or handling the disclosure of knowledge or suspicion on property relating to crime, of any place outside Hong Kong which the authorized officer thinks fit, for the purpose of combating crime. (Added 21 of 2004 s. 24)
- (10) Subsection (9) is without prejudice to any other right to disclose information obtained under or by virtue of a disclosure referred to in subsection (1) that may exist apart from subsection (9). (Added 21 of 2004 s. 24)

(Enacted 1994. Added 90 of 1995 s. 22)

Section:	26	Restriction on revealing disclosure under section 25A	L.N. 362 of 1997	01/07/1997
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- (1) Subject to subsection (2), no witness in any civil or criminal proceedings shall be obliged-
 - (a) to reveal that a disclosure was made under section 25A(1) or (4); (Amended 90 of 1995 s. 23)
 - (b) to reveal the identity of any person as the person making the disclosure; or
 - (c) to answer any question if the answer would lead, or would tend to lead, to the revealing of any fact or matter referred to in paragraph (a) or (b).
- (2) Subsection (1) shall not apply in any proceedings-
 - (a) for an offence under section 25 or 25A or this section; or (Amended 90 of 1995 s. 23)
 - (b) where the court is of the opinion that justice cannot fully be done between the parties without revealing the disclosure or the identity of any person as the person making the disclosure.
- (3) Subject to subsections (4), (5) and (6), no person shall publish or broadcast any information so as to reveal or suggest-
 - (a) that a disclosure was made under section 25A(1) or (4); or (Amended 90 of 1995 s. 23)
 - (b) the identity of any person as the person making the disclosure.
- (4) In subsection (3), "information" (資料)-
 - (a) includes a report of any civil or criminal proceedings;
 - (b) does not include information published for statistical purposes by, or under the authority of, the Government.
- (5) Subsection (3) shall not apply in respect of proceedings-
 - (a) against the person making the disclosure for an offence under section 25 or 25A; or (Amended 90 of 1995 s. 23)

- (b) for an offence under this section.
- (6) The court or a magistrate may, if satisfied that it is in the interests of justice to do so, by order dispense with the requirements of subsection (3) to such extent as may be specified in the order.
- (7) If information is published or broadcast in contravention of subsection (3), each of the following persons-
- (a) in the case of publication as part of a newspaper or periodical publication, any proprietor, editor, publisher and distributor thereof;
 - (b) in the case of a publication otherwise than as part of a newspaper or periodical publication, any person who publishes it and any person who distributes it;
 - (c) in the case of a broadcast, any person who broadcasts the information and, if the information is contained in a programme, any person who transmits or provides the programme and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical publication,
- commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.
- (8) Proceedings for an offence under this section shall not be instituted except with the consent of the Secretary for Justice. (Amended L.N. 362 of 1997)
- (9) In this section-
- "broadcast" (廣播) includes broadcast by radio, film, videotape or television;
- "publish" (出版) means publish in writing.

(Enacted 1994)

Section:	27	Sentencing in respect of specified offences	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) This section applies where, in proceedings in the District Court or the Court of First Instance, a person has been convicted of a specified offence. (Amended 25 of 1998 s. 2)
- (2) The prosecution may furnish information to the court regarding any or all of the following-
- (a) the nature and extent of any harm caused, directly or indirectly, to any person by the act in respect of which the person has been so convicted;
 - (b) the nature and extent of any benefit, whether financial or otherwise, that accrued or was intended to accrue, directly or indirectly, to that or any other person from that act;
 - (c) the prevalence of that specified offence;
 - (d) the nature and extent of any harm, whether direct or indirect, caused to the community by recent occurrences of that specified offence;
 - (e) the nature and extent of the total benefit, whether financial or otherwise, accruing directly or indirectly to any person from recent occurrences of that specified offence.
- (3) Only information that would be admissible in evidence in criminal proceedings (including proceedings in respect of sentencing) may be furnished to the court under subsection (2).
- (4) If the prosecution so requests, the court shall determine whether the evidence adduced at the trial or, if the conviction followed a plea of guilty, the matters accepted by the court prior to conviction show that the specified offence was an organized crime.
- (5) The prosecution shall not request a determination under subsection (4) unless it has given notice to the person of its intention to seek such a determination, and unless such notice has been given prior to the plea last entered by the person or within such further time as may have been allowed by the court under subsection (6).
- (6) If a person has pleaded guilty to a specified offence and it appears to the court, having regard to the time at which the prosecution was informed of the accused's intention to plead guilty, that it would be in the interests of justice to allow the prosecution further time within which to give the notice provided for in subsection (5), the court may order accordingly and may specify such period for that purpose as it considers reasonable in the circumstances, and if notice is given pursuant to an order under this subsection the court may allow the accused to withdraw his plea of guilty.

- (7) The court shall not make a determination under subsection (4) that a specified offence was an organized crime unless, subsequent to his receipt of the notice required to be given under subsection (5), the person convicted has been given an opportunity to be heard on the matter.
- (8) If in making a determination under subsection (4) the court determines that the specified offence was an organized crime by reason of its connection with the activities of a particular triad society, the prosecution may furnish information to the court regarding the nature and extent of those activities and the way in which the offence was connected with those activities.
- (9) The court may receive and take into account regarding a matter referred to in subsection (8) any information which it considers reliable in the circumstances.
- (10) Where the prosecution seeks to furnish information to a court under this section regarding any matter referred to in subsection (2) or (8), the court shall allow the person convicted an opportunity to object to the reception of the information, and where any such information is received by the court the court shall allow the person an opportunity to furnish information regarding that same matter.
- (11) Subject to subsections (12) and (13), where a court is satisfied beyond reasonable doubt-
 - (a) that the specified offence was an organized crime; or
 - (b) as to any information furnished under subsection (2) or (8),
 or where any such matter is agreed by the person convicted, the court shall have regard to such matter when it passes a sentence on the person for the relevant specified offence and may, if it thinks fit, pass a sentence on the person for that offence that is more severe than the sentence it would, in the absence of such matter, have passed.
- (12) If an application has been made for a confiscation order under section 8, the court shall not have regard for the purpose of subsection (11) to any proceeds of a specified offence or organized crime to which the application for the confiscation order relates.
- (13) A sentence passed pursuant to subsection (11) shall not exceed the maximum penalty permitted by law for the offence.
- (14) This section operates without prejudice to any other information that may be furnished to a court before a person is sentenced, or to any other information to which a court shall or may have regard when sentencing a person for any offence.
- (15) This section does not apply to a person who is convicted of a specified offence committed before the commencement of this section.

(Enacted 1994)

Section:	28	Disclosure of information held by public bodies	25 of 1998; 13 of 1999	01/07/1997
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Expanded Cross Reference:

15, 16, 17

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2; 13 of 1999 s. 3

- (1) Subject to subsection (4), the Court of First Instance may, on an application by the prosecutor, order any material mentioned in subsection (3) which is in the possession of a public body to be produced to the Court of First Instance within such period as the Court of First Instance may specify.
- (2) The power to make an order under subsection (1) is exercisable if-
 - (a) the powers conferred on the Court of First Instance by sections 15(1) and 16(1) are exercisable by virtue of section 14(1); or
 - (b) those powers are exercisable by virtue of section 14(2) and the Court of First Instance has made a restraint or charging order which has not been discharged,
 but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), section 14(3) shall apply for the purposes of this section as it applies for the purposes of sections 15 and 16.
- (3) The material referred to in subsection (1) is any material which-

- (a) has been submitted to an officer of a public body by the defendant or by a person who has at any time held property which was realisable property;
 - (b) has been made by an officer of a public body in relation to the defendant or such a person; or
 - (c) is correspondence which passed between an officer of a public body and the defendant or such a person,
- and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the body concerned.
- (4) An order under subsection (1) shall not require the production of any material unless it appears to the Court of First Instance that the material is likely to contain information that would facilitate the exercise of the powers conferred on the Court of First Instance by sections 15 to 17 or on a receiver appointed under section 15 or 17 or in pursuance of a charging order. <* Note - Exp. X-Ref.: Sections 15, 16, 17 *>
 - (5) The Court of First Instance may by order authorize the disclosure to such a receiver of any material produced under subsection (1) or any part of such material; but the Court of First Instance shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the public body to make representations to the Court of First Instance.
 - (6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Ordinance of the receiver or the Court of First Instance.
 - (7) The Court of First Instance may by order authorize the disclosure to an authorized officer of any material produced under subsection (1) or any part of such material; but the Court of First Instance shall not make an order under this subsection unless-
 - (a) a reasonable opportunity has been given for an officer of the public body to make representations to the Court of First Instance; and
 - (b) it appears to the Court of First Instance that the material is likely to be relevant in exercising functions relating to the investigation of specified offences.
 - (8) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to the investigation of specified offences.
 - (9) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.
 - (10) An order under subsection (1) and, in the case of material in the possession of a public body, an order under section 4(2) may require any officer of the public body (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the Government. (Amended 13 of 1999 s. 3)
 - (11) In this section "public body" (公共機構) means-
 - (a) any Government department; and
 - (b) any body specified by the Chief Executive under subsection (12). (Amended 13 of 1999 s. 3)
 - (12) The Chief Executive may, by notice in the Gazette, specify a body to be a public body for the purposes of this section. (Amended 13 of 1999 s. 3)

(Enacted 1994. Amended 25 of 1998 s. 2)
[cf. 1986 c. 32 s. 30 U.K.]

Section:	29	Compensation	L.N. 362 of 1997; 25 of 1998	01/07/1997
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Expanded Cross Reference:

15, 16, 17

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) If an investigation is begun against a person for a specified offence or offences and any of the following circumstances occur, namely-
 - (a) no proceedings are instituted against that person;
 - (b) proceedings are instituted against that person but do not result in his conviction for any specified offence (including any proceedings referred to in section 8(1)(a)(ii) where no confiscation order is made against that person);
 - (ba) that person absconds after proceedings are instituted against him and subsequently-
 - (i) he ceases to be an absconder; and
 - (ii) either-
 - (A) those proceedings are continued or reinstated but do not result in his conviction for any specified offence; or
 - (B) those proceedings are not continued or reinstated within a reasonable period after it is known to the Secretary for Justice that he has ceased to be an absconder; or (Added 90 of 1995 s. 25. Amended L.N. 362 of 1997)
 - (c) proceedings are instituted against that person and he is convicted of one or more specified offences, but
 - (i) the conviction or convictions concerned are quashed; or
 - (ii) he is granted a pardon in respect of the conviction or convictions concerned,

the Court of First Instance may, on application by a person who held property which was realisable property (or, in the case of such a person who has died, his personal representative on his behalf), order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.
- (2) The Court of First Instance shall not order compensation to be paid under subsection (1) unless it is satisfied-
 - (a) subject to subsection (3A), that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences concerned; and
 - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order of the Court of First Instance under sections 15 to 17. < * Note - Exp. X-Ref.: Sections 15, 16, 17 * >
- (3) Subject to subsection (3A), the Court of First Instance shall not order compensation to be paid under subsection (1) in any case where it appears to the Court of First Instance that the investigation would have been continued, or the proceedings would have been instituted or continued, as the case may be, if the serious default had not occurred.
- (3A) Subsections (2)(a) and (3) shall not apply to any case to which subsection (1)(ba) is applicable. (Added 90 of 1995 s. 25)
- (4) Without prejudice to subsection (1), where-
 - (a) a disclosure is made by any person in accordance with section 25A(2) in relation to any property;
 - (b) in consequence of the disclosure and for the purposes of an investigation or prosecution in respect of a specified offence or offences any act is done or omitted to be done in relation to that property; and
 - (c) no proceedings are instituted against any person in respect of that offence or those offences or no order is made by the Court of First Instance under section 15 or 16 in relation to that property,

the Court of First Instance may, on application by a person who held the property, order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.
- (5) The Court of First Instance shall not order compensation to be paid under subsection (4) unless it is satisfied-
 - (a) that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences concerned and that, but for that default, the act or omission referred to in subsection (4)(b) would not have occurred; and
 - (b) the applicant has, in consequence of the act or omission referred to in subsection (4)(b),

- suffered loss in relation to the property.
- (6) The amount of compensation to be paid under this section shall be such as the Court of First Instance thinks just in all the circumstances of the case.

(Enacted 1994. Amended 90 of 1995 s. 25; 25 of 1998 s. 2)
[cf. 1986 c. 32 ss. 19 & 24(3) U.K.]

Section:	30	Rules of court	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

The power to make rules of court under section 54 of the High Court Ordinance (Cap 4) shall include power to make rules of court for the purposes of this Ordinance.

(Enacted 1994. Amended 25 of 1998 s. 2)

Section:	31	Amendment of amount in section 8(4) and Schedules	13 of 1999	01/07/1997
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Remarks:

Amendments retroactively made - see 13 of 1999 s. 3

Subject to the approval of the Legislative Council, the Chief Executive in Council may by order amend the amount specified in section 8(4) and the Schedules.

(Enacted 1994. Amended 13 of 1999 s. 3)

Section:	32	Savings		30/06/1997
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This Ordinance operates without prejudice to the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405).

(Enacted 1994)

Section:	33	(Omitted as spent)		30/06/1997
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(Omitted as spent)

(Enacted 1994)

Section:	34	(Omitted as spent)		30/06/1997
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(Omitted as spent)

(Enacted 1994)

Section:	35	(Omitted as spent)		30/06/1997
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(Omitted as spent)

(Enacted 1994)

Section:	36	(Omitted as spent)		30/06/1997
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(Omitted as spent)

(Enacted 1994)

Schedule:	1	OFFENCES RELEVANT TO DEFINITIONS OF "ORGANIZED CRIME" AND "SPECIFIED OFFENCE"	15 of 2007	06/07/2007
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[sections 2, 8 & 31]

Common law offences

1. murder
2. kidnapping
3. false imprisonment
4. conspiracy to pervert the course of justice

Statutory offences

Offence	Description*
5. Import and Export Ordinance (Cap 60)	
section 6A	import or export of strategic commodities
section 6C	import of certain prohibited articles
section 6D(1) and (2)	export of certain prohibited articles
section 6E	carriage, etc. of prescribed articles in Hong Kong waters
section 18	importing or exporting unmanifested cargo
6. Immigration Ordinance (Cap 115)	
section 37D(1)	arranging passage to Hong Kong of unauthorized entrants
section 38(4)	carrying an illegal immigrant
section 42(1) and (2)	false statements, forgery of documents and use and possession of forged documents
7. Dangerous Drugs Ordinance (Cap 134)	
section 4(1)	trafficking in dangerous drugs
section 4A(1)	trafficking in purported dangerous drugs
section 6(1)	manufacturing a dangerous drug
8. Gambling Ordinance (Cap 148)	
section 5	operating, managing or controlling gambling establishment
section 7(1)	bookmaking
9. Societies Ordinance (Cap 151)	
section 19	penalties on an office-bearer, etc. of an unlawful society
section 21	allowing a meeting of an unlawful society to be held on premises
section 22	inciting etc., a person to become a member of an unlawful society
10. Money Lenders Ordinance (Cap 163)	
section 24(1)	lending money at an excessive interest rate
11. Crimes Ordinance (Cap 200)	
section 24	threatening a person with intent
section 25	assaulting with intent to cause certain acts to be done or omitted
section 53	causing explosion likely to endanger life or property
section 54	attempt to cause explosion, or making or keeping explosive with intent to endanger life or property
section 55	making or possession of explosive
section 60	destroying or damaging property
section 61	threats to destroy or damage property
section 71	forgery

section 75(1)	possessing a false instrument with intent
section 98(1)	counterfeiting notes and coins with intent
section 100(1)	custody or control of counterfeit notes and coins with intent
section 105	importation and exportation of counterfeit notes and coins
3.12.3	rape
section 118	procurement of person by threats
section 119	procurement of person by false pretences
section 120	trafficking to or from Hong Kong in persons
section 129	control over person for purpose of unlawful sexual act or prostitution
section 130	sexual act or prostitution
section 131	causing prostitution of person
section 134	detention of person for unlawful sexual act or in vice establishment
section 137	living on earnings of prostitution
section 139	keeping a vice establishment
12. Theft Ordinance (Cap 210)	
section 9	theft
section 10	robbery
section 11(1)	burglary
section 16A	fraud (Added 45 of 1999 s. 6)
section 17	obtaining property by deception
section 18	obtaining a pecuniary advantage by deception
section 18D	procuring false entry in certain records
section 19	false accounting
section 23(1) and (4)	blackmail
section 24(1)	handling stolen goods
13. Offences against the Person Ordinance (Cap 212)	shooting or attempting to shoot, or wounding or striking with intent to do grievous bodily harm
section 17	
14. Firearms and Ammunition Ordinance (Cap 238)	possession of arms or ammunition without licence
section 13	dealing in arms or ammunition without a licence
section 14	
14A. Trade Descriptions Ordinance (Cap 362)	
section 9(1) and (2)	offences in respect of infringement of trade mark rights
section 12 (provided that for the purpose of this Ordinance, an offence under section 12 of the Trade Descriptions Ordinance does not include an offence relating only to false trade description)	import or export of goods bearing forged trade mark
section 22 (provided that for the purpose of this Ordinance, "offence under this Ordinance" referred to in section 22 of the Trade Descriptions Ordinance only means an offence under-	
(a) section 9(1) or (2) of that	being accessory to certain offences committed outside Hong Kong (Added L.N. 11 of 2000)

- Ordinance; or
 (b) section 12 of that
 Ordinance, excluding any
 offence relating only to
 false trade description)
15. Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) section 25(1) dealing with property known or believed to represent proceeds of drug trafficking (Replaced 26 of 2002 s. 3)
 16. Organized and Serious Crimes Ordinance (Cap 455) section 25(1) dealing with property known or believed to represent proceeds of indictable offence (Replaced 26 of 2002 s. 3)
 17. Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap 526) section 4 providing services that assist the development, production, acquisition or stockpiling of weapons of mass destruction (Added 90 of 1997 s. 15)
 18. Copyright Ordinance (Cap 528)
 - section 118(1), (4) and (8) (provided that for the purpose of this Ordinance, "infringing copy" referred to in section 118(1) and (4) of the Copyright Ordinance does not include a copy of a work which is an infringing copy by virtue only of section 35(3) of that Ordinance and which was lawfully made in the country, territory or area where it was made)
 - section 120(1), (2), (3) and (4) (provided that for the purpose of this Ordinance, "infringing copy" referred to in section 120(1) and (3) of the Copyright Ordinance does not include a copy of a work which is an infringing copy by virtue only of section 35(3) of that Ordinance and which was lawfully made in the country, territory or area where it was made) (Amended 15 of 2007 s. 77)
 offences relating to making or dealing with infringing copies

 offences relating to making infringing copies outside Hong Kong (Added L.N. 11 of 2000)
 19. Chemical Weapons (Convention) Ordinance (Cap 578) section 5 prohibition against using, developing or producing, acquiring, stockpiling, retaining, participating in the transfer of, engaging in

military preparations, or in preparations of a military nature, intending to use, chemical weapons, or assisting, encouraging or inducing anyone to engage in any activity prohibited by the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, signed at Paris on 13 January 1993 (Added 26 of 2003 s. 44)

Note:

* **The short description of offences in this Schedule is for ease of reference only.**

Schedule:	2	OTHER SPECIFIED OFFENCES	L.N. 145 of 2002	01/01/2003
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[sections 2, 8 & 31]
(Replaced 26 of 2002 s. 3)

Common law offences

1. manslaughter
2. conspiracy to defraud

Statutory offences

	Offence	Description*
3.	Import and Export Ordinance (Cap 60) section 14 section 14A section 18A section 35A	alteration of vessel, aircraft or vehicle for the purpose of smuggling construction, etc., of vessels for the purpose of smuggling assisting, etc., in export of unmanifested cargo assisting, etc., in carriage of prohibited, etc., articles
4.	Immigration Ordinance (Cap 115) section 37DA(1)	assisting unauthorized entrant to remain
5.	Dangerous Drugs Ordinance (Cap 134) section 5(1) section 9(1), (2) and (3) section 35(1) section 37(1)	supplying or procuring a dangerous drug to or for unauthorized persons offences relating to cannabis plant or opium poppy keeping or managing a divan for the taking of dangerous drugs permitting premises to be used for unlawful trafficking, manufacturing or storage of dangerous drugs
6.	Gambling Ordinance (Cap 148) section 14 section 15(1)	providing money for unlawful gambling or for an unlawful lottery permitting premises to be used as gambling establishment
7.	Registration of Persons Ordinance (Cap 177) section 7A	possession of forged identity cards
8.	Crimes Ordinance (Cap 200)	

	section 72	copying a false instrument
	section 73	using a false instrument
	section 74	using a copy of a false instrument
	section 76	making or possessing equipment for making a false instrument
	section 99(1)	passing, etc. counterfeit notes and coins
	section 101	making or custody or control of counterfeiting materials and implements
9.	Prevention of Bribery Ordinance (Cap 201)	
	section 4(1)	bribery of public servant
	section 5(1)	bribery for giving assistance, etc. in regard to contracts
	section 6(1)	bribery for procuring withdrawal of tenders
	section 9(2)	bribery of agent
10.	Theft Ordinance (Cap 210)	
	section 12(1)	aggravated burglary
	section 18A	obtaining services by deception
11.	Offences against the Person Ordinance (Cap 212)	
	section 19	wounding or inflicting grievous bodily harm
12.	Criminal Procedure Ordinance (Cap 221)	
	section 90(1)	doing an act with intent to impede apprehension or prosecution of offender

(Enacted 1994)

Note:

* **The short description of offences in this Schedule is for ease of reference only.**

Schedule:	3	ASSETS ON WHICH A CHARGING ORDER MAY BE IMPOSED	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

[sections 16 & 31]

1. Land in Hong Kong.
2. Securities of any of the following kinds-
 - (a) Government stock;
 - (b) stock of any body incorporated in Hong Kong;
 - (c) stock of any body incorporated outside Hong Kong or of any state or territory outside Hong Kong, being stock registered in a register kept at any place within Hong Kong;
 - (d) units of any unit trust in respect of which a register of the unit holders is kept at any place within Hong Kong.
3. In this Schedule-
 - (a) the terms "Government stock" (政府證券) and "land" (土地) have the same meaning as in section 2 of the High Court Ordinance (Cap 4);
 - (b) the terms "stock" (股份) and "unit trust" (單位信託基金) have the same meaning as in section 20A of that Ordinance.

(Enacted 1994. Amended 25 of 1998 s. 2)

Schedule:	4	ORGANIZED AND SERIOUS CRIMES ORDINANCE (CAP 455)	L.N. 362 of 1997; 25 of 1998	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

[section 3(7)(c)]

SECTION 3

NOTICE REQUIRING ATTENDANCE TO ANSWER
QUESTIONS OR FURNISH INFORMATION

To :
(name and address of person)

1. On, in the Court of First Instance, Hong Kong an order was made by the Hon. Mr. Justice under section 3 of the Organized and Serious Crimes Ordinance (Cap 455) for the purpose of an investigation into an organized crime. A copy of the order as it relates to you is annexed to this Notice.

2. Particulars of the organized crime under investigation are-

- (a) offence :
- (b) Date of offence :
- (c) Place of offence :
- (d) Other particulars :

*3. The order was made in respect of you.

or

*3. The order was made in respect of, and you are a person of that description.

4. The order authorizes the Secretary for Justice to require a person referred to in paragraph 3 above-

- *(a) to answer questions or otherwise furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to the investigation;
- *(b) to produce any material that reasonably appears to the Secretary for Justice to relate to any matter relevant to the investigation, or any material of a class that reasonably appears to him to so relate.

5. This Notice requires you-

- *(a) to attend before
(name and description of authorized officer)
at.....
(place of interview)
on..... (date and time of interview) to answer questions or otherwise furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to the investigation;

*(b) to produce at

(time(s) and place(s))
 the following material or class of material-

.....

6. The order also requires
 (other terms of the order relevant to the person)

7. NOTE: 1. This Notice has important legal consequences. It is in your interests to read the provisions of the Ordinance set out with this Notice, and to seek legal advice in relation to your rights and obligations under the Notice.
 2. You may be accompanied by a solicitor and a barrister when you attend to answer questions or furnish information in compliance with paragraph 5(a) of the notice, or to produce material in compliance with paragraph 5(b) of the notice.

Dated this day of 19 .

.....
 for and on behalf of the
 Secretary for Justice.

* Delete as appropriate.

(Enacted 1994. Amended L.N. 362 of 1997; 25 of 1998 s. 2)

Schedule:	5	CERTIFICATE OF SENTENCE IN RESPECT OF TERM OF IMPRISONMENT FIXED UNDER SECTION 13 OF THE ORGANIZED AND SERIOUS CRIMES ORDINANCE (CAP 455)	25 of 1998 s. 2	01/07/1997
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Remarks:
 Amendments retroactively made - see 25 of 1998 s. 2

[sections 13(8) & 31]

To the Commissioner of Correctional Services.

Whereas the Court of First Instance/District Court*-

- (a) on the day of 19-
 - (i) sentenced (name of defendant) in respect of the specified offence/offences*, within the meaning of the Organized and Serious Crimes Ordinance (Cap 455), of
 (particulars of offence/offences*); and
 - *(ii) imposed a period of imprisonment/detention* of months/years* in respect of that offence/those offences*; and
- (b) on the day of 19 made a confiscation order under section 8(7)(a) of the Organized and Serious Crimes Ordinance (Cap 455) that that defendant pay the amount of \$..... :

This is to certify that on the day of 19 the Court of First Instance/District Court* made an order under section 13 of the Organized and Serious Crimes Ordinance (Cap 455) fixing a term of imprisonment of months/years* which that person is to serve if any of the amount to be paid under that confiscation order is not paid or recovered on or before the day of 19

Dated this day of 19

.....
Registrar of the
High Court/District Court*.

* Delete where inapplicable.

Note: Section 13(4) of the Organized and Serious Crimes Ordinance (Cap 455) provides that where a person becomes liable to serve a term of imprisonment fixed under section 13 of that Ordinance in respect of a confiscation order and is also liable to serve a term of imprisonment (or detention) in respect of the specified offence or offences concerned, that first-mentioned term of imprisonment shall not begin to run until after the end of that second-mentioned term of imprisonment (or detention).

(Enacted 1994. Schedule 5 added 90 of 1995 s. 26. Amended 25 of 1998 s. 2)

Schedule:	6	PARTICULARS TO BE RECORDED BY REMITTANCE AGENTS AND MONEY CHANGERS	L.N. 262 of 2006	26/01/2007
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[sections 24A & 24C]

PART 1

PARTICULARS TO BE RECORDED BY REMITTANCE AGENTS WHERE PARAGRAPH (a)(i) OF THE DEFINITION OF "REMITTANCE AGENT" IN SECTION 24A IS APPLICABLE

1. Transaction serial number
2. Currency and amount involved
3. Date and time of receiving instructions from instructor(s)/sender(s)
4. Instruction details (including method of delivery and/or acknowledgement)
5. Name, identity card number (or certificate of identity, document of identity or travel document number with place of issue), telephone number and address of instructor(s)
6. Name, identity card number (or certificate of identity, document of identity or travel document number with place of issue), telephone number and address of sender(s) (Amended L.N. 262 of 2006)
7. Bank account(s) involved, if any
8. Name and particulars of recipient(s)
9. Currency and amount to each recipient
10. Date and time sent

PART 2

PARTICULARS TO BE RECORDED BY REMITTANCE AGENTS WHERE PARAGRAPH (a)(ii) OF THE DEFINITION OF "REMITTANCE AGENT" IN SECTION 24A IS APPLICABLE

1. Transaction serial number
2. Currency and amount involved
3. Date and time of receiving instructions by the agent
4. Instruction details (including method of receipt and/or acknowledgement)
5. Name and address, or name and bank account number of instructor(s)

6. Name, telephone number and address of sender(s)
7. Bank account(s) involved, if any
8. Name, identity card number (or certificate of identity, document of identity or travel document number with place of issue), telephone number, address or, if payment is to be made into a Hong Kong bank account, the name of the account holder and account number, of the recipient(s) apart from the remittance agent
9. Currency and amount involved by each recipient
10. Date and time received by recipient(s)

PART 3

PARTICULARS TO BE RECORDED BY REMITTANCE AGENTS WHERE PARAGRAPH (a)(iii) OF THE DEFINITION OF "REMITTANCE AGENT" IN SECTION 24A IS APPLICABLE

1. Transaction serial number
2. Currency and amount involved
3. Date and time of receiving instructions from instructor(s)
4. Instruction details (including method of delivery and/or acknowledgement)
5. Name, identity card number (or certificate of identity, document of identity or travel document number with place of issue), telephone number and address of instructor(s)
6. Date and time of giving instructions to agent outside Hong Kong
7. Bank account(s) involved, if any
8. Name, particulars, telephone number and address of recipient(s)
9. Currency and amount to each recipient
10. Name, identity card number (or certificate of identity, document of identity or travel document number with place of issue), telephone number and address of sender(s). (Added L.N. 262 of 2006)

PART 4

PARTICULARS TO BE RECORDED BY MONEY CHANGERS

1. Transaction serial number
2. Date and time of transaction
3. Currencies and amount exchanged
4. Exchange rate
5. Name, identity card number (or certificate of identity, document of identity or travel document number with place of issue) of client
6. Telephone number and address of client

(Schedule 6 added 8 of 2000 s. 3)

(Date of download: 13/08/2007)

Chapter:	575	UNITED NATIONS (ANTI-TERRORISM MEASURES) ORDINANCE	Gazette Number	Version Date
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NB: Provisions/amendments not yet in operation are in white words highlighted in grey. Those texts to be added or amended by the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2004 which has not yet come into force are encircled in a **box**.

		Long title	L.N. 172 of 2004; L.N. 173 of 2004	07/01/2005
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An Ordinance to further implement a decision of the Security Council of the United Nations in its Resolution 1373 of 28 September 2001 relating to measures for the prevention of terrorist acts, and in that connection, to permit the implementation of the United Nations International Convention for the Suppression of Terrorist Bombings, the United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the United Nations Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; to implement certain of the Special Recommendations on Terrorist Financing of the Financial Action Task Force; and to provide for matters incidental thereto or connected therewith.

(Amended 21 of 2004 s. 2)

(Originally 27 of 2002)

Section:	1	Short title and commencement	L.N. 137 of 2002	23/08/2002
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PART 1

PRELIMINARY

- (1) This Ordinance may be cited as the United Nations (Anti-Terrorism Measures) Ordinance.
- (2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

Section:	2	Interpretation	L.N. 173 of 2004	07/01/2005
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- (1) In this Ordinance, unless the context otherwise requires-
 - "authorized officer" (獲授權人員) means-
 - (a) a police officer;
 - (b) a member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342);
 - (c) a member of the Immigration Service established by section 3 of the Immigration Service Ordinance (Cap 331); or
 - (d) an officer of the Independent Commission Against Corruption established by section 3 of the Independent Commission Against Corruption Ordinance (Cap 204); (Added 21 of 2004 s. 3)
 - "Committee" (聯合國委員會) means-
 - (a) the Committee of the United Nations Security Council established pursuant to the United Nations Security Council Resolution 1267 of 15 October 1999; or
 - (b) any other committee-
 - (i) of the United Nations;
 - (ii) established pursuant to a United Nations Security Council Resolution made, or a United Nations Convention which has entered into force, after 15 October 1999; and

(iii) the function of which, in whole or in part, is to designate persons or property as terrorists, terrorist associates or terrorist property, as the case may be;

"Court" (法院) means the Court of First Instance; (Added 21 of 2004 s. 3)

"entity" (實體) means any body of persons (including individuals), whether corporate or unincorporate;

"functions" (職能) includes powers;

"funds" (資金) includes funds mentioned in Schedule 1; (Amended 21 of 2004 s. 3)

"items subject to legal privilege" (享有法律特權的品目) has the same meaning as in section 2(1) of the Organized and Serious Crimes Ordinance (Cap 455);

"material" (材料) includes any book, document or other record in any form whatsoever, and any article or substance; (Added 21 of 2004 s. 3)

"possession" (管有) includes control; (Added 21 of 2004 s. 3)

"practicable" (切實可行) means reasonably practicable;

"premises" (處所) includes any place and, in particular, includes-

(a) any vehicle, vessel, aircraft, hovercraft or offshore structure; and

(b) any tent or movable structure; (Added 21 of 2004 s. 3)

"prescribed interest" (訂明權益), in relation to any property, means an interest in the property prescribed by rules of court as an interest for the purposes of this Ordinance;

"relevant offence" (有關罪行) means an offence against this Ordinance; (Added 21 of 2004 s. 3)

"Secretary" (局長) means the Secretary for Security;

"terrorist" (恐怖分子) means a person who commits, or attempts to commit, a terrorist act or who participates in or facilitates the commission of a terrorist act;

"terrorist act" (恐怖主義行為)-

(a) subject to paragraph (b), means the use or threat of action where-

(i) the action is carried out with the intention of, or the threat is made with the intention of using action that would have the effect of- (Amended 21 of 2004 s. 3)

(A) causing serious violence against a person;

(B) causing serious damage to property;

(C) endangering a person's life, other than that of the person committing the action;

(D) creating a serious risk to the health or safety of the public or a section of the public;

(E) seriously interfering with or seriously disrupting an electronic system; or

(F) seriously interfering with or seriously disrupting an essential service, facility or system, whether public or private; and (Amended 21 of 2004 s. 3)

(ii) the use or threat is-

(A) intended to compel the Government or to intimidate the public or a section of the public; and

(B) made for the purpose of advancing a political, religious or ideological cause;

(b) in the case of paragraph (a)(i)(D), (E) or (F), does not include the use or threat of action in the course of any advocacy, protest, dissent or industrial action;

"terrorist associate" (與恐怖分子有聯繫者) means an entity owned or controlled, directly or indirectly, by a terrorist;

"terrorist property" (恐怖分子財產) means-

(a) the property of a terrorist or terrorist associate; or

(b) any other property consisting of funds that-

(i) is intended to be used to finance or otherwise assist the commission of a terrorist act; or

(ii) was used to finance or otherwise assist the commission of a terrorist act;

"weapons" (武器) includes-

(a) chemical, biological, radiological or nuclear weapons and their precursors;

(b) any arms and related material (including ammunition, military vehicles, military equipment and paramilitary equipment); and

(c) any components of any arms and related material mentioned in paragraph (b).

"authorized officer" (獲授權人員) means -

- (a) a police officer;
- (b) a member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap. 342);
- (c) a member of the Immigration Service established by section 3 of the Immigration Service Ordinance (Cap. 331); or
- (d) an officer of the Independent Commission Against Corruption established by section 3 of the Independent Commission Against Corruption Ordinance (Cap. 204);

(Added 21 of 2004 s. 3)

“Court” (法院) means the Court of First Instance; (Added 21 of 2004 s. 3)

“material” (材料) includes any book, document or other record in any form whatsoever, and any article or substance; (Added 21 of 2004 s. 3)

“possession” (管有) includes control; (Added 21 of 2004 s. 3)

“premises” (處所) includes any place and, in particular, includes -

- (a) any vehicle, vessel, aircraft, hovercraft or offshore structure; and
- (b) any tent or movable structure;

(Added 21 of 2004 s. 3)

“relevant offence” (有關罪行) means an offence against this Ordinance;”.(Added 21 of 2004 s. 3)

- (2) Any reference in the definition of "terrorist act" to-
 - (a) an action, person or property includes an action, person or property outside the HKSAR;
 - (b) the Government or public includes the government, or the public, of a place outside the HKSAR.
- (3) For the purposes of this Ordinance, any proceeds of a terrorist or terrorist associate arising from a terrorist act are-
 - (a) any payments or other rewards received at any time by the terrorist or terrorist associate in connection with the commission of that act;
 - (b) any property derived or realized, directly or indirectly, by the terrorist or terrorist associate from any of the payments or other rewards; and
 - (c) any pecuniary advantage obtained in connection with the commission of that act.
- (4) For the purposes of this Ordinance, a person who has a prescribed interest in any property shall be deemed to be a person by, for or on behalf of whom the property is or was held.
- (5) Nothing in this Ordinance shall-
 - (a) require the disclosure of any items subject to legal privilege;
 - (b) authorize the search or seizure of any items subject to legal privilege; or
 - (c) restrict the privilege against self-incrimination.
- (6) Without prejudice to the powers of the Court under the Rules of the High Court (Cap 4 sub. leg. A), the Court may of its own motion or on application order that any person who may be affected by an application- (Amended 21 of 2004 s. 21)
 - (a) under section 5 in the case of an application under section 5(1) made inter partes; or
 - (b) under section 13, 17 or 18,
 - be joined as a party to the proceedings. (Amended L.N. 29 of 2004)
- (7) For the avoidance of doubt, it is hereby declared-
 - (a) that section 14 of the High Court Ordinance (Cap 4) shall apply to any judgment or order of the Court arising from proceedings- (Amended 21 of 2004 s. 21)
 - (i) under section 5 in the case of an application under section 5(1) made inter partes; or
 - (ii) under section 13, 17 or 18;
 - (b) the provisions of this Ordinance shall be subject to the operation of Part XII of the Interpretation and General Clauses Ordinance (Cap 1).

Section:	3	Application of certain provisions outside HKSAR	L.N. 172 of 2004; L.N. 173 of 2004	07/01/2005
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Sections 7, ~~8~~, 9, 10, 11B and 11F shall apply to- (Amended 21 of 2004 s. 4)

- (a) any person within the HKSAR; and
- (b) any person outside the HKSAR who is-
 - (i) a Hong Kong permanent resident; or
 - (ii) a body incorporated or constituted under the law of the HKSAR.

Note:

* **Section 8 has not yet come into operation.**

Section:	4	Specification by Chief Executive of persons and property as terrorists, terrorist associates or terrorist property	L.N. 137 of 2002	23/08/2002
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PART 2

SPECIFICATION OF TERRORISTS, TERRORIST ASSOCIATES AND TERRORIST PROPERTY AND FREEZING OF ~~FUND~~Property

(Amended 21 of 2004 s.21)

- (1) Where a person is designated by the Committee as a terrorist, the Chief Executive may publish a notice in the Gazette specifying the name or names of the person.
- (2) Where a person is designated by the Committee as a terrorist associate, the Chief Executive may publish a notice in the Gazette specifying the name or names of the person.
- (3) Where any property is designated by the Committee as terrorist property, the Chief Executive may publish a notice in the Gazette specifying the property.
- (4) For the avoidance of doubt, it is hereby declared that a notice under subsection (1), (2) or (3) is not subsidiary legislation.
- (5) For the purposes of this Ordinance, it shall be presumed, in the absence of evidence to the contrary, that-
 - (a) a person specified in a notice under subsection (1) is a terrorist;
 - (b) a person specified in a notice under subsection (2) is a terrorist associate;
 - (c) property specified in a notice under subsection (3) is terrorist property.
- (6) Where-
 - (a) a person or property is specified in a notice under subsection (1), (2) or (3), as the case may be; and
 - (b) the person or property ceases to be designated by the Committee as a terrorist, terrorist associate or terrorist property, as the case may be,
 then-
 - (c) immediately upon the occurrence of that cesser, the notice shall be deemed to be revoked to the extent that it relates to the person or property, as the case may be; and
 - (d) the Chief Executive shall, as soon as is practicable and for information purposes, publish a notice in the Gazette stating that the first-mentioned notice has been revoked to the extent that it relates to the person or property, as the case may be (or words to the like effect).

Section:	5	Specification by Court of First Instance of persons and property as terrorists, terrorist associates or terrorist property		
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Remarks:
not yet in operation

- (1) The Chief Executive may make an application to the Court of First Instance for an order to specify- (Amended 21 of 2004 s.21)

- (a) the person the subject of the application as a terrorist or terrorist associate; or
- (b) the property the subject of the application as terrorist property.
- (2) Where an application is made under subsection (1), the Court of First Instance shall only make the order sought by the application if it is satisfied that the person or property the subject of the application is a terrorist, terrorist associate or terrorist property, as the case may be. (Amended 21 of 2004 s.21)
- (3) The Chief Executive shall cause an order under subsection (2) to be published in the Gazette.
- (4) Where an order under subsection (2) is published in the Gazette, then, subject to section 17(3)(a), for the purposes of this Ordinance, it shall be presumed, in the absence of evidence to the contrary, that-
 - (a) a person specified in the order as a terrorist is a terrorist;
 - (b) a person specified in the order as a terrorist associate is a terrorist associate;
 - (c) property specified in the order as terrorist property is terrorist property.
- (5) Where-
 - (a) a person or property is specified in an order under subsection (2) published in the Gazette; and
 - (b) the Chief Executive receives information which causes him to have reasonable grounds to believe that the person or property is not, or is no longer, a terrorist, terrorist associate or terrorist property, as the case may be,
 then the Chief Executive shall, as soon as is practicable, make an application to the Court of First Instance for the order to be revoked to the extent that it relates to the person or property, as the case may be. (Amended 21 of 2004 s.21)
- (6) The Court of First Instance shall grant an application under subsection (5). (Amended 21 of 2004 s.21)
- (7) Where-
 - (a) a person or property is specified in an order under subsection (2) published in the Gazette; and
 - (b) the Court of First Instance has granted an application- (Amended 21 of 2004 s.21)
 - (i) under subsection (6) which relates to the person or property, as the case may be; or
 - (ii) under section 17(3)(b) which relates to the person or property, as the case may be,
 then the Chief Executive shall, as soon as is practicable, cause a notice to be published in the Gazette specifying that the order has been revoked to the extent that it relates to the person or property, as the case may be.
- (8) An order under subsection (2) published in the Gazette which has not been revoked in its entirety by virtue of the granting of an application under subsection (6) or section 17(3)(b) shall expire on the 2nd anniversary of the date of its publication in the Gazette.
- (9) For the avoidance of doubt, it is hereby declared that an application under subsection (1) shall be made inter partes except where the application falls within the circumstances specified in rules of court made for the purposes of this section.

Section:	6	Freezing of funds		
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Remarks:
not yet in operation

- (1) Where the Secretary has reasonable grounds to suspect that any funds held by any person are property held by any person is terrorist property, the Secretary may, by notice in writing specifying the funds, direct that the funds not be made available, directly or indirectly, to any person the property, direct that a person shall not, directly or indirectly, deal with the property except under the authority of a licence granted by the Secretary.
- (2) Where-
 - (a) Funds are property is specified in a notice under subsection (1); and
 - (b) either-
 - (i) the Secretary ceases to have reasonable grounds to suspect that the funds are property is

- terrorist property; or
- (ii) the Court of First Instance has granted an application under section 17 which relates to the funds to the property.
- then the Secretary shall, as soon as is practicable, by notice in writing revoke the notice to the extent that it relates to the funds property.
- (3) Subject to subsection (4), a notice under subsection (1) which has not been revoked under subsection (2) shall expire on the 2nd anniversary of the date on which it was signed by the Secretary.
- (4) Where an application under section 13 has been made to the Court of First Instance -
- (a) in respect of funds property, or part thereof, specified in a notice under subsection (1); and
- (b) before the expiration of the notice under subsection (3),
- then, subject to subsection (2), the notice shall not expire in relation to the funds property, or part thereof, as the case may be, until the date, if any, on which-
- (c) proceedings relating to the application (including proceedings relating to any appeal) are no longer pending; and
- (d) the funds property, or part thereof, as the case may be, have has not been forfeited in consequence of those proceedings. (Amended 21 of 2004 s. 5)
- (5) Where a notice under subsection (1) has been revoked under subsection (2) or has expired under subsection (3) or (4), the Secretary shall not again exercise the power under subsection (1) in respect of the funds property specified in the notice unless there has been a material change in the grounds in respect of which the Secretary proposes to again exercise that power in respect of the funds property. (Amended 21 of 2004 s. 5)
- (6) For the avoidance of doubt, it is hereby declared that the revocation under subsection (2), or the expiry under subsection (3) or (4), of a notice under subsection (1) shall not affect the application of section 8 to the funds which were property which was specified in the notice. (Amended 21 of 2004 s. 5)
- (7) A notice under subsection (1) or (2) shall be given to the person holding the funds concerned ("the recipient"), and shall require the recipient to send a copy of the notice without delay to the person whose funds they are, or for or on whose behalf the funds are held ("the owner"). A notice under subsection (1) or (2) shall be given to the person holding the property concerned ("the recipient") and shall require the recipient to send a copy of the notice without delay to each person, if any, whose property it is, or for or on behalf of whom the property is held ("the owner"). (Replaced 21 of 2004 s. 5)
- (8) A recipient shall be treated as complying with subsection (7) if, without delay, he sends a copy of the notice mentioned in that subsection to the owner at his last-known address or, if he does not have an address for the owner, he makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.
- (9) Where any property the subject of a notice under subsection (1) or (2) is immovable property, the notice shall, for the purpose of the Land Registration Ordinance (Cap. 128)—
- (a) be deemed to be an instrument affecting land; and
- (b) be registrable as such in the Land Registry under that Ordinance in such manner as the Land Registrar thinks fit.
- (10) The Secretary may, in a notice under subsection (1)—
- (a) give a direction that an authorized officer may, for the purpose of preventing any property the subject of the notice being removed from the HKSAR, seize the property;
- (b) give directions in accordance with which any such property so seized shall be dealt with.
- (11) The Secretary may exercise the powers under subsection (10) only if he has reasonable cause to suspect that the relevant property will be removed from the HKSAR.
- (12) In subsection (1), "deal with" (處理), in relation to property, means -

- (a) to receive or acquire the property;
- (b) to conceal or disguise the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
- (c) to dispose of or convert the property;
- (d) to bring into or remove from the HKSAR the property; or
- (e) to use the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise).

(Amended 21 of 2004, s5)

Section:	7	Prohibition on provision or collection of funds to commit terrorist acts	L.N. 173 of 2004	07/01/2005
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PART 3

PROHIBITIONS RELATING TO TERRORISTS, TERRORIST ASSOCIATES AND TERRORIST PROPERTY

A person shall not provide or collect, by any means, directly or indirectly, funds-

- (a) with the intention that the funds be used; or
 - (b) knowing that the funds will be used,
- in whole or in part, to commit one or more terrorist acts (whether or not the funds are actually so used).

(Amended 21 of 2004 s. 6)

Section:	8	Prohibition on making funds, etc. available to terrorists and terrorist associates		
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Remarks:
not yet in operation

No person shall, except under the authority of a licence granted by the Secretary, make any funds or financial (or related) services available, directly or indirectly, to or for the benefit of a person ~~who the first mentioned person knows or has reasonable grounds to believe is a terrorist or terrorist associate,~~ knowing that, or being reckless as to whether, such person is a terrorist or terrorist associate.

(Amended 21 of 2004 s. 7)

Section:	9	Prohibition on supply of weapons to terrorists and terrorist associates	L.N. 173 of 2004	07/01/2005
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A person shall not provide or collect, by any means, directly or indirectly, weapons-

- (a) with the intention that the weapons be directly or indirectly supplied to or otherwise used;
- (b) knowing that the weapons will be directly or indirectly supplied to or otherwise used; or
- (c) being reckless as to whether the weapons would be directly or indirectly supplied to or otherwise used,

by a person and knowing that, or being reckless as to whether, such person is a terrorist or terrorist associate.

(Replaced 21 of 2004 s. 8)

Section:	10	Prohibition on recruitment, etc. to a body specified in a section 4(1) or (2) notice or a section 5(2) order	L.N. 172 of 2004; L.N. 173 of 2004	07/01/2005
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- (1) A person shall not-
- (a) recruit another person to become a member; or
 - (b) become a member,
- of a body specified in a notice published in the Gazette under section 4(1) or (2) or an order published in the Gazette under section 5(3), knowing that, or being reckless as to whether, it is a body specified in such a notice or order (as the case may be).
- (2) In subsection (1), "body" (團體) means a body of persons, whether corporate or unincorporate.

(Replaced 21 of 2004 s. 9)

Section:	11	Prohibition against false threats of terrorist acts	L.N. 137 of 2002	23/08/2002
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- (1) A person shall not communicate or make available by any means any information which he knows or believes to be false to another person with the intention of causing alarm to the public or a section of the public by a false belief that a terrorist act has been, is being or will be carried out.
- (2) A person shall not-
- (a) place any article or substance in any place; or
 - (b) despatch any article or substance by post, rail or by any other means of sending things from one place to another,
- with the intention of causing alarm to the public or a section of the public by a false belief that-
- (c) the article or substance is likely to explode or ignite and thereby cause personal injury or damage to property; or
 - (d) the article contains or the substance consists of-
 - (i) any dangerous, hazardous, radioactive or harmful substance;
 - (ii) any toxic chemical; or
 - (iii) any microbial or other biological agent, or toxin,
 that is likely to cause death, disease or personal injury or damage to property.

Section:	11A	Interpretation of Part 3A	L.N. 173 of 2004	07/01/2005
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PART 3A

PROHIBITIONS RELATING TO BOMBING OF PRESCRIBED OBJECTS

- (1) In this Part, unless the context otherwise requires-
- "explosive or other lethal device" (爆炸性或其他致命裝置) means-
- (a) an explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or
 - (b) a weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material;
- "infrastructure facility" (基建設施) means any publicly or privately owned facility providing or distributing services for the benefit of the public, and includes any water, sewage, energy, fuel or communications facility;
- "place of public use" (公用場所) means those parts of any building, land, street, waterway or

other location that are accessible or open to the public, whether continuously, periodically or occasionally, and whether or not upon the payment of any fee, and includes any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public;

"prescribed object" (訂明標的) means-

- (a) an infrastructure facility;
- (b) a place of public use;
- (c) a public transportation system; or
- (d) a state or government facility;

"public transportation system" (公共運輸系統) means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo;

"state or government facility" (國家或政府設施) includes any permanent or temporary facility or conveyance that is used or occupied by-

- (a) representatives of a state, or members of a government, the legislature or the judiciary, or officials or employees of a state or government or any other public authority or entity, in connection with their official duties; or
- (b) employees or officials of an intergovernmental organization in connection with their official duties.

- (2) Any reference in this Part to a prescribed object does not include a prescribed object in the People's Republic of China outside the HKSAR.

(Part 3A added 21 of 2004 s. 10)

Section:	11B	Prohibitions against bombing of prescribed objects	L.N. 173 of 2004	07/01/2005
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- (1) A person shall not unlawfully and intentionally deliver, place, discharge or detonate an explosive or other lethal device in, into or against a prescribed object with the intention to cause death or serious bodily injury to any person.
- (2) A person shall not unlawfully and intentionally deliver, place, discharge or detonate an explosive or other lethal device in, into or against a prescribed object-
 - (a) with the intention to cause extensive destruction of the prescribed object; and
 - (b) where such destruction results in or is likely to result in major economic loss.

(Part 3A added 21 of 2004 s. 10)

Section:	11C	Interpretation of Part 3B	L.N. 173 of 2004	07/01/2005
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PART 3B

PROHIBITIONS RELATING TO SHIPS AND FIXED PLATFORMS

In this Part, unless the context otherwise requires-

"act" (行為) includes an omission;

"act of violence" (暴力行為) means-

- (a) an act done in the HKSAR which constitutes the offence of murder, attempted murder, manslaughter, culpable homicide or assault, or an offence under section 17, 19, 20, 21, 22, 23, 28 or 29 of the Offences against the Person Ordinance (Cap 212) or under section 53 or 54 of the Crimes Ordinance (Cap 200); and
- (b) an act done outside the HKSAR which, if done in the HKSAR, would constitute an offence mentioned in paragraph (a);

"fixed platform" (固定平台) means an artificial island, installation or structure permanently

attached to the seabed for the purpose of the exploration or exploitation of resources or for other economic purposes;

"Hong Kong ship" (香港船舶) means a ship registered in the HKSAR;

"maritime navigational facility" (航海設施) includes-

- (a) any lightship and any floating or other light exhibited for the guidance of ships;
- (b) any description of a fog signal not carried on a ship;
- (c) all marks and signs in aid of marine navigation;
- (d) an electronic, radio or other aid to marine navigation not carried on board a ship;

"master" (船長) includes every person (except a pilot) having command or charge of a ship;

"Rome Convention" (《羅馬公約》) means the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988;

"scheduled to navigate" (已編定航行), in relation to a ship, means that the ship has-

- (a) an intended route;
- (b) a voyage plan;
- (c) a normal course of plying; or
- (d) an advertised sailing schedule;

"ship" (船舶) means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles, or any other floating craft.

(Part 3B added 21 of 2004 s. 10)

Section:	11D	Part not to apply to certain ships	L.N. 173 of 2004	07/01/2005
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This Part shall not apply to-

- (a) a warship;
- (b) a ship owned or operated by a state when being used as a naval auxiliary or for customs or police purposes;
- (c) a ship owned or operated by the Government when being used for customs or police purposes; or
- (d) a ship that has been withdrawn from navigation or is laid up.

(Part 3B added 21 of 2004 s. 10)

Section:	11E	Prohibitions relating to ships	L.N. 173 of 2004	07/01/2005
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- (1) A person shall not unlawfully and intentionally-
 - (a) by force or by threat of force or by any other form of intimidation, seize or exercise control over a ship;
 - (b) on board a ship, commit an act of violence that is likely to endanger the safe navigation of the ship;
 - (c) destroy a ship;
 - (d) cause damage to a ship or the ship's cargo where that damage is likely to endanger the safe navigation of the ship;
 - (e) place or cause to be placed on a ship anything that is likely to destroy the ship;
 - (f) place or cause to be placed on a ship anything that is likely to cause damage to the ship or the ship's cargo where that damage endangers or is likely to endanger the safe navigation of the ship;
 - (g) destroy, seriously damage or seriously interfere with the operation of any maritime navigational facilities, where the destruction, damage or interference, as the case may be, is likely to endanger the safe navigation of a ship; or
 - (h) endanger the safe navigation of a ship by communicating to another person information which the person communicating the information knows to be false.

- (2) A person shall not intentionally-
 - (a) cause the death of any person in connection with the commission or attempted commission of any act prohibited under subsection (1)(a), (b), (c), (d), (e), (f), (g) or (h); or
 - (b) injure any person in connection with the commission or attempted commission of any act prohibited under-
 - (i) subsection (1)(a), (b), (c), (d), (e), (f), (g) or (h); or
 - (ii) paragraph (a).
- (3) A person shall not threaten to do, in relation to a ship, any act prohibited under subsection (1)(b), (c), (d) or (g) if the threat-
 - (a) is in order to compel any other person to do or abstain from doing any act; and
 - (b) is likely to endanger the safe navigation of the ship.

(Part 3B added 21 of 2004 s. 10)

Section:	11F	Prohibitions relating to fixed platforms	L.N. 173 of 2004	07/01/2005
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- (1) A person shall not unlawfully and intentionally-
 - (a) by force or by threat of force or by any other form of intimidation, seize or exercise control over a fixed platform;
 - (b) on board a fixed platform, commit an act of violence that is likely to endanger the safety of the platform;
 - (c) destroy a fixed platform;
 - (d) cause damage to a fixed platform where that damage is likely to endanger the safety of the platform; or
 - (e) place or cause to be placed on a fixed platform anything that is likely to destroy the platform or to endanger the safety of the platform.
- (2) A person shall not intentionally-
 - (a) cause the death of any person in connection with the commission or attempted commission of any act prohibited under subsection (1)(a), (b), (c), (d) or (e); or
 - (b) injure any person in connection with the commission or attempted commission of any act prohibited under-
 - (i) subsection (1)(a), (b), (c), (d) or (e); or
 - (ii) paragraph (a).
- (3) A person shall not threaten to do, in relation to a fixed platform, any act prohibited under subsection (1)(b), (c) or (d) if the threat-
 - (a) is in order to compel any other person to do or abstain from doing any act; and
 - (b) is likely to endanger the safety of the platform.

(Part 3B added 21 of 2004 s. 10)

Section:	11G	Provisions supplementary to sections 11E and 11F	L.N. 173 of 2004	07/01/2005
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- (1) For the purposes of sections 11E(2) and 11F(2), an act by any person occurs in connection with the commission or attempted commission of any of the acts prohibited under section 11E(1) or 11F(1) ("prohibited acts"), as the case may be, if it was done with intent-
 - (a) to commit or facilitate the commission or attempted commission of any of the prohibited acts;
 - (b) to avoid the detection of himself or of any other person in the commission or attempted commission of any of the prohibited acts; or
 - (c) to avoid the arrest or facilitate the flight of himself or of any other person on the commission or attempted commission of any the prohibited acts.
- (2) Subsection (1) shall not limit the generality of the expression "in connection with the commission or attempted commission of".

(Part 3B added 21 of 2004 s. 10)

Section:	11H	Master may deliver alleged offender to appropriate authorities	L.N. 173 of 2004	07/01/2005
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- (1) The master of a Hong Kong ship may deliver to the appropriate authorities of a state that is a party to the Rome Convention any person whom the master has reasonable grounds to believe has committed any act prohibited under section 11E.
- (2) The master of a Hong Kong ship who intends to deliver a person under subsection (1) shall notify the appropriate authorities of the state concerned of-
 - (a) his intention to deliver the person to those authorities; and
 - (b) his reasons for intending to do so.
- (3) A notification under subsection (2) shall be given-
 - (a) if it is practicable to do so, before the ship enters the territorial sea of the state concerned; or
 - (b) in any other case, as soon as is practicable.
- (4) Where the master of a Hong Kong ship delivers a person under subsection (1), the master shall give to the appropriate authorities of the state concerned any evidence relating to the act concerned prohibited under section 11E that is in the master's possession.

(Part 3B added 21 of 2004 s. 10)

Section:	11I	Extra-territorial jurisdiction in relation to section 11E	L.N. 173 of 2004	07/01/2005
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Section 11E shall apply in respect of an act that occurs outside the HKSAR-

- (a) if-
 - (i) the act occurs against or on board a ship that is navigating, or is scheduled to navigate, into or through or from the waters beyond the outer limits of the territorial sea of a state or the lateral limits of its territorial sea with adjacent states; and
 - (ii) either-
 - (A)the ship is a Hong Kong ship; or
 - (B)the alleged offender is a Hong Kong permanent resident;
- (b) if-
 - (i) the act occurs against or on board a ship that is within the territory of another state;
 - (ii) the alleged offender is found in a state that is a party to the Rome Convention but is not the state where the act occurred; and
 - (iii) either-
 - (A)the ship is a Hong Kong ship; or
 - (B)the alleged offender is a Hong Kong permanent resident.

(Part 3B added 21 of 2004 s. 10)

Section:	12	Disclosure of knowledge or suspicion that property is terrorist property, etc.	L.N. 173 of 2004	07/01/2005
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PART 4

DISCLOSURE OF KNOWLEDGE OR SUSPICION THAT PROPERTY IS TERRORIST PROPERTY

- (1) Where a person knows or suspects that any property is terrorist property, then the person shall disclose to an authorized officer the information or other matter-
 - (a) on which the knowledge or suspicion is based; and
 - (b) as soon as is practicable after that information or other matter comes to the person's attention.
- (2) If a person who has made a disclosure referred to in subsection (1) does any act in

contravention of section 7 or 8 (whether before or after the disclosure), and the disclosure relates to that act, the person does not commit an offence under section 14(1) in respect of that contravention if-

- (a) that disclosure is made before the person does that act and the person does that act with the consent of an authorized officer; or
 - (b) that disclosure is made-
 - (i) after the person does that act;
 - (ii) on the person's initiative; and
 - (iii) as soon as it is practicable for the person to make it.
- (3) A disclosure referred to in subsection (1)-
- (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
 - (b) shall not render the person who made it liable in damages for any loss arising out of-
 - (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.
- (4) In the case of a person who was in employment at the relevant time, this section shall have effect in relation to disclosures to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as it has effect in relation to disclosures to an authorized officer.
- (5) Where a person knows or suspects that a disclosure has been made under subsection (1) or (4), the person shall not disclose to another person any information or other matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.
- (6) Information obtained under or by virtue of a disclosure referred to in subsection (1) may be disclosed-
- (a) by any authorized officer to the Department of Justice, the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department, and the Independent Commission Against Corruption, for the purpose of preventing and suppressing the financing of terrorist acts; and
 - (b) by any authorized officer to the authorities or persons responsible for investigating or preventing terrorist acts, or handling the disclosure of knowledge or suspicion that any property is terrorist property, of any place outside the HKSAR which the authorized officer thinks fit, for the purpose of preventing and suppressing the financing of terrorist acts. (Replaced 21 of 2004 s. 11)
- (7) Subsection (6) is without prejudice to any other right to disclose information obtained under or by virtue of a disclosure referred to in subsection (1) that may exist apart from subsection (6). (Added 21 of 2004 s. 11)

Section:	12A	Requirement to furnish information or produce material		
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Remarks:
not yet in operation

PART 4A

POWERS OF INVESTIGATION

(1) The Secretary for Justice may, for the purpose of an investigation into a relevant offence, make an ex parte application to the Court for an order under subsection (2) in relation to a particular person or to persons of a particular description.

(2) The Court may, if on such an application it is satisfied that the conditions referred to in

subsection (4)(a), (b) and (d) or subsection (4)(a), (c) and (d) are fulfilled, make an order complying with subsection (3) in respect of the particular person, or persons of the particular description, to whom the application relates.

- (3) An order under subsection (2) shall -
- (a) give particulars of the relevant offence under investigation;
 - (b) identify the particular person, or state the particular description of persons, in respect of whom the order is made;
 - (c) authorize the Secretary for Justice to require the person or persons in respect of whom the order is made -
 - (i) to answer questions or otherwise furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to the investigation; or
 - (ii) to produce any material, or any material of a class, that reasonably appears to the Secretary for Justice to be relevant to the investigation, or both; and
 - (d) contain such other terms (if any) as the Court considers appropriate in the public interest, but nothing in this paragraph shall be construed as authorizing the Court to order the detention of any person in custody without that person's consent.

- (4) The conditions referred to in subsection (2) are -
- (a) that there are reasonable grounds for suspecting that the relevant offence under investigation has been committed;
 - (b) where the application relates to a particular person, that there are reasonable grounds for suspecting that the person has information, or is in possession of material, likely to be relevant to the investigation;
 - (c) where the application relates to persons of a particular description, that -
 - (i) there are reasonable grounds for suspecting that some or all persons of that description have such information or are in possession of such material; and
 - (ii) the relevant offence could not effectively be investigated if the application was required to relate to a particular person, whether because of the urgency of the investigation, the need to keep the investigation confidential or the difficulty in identifying a particular person who has the relevant information or material;
 - (d) that there are reasonable grounds for believing that it is in the public interest, having regard -
 - (i) to the seriousness of the relevant offence under investigation;
 - (ii) to whether or not the relevant offence could be effectively investigated if an order under subsection (2) is not made;
 - (iii) to the benefit likely to accrue to the investigation if the information is disclosed or the material is obtained; and
 - (iv) to the circumstances under which the person or persons may have acquired, or may hold, the information or material (including any obligation of confidentiality in respect of the information or material and any family relationship with a person to whom the information or material relates), that an order under subsection (2) should be made in respect of that person or those persons.

- (5) Where an order under subsection (2) authorizes the Secretary for Justice to require a person to answer questions or otherwise furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to an investigation, the Secretary for Justice may by one, or more than one, notice in writing served on that person require him to attend before an authorized officer at a specified time and place, or at specified times and places, and answer questions or otherwise furnish information with respect to any matter that reasonably appears

to the authorized officer to be relevant to the investigation.

(6) Where an order under subsection (2) authorizes the Secretary for Justice to require a person to produce any material that reasonably appears to the Secretary for Justice to be relevant to the investigation or be of a class that is so relevant, the Secretary for Justice may by one, or more than one, notice in writing served on that person require him to produce at a specified time and place, or at specified times and places, any specified material that reasonably appears to him to be so relevant or any material of a specified class that reasonably appears to him to be so relevant.

(7) A notice in writing imposing a requirement on a person under subsection (5) or (6) shall -

(a) state that a court order has been made under this section and include -

(i) the date of the order;

(ii) the particulars of the relevant offence under investigation;

(iii) where the order is made in respect of that particular person, a statement to that effect;

(iv) where the order is made in respect of persons of a particular description and that person is of that particular description, a statement to that effect;

(v) a statement of the authorization given to the Secretary for Justice by the order; and

(vi) a statement of any other terms of the order relevant to that person;

(b) have annexed to it a copy of the order under this section, but there may be excluded from such copy -

(i) any reference in the order to a particular person other than that person, or to persons of a particular description not including that person; and

(ii) any details in the order that relate only to such particular person or persons of a particular description; and

(c) be substantially in the form specified in Schedule 2 in relation to such notice and in addition shall set out or have annexed to it subsection (8) and section 12E.

(8) An authorized officer may photograph or make copies of any material produced in compliance with a requirement under this section.

(9) Subject to section 2(5)(a), (b) and (c), a person is not excused from furnishing information or producing any material required under this section on the ground that to do so would breach an obligation as to secrecy or another restriction upon the disclosure of information or material imposed by statute or otherwise.

(10) A statement by a person in response to a requirement imposed by virtue of this section may not be used against him in criminal proceedings against him except in evidence in proceedings under section 14(7F) or under section 36 of the Crimes Ordinance (Cap. 200).

(11) Where an order under subsection (2) has been made, the Secretary for Justice, or a person authorized in writing by the Secretary for Justice for the purpose of this subsection, may, after satisfying any conditions that may be prescribed by rules of court in this respect, obtain a copy of the order; but subject to the foregoing part of this subsection and to subsection (7)(b), no person is entitled to obtain a copy of the order or any part of the order.

(12) Where a requirement imposed on a person under this section relates to material which consists of information recorded otherwise than in legible form—

(a) the requirement shall have effect as a requirement to produce the material in a form in which it can be taken away; and

(b) an authorized officer may, by notice in writing served on the person, require the person to produce at a specified time and place, or at specified times and places, the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the requirement to produce the material in

the form in which it is recorded.

(13) An application for the revocation or variation of an order under this section may be made by any person on whom a requirement is imposed under the order.

(14) The Secretary shall prepare a code of practice in connection with -

(a) the exercise of any of the powers conferred; and

(b) the discharge of any of the duties imposed, by this section, and any such code shall be laid before the Legislative Council and shall not be promulgated until the code has been approved by the Legislative Council.

(Part 4A added 21 of 2004 s.12)

Section: 12B Order to make material available

Remarks:
not yet in operation

(1) The Secretary for Justice or an authorized officer may, for the purpose of an investigation into a relevant offence, make an ex parte application to the Court for an order under subsection (2) in relation to particular material or to material of a particular description, whether in the HKSAR or, in the case of an application by the Secretary for Justice, elsewhere.

(2) Subject to subsection (6), the Court may, if on such an application it is satisfied that the conditions referred to in subsection (5) are fulfilled, make an order -

(a) that the person who appears to the Court to be in possession of the material to which the application relates shall -

(i) produce the material to an authorized officer for him to take away; or

(ii) give an authorized officer access to it, within such period as the order may specify;

(b) that the person who appears to the Court likely to come into possession of the material to which the application relates shall, when the person comes into possession of any such material -

(i) produce the material to an authorized officer for him to take away; or

(ii) give an authorized officer access to it, within such period as the order may specify; or

(c) in terms both of paragraphs (a) and (b).

(3) An order under subsection (2), in so far as it is in terms of paragraph (b) of that subsection, shall cease to have effect upon the expiration of 3 months after the day on which the order is made, or upon the expiration of such lesser period, if any, as is specified in the order for the purpose, but nothing in this subsection shall -

(a) affect any obligation incurred under that order prior to its expiration;

(b) prevent, in relation to the person required to comply with that order, any further order being made under that subsection in respect of that person (including before the expiration of that first-mentioned order).

(4) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the Court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(5) The conditions referred to in subsection (2) are -

(a) that there are reasonable grounds for suspecting that the relevant offence has been committed;

(b) that there are reasonable grounds for believing that the material to which the application relates is likely to be relevant to the investigation for the purpose of which the application

is made:

(c) that there are reasonable grounds for believing that it is in the public interest, having regard -

(i) to the benefit likely to accrue to the investigation if the material is obtained; and

(ii) to the circumstances under which the person in possession of the material holds it, that the material should be produced or that access to it should be given.

(6) Where an application under subsection (1) relates to material of a particular description, an order under subsection (2) shall only be made where an application in relation to particular material is not practicable.

(7) Where the Court makes an order under subsection (2)(a)(ii) or (b)(ii) in relation to material on any premises it may, on the same or a subsequent application of an authorized officer, order any person who appears to it to be entitled to grant entry to the premises to allow an authorized officer to enter the premises to obtain access to the material.

(8) An application for the revocation or variation of an order under subsection (2) or (7) may be made by any person who is subject to the order.

(9) Where material to which an application under this section relates consists of information recorded otherwise than in legible form -

(a) an order under subsection (2)(a)(i) or (b)(i) shall have effect as an order to produce the material in a form in which it can be taken away; and

(b) an order under subsection (2)(a)(ii) or (b)(ii) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(10) Where an order under subsection (2)(a)(i) or (b)(i) relates to information recorded otherwise than in legible form, an authorized officer may, by notice in writing served on the person, require the person to produce the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the order to produce the material in the form in which it was recorded.

(11) Subject to section 2(5)(a), (b) and (c), a person is not excused from producing any material in relation to which an order under subsection (2) is made on the ground that to do so would breach an obligation as to secrecy or another restriction upon the disclosure of information imposed by statute or otherwise.

(12) An authorized officer may photograph or make copies of any material produced under this section.

(Part 4A added 21 of 2004 s.12)

Section:	12C	Authority for search		
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Remarks:
not yet in operation

(1) An authorized officer may, for the purpose of an investigation into a relevant offence, apply to the Court for a warrant under this section in relation to specified premises.

(2) On such application the Court may issue a warrant authorizing an authorized officer to enter and search the premises if it is satisfied -

(a) that a requirement imposed under section 12A(6) in relation to material on the premises has not been complied with;

(b) that an order under section 12B in relation to material on the premises has not been complied with;

(c) that the conditions referred to in subsection (3) are fulfilled; or

(d) that the conditions referred to in subsection (4) are fulfilled.

(3) The conditions referred to in subsection (2)(c) are -

(a) that there are reasonable grounds for suspecting that the relevant offence has been committed;

(b) that the conditions referred to in section 12B(5)(b) and (c) are fulfilled in relation to any material on the premises;

(c) that it would not be appropriate to make an order under section 12B in relation to the material because -

(i) it is not practicable to communicate with any person entitled to produce the material;

(ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or

(iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless an authorized officer could secure immediate access to the material

(4) The conditions referred to in subsection (2)(d) are -

(a) that there are reasonable grounds for suspecting that the relevant offence has been committed;

(b) that there are reasonable grounds for suspecting that there is on the premises material which is likely to be relevant to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularized;

(c) that -

(i) it is not practicable to communicate with any person entitled to grant entry to the premises;

(ii) entry to the premises will not be granted unless a warrant is produced; or

(iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless an authorized officer arriving at the premises could secure immediate entry to them.

(5) Where an authorized officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material which is likely to be relevant to the investigation for the purpose of which the warrant was issued.

(6) An authorized officer may photograph or make copies of any material seized under this section.

(Part 4A added 21 of 2004 s.12)

Section:	12D	Disclosure of information obtained under section 12A, 12B or 12C		
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Remarks:
not yet in operation

(1) Where any information subject to an obligation of secrecy under the Inland Revenue Ordinance (Cap. 112) has been obtained from the Commissioner of Inland Revenue or any officer of the Inland Revenue Department under or by virtue of section 12A, 12B or 12C, that information may be disclosed by any authorized officer to the Secretary for Justice for the purposes of -

(a) any prosecution of a relevant offence;

(b) any application for an order under section 5 or 13(1); or

(c) any consideration of giving a notice under section 6(1), but, subject to subsection (4), may not otherwise be disclosed.

(2) Subject to subsection (1), information obtained by any person under or by virtue of section 12A, 12B or 12C may be disclosed by any authorized officer -

(a) to the Department of Justice, the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department, and the Independent Commission Against Corruption, for the purpose of preventing and suppressing a relevant offence;

(b) to any corresponding person or body, where the information appears to the Secretary for Justice to be likely to assist that person or body to discharge its functions relating to preventing and suppressing offences of a similar nature to relevant offences; and

(c) to the Chief Executive for the purposes of section 5 and the Secretary for the purposes of section 6.

(3) Subsection (2) is without prejudice to any other right to disclose information obtained under or by virtue of section 12A, 12B or 12C that may exist apart from subsection (2).

(4) Information mentioned in subsection (1) or (2) may, on the authority of the Chief Executive, but subject to the information being transmitted through and with the approval of the Ministry of Foreign Affairs of the People's Republic of China, be disclosed -

(a) to any organ of the United Nations or to any person in the service of the United Nations; and

(b) for the purpose of assisting the United Nations in securing compliance with or detecting evasion of measures in relation to a terrorist or terrorist associate decided upon by the Security Council of the United Nations.

(5) In this section, "corresponding person or body" (相應的人員或機構) means any person who or body which, in the opinion of the Secretary for Justice, has under the law of a place outside the HKSAR, functions corresponding to any of the functions of any body mentioned in subsection (2)(a).

(Part 4A added 21 of 2004 s.12)

Section:	12E	Investigation not to be prejudiced		
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Remarks:
not yet in operation

(1) Where an order under section 12A or 12B has been made or has been applied for and has not been refused or a warrant under section 12C has been issued, a person who, knowing or suspecting that the investigation in relation to which the order has been made or applied for or the warrant has been issued is taking place, shall not -

(a) without lawful authority or reasonable excuse, make any disclosure intending to prejudice the investigation; or

(b) falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, any material -

(i) knowing or suspecting that the material is likely to be relevant to the investigation; and

(ii) intending to conceal the facts disclosed by the material from persons carrying out the investigation.

(2) Where a person has been arrested in connection with an investigation specified in subsection (1), that subsection shall not apply as regards any disclosure in respect of the investigation made after such arrest.

(Part 4A added 21 of 2004 s.12)

Section: 12F Interpretation of Part 4B

Remarks:
not yet in operation

PART 4B

SEIZURE AND DETENTION OF PROPERTY SUSPECTED
TO BE TERRORIST PROPERTY

In this Part, unless the context otherwise requires -
“seized property” (被檢取的財產) means any property seized under section 12G.

(Part 4B added 21 of 2004 s.12)

Section: 12G Issue of warrant

Remarks:
not yet in operation

- (1) Where it appears to the Court upon the oath of any person that there is reasonable cause to suspect that -
 - (a) in any premises there is terrorist property; or
 - (b) there is in any premises any thing that is, or contains, evidence of a relevant offence, the Court may issue a warrant authorizing an authorized officer to enter the premises named in the warrant and there to search for and seize, remove and detain any terrorist property.
- (2) An authorized officer executing a warrant issued under subsection (1) may use such assistance and force as are reasonable and necessary for the purposes for which the warrant is issued.
- (3) An authorized officer who has entered any premises by virtue of a warrant issued under subsection (1) may seize, remove and detain any thing (including any material produced or required to be produced by virtue of an order under section 12A or 12B or a warrant issued under section 12C) if he has reason to suspect that such thing is terrorist property.
- (4) An authorized officer who has entered any premises by virtue of a warrant issued under subsection (1) may stop and search any person found on the premises if -
 - (a) in relation to the premises, any thing mentioned in subsection (3) has been seized; or
 - (b) the authorized officer has reason to suspect that the person has in his actual custody any thing mentioned in subsection (3).
- (5) No person shall be searched under this section except by a person of the same sex.

(Part 4B added 21 of 2004 s.12)

Section: 12H Period for which seized property may be detained

Remarks:
not yet in operation

- (1) Seized property shall not be detained for a period of more than 30 days unless, before the expiration of that period, the continued detention of the property is authorized by an order under subsection (2).
- (2) The Court may, on application made to it by an authorized officer, by order authorize the continued detention of seized property where it is satisfied that -
- (a) there are reasonable grounds for suspecting that the property is terrorist property; and
 - (b) the detention of the property is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the HKSAR or elsewhere) of-
 - (i) proceedings against any person in relation to an offence with which the property is connected; or
 - (ii) steps which may result in a direction being given under section 6(1) in respect of the property or which may result in the forfeiture or other confiscation of the property.
- (3) An order under subsection (2) shall authorize the continued detention of the seized property to which it relates for such period, not exceeding 3 months beginning with the date of the order, as is specified in the order and the Court, on application made to it by an authorized officer and if satisfied as to the matters referred to in subsection (2)(a) and (b), may thereafter from time to time by order authorize the further detention of the property but so that -
- (a) no period of detention specified in an order under this subsection shall exceed 3 months beginning with the date of the order; and
 - (b) the total period of detention shall not exceed 2 years from the date of the order under subsection (2).
- (4) At any time while seized property is being detained by an order under subsection (2) or (3) the Court may direct its release if satisfied -
- (a) on an application made by -
 - (i) the person from whom it was seized;
 - (ii) a person by, for or on behalf of whom it was held; or
 - (iii) a person who otherwise has an interest in it, that there are no, or are no longer, any such grounds for its detention as are referred to in subsection (2); or
 - (b) on an application made by an authorized officer, that its detention is no longer justified.
- (5) If, at any time when any seized property is being detained by virtue of an order under subsection (2) or (3) -
- (a) proceedings are instituted (whether in the HKSAR or elsewhere) against any person in relation to an offence with which the property is connected; or
 - (b) steps have been taken (whether in the HKSAR or elsewhere) which may result in a direction being given under section 6(1) in respect of the property or which may result in the forfeiture or other confiscation of the property, the property shall not be released until the proceedings or steps have been concluded.

(Part 4B added 21 of 2004 s.12)

Section:	12I	Interest		
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Remarks:
not yet in operation

Seized property which is money and which is detained in pursuance of an order under section 12H(2)

or (3) shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing thereon shall be added to the property on its release.

(Part 4B added 21 of 2004 s.12)

Section:	12J	Procedure		
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Remarks:
not yet in operation

An order under section 12H(2) shall provide for notice to be given to persons affected by the order.

(Part 4B added 21 of 2004 s.12)

Section:	13	Forfeiture of certain terrorist property		
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Remarks:
not yet in operation

PART 5

FORFEITURE AND OFFENCES

- (1) The Court of First Instance may, if satisfied on an application made by or on behalf of the Secretary for Justice that any property specified in the application is terrorist property—
(Amended 21 of 2004 s. 21)
- (a) mentioned in paragraph (a) of the definition of "terrorist property" and which also—
 - (i) in whole or in part directly or indirectly represents any proceeds arising from a terrorist act;
 - (ii) is intended to be used to finance or otherwise assist the commission of a terrorist act; or
 - (iii) was used to finance or otherwise assist the commission of a terrorist act; or
 - (b) mentioned in paragraph (b) of the definition of "terrorist property", order, subject to subsection (2), the forfeiture of the property.
- (2) Where the Court of First Instance makes an order under subsection (1) in respect of any property, the Court shall specify in the order so much, if any, of the property in respect of which the Court is not satisfied as mentioned in that subsection. (Amended 21 of 2004 s. 21)
- (3) An order may be made under this section whether or not proceedings are brought against any person for an offence with which the property concerned is connected.
- (4) The standard of proof on an application under this section shall be the standard of proof applicable to civil proceedings in a court of law.
- (5) Subject to section 20(3), Order 115, rule 29, of the Rules of the High Court (Cap 4 sub. leg. A) shall, with all necessary modifications, apply to and in relation to subsection (1) as it applies to and in relation to section 24D(1) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405).

(Amended 21 of 2004 s.13)

Section:	14	Offences	L.N. 172 of 2004; L.N. 173 of 2004	07/01/2005
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- (1) Any person who contravenes section 7, 8 or 9 commits an offence and is liable—
(a) on conviction on indictment to a fine and to imprisonment for 14 years;

- (b) on summary conviction to a fine at level 6 and to imprisonment for 2 years.
- (2) A person who knowingly contravenes a notice under section 6(1) commits an offence and is liable- (Amended 21 of 2004 s.14)
- (a) on conviction on indictment to a fine and to imprisonment for 7 years;
- (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.
- (3) A person who, without reasonable excuse, contravenes a requirement under section 6(7) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 3 months.
- (4) A person who contravenes section 10(1) or 11(1) or (2) commits an offence and is liable- (Amended 21 of 2004 s. 14)
- (a) on conviction on indictment to a fine and to imprisonment for 7 years;
- (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.
- (5) A person who contravenes section 12(1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.
- (6) A person who contravenes section 12(5) commits an offence and is liable-
- (a) on conviction on indictment to a fine and to imprisonment for 3 years;
- (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.
- (7) In proceedings against a person for an offence under subsection (6), it is a defence to prove-
- (a) that he did not know or suspect that the disclosure concerned was likely to be prejudicial in the way referred to in section 12(5); or
- (b) that he had lawful authority or reasonable excuse for making that disclosure.
- (7A) Any person who contravenes section 11B(1) or (2) commits an offence and is liable on conviction to imprisonment for life. (Added 21 of 2004 s. 14)
- (7B) Any person who contravenes section 11E(1), (2)(b) or (3) or 11F(1), (2)(b) or (3) commits an offence and is liable-
- (a) on conviction on indictment to a fine and to imprisonment for 14 years;
- (b) on summary conviction to a fine at level 6 and to imprisonment for 2 years. (Added 21 of 2004 s. 14)
- (7C) Any person who contravenes section 11E(2)(a) or 11F(2)(a) commits an offence and is liable on conviction to imprisonment for life. (Added 21 of 2004 s. 14)
- (7D) Any master of a Hong Kong ship who, without reasonable excuse, contravenes section 11H(2), (3) or (4) commits an offence and is liable on conviction to a fine at level 2. (Added 21 of 2004 s. 14)
- (7E) Any person who without reasonable excuse fails to comply with a requirement imposed on him under section 12A commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year. (Added 21 of 2004 s. 14)
- (7F) Any person who, in purported compliance with a requirement under section 12A-
- (a) makes a statement that he knows to be false or misleading in a material particular; or
- (b) recklessly makes a statement that is false or misleading in a material particular,
- commits an offence and is liable-
- (c) on conviction on indictment to a fine of \$500000 and to imprisonment for 3 years;
- (d) on summary conviction to a fine at level 6 and to imprisonment for 1 year. (Added 21 of 2004 s. 14)
- (7G) Any person who without reasonable excuse fails to comply with an order under section 12B(2) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year. (Added 21 of 2004 s. 14)
- (7H) Any person who intentionally and without reasonable excuse hinders or obstructs an authorized officer in the execution of a warrant issued under section 12C commits an offence and is liable-
- (a) on conviction on indictment to a fine of \$250000 and to imprisonment for 2 years;
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months. (Added 21 of 2004 s. 14)

- (7I) A person who contravenes section 12E(1) commits an offence and is liable-
- (a) on conviction on indictment to a fine and to imprisonment for 7 years;
 - (b) on summary conviction to a fine of \$500000 and to imprisonment for 3 years. (Added 21 of 2004 s. 14)
- (7J) Any person who intentionally and without reasonable excuse obstructs any person in the exercise of his powers under a warrant issued under section 12G(1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months. (Added 21 of 2004 s. 14)
- (8) Summary proceedings for an offence under this Ordinance, being an offence alleged to have been committed outside the HKSAR, may be commenced at any time not later than 12 months from the date on which the person charged first enters the HKSAR after committing the offence.
- (9) No proceedings for an offence under this Ordinance shall be instituted in the HKSAR except by or with the consent of the Secretary for Justice.

Note:

***Sections 8, 14(2), (3) and (7E) to (7J) have not yet come into operation.**

Section:	15	Supplementary provisions applicable to licences mentioned in section 6(1) or 8		
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Remarks:
not yet in operation

PART 6

MISCELLANEOUS

- (1) Without prejudice to the generality of conditions and exceptions which may be specified in a licence mentioned in section 6(1)-
- ~~(a) such conditions may relate to specifying the manner in which the funds to which the licence relates shall be held from time to time ; and~~
 - (a) such conditions may -
 - (i) relate to specifying the manner in which the property to which the licence relates shall be held from time to time;
 - (ii) relate to the appointment of a receiver to take possession of the property and to deal with it in a manner which preserves the value of the property or any other property into which it is converted; and
 - (iii) require a person holding the property to give possession of the property to a receiver if any, appointed in respect of the property; and
- (Replaced 21 of 2004 s.15)
- (b) such exceptions may relate but are not limited to-
 - (i) the reasonable living expenses;
 - (ii) the reasonable legal expenses; and
 - (iii) the payments liable to be made under the Employment Ordinance (Cap 57), of any person by, for or on behalf of whom the funds are held.
- (2) Without prejudice to the generality of conditions and exceptions which may be specified in a licence mentioned in section 8, such exceptions may relate to the reasonable living expenses, reasonable legal expenses and the payments liable to be made under the Employment Ordinance (Cap 57) of the person second-mentioned in that section to which the licence relates.

Section:	16	Delegations	L.N. 137 of 2002	23/08/2002
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- (1) The Chief Executive may, to such extent and subject to such restrictions and conditions as the Chief Executive may think proper, delegate or authorize the delegation of any of the Chief Executive's functions under this Ordinance to any public officer, or class or description of public officers, approved by the Chief Executive, and references in this Ordinance to the Chief Executive shall be construed accordingly.
- (2) The Secretary may, to such extent and subject to such restrictions and conditions as the Secretary may think proper, delegate or authorize the delegation of any of the Secretary's functions under this Ordinance to any public officer, or class or description of public officers, approved by the Secretary, and references in this Ordinance to the Secretary shall be construed accordingly.

Section:	17	Applications to Court of First Instance		
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Remarks:
not yet in operation

- (1) Where-
 - (a) an application under section 5(1) has been made ex parte and in consequence thereof an order under section 5(2) has been published in the Gazette, then-
 - (i) any person specified in the order, or any person acting for or on behalf of the person so specified, may at any time make an application to the Court of First Instance for the order to be revoked to the extent that it relates to the person so specified; (Amended 21 of 2004 s. 21)
 - (ii) any person by, for or on behalf of whom any property specified in the order is held, or any other person in respect of whom the Court of First Instance is satisfied that the person is affected by the order, may at any time make an application to the Court of First Instance for the order to be revoked to the extent that it relates to the property so specified; (Amended 21 of 2004 s. 21)
 - (b) a notice has been given under section 6(1), then any person by, for or on behalf of whom any funds specified in the notice are property specified in the notice is held, or any other person in respect of whom the Court of First Instance is satisfied that the person is affected by the notice, may at any time make an application to the Court of First Instance for the notice to be revoked to the extent that it relates to the funds so property so specified. (Amended 21 of 2004 s. 16) (Amended 21 of 2004 s. 21)
- (2) A person who makes an application under subsection (1) shall give a copy of the application (and an affidavit, if any, and other relevant documents, if any, in support)-
 - (a) to the Secretary for Justice and, in the case of an application under subsection (1)(a)(ii) or (b), to any other person by, for or on behalf of whom the property or funds concerned is or are concerned is held; and (Amended 21 of 2004 s. 16)
 - (b) not later than 7 days before the date fixed for the hearing of the application or such shorter period as the Court of First Instance may permit pursuant to rules of court. (Amended 21 of 2004 s. 21)
- (3) On an application under subsection (1)-
 - (a) in the case of an application under subsection (1)(a)(i) or (ii), the presumption mentioned in section 5(4) shall not be applicable, whether for the purposes of the proceedings or otherwise, immediately upon the initiation of the proceedings and until the conclusion of the proceedings (including the conclusion of any appeal arising out of the proceedings); and
 - (b) the Court of First Instance shall grant the application unless- (Amended 21 of 2004 s. 21)
 - (i) where subsection (1)(a)(i) is applicable, the Court of First Instance is satisfied that the person specified in the order concerned under section 5(2) is a terrorist or terrorist

associate, as the case may be;

(ii) where subsection (1)(a)(ii) is applicable, the Court of First Instance is satisfied that the property specified in the order concerned under section 5(2) is terrorist property;

(iii) where subsection (1)(b) is applicable, the Court of First Instance is satisfied that there are reasonable grounds to suspect that the funds specified in the notice concerned under section 6(1) are property specified in the notice concerned under section 6(1) is terrorist property. (Amended 21 of 2004 s.16)

(4) An application for-

(aa) the revocation or variation of a direction mentioned in section 6(10) may be made by any person affected by the notice under section 6(1) in which the direction appears; (Added 21 of 2004 s.16)

(a) the grant of a licence mentioned in section 6(1) or 8 may be made by any person affected by the operation of that section; or

(b) the variation of a licence mentioned in section 6(1) or 8 may be made by any person affected by the licence.

(5) A person who makes an application under subsection (4) shall give a copy of the application (and affidavit, if any, and other relevant documents, if any, in support)-

(a) to the Secretary for Justice and to any other person affected by the operation concerned of section 6(1) or 8, or the licence concerned, as the case may be; and

(a) to the Secretary for Justice and to any other person affected by -

(i) the notice under section 6(1) concerned;

(ii) the operation concerned of section 6(1) or 8; or

(iii) the licence concerned, as the case may be; and

(Replaced 21 of 2004 s.16)

(b) not later than 7 days before the date fixed for the hearing of the application or such shorter period as the Court of First Instance may permit pursuant to rules of court. (Amended 21 of 2004 s. 21)

(6) The Court of First Instance shall not grant an application under subsection (4) unless it is satisfied that it is reasonable in all the circumstances of the case to do so. (Amended 21 of 2004 s. 21)

(7) Where-

(a) proceedings relating to an application under subsection (4) (including proceedings relating to any appeal) are no longer pending; and

(b) the licence to which the application relates

(i) is, or is still, required to be granted; or

(ii) is, or is still, required to be varied, as the case may be,

(b) either -

(i) the direction to which the application relates -

(A) is, or is still, required to be revoked; or

(B) is, or is still, required to be varied; or

(ii) the licence to which the application relates -

(A) is, or is still, required to be granted; or

(B) is, or is still, required to be varied, as the case may be,

(Replaced 21 of 2004 s.16)

then the Secretary shall, as soon as is practicable, cause the direction to be revoked or varied, or the licence to be granted or varied, as the case may be, accordingly. (Amended 21 of 2004 s.16)

Remarks:
not yet in operation

- (1) Subject to subsection (2), where-
- (a) a person has ceased to be specified as a terrorist or terrorist associate under section 5(2); or
 - (b) property has ceased to be-
 - (i) specified as terrorist property under section 5(2); or
 - (ii) specified in a notice under section 6(1),
- then the Court of First Instance may, on application by- (Amended 21 of 2004 s. 21)
- (c) in the case of paragraph (a), the person who was so specified, or any person acting for or on behalf of the person who was so specified;
 - (d) where paragraph (b) is applicable, any person by, for or on behalf of whom the property that was so specified is held,
- order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.
- (2) The Court of First Instance shall not order compensation to be paid under subsection (1) unless it is satisfied- (Amended 21 of 2004 s. 21)
- (a) where subsection (1)(a) is applicable, that at no time when the person concerned was specified as a terrorist or terrorist associate under section 5(2) was the person either a terrorist or terrorist associate;
 - (b) where subsection (1)(b) is applicable, that at no time when the property was specified as terrorist property under section 5(2), or was specified in a notice under section 6(1), as the case may be, was the property terrorist property;
 - (c) that there has been some **serious** default on the part of any person concerned in obtaining the relevant specification under section 5(2) or 6(1); and (Amended 21 of 2004 s. 17)
 - (d) the applicant has, in consequence of the relevant specification and the default mentioned in paragraph (c), suffered loss.
- (2A) Without prejudice to the operation of subsection (1), where -
- (a) any property is seized property within the meaning of section 12F; and
 - (b) subsequently, none of the following events occurs -
 - (i) the property is specified in a notice under section 6(1);
 - (ii) the property is forfeited under section 13;
 - (iii) proceedings are instituted (whether in the HKSAR or elsewhere) -
 - (A) against any person in relation to an offence with which the property is connected;
 - or
 - (B) which may result in the forfeiture or other confiscation of the property
- the Court may, on an application made by any person by, for or on behalf of whom the property was held, order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order. (Added 21 of 2004 s. 17)
- (2B) The Court shall not order compensation to be paid under subsection (2A) unless it is satisfied that -
- (a) there has been some default on the part of any person concerned with the seizure or detention of the property concerned; and
 - (b) the applicant has, in consequence of such seizure or detention and the default mentioned in paragraph (a), suffered loss in relation to the property.”
- (Added 21 of 2004 s. 17)
- (3) The amount of compensation to be paid under this section shall be such as the Court of First Instance thinks just in all the circumstances of the case. (Amended 21 of 2004 s. 21)

Section:	18A	Saving of common law remedies		
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Remarks:
not yet in operation

(1) Subject to subsection (2), nothing in section 18 affects any remedy available to a person at common law.

(2) Where a court orders any compensation under section 18 or damages at common law in respect of any default, the court shall take into account, in reduction of the amount of compensation or damages, any amount awarded as damages or ordered as compensation (as the case may be) in respect of that default.

(Added 21 of 2004 s. 18)

Section:	19	(Repealed 21 of 2004 s. 19)	L.N. 173 of 2004	07/01/2005
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Section:	20	Procedure	L.N. 173 of 2004	07/01/2005
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- (1) Provision may be made by rules of court-
 - (a) with respect to applications under-
 - (i) section 5;
 - (ii) section 13;
 - (iii) section 17; or (Replaced 21 of 2004 s. 20)
 - (iv) section 18; (Replaced 21 of 2004 s. 20)
 - (v) (Repealed 21 of 2004 s. 20)
 - (b) without limiting the generality of paragraph (a), with respect to the circumstances in which applications mentioned in that paragraph shall be made ex parte;
 - (c) without limiting the generality of paragraph (a), with respect to expediting, on grounds specified in the rules, the hearing of applications mentioned in that paragraph;
 - (d) with respect to the division, conversion or disposal of property for the purposes of satisfying an order under section 13(1) to which the property is subject where-
 - (i) section 13(2) is applicable; and
 - (ii) the property is not readily divisible for those purposes;
 - (e) without limiting the generality of paragraph (a), prescribing interests for the purposes of the definition of "prescribed interest";
 - (f) generally with respect to the procedure under this Ordinance before any court.
- (2) Rules of court-
 - (a) shall provide for applications by any person on whom a requirement is imposed under an order under section 12A or 12B for the revocation or variation of such order;
 - (b) may provide for-
 - (i) proceedings relating to section 12A, 12B or 12C;
 - (ii) conditions that must be satisfied before a person (including the Secretary for Justice) referred to in section 12A(11) may obtain a copy of an order under section 12A. (Replaced 21 of 2004 s. 20)
- (3) Subsections (1) and (2) are without prejudice to the generality of any existing power to make rules. (Replaced 21 of 2004 s. 20)

Section:	21	Proceedings inter partes shall be held in open court unless otherwise ordered by the court	L.N. 137 of 2002	23/08/2002
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- (1) Subject to subsection (2), proceedings inter partes in respect of applications mentioned in section 20(1)(a) shall be held in open court unless the court otherwise orders, upon application made by any party to the proceedings, that all or part of the proceedings shall be held in chambers or in camera.
- (2) The court shall not make an order that proceedings mentioned in subsection (1) shall be held in chambers or in camera unless the court is satisfied that the order is reasonably necessary in the interests of-
 - (a) the security, defence or external relations of the HKSAR; or
 - (b) the administration of justice.
- (3) In this section, "court" (法庭) includes a magistrate.

Schedule:	1	FUNDS	L.N. 173 of 2004	07/01/2005
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[section 2(1)]
(Amended 21 of 2004 s. 22)

1. Gold coin, gold bullion, cash, cheques, claims on money, drafts, money orders and other payment instruments.
2. Deposits with financial institutions or other entities, balances on accounts, debts and debt obligations.
3. Securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivatives contracts).
4. Interest, dividends or other income on or value accruing from or generated by property.
5. Credit, rights of set-off, guarantees, performance bonds or other financial commitments.
6. Letters of credit, bills of lading and bills of sale.
7. Documents evidencing an interest in funds or financial resources, and any other instrument of export financing.

Schedule:	2	FORM		
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Remarks:
not yet in operation

SCHEDULE 2[s. 12A]

FORM

NOTICE UNDER SECTION 12A OF UNITED NATIONS (ANTI-TERRORISM MEASURES) ORDINANCE (CAP. 575) REQUIRING ATTENDANCE TO ANSWER QUESTIONS OR FURNISH INFORMATION

To:
(name and address of person)

1. On ...(date)....., in the Court of First Instance, Hong Kong an order was made by the Hon. Mr. Justiceunder section 12A of the United Nations (Anti-Terrorism Measures) Ordinance for the purpose of an investigation into a relevant offence. A copy of the order as it relates to you is annexed to this Notice.

2. Particulars of the relevant offence under investigation are -
(a) Offence:
(b) Date of offence:
(c) Place of offence:
(d) Other particulars:

*3. The order was made in respect of you.

Or

*3. The order was made in respect of(description of persons) and you are a person of that description.

4. The order authorizes the Secretary for Justice to require a person referred to in paragraph 3 above -
*(a) to answer questions or otherwise furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to the investigation;
*(b) to produce any material that reasonably appears to the Secretary for Justice to be relevant to the investigation or be of a class that is so relevant.

5. This Notice requires you—
*(a) to attend before.....(name and description of authorized officer).....at.....(place of interview).....on.....(date and time of interview).....to answer questions or otherwise furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to the investigation;
*(b) to produce attime(s) and place(s))the following material or class of material -.....

6. The order also requires(other terms of the order relevant to the person).....

7. NOTE: 1. This Notice has important legal consequences. It is in your interest to read the provisions of the Ordinance set out with this Notice, and to seek legal advice in relation to your rights and obligations under this Notice.

2. You may be accompanied by a solicitor and a barrister when you attend to answer questions or furnish information in compliance with paragraph 5(a) of this Notice, or to produce material in compliance with paragraph 5(b) of this Notice.

Dated this day of 20 .

.....
for and on behalf of the Secretary
for Justice

Delete as appropriate

ANNEX 4: All Laws, Regulations and Other Material Received

The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Cap. 2101)

Ordinances

Banking Ordinance (Cap. 155)
Betting Duty Ordinances (Cap. 108)
Business Registration Ordinance (Cap. 310)
Chief Executive Election Ordinance (Cap. 569)
Chinese Temples Ordinance (Cap. 153)
Community Chest of Hong Kong Ordinance (Cap. 1122)
Companies Amendment Ordinance (No. 30 of 2004)
Companies Ordinance (Cap. 32)
Credit Unions Ordinance (Cap. 119)
Crimes Ordinance (Cap. 200)
Criminal Procedure Ordinance (Cap. 221)
Customs and Excise Service Ordinance (Cap. 342)
Dangerous Drugs Ordinance (Cap. 134)
District Court Ordinance (Cap. 336)
Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)
Estate Agents Ordinance (Cap. 511)
Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Cap. 511C) and related forms
Evidence Ordinance (Cap. 8)
Exchange Fund Ordinance (Cap. 66)
Fugitive Offenders Ordinance (Cap. 503)
Gambling Ordinance (Cap. 148)
High Court Ordinance (Cap. 4)
Hong Kong Bill of Rights Ordinance (Cap. 383)
Hong Kong Council of Social Service Incorporation Ordinance (Cap. 1057)
Hong Kong Court of Final Appeal Ordinance (Cap. 484)
Import and Export (General) Regulations (Cap. 60A)
Import and Export Ordinance (Cap. 60)
Import and Export (Registration) Regulations (Cap. 60E)
Independent Commission Against Corruption Ordinance (Cap. 204)
Insurance Companies Ordinance (Cap. 41)
Interpretation and General Clauses Ordinance (Cap.1)
Interception of Communications and Surveillance Ordinance (Cap. 589)
Immigration Ordinance (Cap. 115)
Inland Revenue Ordinance (Cap. 112)
Legal Practitioners Ordinance (Cap. 159)
Limited Partnerships Ordinance (Cap. 37)
Money Changers Ordinance (Cap. 34)
Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)
Money Lenders Ordinance (Cap. 163)
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ANNEX 5: Additional Charts, Tables and Case Studies

1. Case Examples

ML cases prosecuted in Hong Kong

Case 1: In 2003, a Hong Kong resident was sentenced to 4½ years' imprisonment for illegal bookmaking and laundering HKD 471 million (USD 60 million) in the proceeds of illegal gambling. Subsequent investigation of the STRs filed disclosed an Indonesian resident who has been acting in the capacity of an offshore banker, essentially underwriting the Hong Kong resident's illegal gambling activities. The Indonesian was found to have controlled accounts that had disbursed HKD 724 million (USD 93 million) in illegal gambling proceeds in the preceding five years. The Indonesian was arrested during transit in Hong Kong, and in 2005 convicted of ML and sentenced to five years' imprisonment. *This case shows that the sentencing for ML offence is sometimes heavier than the predicate crime.*

Case 2: In 2004, C&ED neutralised a pirate optical disc manufacturing syndicate. In August 2006, the syndicate's female head was convicted of intellectual property offence and ML offences and sentenced to 45 months' imprisonment for the ML offence and 10 months for the intellectual property offences. Proceedings are underway to confiscate HKD 20 million (USD 2.6 million) in restrained assets. *This case shows that law enforcement agencies in Hong Kong do charge persons with both the predicate crime and ML offences.*

Case 3: In 2006, a protracted joint investigation between the Narcotics Bureau of the Hong Kong Police (NB) and the Australian Crime Commission resulted in the conviction of two individuals in Hong Kong for conspiracy to launder the proceeds of HKD 73 Million (USD 9.3m) in drug proceeds during 2003 and 2004, between Sydney and Hong Kong. The individuals were sentenced to nine years' and four years' imprisonment, respectively. In this case, the predicate crime occurred in Australia. Only the dealing of the proceeds of the predicate crime was in HK. *This case illustrates the severity of sentence ML offences can attract in Hong Kong.*

Case 4: In late 2001, Chinese authorities disclosed a fraud involving three successive managers of a provincial bank branch, who over a ten-year period had conspired to defraud the bank. A significant amount of the stolen funds were sent to Hong Kong, where the principal manager's cousin and his wife laundered it through companies they had set up. The investigation revealed the manager's cousin and his wife, both ex-bankers, had set up over 100 companies and 500 bank accounts to launder the proceeds of the fraud, amounting to HKD 6.5 billion (about USD 0.83 billion), during the period 1995: 2001. The cousin and his wife were subsequently prosecuted for ML. In January 2007, they were both convicted and sentenced to six years' imprisonment. Around HKD 850 million (about USD 109 million) in assets was recovered and is currently under restraint by the Police in relation to this case. *This case illustrates the scale and complexity of ML investigations undertaken by the Hong Kong Police FID.*

Case 5: In 2002, a director of an UK based broadcasting corporation subsidiary and two directors of an associated company were charged by the ICAC with corruption and ML offences. In the course of sourcing programme merchandise, the three directors conspired to demand illegal commissions from their suppliers totalling over HKD 6 million (USD 769 230). The proceeds were paid into the bank accounts of nominee companies, transferred to bank accounts in Switzerland and New Zealand and subsequently shared amongst the three directors. In 2004, they pleaded guilty to one corruption charge and the ML charge was left on the court file. They were each sentenced to 20 months' imprisonment, with the director of the subsidiary ordered to pay restitution equivalent to over USD 330 000. The prosecution accepted the plea offer because of the close link between the underlying facts of the corruption and ML offence and the likelihood that the sentences imposed on the three directors would not be significantly affected by not proceeding with the ML charge. *This case demonstrates that in Hong Kong persons are charged with both the predicate crime and ML.*

ML conviction relating to illegal bookmaking

Case 1: In 2003, a Hong Kong resident was sentenced to 4½ years' imprisonment for illegal bookmaking and laundering HKD 471 million (USD 60.4 million) in the proceeds of illegal gambling. The Hong Kong resident's assets totalling HKD 4 million (USD 512 820) were later confiscated. Subsequent investigation disclosed that a foreign resident, who has been acting in the capacity of an offshore banker, was essentially underwriting the Hong Kong resident's illegal gambling activities. The foreign resident was found to have controlled accounts that had disbursed HKD 724 million (USD 92.8 million) in illegal gambling proceeds in the preceding five years. Suspicious transaction reports filed by banks, and the records they maintained, played an important role in facilitating the investigation. The foreign resident was arrested during transit in Hong Kong, and in 2005 convicted of ML and sentenced to five years of imprisonment.

Enforcement of a foreign confiscation order issued as part of civil proceedings

Case 1: A joint investigation between the Police (FI NB) and the authorities in an overseas jurisdiction targeted a drug trafficker engaging in smuggling drugs from HK to the overseas jurisdiction. The investigation had also identified his assets in Hong Kong. After an unsuccessful prosecution in Hong Kong, the overseas jurisdiction issued a civil forfeiture order against him in 2001. Assets worth USD 1.47 million were finally forfeited in 2003. The case is now pending sharing with the overseas jurisdiction.

Mutual legal assistance

Case 1: In 2003, an investigation of an Asian country into a loan sharking and ML syndicate revealed crime proceeds were converted to bearer bonds amounting to USD 75 million. The bonds were later found to have redeemed and transferred to a fund manager in HK for investment. In late 2003, the authorities of the Asian country made a MLA request to HK for tracing of the proceeds and collection of evidence. The request was then taken over by the Police (FI NB). Investigation by FI NB found that the proceeds had been invested in various stocks, currencies and overseas property. The financial evidence collected by FI NB, e.g. banker evidence, bank statements, etc., was subsequently used for the prosecution in the Asian country. As a result, three nationals of the Asian country were convicted of loan sharking and ML and confiscation orders were issued to confiscate a total of USD 38.2M from them. In January 2007, an external confiscation order was successfully registered in HK.

Money laundering using nominee corporate accounts

Case 1: The ease with which syndicates can utilise nominee corporate account to structure through Hong Kong was highlighted in a case involving the laundering of proceeds from a series of embezzlement at a subsidiary of Bank A in a neighbouring jurisdiction. In late 2001, the authorities of the neighbouring jurisdiction disclosed a fraud involving three successive managers of a provincial bank branch, who over a 10-year period had conspired to defraud the bank. A significant amount of the stolen funds were sent to Hong Kong, where the principal manager's cousin and his wife laundered it through companies they had set-up. The investigation revealed the manager's cousin and his wife, both ex-bankers, had set up over 100 companies and 500 bank accounts to launder the proceeds of the fraud, HKD 6.5-billion, during the period 1995: 2001. In January 2007, the cousin and his wife were convicted of ML and sentenced to six years' imprisonment respectively. Around HKD 850 Million in assets was recovered and is currently under restraint by the Police in relation to this case pending repatriation to Bank A. This case highlights the size and complexity of ML investigations undertaken by the Police.

Money laundering related to an international 'boiler room' fraud

Case 1: In March 2005 the Court of First Instance confiscated HKD 14.8M in assets from the head of an international boiler room fraud syndicate through absconder proceedings. The syndicate, active since 1997, utilised bases in City B and subsequently City C from which they targeted victims using cold calls to market bogus investment schemes. They utilised numerous offshore nominee companies with bank accounts in Hong Kong to launder their proceeds. Suspicious transaction reports filed by banks, and the records they maintained, played an important role in facilitating the investigation. The syndicate's main nominee account opener was convicted in the Court of First Instance for ML offences and sentenced to six years' imprisonment. In early 2007, a similar scheme resulted in four years' imprisonment for the individual who operated the bank accounts used in 2005 and 2006 to deceive victims from City D and City E out of HKD 2.6 million.

Exercise of Regulators' powers

Case 1: In December 2005, the SFC reprimanded an LC and fined it HKD 700 000 (USD 90 000) for serious breaches of, among other things, the *Securities Guidelines*. The LC acted as the selling broker in a number of significant transactions. Following these transactions, a large portion of the sale proceeds (ranging from HKD 39 million to HKD 84 million) was transferred by sellers to some other accounts, which were accounts of BVI companies opened shortly before the transactions. The proceeds could not be traced beyond these BVI companies as they were transferred out of Hong Kong. It was found that the LC had failed to:

- (a) enquire into the reason for the fund transfers in order to fulfil the requirements of the *Securities Guidelines*;
- (b) put in place internal policies or procedures to ensure compliance with the *Securities Guidelines*; and
- (c) appoint an officer to be responsible for disclosure by staff of suspicions about a person, transaction or property.

In May and July 2006, two former responsible officers of the LC were suspended for a period of six and five months respectively for the same failures. Prior to taking these actions, the SFC suspended another former responsible officer of the LC for a period of four months in September 2005 for breaching the *Securities Guidelines* and KYC rule of the *Code of Conduct*. As the account executive of the BVI companies, he had failed to enquire into the identity of their ultimate beneficiary owner and the suspicious fund transfers.

Case 2: In May 2006, the SFC suspended a responsible officer of an LC for nine months for breaching the *Securities Guidelines*. The LC concerned was the placing agent and underwriter for a placement. The responsible officer had, among other things, failed to enquire into:

- (a) the financial standing of six sub-underwriters, which were BVI companies introduced by an account executive, in breach of the *Securities Guidelines*; and
- (b) the identity of the ultimate beneficiary owner of the relevant share subscription.

The responsible officer lodged an appeal to the Securities and Futures Appeal Tribunal, which upheld the SFC's findings and considered imposing an even longer suspension. In June 2006, the SFC also reprimanded the LC concerned for, among other things, breaching the *Securities Guidelines* and ignoring the KYC principle.

Suspicious Transaction Reporting

Case 1: In October 2002, a STR was filed by a bank. The bank reported that a 23-year old female customer, who claimed to be a student, frequently made cash deposits to her own account and an account of a male customer. The cash also carried strong smell of cigarette. The JFIU analyzed the

information and discovered that the male customer had just been arrested for trafficking in a dangerous drug (heroin). The JFIU then disseminated the STR to the Financial Investigation Division, Narcotics Bureau (FID NB) for further investigation. The FID NB's investigation subsequently revealed that the bank accounts of the duo had received cash deposits of HKD 1.8 million (USD 230 000) and HKD 2.9 million (USD 371 000) respectively between July and Oct 2002, and the monies were subsequently withdrawn predominantly by way of cash withdrawals. The investigation finally culminated to the prosecution of the female for ML. She was convicted and sentenced to four years' imprisonment in August 2007. The male customer was convicted of trafficking in a dangerous drug at an earlier time and was sentenced to 11 years' imprisonment.

The effectiveness and efficiency of the LEAs

Case 1: Following a joint operation between the NB of the Police and the Police in Country A, which resulted in the seizure of 70 kg of heroin in City X in 2002, two individuals in Hong Kong were convicted of conspiracy to launder HKD 173 million (USD 22 million) in drug proceeds. Upon guilty pleas, the two individuals were sentenced to 6½ years' and five years' imprisonment respectively, and assets of HKD 10.5 million (USD 1.3 million) were confiscated.

Case 2: In 2003, a cross-border law enforcement operation code-name "Firelily" targeted organised vice activities in Kowloon and City Y targeting the syndicate heads on both sides of the border and their assets. When the operation turned overt, over 250 persons were arrested in Hong Kong and HKD 86 million (USD 11 million) in criminal assets were restrained and subsequently confiscated. Those arrested were later sentenced to prison terms of up to six years for ML and controlling vice activities.

Case 3: In 2003, a Hong Kong resident was sentenced to 4½ years' imprisonment for illegal bookmaking and laundering HKD 471 million (USD 60 million) in the proceeds of illegal gambling. Subsequent investigation of the STRs filed disclosed a foreign resident who has been acting in the capacity of an offshore banker, essentially underwriting the Hong Kong resident's illegal gambling activities. The foreign resident was found to have controlled accounts that had disbursed HKD 724 million (USD 93 million) in illegal gambling proceeds in the preceding five years. The foreign resident was arrested during transit in Hong Kong, and in 2005 convicted of ML and sentenced to five years' imprisonment.

Case 4: In 2004, C&ED neutralised a pirate optical disc manufacturing and retailing syndicate. Following on from this, in August 2006, the syndicate's female head was convicted of infringement of intellectual property rights (IPR) offences, and ML offence, and was sentenced to 45 months' imprisonment for each of the IPR offences and the ML offence while ten months of imprisonment for the ML offence was run consecutively to the sentence of IPR offences. Proceedings are underway to confiscate about HKD 20 million (about USD 2.6 million) of restrained assets. This case shows that we do charge persons with the predicate offence and self laundering. The sentence for ML is as heavy as that for the predicate crimes.

Case 5: A tripartite investigation between the Country B, Hong Kong, and Country C into suspicious remittance activities to accounts in Hong Kong connected to human smuggling. This resulted in the 2003 conviction in Hong Kong of an individual for ML and passport offences. He was sentenced to four years' imprisonment and HKD 2.75m (USD 350 000) in assets confiscated in 2005.

Case 6: During 2005 and 2006, victims from Country D and Country E were induced to invest HKD 2.6 million (USD 333 000) with four bogus securities companies in Hong Kong. In 2007, the individual who operated the bank accounts used in the scam was successfully prosecuted for ML and sentenced to 4 years' imprisonment.

Case 7: In 2006, a five-year joint investigation between the NB and the Country C resulted in the conviction of two individuals in Hong Kong for conspiracy to launder the proceeds of

HKD 73 million (USD 9.4 million) in drug proceeds during 2003 and 2004, between City Z and Hong Kong. The individuals were sentenced to nine years' and four years' imprisonment, respectively. In this case the number of STRs received by JFIU was more than a hundred.

Case 8: In late 2001, the authorities of a neighbouring jurisdiction disclosed a fraud involving three successive managers of a provincial bank branch, who over a ten-year period had conspired to defraud the bank. A significant amount of the stolen funds were sent to Hong Kong, where the principal manager's cousin and his wife laundered it through companies they had set up. The investigation revealed the manager's cousin and his wife, both ex-bankers, had set up over 100 companies and 500 bank accounts to launder the proceeds of the fraud, amounting to HKD 6.5 billion (about USD 0.83 billion), during the period 1995: 2001. The cousin and his wife were subsequently prosecuted for ML. In January 2007, they were both convicted and sentenced to six years' imprisonment. Around HKD 850 million (about USD 109 million) in assets was recovered and is currently under restraint by the Police in relation to this case. This case illustrates the scale and complexity of ML investigations undertaken by the Hong Kong Police's Financial Investigations Division.

Case 9: In 2007, three individuals were convicted of ML for their involvement in the laundering of the proceeds of a USD 2.7 million banking fraud that occurred in Australia in December 2004. Both were sentenced to 2½ years' imprisonment upon guilty pleas. The crimes were disclosed by the filing of STRs.

Case 10: In 2004, arising from a corruption investigation, the chairman of a publicly listed company was charged by the ICAC with theft, amongst other charges, and his cousin, a businessman, was charged with two counts of ML under s.25 of OSCO, in relation to HKD 20.8 million (USD 2.7 million) which was withdrawn from the listed company, purportedly for the acquisition of land and for construction of a factory in a neighbouring jurisdiction. The withdrawal was supported by a false agreement entered into by a subsidiary of the listed company with a non-existent company in a neighbouring jurisdiction for the stated purpose. In reality the funds were diverted to the personal or business accounts of the businessman. In 2006, both the chairman and the businessman were convicted of all charges and sentenced to six and three years' imprisonment respectively. This case demonstrated that whilst the principal offender was prosecuted for the predicate offence of theft, his accomplice who assisted him in laundering the stolen proceeds was prosecuted for ML.

Cases triggered by STR that resulted in prosecution

Case 1: In 2003, a Hong Kong resident was sentenced to 4½ years' imprisonment for illegal bookmaking and laundering HKD 471 million (USD 60 million) in the proceeds of illegal gambling. Subsequent investigation disclosed foreign resident who has been acting in the capacity of an offshore banker, essentially underwriting the Hong Kong resident's illegal gambling activities. The foreign resident was found to have controlled accounts that had disbursed HKD 724 million (USD 93 million) in illegal gambling proceeds in the preceding five years. The foreign resident was arrested during transit in Hong Kong, and in 2005 convicted of ML and sentenced to five years' imprisonment.

Case 2: In 2006, a five-year joint investigation between the NB and country founded upon STRs resulted in the conviction of two individuals in Hong Kong for conspiracy to launder the proceeds of HKD 73 million (USD 9.3 million) in drug proceeds during 2003 and 2004, between Sydney and Hong Kong. The individuals were sentenced to nine years and four years' imprisonment, respectively. In this case, the JFIU received over 100 STRs.

Case 3: In 2007, three individuals were convicted of ML in connection with their involvement in the laundering of the proceeds of a USD 2.7 million banking fraud that occurred in Country Y in December 2004. All were sentenced to 2½ years' imprisonment, upon guilty pleas. The crimes were disclosed by the filing of STRs.

Cross-border movement of currency/BNI

Case 1: Some years ago, a money courier was surfaced in a joint drug investigation between Hong Kong Police and the police of Country X. He was intercepted at the Hong Kong International Airport when he arrived from City A carrying with him cash worth USD 393 000 in the currency of Country X. The cash was seized under s.24B of the DTRP and was subsequently forfeited by court under s.24D of the Ordinance. The money courier was not arrested as the joint investigation had yet to be mature. The investigation continued after the forfeiture, which later culminated to the collection of sufficient evidence against the whole syndicate for both ML and drug trafficking charges in Hong Kong and City A. The money courier and another member of the syndicate were convicted of ML in the High Court in November 2002 and were respectively sentenced to 60 and 80 months of imprisonment. Other members of the syndicate were convicted of drug trafficking in City A.

Investigation of money couriers who are unregistered remittance agents

Case 1: A money courier was surfaced from a STR. Initial analysis suggested the laundering of tainted funds and a joint investigation between Hong Kong Police and the Customs Authorities of a neighbouring jurisdiction was initiated. The investigation revealed that the money courier was engaged in underground remittance business between Hong Kong and the neighbouring jurisdiction. The in-depth investigation revealed no evidence to suggest the money was tainted and the courier was intercepted by the Customs Authorities of the neighbouring jurisdiction at one of its control points with the seizure of USD 49 000 which the courier had failed to declare. The funds were subsequently confiscated. (Note: Operating a remittance business in the neighbouring jurisdiction was prohibited, which explained why the money courier did not declare the money.)

Seizure of currency at time of arrest

Case 1: In 2004, a joint investigation was conducted between the Hong Kong Customs and Excise and an overseas LEA culminated to the neutralisation of a methamphetamine manufacturing syndicate. The manufacture laboratory of the syndicate was smashed in Country X and ten syndicate members were arrested inside the set-up. At the material time, the mastermind financing the set-up was stopped in the Hong Kong Macau Ferry Terminal. A sum of cash, comprising different currencies of total USD 110 000 was found in his possession. The mastermind was arrested and the currencies were seized.

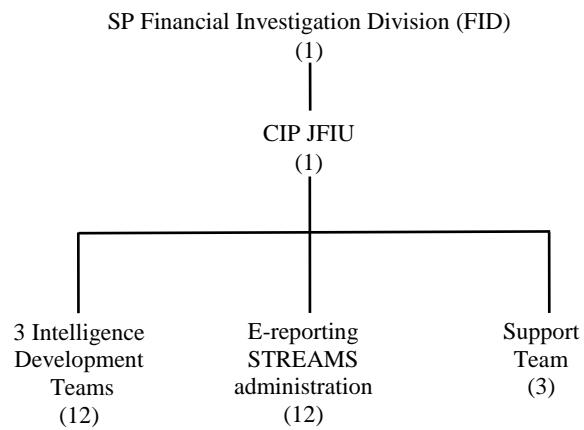
International co-operation

Case 1: Intelligence from the disclosures from the financial institutions was forwarded to an overseas counterpart in late 2003. Further information exchanges were conducted between January and August 2004. In late 2004, MLA request was received from the overseas counterpart. Subsequently, 42 persons were arrested in an European country in 2007 in connection with a VAT fraud case and the court proceedings are scheduled to be conducted in early 2008.

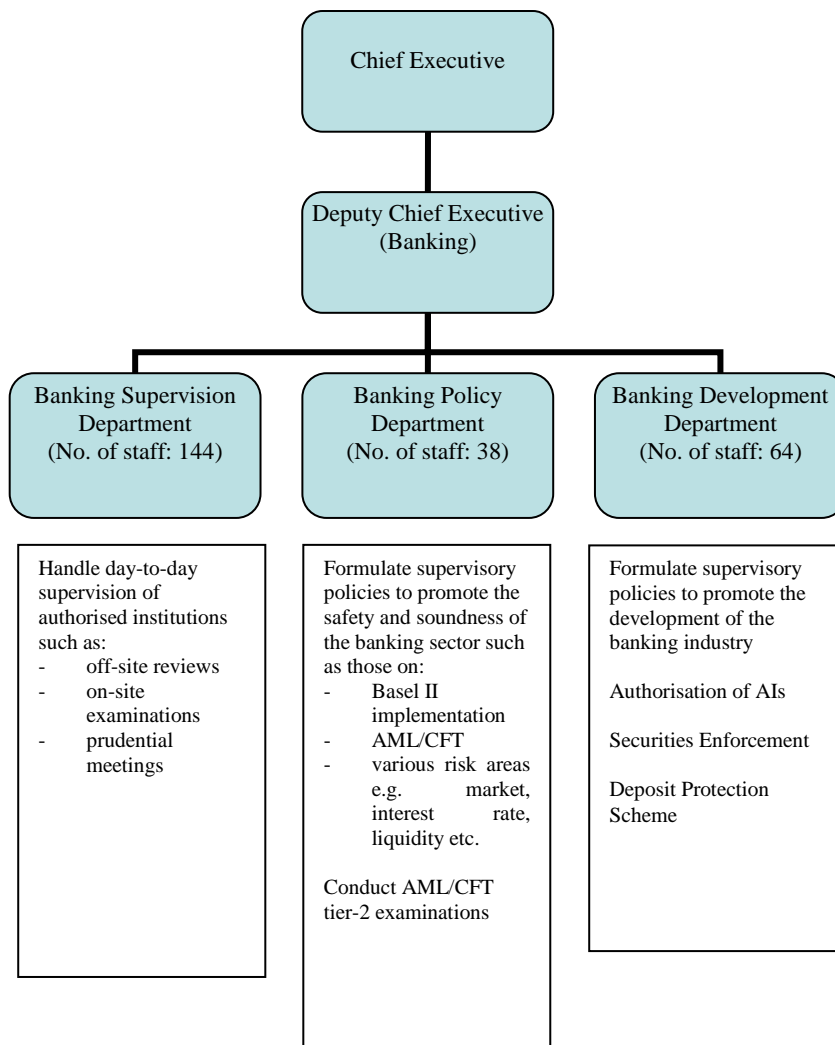
Case 2: After receiving a disclosure from a financial institution, a letter requesting for information was sent to the Authorities of an overseas jurisdiction in 2000. The overseas authorities revealed that the subject was under investigation in relation to an alien smuggling case. Prosecution was subsequently initiated in the overseas jurisdiction. In Hong Kong, production orders were applied for to retrieve the banking information and was passed to the overseas authorities. In 2004, formal MLA request was received and a total of HKD 21.25 million was restrained in Hong Kong. The confiscation of the sum will be taken place upon the conclusion of legal proceedings in the overseas jurisdiction in due course.

2. Organisation Charts

JFIU

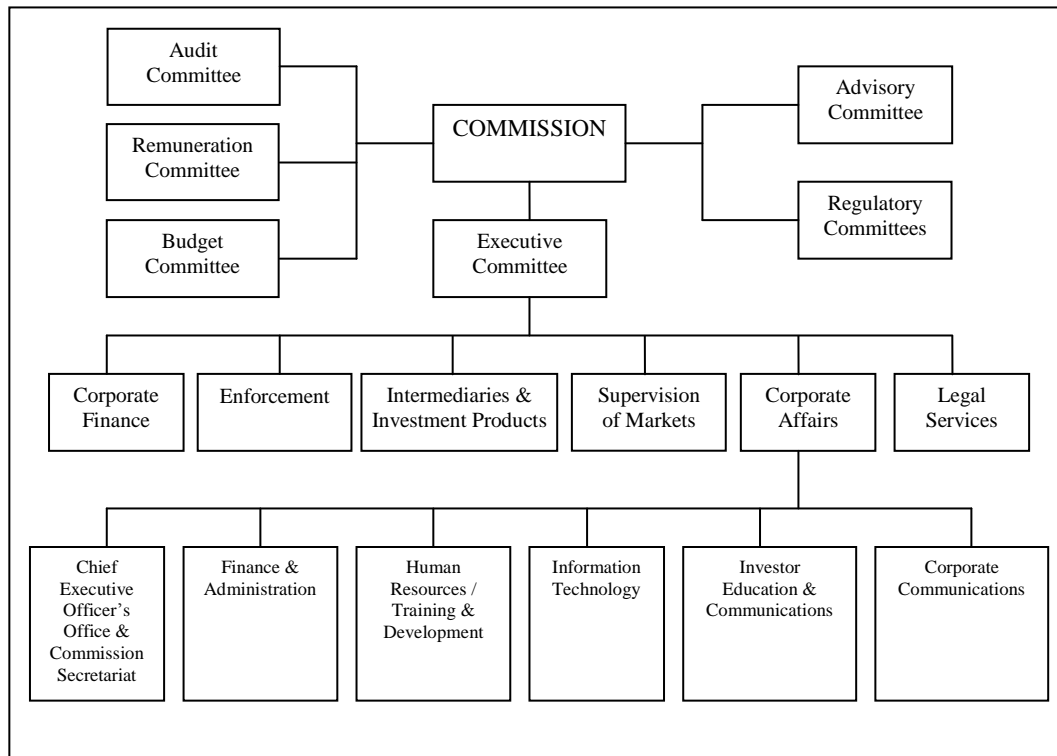


HKMA



SFC

SFC organisation chart as at November 2007..



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