AML Seminar (Accountants)

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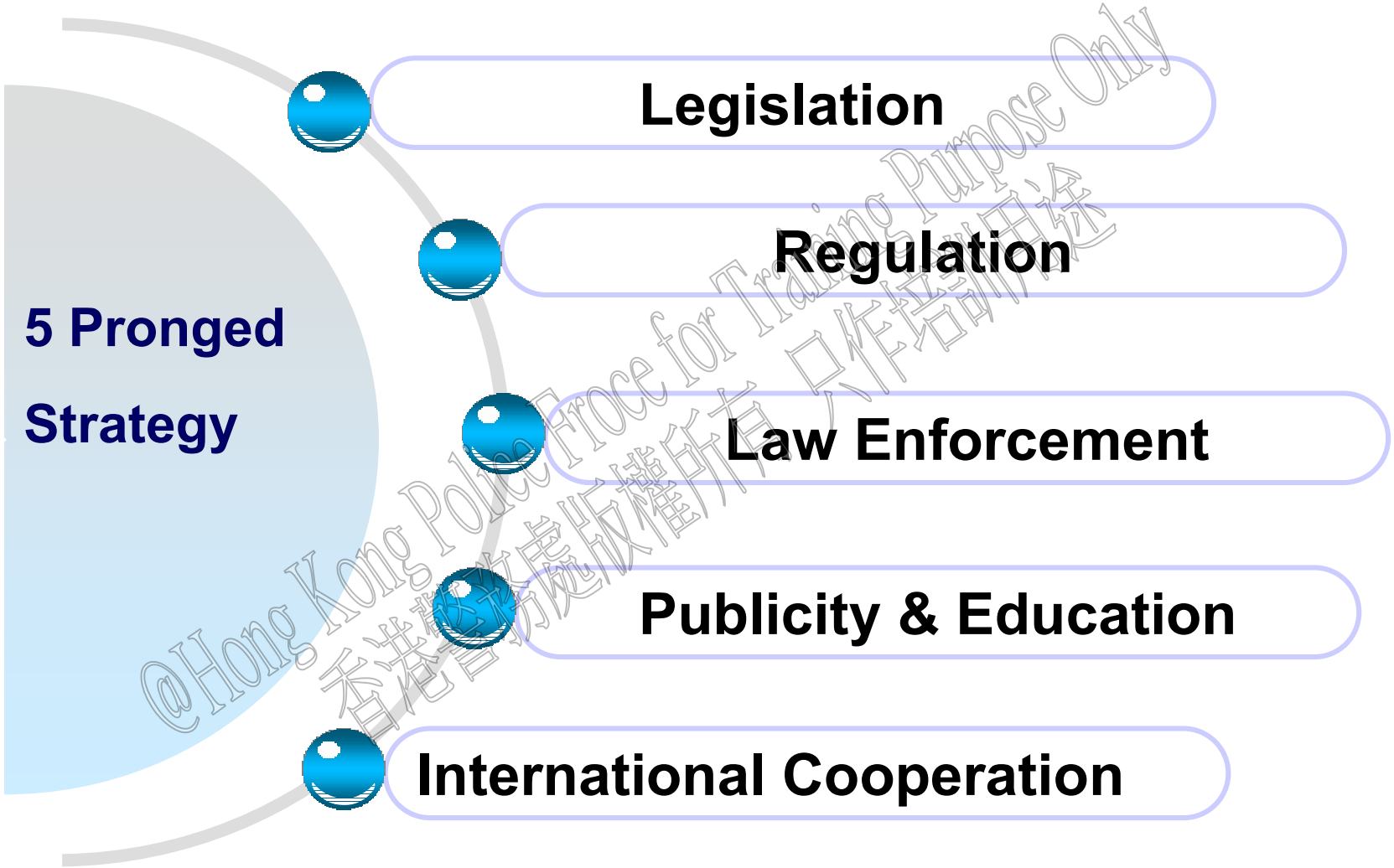
HK's AML/CFT Regime



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AML/CFT Legislation

1989 **Drug Trafficking (Recovery of Proceeds) Ordinance**
("DTROP", Cap 405)

1994 **Organized & Serious Crimes Ordinance**
("OSCO", Cap 455)

2002 **United Nations (Anti-Terrorism Measures) Ordinance**
("UNATMO", Cap 575)

2012 **Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance**
("AMLO", Cap 615)

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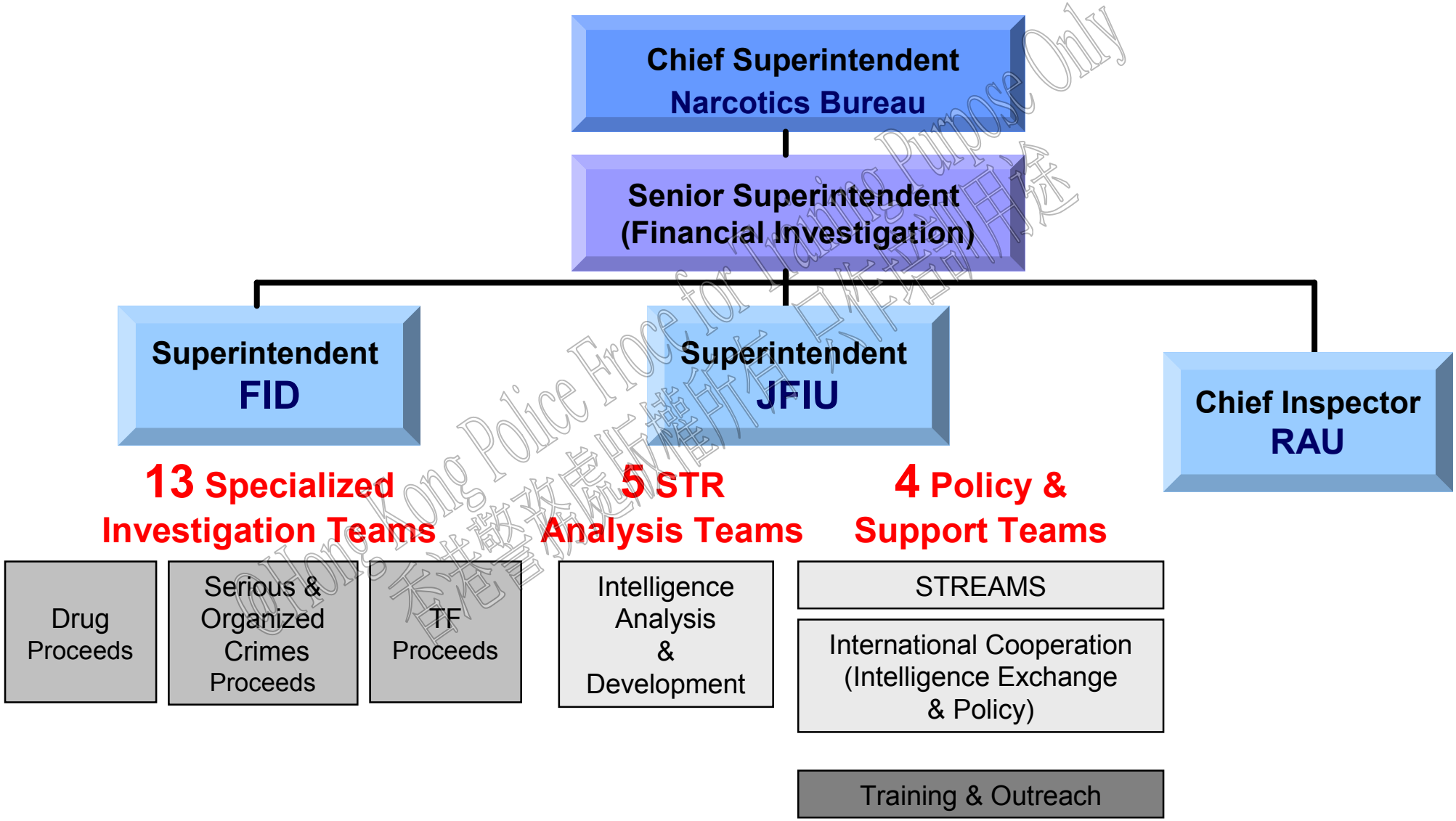
AML/CFT Enforcement Arm of Hong Kong Police Force (HKPF)



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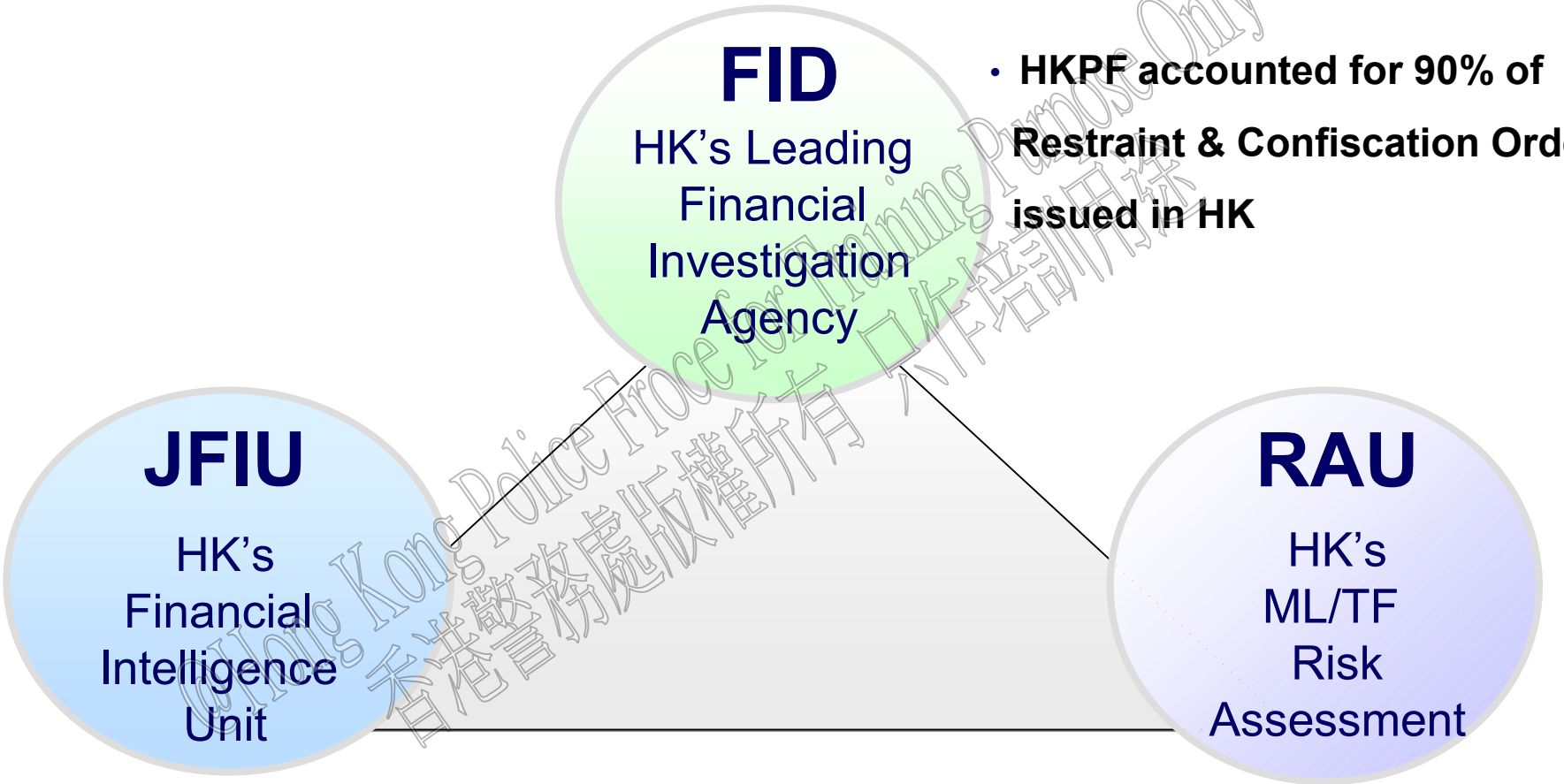

- **HKPF accounted for 90% of Restraint & Confiscation Orders issued in HK**

- **Egmont Group Member since 1996**
- **Sole agency for HK's STR regime**

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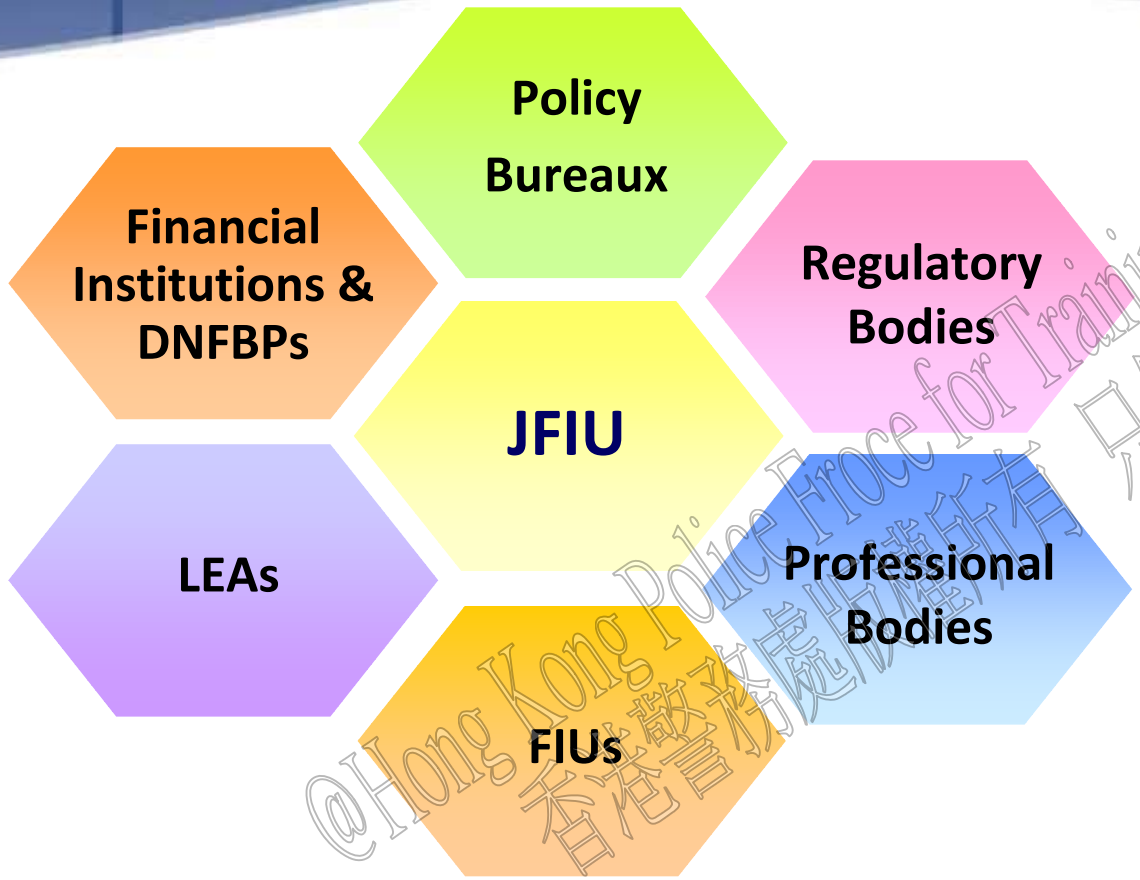
About JFIU



- **Not** an investigative unit
- Receive, analyze and disseminate STRs
- International cooperation
- Typological study of money laundering / terrorist financing
- Training and outreach

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Information Flow

Reporting Entities

STR

Financial Intelligence Unit

Analysis

Law Enforcement Agencies

Financial Investigation

Useful Information ***Intelligence*** ***Evidence***

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Legal Obligation to File STRs

Cap 405 S.25A(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.

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Legal Obligation to File STRs

Cap 455 S.25A(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.

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Legal Obligation to File STRs

Cap 575 S.12(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.

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Appropriate Time to File STRs

CAP 405 / 455 / 575

- If a person who has made a disclosure, 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.

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Legal Protection of a Disclosure

CAP 405 / 455 / 575

- (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.

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Revelation of Disclosure

CAP 405 / 455

- no witness in any civil or criminal proceedings shall be obliged-
- (a) to reveal that a disclosure was made under section 25A
  (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

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Revelation of Disclosure

CAP 405 / 455 / 575

- Not to disclose details after reporting

  A person commits an offence if, knowing or suspecting that a disclosure has been made, he discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following that the disclosure.

- Source of information kept confidential

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Money Laundering Cap 405 / 455

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 / an indictable offence, he deals with that property.

"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);

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Terrorist Financing Cap 575

A person must not —

(a) except under the authority of a licence granted by the Secretary, make any property or financial (or related) services available, by any means, directly or indirectly, to or for the benefit of a person knowing that, or being reckless as to whether, the person is a terrorist or terrorist associate; or

(b) collect property or solicit financial (or related) services, by any means, directly or indirectly, for the benefit of a person knowing that, or being reckless as to whether, the person is a terrorist or terrorist associate.

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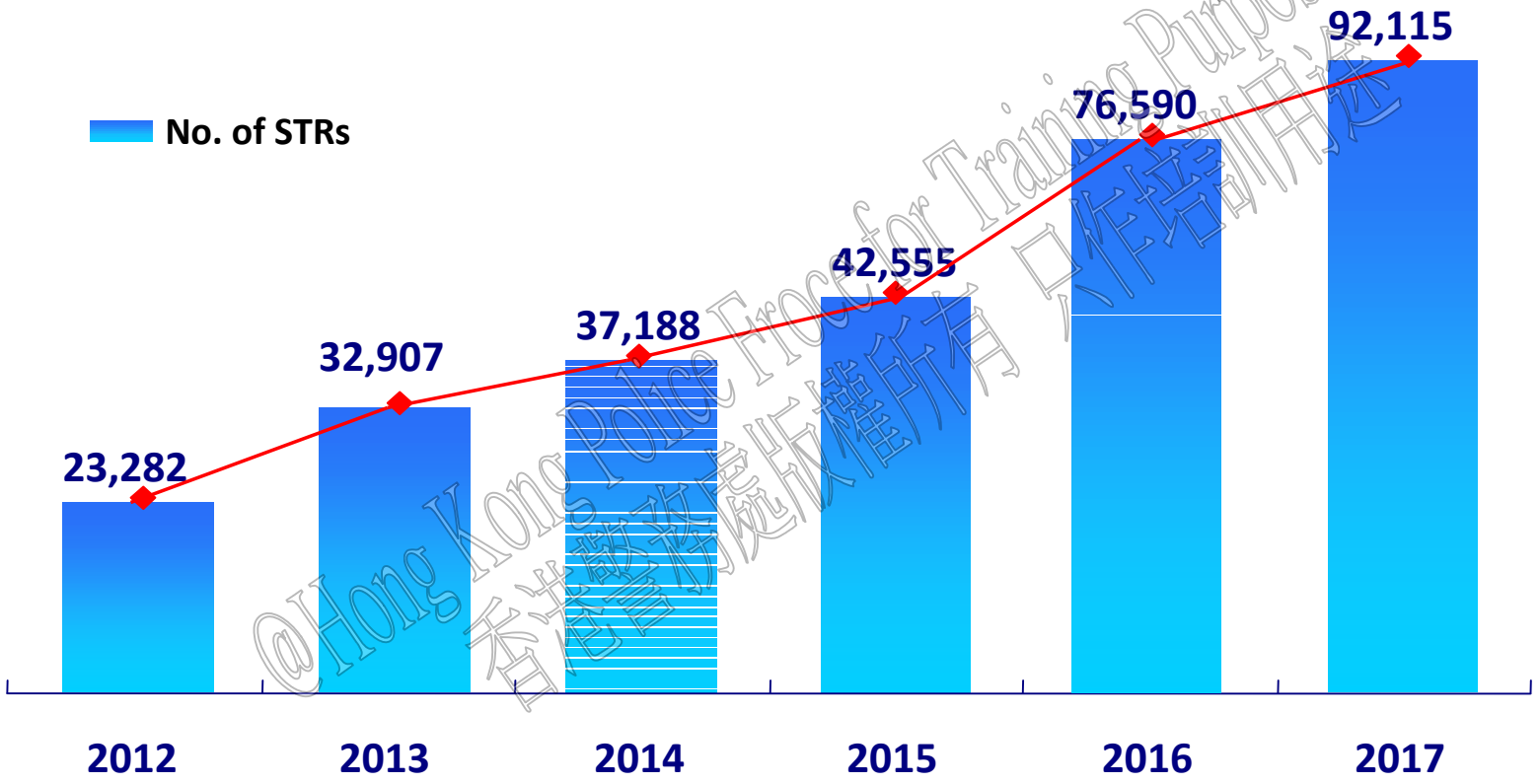
STR Overview

No. of STRs Received from 2012 to 2017



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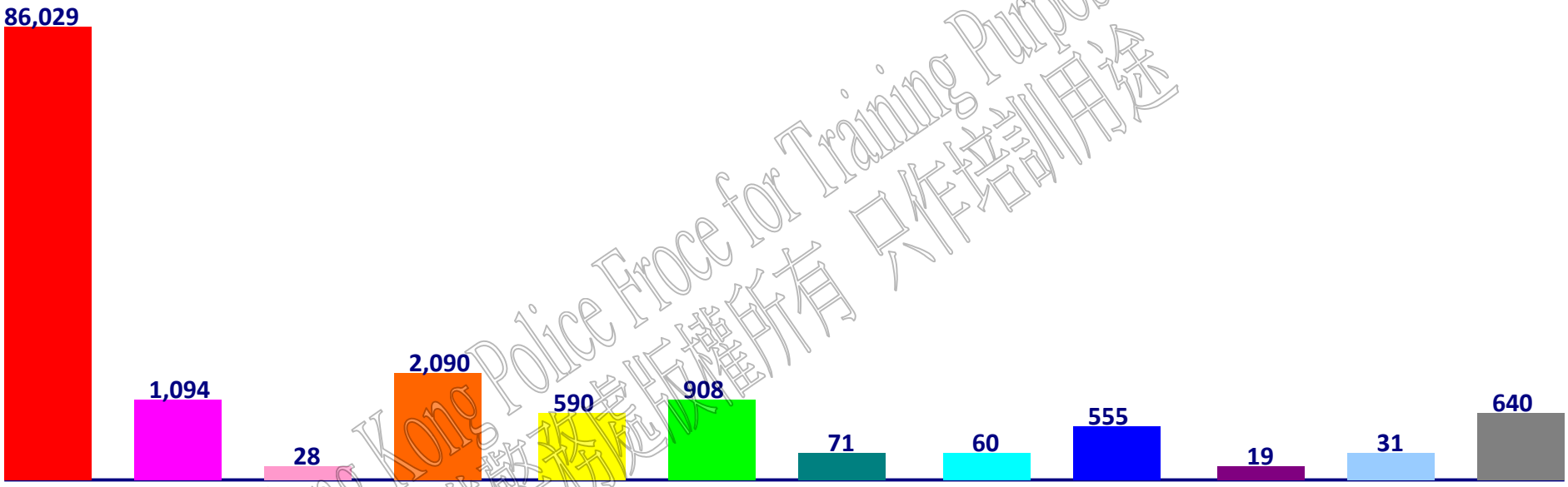
STR Overview

Breakdown of STRs Submitted in 2017



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How to File Quality STRs?

SAFE Approach

Screen	**subject entities' background & transactions**
Ask	**appropriate questions to clarify circumstances**
Find	**relevant records for review**
Evaluate	**whether suspicion is substantiated**

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STR Content

- **Particulars** of the subject persons / organizations / beneficial owners
- **What Suspicious?**
  - Property involved
  - Accounts and transactions
- **Why Suspicious?**
  - Suspected crimes / suspicious indicators / news
  - Assessment and analysis?
  - Explanation by customers, if any
- **Previous STR ref. / Police case ref.**, if any

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Recommended Structure for STR Filing

(1) Triggering Factors

- Offence (Fraud, corruption, sanctioned, terrorist financing etc.)
- Search warrant / court order served
- Publicly available information (Adverse news, SFC alerts etc.)
- Suspicious transaction patterns (Substantial cash deposits, temporary repository of funds, suspected UMSO etc.)

(2) Background of Subject(s)

- Individual: age, occupation, reported salary, banking history etc.
- Corporate: incorporation date and location, business nature, expected turnover etc.

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Recommended Structure for STR Filing

(3) Transactions

- Reviewing period
- Previous transaction pattern (Sudden change?)
- Total deposit & withdrawal amounts
- Suspicious transactions (Not simply frequent transactions / large-amount transactions)
- Suspicious patterns

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Recommended Structure for STR Filing

(4) KYC/CDD & Open Source

- Detail the findings if suspicious (KYC enquiry, adverse reports of counterparties, adverse news.., etc.)
- Provide links of open source information

(5) Conclusion & Way Forward

- Conclusion of report
- Follow up action (Further review, account closure etc.)

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Reporting Method

How to submit an STR?

Suspicious transaction reports can be made in one of the following ways:

- by e-reporting system, STREAMS
- by email to **jfiu@police.gov.hk**

- by fax to : (852) 2529 4013

- by mail, addressed to Joint Financial Intelligence Unit, GPO Box 6555 Hong Kong

- by telephone (852) 2866 3366 (for urgent reports during office hours)

If you want to file STR via STREAMS, you have to complete **the application form** and return to JFIU either by fax (2529 4013) or email (**jfiu@police.gov.hk**). If you need any further information, please feel free to contact JFIU staff.

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Risk Indicators (Accountants)

- Complex corporate structures which obscure the ultimate beneficial ownership.
- Frequent changes in the legal structure of a client's company which has no clear justifications.
- The level of activities of a client's company does not match its volume/frequency of fund flows.
- Over/under invoicing of goods/services.
- Payments received from an un-related party without supporting business activities.
- Customer has a history of changing bookkeepers or accountants yearly.

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Risk Indicators (Accountants)

- Company is paying unusual consultant fees to offshore companies.
- Company records consistently reflect sales at less than cost, thus putting the company into a loss position, but the company continues without reasonable explanation of the continued loss.
- Examination of source documents shows misstatements of business activity that cannot be readily traced through the company books.
- Company acquires large personal and consumer assets (i.e., boats, luxury automobiles, personal residences) when this type of transaction is inconsistent with the ordinary business practice of the customer or the practice of that particular industry.

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Thank You

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