Chapter 5

Countering Money Laundering and Terrorist Financing

Achieving an Ever Higher Standard

Hong Kong is committed to the fight against money laundering and terrorist financing. The establishment and operation of a comprehensive and effective regime to tackle the twin problems requires cross-functional co-ordination among government departments, private organisations and international bodies. The Narcotics Division (ND) is responsible for setting overall policy and co-ordinating the implementation of anti-money laundering and counter-terrorist financing measures with Department of Justice, the Hong Kong Police Force, Customs and Excise Department, Financial Services and the Treasury Bureau, financial regulators namely Hong Kong Monetary Authority, Securities and Futures Commission, Office of the Commissioner of Insurance, and the non-financial sectors. ND's mission is to ensure that Hong Kong's anti-money laundering and counter-terrorist financing regime is consistent with the established international standards.

Legislation

Hong Kong has effective legal and financial systems in place to counter money laundering. The Drug Trafficking (Recovery of Proceeds) Ordinance (DTROP) (Chapter 405) is the main tool to trace, restrain and confiscate proceeds of drug trafficking and to stop drug traffickers from retaining their illicit profits. Together with the Organised and Serious Crimes Ordinance (OSCO) (Chapter 455), an effective legal framework is in place for countering money laundering.
Since the introduction of DTROP in 1989 and OSCO in 1994, assets valued at HK$435 million have been confiscated and paid to the Government. By 2006, assets amounting to HK$1.41 billion were restrained pending confiscation proceedings.

The two ordinances were significantly strengthened in 1995 to make it more difficult for drug traffickers and other criminals to launder or retain their illicit profits. Under OSCO, there is also a registration scheme whereby money changers and remittance agents are required to register their businesses with the Police.

In July 2002, the anti-money laundering provisions in DTROP and OSCO were further strengthened through the enactment of the Drug Trafficking and Organised Crimes (Amendment) Ordinance 2002. One major amendment effected through this ordinance is to allow the making of restraint or charging orders 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. This helps to forestall the defendant from disposing of, or concealing, his properties during the period when further investigation is in progress. Another amendment requires the holder of any realisable property, which is subject to a restraint or charging order, 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 is also introduced to deter people from knowingly dealing with any restrained property. DTROP currently gives the court the power to assume all properties held by the defendant come from drug trafficking since conviction for a drug trafficking offence, or which has passed through the
defendant's hands in the past six years. It then falls to the defendant to show the contrary. The amended provision allows such an assumption be applied to defendants who have been convicted of a drug money laundering offence as well. The amended ordinance also requires the court to fix a period within which a defendant is to pay the amount under a confiscation order.

On the anti-terrorism front, Hong Kong enacted legislation to give effect to the United Nations Security Council Resolutions (UNSCRs) concerning terrorism and terrorist financing. In June 2000, the United Nations Sanctions (Afghanistan) Regulation under the United Nations Sanctions Ordinance (Cap. 537) was enacted. The Regulation gives effect to UNSCR 1267 which aims to combat, among others, terrorist financing by preventing the making of funds and other financial resources available to the Taliban.

Following the September 11, 2001 terrorist attacks in the Unites States, the international community called for global efforts to starve the terrorists of funding. Hong Kong has enacted further legislation giving effect to additional UNSCRs and the Special Recommendations of the Financial Action Task Force on Money Laundering (FATF) to combat terrorist financing.

The United Nations (Anti-Terrorism Measures) Ordinance (UNATMO) (Chapter 575) was enacted in July 2002 and a substantive part of it came into operation in August the same year. The ordinance fully implements the mandatory elements of UNSCR 1373 and the FATF Special Recommendations II, III and IV on terrorist financing to a large extent. The ordinance clearly prohibits any person within Hong Kong from providing or collecting funds for terrorists, and requires disclosure of
suspected terrorist property.

The United Nations Sanctions (Afghanistan) (Amendment) Regulation came into operation in July 2002. The regulation implements UNSCR 1390 which extends part of the sanctions previously imposed by UNSCRs 1267 and 1333.

The United Nations (Anti-Terrorism Measures) (Amendment) Ordinance (the Amendment Ordinance) was passed in July 2004. It amended UNATMO enacted in 2002, so as to give effect to the UNSCR 1373 and the FATF Special Recommendation III. It provides, amongst other things, the power to freeze the non-fund property of terrorists and terrorist organisations. Furthermore, it prohibits the provision or collection of funds by a person intending or knowing that the funds will be used in whole or in part to commit one or more terrorist acts. It also provides the legal framework within which Joint Financial Intelligence Unit (JFIU) can carry out exchange of financial information and intelligence with its overseas counterparts. The Amendment Ordinance also implements some of the requirements under 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.

Reporting suspicious transactions is a legal obligation for all according to DTROP, OSCO and UNATMO. JFIU, which is manned by the Police and Customs officers, was set up in 1989 to receive and analyse suspicious transaction reports. In 2006, 14,557 reports of suspicious transactions were received by the JFIU.
Feedbacks on the quality of suspicious transactions reporting are provided to the financial sectors regularly. During the year, the "STREAMS", which is the project for the electronic filing of suspicious transactions reports (STRs) to JFIU, commenced operation. It consists of an e-reporting system and an automated STRs processing and analysis system and has improved the present system of processing STRs manually.

In order to implement FATF Special Recommendation VII, the Government gazetted an amendment notice in December 2006 to amend Section 24C and Schedule 6 of OSCO in order to lower the threshold for identity verification and record-keeping in transactions undertaken by remittance agents and money changers from HK$ 20,000 or above to HK$ 8,000 or above. The new requirements took effect in January 2007.

**International Co-operation**

The Basic Law provides for the continuation of Hong Kong's existing legal, administrative, financial and social systems as well as participation in international organisations beyond 1997.

Hong Kong has been an active member of the FATF, the international anti-money laundering standard setter, since 1990 and is a founding member of the Asia/Pacific Group on Money Laundering (APG) established in 1997. Over the years, Hong Kong has put in place effective legal and financial systems to tackle money laundering, and has implemented most of the FATF's 1996 Forty Recommendations - the international standards and practices in combating money
laundering designed for universal application - either by legislation or through guidelines issued by the financial regulators.

The FATF has revised its 40 Recommendations and 9 Special Recommendations. It forms the new international benchmark against which jurisdictions worldwide are assessed on their efforts in the areas of anti-money laundering and counter-terrorist financing. Preparations are now in hand to implement the revised Recommendations in Hong Kong. We have implemented those FATF Recommendations that do not require legislative amendments by issuing administrative guidelines and other means. All the three financial regulators have issued guidelines to the financial institutions reflecting the amended FATF standards. As regards those recommendations which need to be put in place through new legislation, we are studying the legislative amendments required. Since the new legislation would likely affect a wide range of sectors, thorough consultations will have to be conducted. FATF will conduct a “Mutual Evaluation” on Hong Kong in late 2007 with the report to be discussed by the Plenary in June 2008. We plan to finalise the legislative proposals after the FATF “Mutual Evaluation” is completed so as to take on board any recommendations that the evaluation would make.

Hong Kong actively participated in FATF's Working Group on Terrorist Financing and Money Laundering (WGTM), which discusses weaknesses in international anti-money laundering and counter-terrorist financing network and develops new policies and Recommendations. Hong Kong also played an active part in FATF's Working Group on Evaluations and Implementation (WGEI), which reviews and discusses issues related to the interpretation and implementation of the Recommendations. In October 2006, Hong Kong joined the newly formed FATF
Typologies Project Team on “Laundering the Proceeds of Missing Trader Intra-Community (MTIC) Carousel Fraud”. Representatives from the Police and Customs and Excise Department also participated in the FATF/Eurasian Group Typologies Experts’ Meeting in Shanghai in November. Hong Kong participated in the FATF's Mutual Evaluation of United Kingdom in November/December 2006.

At the regional level, besides taking part in its annual meeting, Hong Kong has played an active role in the APG's typologies exercise, including participating in its annual typologies workshop in Indonesia in November 2006. Hong Kong took part in the APG Mutual Evaluations of Sri Lanka and Mongolia in March and December 2006 respectively.

Hong Kong co-operates closely with foreign jurisdictions in combating money laundering, and maintains a programme of negotiations for bilateral mutual legal assistance agreements which includes provisions for asset tracing and seizure. Regarding the exchange of information, Hong Kong's Mutual Legal Assistance Agreements all provide for the exchange of information for all serious crimes, including money laundering. Hong Kong has signed Mutual Legal Assistance in Criminal Matters Agreements with 21 countries (the United States, Australia, France, the United Kingdom, New Zealand, Italy, Korea, Switzerland, Portugal, the Philippines, Ireland, Canada, the Netherlands, Ukraine, Singapore, Belgium, Denmark, Poland, Israel, Germany and Malaysia).

Hong Kong authorities exchange intelligence on money laundering activities on an informal basis with overseas counterparts. In addition, the law enforcement agencies co-operate closely with Interpol and the locally based liaison officers of
overseas law enforcement agencies. The Government amended the Banking Ordinance in 1999 to allow the Hong Kong Monetary Authority to disclose information to an overseas supervisory authority about individual customers, subject to conditions on data protection.

In May 1997, the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 was ratified in Hong Kong. All the required legislation is in place to effect and comply with the convention. Ratification enables Hong Kong to enforce confiscation and related orders made by courts in designated overseas jurisdictions and to provide necessary assistance in relation to their drug trafficking investigations.

**Regulatory Control**

In addition to a comprehensive legislative framework, the banking, securities, insurance, futures and leveraged foreign exchange sectors have also put in place regulatory systems to fight money laundering. The Hong Kong Monetary Authority, the Office of the Commissioner of Insurance and the Securities and Futures Commission have all issued enforceable administrative guidelines on money laundering to those industries under their respective supervision. These guidelines require the industries to observe stipulated standards and procedures in record keeping, customer identification and reporting of suspicious transactions. The guidelines are updated regularly to be in step with the latest FATF recommendations and legislative changes.

The financial sector in Hong Kong has taken a number of steps to fight against
terrorist financing. The regulators have issued advisory letters to financial institutions drawing their attention to the relevant legislation and advice issued by overseas jurisdictions, and alerting them to take the necessary steps to prevent money laundering and terrorist financing. They have also circulated lists of persons and entities gazetted under the legislation, with instructions that these should be checked against records and any suspicious transactions be reported to the JFIU.

**Public Education**

To combat money laundering, we need the assistance and co-operation of the community at large. Government and regulators regularly conducted training and educational programmes for sectors which played an active role in fighting money laundering and terrorist financing to sensitize them to the latest trends and methods used by money launderers and criminals. The ND and the JFIU co-organised two seminars for estate agents in January 2006 and a series of seminars for banks, insurance, securities, trust and company service providers, money lending, remittance and money changing, precious metals/stones dealing, estate agency sectors in September 2006. ND also set up focus groups with the last four of the aforementioned sectors to discuss issues related to the implementation of the FATF Recommendations. ND was also preparing a set of interactive training kit to assist these sectors in identifying suspicious transactions. Media briefings and interviews were also conducted as opportunities arose so that the general public could have a better understanding of the issues at stake and to rally them for their support.

In keeping with its international obligations, Hong Kong is fully committed to combating money laundering and terrorist financing now and in future; and will
ensure that its anti-money laundering and counter-terrorist financing regime meets international standards. The Government is also committed to co-operating closely with international organisations and individual governments, both on a multilateral and bilateral basis, to maintain the effectiveness of the global campaign.