

**Establishment of a Reporting System  
on the Physical Cross-Boundary Transportation  
of Large Quantities of Currency and  
Bearer Negotiable Instruments**

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**Consultation Paper**

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**Security Bureau**

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## **CHAPTER 1: INTRODUCTION**

### **Purpose**

1.1 This consultation document invites public views on the Government's proposal to establish a system to detect the physical cross-boundary transportation of large quantities of currency and bearer negotiable instruments (CBNIs)<sup>1</sup> as an effort to move towards compliance with international standards established under Recommendation 32 (R32) of the Financial Action Task Force (FATF) on anti-money laundering (AML) and counter-financing of terrorism (CFT).

### **FATF and Hong Kong's International Obligations**

1.2 FATF is an inter-governmental body established in 1989. It has developed 40 Recommendations for combating money laundering, financing of terrorism and proliferation of weapons of mass destruction as international standards to be met by member jurisdictions. Currently, FATF comprises 34 member jurisdictions and two regional organisations. In addition, FATF has eight associate members which are regional bodies, covering 154 countries and regions in the world, with a mandate to ensure the adoption, implementation and enforcement of the AML/CFT standards as set out in the FATF's 40 Recommendations. These cover most members of the international community as well as major financial centres in the world, establishing a global network for international cooperation on AML/CFT matters. Details of FATF's membership are set out at **Annex A**. Hong Kong has been a member of FATF since 1991, and is obliged to implement the AML/CFT requirements as promulgated by FATF.

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<sup>1</sup> A "bearer negotiable instrument" (BNI) is a non-cash monetary instrument which may contain the instruction of "pay to the bearer". The bearer is the person in possession of the BNI. Common examples of BNIs include traveller cheques, cash cheques, promissory notes and money orders. The definition will be given in greater detail in Chapter 2.

1.3 In order to ensure full and effective implementation of its Recommendations at the global level, FATF monitors members' performance and compliance with its Recommendations by conducting mutual evaluations (ME) on their AML/CFT systems and closely monitoring follow-up actions after each ME. The last round of ME (i.e. the third ME) on Hong Kong's AML/CFT regime was completed in 2008. It is expected that FATF will conduct the fourth round of ME on Hong Kong in 2018.

### **R32 and Its Objectives**

1.4 Of FATF's 40 recommendations, R32 requires member jurisdictions to establish by statute a system to detect the physical cross-boundary transportation of CBNIs (the "R32 System"). FATF's statement on R32 is at **Annex B**. The purpose is to ensure that jurisdictions have in place the legal framework and measures to, amongst others, detect the transportation of CBNIs; and where there is suspicion of links to money laundering, terrorist financing or predicate offences, to stop or restrain such CBNIs. In the process, jurisdictions should also apply proportionate and dissuasive sanctions against false disclosure or declaration.

1.5 According to FATF, implementing an effective R32 System is an important means to stop terrorists and other criminals from financing their activities or laundering the proceeds of their crimes through physically moving CBNIs across different jurisdictions. The importance of the R32 System has been specifically highlighted by the FATF lately, with a public statement at the end of its Plenary in February 2015 stressing, amongst others, the importance of implementing the R32 System as a measure to tackle the growing concern of terrorist financing. All member jurisdictions, including Hong Kong, are required to step up and expedite their efforts in this regard.

### **Absence of the R32 System in Hong Kong**

1.6 Over the years, Hong Kong has gradually developed a comprehensive regime along FATF's Recommendations in the fight against money laundering and terrorist financing activities. This

includes, amongst other things, the criminalisation of such activities, the restraint and confiscation of crime proceeds, the requirements on reporting suspicious transactions and for financial institutions to carry out customer due diligence measures and record-keeping, etc. Specifically, money laundering and terrorist financing offences are prescribed in the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), the Organized and Serious Crimes Ordinance (Cap. 455), and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575). The three Ordinances also prescribe the obligation to report suspicious transactions to the Joint Financial Intelligence Unit<sup>2</sup>. In addition, under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) (AMLO), specified financial institutions have a statutory obligation to conduct customer due diligence on their clients and keep relevant records for a specified period. Non-compliance may render them liable to supervisory or criminal sanctions.

1.7 At present, Hong Kong is the only FATF member jurisdiction, among 34, which has yet to establish the R32 System. In practice, R32 is the only area where Hong Kong was still rated as “non-compliant”<sup>3</sup> in the last round of ME. This suggests that Hong Kong would need to accord priority to establishing the R32 System as soon as possible, since it would inevitably be one of the major foci of the fourth ME on Hong Kong. Past experience suggested that major deficiencies in fulfilling FATF’s recommendations would result in a more intensive follow-up

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<sup>2</sup> The Joint Financial Intelligence Unit (JFIU) is jointly run by the Hong Kong Police Force and the Hong Kong Customs and Excise Department, responsible for receiving, analysing and storing suspicious transaction reports and disseminating them to the appropriate investigative unit(s).

<sup>3</sup> For each of their Recommendation, FATF will generally give a rating of -

- (a) “Compliant” : the Recommendation is fully observed with respect to all essential criteria;
- (b) “Largely compliant” : there are only minor shortcomings, with a large majority of the essential criteria being fully met;
- (c) “Partially compliant” : substantive action has been taken and some of the essential criteria are complied with; and
- (d) “Non-compliant” : there are major shortcomings, with a large majority of the essential criteria not being met.

process and enhanced scrutiny by FATF, and would have a negative impact on Hong Kong's reputation as an international financial centre.

1.8 It is important to stress that the R32 System is not a panacea to combating money laundering and terrorist financing activities. It is but one of the many measures envisaged by the FATF in tackling such activities through different channels. The primary purpose is to enable law enforcement agencies (LEAs) to detect attempts to conceal the flow of illicit funds through physically moving CBNIs across boundaries. The R32 System has to work hand in hand with other measures in order that Hong Kong could have an effective AML/CFT regime.

### **Scope of the Proposed R32 System for Hong Kong**

1.9 When considering this document, members of the public are reminded that the R32 System is not, and should not be perceived as, any form of currency control. The R32 System only requires the reporting of the physical movement of large quantities of CBNIs across the border of member jurisdictions, so as to facilitate the prevention and detection of flow of funds stemming from illicit activities. This understanding has been clearly stated by FATF, which stresses that jurisdictions should implement the R32 System *“without restricting either (i) trade payments between countries for goods and services; or (ii) the freedom of capital movements in any way.”*

1.10 In other words, under the proposed R32 System, members of the public will not be prohibited from bringing large quantities of CBNIs into and out of Hong Kong, but they need to report to the authorities if the amount is over the designated threshold. As electronic payment is becoming more common for settlement of payments, the requirement should not result in any noticeable difference to the average travellers. Neither would this hinder normal cross-boundary trade and business transactions with the advance in banking and financial services.

1.11 Experiences of other jurisdictions which have already implemented the R32 System in accordance with FATF requirements also stand to testify to the limited implications that the system would bring to legitimate business and other activities.

## **Consultation and Next Steps**

1.12 We invite members of the public to consider the proposals contained in this document and provide feedback on the specific questions set out in Chapter 4 on or before 20 October 2015.

1.13 Subject to the results of this consultation exercise, the Government will consolidate the views collected and develop detailed legislative proposals for the system.

## **CHAPTER 2: MAJOR COMPONENTS OF AN R32 SYSTEM RECOMMENDED BY FATF AND OVERSEAS EXAMPLES**

2.1 Under R32, FATF's member jurisdictions should implement a system that could best respond to its local needs and situation, provided that the system meets a few key elements. This chapter presents these key elements, as well as describes a few overseas examples for reference.

### **Currency and bearer negotiable instruments (CBNIs)**

2.2 According to FATF, the items that should be reported under an R32 System refer to "currency" and "bearer negotiable instruments" (BNIs). "Currency" is defined by FATF as banknotes and coins that are in circulation as a medium of exchange, and foreign currency which may be brought into a jurisdiction, whereas BNIs include monetary or negotiable instruments in bearer form such as traveller cheques, cash cheques, promissory notes and money orders, in such form that title to these instruments passes upon delivery; or include incomplete but signed instruments with the payee's name omitted.

2.3 It should be noted that under FATF's definition of BNIs, gold and other precious metals and stones are not included, despite their high liquidity and use in certain situations as a means of exchange or transmitting value. FATF has separate AML/CFT recommendations dealing with these commodities.

### **Declaration System, Disclosure System and Mixed System**

2.4 Under FATF's requirements, members may meet their obligations under R32 by implementing either a declaration system, a disclosure system, or a mixed system, to detect both incoming and outgoing transportation of large quantities of CBNIs, whether by travellers or through cargo or mail. An R32 System is an essential part in the fight against money laundering and terrorist financing activities, as data collected provide useful information for conducting analysis and tracing the flow of illicit funds.



2.5 Under a **declaration system**, persons are required to report to the designated competent authorities, commonly the customs authorities, proactively. Declarations can be done by either tendering a written declaration or making an oral declaration. Insofar as travellers are concerned, written declarations can take one of the two models, namely (a) applicable to all travellers, or (b) applicable only to travellers carrying an amount above the threshold. For the former, all travellers are required to complete a written declaration. They are commonly required to fill in a form to indicate (e.g. by ticking a “yes” or “no” box on the form) whether or not they are carrying any CBNIs above a threshold. In the second model, only travellers carrying an amount of CBNIs above the specified threshold are required to declare and fill in a form. For oral declarations, travellers are required to report to a customs official verbally if he has brought with him CBNIs above the designated threshold.

2.6 Under a **disclosure system**, travellers are required to provide the authorities with appropriate information upon request. There is no requirement for travellers to make an upfront written or oral report, but they should give a truthful answer to the competent authorities upon request.

2.7 While FATF has not provided detailed recommendations regarding the declaration and/or disclosure system for cargoes and mails, member jurisdictions should put in place suitable arrangements in accordance with their practical conditions.

2.8 In essence, FATF allows certain flexibility for member jurisdictions in adopting a declaration system (written and/or oral), a disclosure system, or one mixing declaration and disclosure, for the incoming and/or outgoing directions of transportation of CBNIs. There are, therefore, many different models for the R32 System practised around the world. For instance, it could be in the form of a pure disclosure system, a pure declaration system or a system with mixed declaration and disclosure systems for the incoming and outgoing directions, a “declaration-in and disclosure-out” system, etc. Overseas jurisdictions have adopted different models which best suit their own particular circumstances. The practices of some overseas developed economies which have been rated by FATF as “compliant” or “largely

compliant” in respect of R32 are set out in paragraphs 2.11 to 2.15 below for reference.

### **Designated Threshold**

2.9 According to FATF’s suggestion, any physical transportation of CBNI exceeding a threshold of USD/EUR15,000 (about HK\$120,000<sup>4</sup>) will require declaration or disclosure. The threshold was agreed among member jurisdictions when the requirements were designed. Overseas jurisdictions which have in place an R32 System commonly adopt a threshold equivalent to or below FATF’s threshold.

### **Other Elements**

2.10 To ensure the effectiveness of the R32 System, FATF requires member jurisdictions to also put in place effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, in respect of persons who make false declarations or disclosures, who fail to make a declaration or disclosure as required, or who do not make declarations or disclosures properly. In addition, where the CBNI concerned are related to money laundering, terrorist financing or predicate offences, there should be measures enabling the authorities to stop, restrain for a reasonable period and/or confiscate such CBNI as appropriate. Information obtained through the declaration and/or disclosure process should be available to the local Financial Intelligence Unit for further analysis.

### **Overseas Practices**

2.11 Amongst the members of FATF, the R32 Systems of a few FATF member jurisdictions which have been rated as “compliant” or “largely compliant” are described below.

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<sup>4</sup> Based on an exchange rate of USD1: HK\$7.8 and EUR1: HK\$8.6, the threshold is about HK\$117,000 and HK\$129,000 respectively. We have rounded it up to become HK\$120,000 for the purpose of this consultation exercise.

### *The United States of America (the US)*

2.12 The US has implemented a declaration system that applies to incoming and outgoing physical transportation of CBNI's. Travellers leaving or entering the US are required to report CBNI's exceeding USD 10,000 (i.e. around HK\$78,000) on a form and submit to the customs authority upon entering / leaving the US. The system also applies to senders of cargoes and mails. In addition, each person in the US who receives CBNI's in excess of USD 10,000, from a place outside the US, must report within 15 days the amount, the date of receipt, the form of monetary instruments, and the person from whom the currency or monetary instruments were received.

### *The United Kingdom (UK)*

2.13 The UK has in place a declaration system for movement of CBNI's between the UK and non-European Union (EU) members, and a pure disclosure system that covers movements between the UK and other EU members. All persons entering or leaving the UK from or to a non-EU country are required to fill in a declaration form for CBNI's valued at EUR 10,000 (around HK\$86,000) or more. The UK system does not require the recipient of CBNI's to make a report. Meanwhile, any person entering or leaving the UK from or to a EU country is required to answer any questions that a customs officer may put to him about his baggage and anything contained therein or carried with him, including CBNI's, and produce such items for examination if requested to do so.

### *Australia*

2.14 Australia implements a combination of declaration (for currency) and disclosure (for BNI's) systems for incoming and outgoing transportation of CBNI's. For currency, the threshold for making a declaration by a prescribed form for all physical movements is AUD 10,000 (around HK\$60,000), whether carried by travellers or through mail and cargo. In addition, when receiving currency equal to or above the threshold from outside Australia, a report must be submitted by

the recipient within five business days of receiving the currency. The disclosure system for BNIs applies only to travellers, and a traveller must, if required to do so by a police officer or a customs officer, disclose whether or not the person has with him or her any BNIs and the amount payable under each BNI; and produce to the officer such BNIs.

### *Singapore*

2.15 Singapore practises a declaration system for both inbound and outbound travellers. Travellers must declare to the concerned authority any CBNIIs transported which exceed the threshold of SGD 20,000 (i.e. around HK\$116,000) on a prescribed form. The reporting obligation also applies to any person who is moving CBNIIs into or out of Singapore through containerised cargo, the postal system, courier companies, etc. A separate prescribed form must be filled out for such declarations. Any person within Singapore who receives CBNIIs exceeding the threshold from overseas is required to file a return within five business days of receiving them.

## CHAPTER 3: THE PROPOSED R32 SYSTEM FOR HONG KONG

3.1 As set out in the earlier chapters, it is of paramount importance for Hong Kong to establish the R32 System, which will complement our efforts in combating money laundering and terrorist financing, as well as fulfil Hong Kong's international obligations as a FATF member. In devising Hong Kong's R32 System, we have made reference to the following major principles –

- (a) the system should meet the international standards recommended by FATF, and at the same time take into account domestic circumstances;
- (b) the system should be effective in enabling the physical movement of illicit funds to be detected and the flow of such funds to be traced;
- (c) the system is not and would not have the effect of currency control, and would not affect the legitimate flow of funds across boundaries;
- (d) the system should facilitate compliance with the reporting obligations by members of the public and minimise any inconvenience caused to them as a result of compliance; and
- (e) the smooth and efficient operation of our existing control points should not be compromised.

***Question 1:*** *What are your views on the principles we have adopted in devising Hong Kong's R32 System? What other major factors do you think we should take into account?*

3.2 Taking into account the principles set out in paragraph 3.1, major features of the R32 System proposed for Hong Kong are set out in the following paragraphs.

## A Mixed System Proposed for Hong Kong

3.3 As we have explained in Chapter 2, FATF requires jurisdictions to implement a declaration system, a disclosure system or a mixed system for reporting the physical cross-border transportation of CBNIs, by travellers or through cargo or mail. FATF allows flexibility for member jurisdictions to choose the type of system that best suits their local circumstances. Indeed the overseas examples quoted in Chapter 2 indicate that different models have been adopted by jurisdictions around the world.

3.4 At present, there are 12 control points<sup>5</sup> and various other customs offices in Hong Kong, e.g. the Kwai Chung Customhouse, River Trade Terminal, with passenger, cargo or postal packet clearance facilities. Considering the local situation, **we propose to adopt a mixed system as follows –**

Cross-boundary transportation		Proposed reporting type
<b>Passengers</b>	Outgoing	Disclosure <i>(i.e. to report upon request)</i>
	Incoming <sup>6</sup>	Declaration <i>(i.e. to report proactively if CBNIs carried are above designated threshold)</i>
<b>Cargoes</b>	Outgoing and incoming	

<sup>5</sup> The 12 control points include the Hong Kong International Airport, China Ferry Terminal, Macau Ferry Terminal, Tuen Mun Ferry Terminal, Shenzhen Bay, Lok Ma Chau, Lok Ma Chau Spur Line, Lo Wu, Man Kam To, Sha Tau Kok, Hung Hom Station, and Kai Tak Cruise Terminal.

<sup>6</sup> The proposed reporting system for incoming passengers is declaration, except for persons entering Hong Kong not through control points, such as travellers arriving on passenger vessels at the Ocean Terminal or at anchorages. At present, customs clearance for this mode of arrival is done through selection of passengers for examination, either on board or at the terminal, and upon which a passenger has to reveal the items brought with him. For the R32 System, we propose to adopt a similar arrangement by requiring such incoming passengers to disclose the amount of CBNIs only upon request by the authorities. For the sake of succinctness, the term “incoming passengers” in the rest of this paper would refer to those entering Hong Kong through control points only.

## *The Case for Passengers*

3.5 In 2014, more than 375 million persons passed through various control points in Hong Kong. Of these, 76% crossed the “land” boundaries, 14% by “air” and the remaining 10% by “sea”. The daily average number of passengers crossing through Hong Kong’s various control points was over one million. Although it is not possible to estimate the volume of declarations/disclosures which may be generated by any R32 System at this stage, it calls for a cautious approach to ensure the effectiveness of the system but without adversely affecting the smooth flow of people at the control points.

3.6 Under the existing general customs clearance practice, the Customs and Excise Department (C&ED) adopts a risk-based approach in selecting passengers for examination at control points. Such arrangement is in line with international practices. It places a stronger focus on the inbound direction at the control points to interdict illegal items and prevent them from entering Hong Kong. To expedite the local clearance procedures, C&ED has, since November 2005, further implemented the Red and Green Channel System (RGCS) for clearance of arriving passengers at all control points. Under the RGCS, passengers arriving in Hong Kong with goods to declare (e.g. with dutiable goods in excess of the exempted quantities) should use the “Red Channel” to make a declaration; and those with nothing to declare should use the “Green Channel”. As for the outbound direction, C&ED selects passengers for examination according to risk profiling.

3.7 Since its implementation, the above customs clearance process has been operating effectively. In this regard, it is proposed that the R32 System for Hong Kong should be built upon this process and **a mixed system for R32 is proposed for passengers travelling into or out of Hong Kong**. Incoming passengers should be required to make a declaration to customs officials if they have with them CBNI above the designated threshold; whereas outgoing passengers should follow a disclosure arrangement.

3.8 In other words, when an incoming passenger enters Hong Kong with an amount of CBNI exceeding the designated threshold, he is

required to make a declaration proactively. In this case, he should use the Red Channel and fill in a declaration form. If his CBNIs do not exceed the designated threshold, he can simply go through the Green Channel. This arrangement basically adopts the same approach as the existing operation of the RGCS, with which members of the public at large should be quite familiar.

3.9 Similarly, tagging on the existing clearance arrangements, the obligation of passengers leaving Hong Kong is to disclose information about CBNIs carried when being approached and asked by an authorised officer.

3.10 By dovetailing the RGCS and the existing customs clearance arrangements as much as possible, we hope to make our reporting system simple for compliance and minimise any confusion for members of the public. This mixed system would also enable us to continue to adopt practices proven to be effective in handling the huge volume of passenger flow. On this note, we should stress again that the proposed reporting arrangement does not intend to stop any legitimate flow of funds or tax the declared / disclosed amount to be brought in or out.

3.11 The current proposal is not intended to cover passengers in transit (i.e. those who do not go through immigration and customs clearance in Hong Kong) from the R32 System of Hong Kong, which would minimise disturbance to passenger flow. In fact, FATF has not stipulated any explicit requirement to subject transiting passengers to the R32 System. This proposed arrangement is indeed common around the world where only passengers going through customs clearance are obliged to declare or disclose under a R32 System. For example, in Australia, only passengers who are clearing with the customs authority are required to declare.

***Question 2: Do you have any views for Hong Kong to adopt a mixed system for passengers?***



## *The Case for Cargoes*

3.12 In 2014, there were over 326 million tonnes of cargo passing through Hong Kong, including 201 million tonnes incoming and 125 million tonnes outgoing. Unlike passenger movements, which predominantly went through the land boundary control points, the majority of cargoes (91.2%) took the sea route, while 7.5% passed through land boundary control points and the remaining 1.3% by air. The total laden (loaded) container throughput in 2014 was over 19 million standard Twenty-foot Equivalent Units (excluding empty containers) (with 9.5 million incoming and 9.5 million outgoing), making Hong Kong one of the busiest container ports in the world.

3.13 Hong Kong has already established the electronic infrastructure for customs clearance of cargoes carried by different modes of transport. In particular, the Road Cargo System has been established since 2010 to require the advance electronic submission of information of cargo imported or exported through land boundary control points. In addition, there are further arrangements with airlines and shipping companies on the advance electronic submission of cargo information for customs clearance. These arrangements have enabled C&ED officers to conduct risk profiling on cargo consignments and determine whether a cargo consignment needs to be inspected before it reaches or leaves Hong Kong, thus facilitating the timely clearance of cargoes. The systems have proven to be reliable, effective and efficient.

3.14 In view of the effectiveness of the above arrangements, **we propose, for the purpose of the local R32 System, to adopt an advance electronic declaration system for both incoming and outgoing cargo consignments.** This means that if an incoming or outgoing cargo contains CBNIs exceeding the designated threshold, the person responsible for the import or export of the cargo (being the owner of the cargo or his agent(s)) will be required to make an advance declaration to the authority concerned, through an electronic system.

3.15 Like the prevailing arrangements for customs clearance, the responsible LEA will be enabled to conduct risk profiling in advance, hence giving the benefit of minimising disruption to cargo traffic. On the contrary, a system with declaration or disclosure on-site (i.e. persons responsible for the cargo to declare or disclose to the authority at the control points or upon inspection) may seriously impede cargo traffic flow and the effectiveness of screening.

3.16 Similar to passenger movements, there is no explicit FATF requirement in dealing with cargoes in transit. We do not propose to include them in the R32 System of Hong Kong.

*Question 3: What do you think of the proposed arrangement of implementing a declaration system with advance electronic submission of information for importing and exporting cargoes?*

### **Designated Threshold**

3.17 In designing the R32 System for Hong Kong, we need to decide on the threshold of CBNI's exceeding which a passenger or the person responsible for a cargo is required to make a declaration to the authority concerned. As noted in Chapter 2, FATF's recommended threshold is USD/EUR 15,000. It is the limit set by FATF which the threshold of member jurisdictions should not exceed. In practice, some jurisdictions adopt lower (i.e. more stringent) thresholds than FATF's recommendation. For example, in ascending order, the threshold adopted by Australia is AUD 10,000 (around HK\$60,000), USD 10,000 (around HK\$78,000) for the US, EUR 10,000 (around HK\$86,000) for the UK, and SGD 20,000 (around HK\$116,000) for Singapore.

3.18 **We propose to adopt FATF's recommended threshold for the R32 System in Hong Kong, i.e. at HK\$120,000, which is equivalent to around USD/EUR 15,000.** The threshold will be applicable to declaration (i.e. incoming passengers and all cross-boundary cargoes). Only those bringing or moving CBNI's valued at above HK\$120,000 are required to report to the authority concerned. Proactive

reporting is not required when the CBNIs carried do not exceed the threshold. Compared with other FATF member jurisdictions, the proposed threshold is largely comparable and is even more relaxed. Moreover, requiring only those with an amount of CBNIs above the threshold to report is commonly practised around the world.

3.19 The proposed threshold has also taken into account similar reporting requirements in Hong Kong's AML/CFT regime. Under the AMLO, a financial institution must carry out customer due diligence measures (e.g. verifying the customer's identity) when it deals with an occasional transaction for its customer with an amount equal to or above HK\$120,000. By adopting the same reporting threshold for the various AML/CFT regimes in Hong Kong, it would help avoid confusion, if any, to relevant practitioners and members of the public.

3.20 As for the disclosure arrangement (i.e. applicable to outgoing passengers), passengers would only need to provide information upon request, regardless of the amount of CBNIs being carried. This is also in line with international practice.

3.21 Meanwhile, in line with FATF's definition of CBNIs (which has been explained in Chapter 2), **we do not intend to require the reporting of the movement of gold and other precious metals and stones** under the present exercise. In fact, there are separate recommendations by FATF for dealing with these items. As regards whether specific items such as casino tokens and bearer share certificates should or should not be included, we welcome any views in this regard.

***Question 4:** Should FATF's recommended threshold of USD/EUR 15,000 (equivalent to around HK\$120,000) be adopted as the designated threshold for Hong Kong's R32 System? Or should a lower/higher threshold be adopted?*

*Question 5: For declarations, should we follow the commonly adopted practice of requiring only those transporting CBNIs above the designated threshold to report? Or should all passengers/persons responsible for a cargo be required to declare, regardless of the amount of CBNIs they transport?*

*Question 6: Do you think that Hong Kong's R32 System should or should not include specific items such as casino tokens and bearer share certificates?*

### **Mail to be Excluded**

3.22 In the 2014-15 financial year, outbound postal mail from Hong Kong totalled 149.3 million items and inbound postal mail totalled 25.3 million items. For international mail items to and from Hong Kong containing CBNIs, they must be sent by registered or insured service<sup>7</sup>. Additionally, senders of outbound mail from Hong Kong should observe the requirements of the destination country or region.

3.23 Among FATF's members, there are divergent approaches regarding whether and how CBNIs are regulated with respect to mail. For instance, in the US, senders of CBNIs through mail above their respective designated thresholds are required to file declaration forms to the authorities before posting; recipients of CBNIs through mail are also required to file declaration forms to the authorities within a specified period upon receipt. In France, sending of currency (but not BNIs) by mail is simply prohibited. In Australia, there are reporting requirements for currency (but not BNIs) sent by mail. Some others simply allow the transportation of cash by mail with minimal restrictions. FATF also notes that countries differ widely in their approach to cash control in mail. There is not a clearly proven model around the world in respect of the regulation of movement of CBNIs by mails. Moreover, the risk of mail being used to transport illicit cash is far from conclusive, and more research and study are required to understand the issue and factors behind.

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<sup>7</sup> Inbound items of a value exceeding HK\$2,500 must be sent by insured service.

3.24 It calls for caution as to whether (and if so, how) Hong Kong should make its R32 System cover mails, in particular, in light of the huge volume of international mails which pass through the system. It has to take into account the diversity of the modes of regulation worldwide, and the practical implications of any form of control on the operation of Hong Kong's mail system. On balance, **we propose not to regulate the posting of CBNIs via the mail system in Hong Kong at this stage.** We will closely monitor the situation of mail in the context of AML/CFT enforcement.

*Question 7: Do you think that Hong Kong should not regulate the posting of CBNIs via the mail system at this stage?*

## **Sanctions**

3.25 As required by FATF, effective, proportionate and dissuasive sanctions should be put in place to deal with persons who fail to make a declaration, or make a false declaration or disclosure, on the CBNIs physically transported. FATF has not made any recommendation on the appropriate level of sanctions, and there is not a universal approach on the sanctions applied in overseas jurisdictions.

3.26 In some overseas jurisdictions such as Australia, administrative penalty is available as an alternative to criminal charges under their R32 Systems. The intention of such arrangement is usually to cater for less serious circumstances, e.g. when an individual has inadvertently made a mistake on the declared amount due to mis-counting of banknotes, or a first-time traveller who is genuinely not familiar with the regulation and hence fails to report.

3.27 For Hong Kong, there is a need to strike a balance between practicality and the need for effective law enforcement. We therefore propose that for the failure to report CBNIs transported as required or making false declarations or disclosures, a fixed penalty system be put in place, but applicable only to first-time offenders who have not previously committed any money laundering or terrorist financing offences. Other

cases should be subject to court proceedings which might lead to more rigorous punishment comprising fines and imprisonment. In drawing up the legislation to establish the new regime, we will take into account relevant factors, such as the severity of the new offences, the deterrent effect and comparable offences in the local legislation.

### **Enforcement Agencies**

3.28 The purpose of the R32 System is to detect the illicit movements of CBNIs being carried across Hong Kong's boundaries. Taking into account the nature of work involving primarily enforcement of relevant requirements at control points, **C&ED would be designated as the lead agency in enforcing the R32 System, with contributions from other local LEAs in respect of intelligence analysis and investigation.** To allow effective enforcement action, C&ED would be empowered to process the declarations received and information disclosed, as well as the information and intelligence collected.

### **Implementation and Publicity**

3.29 Subject to the comments received in this consultation exercise, we will introduce a bill into the Legislative Council to enable the implementation of the R32 System. In addition, a number of other preparatory tasks are also necessary, such as taking forward suitable physical improvements at the control points, and carrying out suitable publicity to promote awareness of the new system. Initial publicity plan includes the production of Announcements in the Public Interests and reminders at the control points, and reaching out to the transport trade, etc.

***Question 8:** Do you have any suggestions on how we could enhance the publicity for the implementation of the R32 System so that members of the public and relevant practitioners could be well informed?*

## CHAPTER 4: SHARE YOUR VIEWS

4.1 This Public Consultation will last for three months starting from 21 July 2015. In sum, we wish to listen to views from stakeholders and members of the public on the following specific issues –

- Question 1** *What are your views on the principles we have adopted in devising Hong Kong's R32 System? What other major factors do you think we should take into account?*
- Question 2** *Do you have any views for Hong Kong to adopt a mixed system for passengers?*
- Question 3** *What do you think of the proposed arrangement of implementing a declaration system with advance electronic submission of information for importing and exporting cargoes?*
- Question 4** *Should FATF's recommended threshold of USD/EUR 15,000 (equivalent to around HK\$120,000) be adopted as the designated threshold for Hong Kong's R32 System? Or should a lower/higher threshold be adopted?*
- Question 5** *For declarations, should we follow the commonly adopted practice of requiring only those transporting CBNIs above the designated threshold to report? Or should all passengers/persons responsible for a cargo be required to declare, regardless of the amount of CBNIs they transport?*
- Question 6** *Do you think that Hong Kong's R32 System should or should not include specific items such as casino tokens and bearer share certificates?*
- Question 7** *Do you think that Hong Kong should not regulate the posting of CBNIs via the mail system at this stage?*
- Question 8** *Do you have any suggestions on how we could enhance the publicity for the implementation of the R32 System so that members of the public and relevant practitioners could be well informed?*

## **When and How to Respond**

4.2 Please send us your views by mail, facsimile or email within the consultation period, i.e. on or before 20 October 2015.

Address: Narcotics Division, Security Bureau  
30/F, High Block, Queensway Government Offices,  
66 Queensway,  
Hong Kong  
Fax No.: 2810 1773  
E-mail Address: r32-consultation@sb.gov.hk

For ease of responding to this consultation exercise and to facilitate subsequent analysis, a standard response form is attached to this document.

4.3 It is optional for members of the public to supply their personal data upon providing views on this consultation paper. The submissions and personal data collected may be transferred to the relevant Government bureaux and departments for purposes directly related to this consultation exercise. The Government bureaux and departments receiving the data may only use the data for such purposes.

4.4 The names and views of individuals and organisations who/which put forth submissions in response to this consultation paper (“senders”) may be published for public viewing. We may, either in discussion with others, whether privately or publicly, or in any subsequent report, cite comments submitted in response to this consultation paper.

4.5 To safeguard senders’ personal data privacy, we will remove senders’ relevant data, such as residential/return addresses, email addresses, identity card numbers, telephone numbers, facsimile numbers and signatures, where provided, when publishing their submissions.

4.6 We will respect the wish of senders to remain anonymous and/or keep the views confidential in part or in whole. If the senders request anonymity in the submissions, their names will be removed when



publishing their views. If the senders request confidentiality, their submissions will not be published.

4.7 If the senders do not request anonymity or confidentiality in the submissions, it will be assumed that the senders can be named and the views can be published in their entirety.

4.8 Any sender providing personal data to us in the submission will have rights of access and correction with respect to such personal data. Requests for data access and correction of personal data should be made in writing to:

Address: Narcotics Division, Security Bureau  
30/F, High Block, Queensway Government Offices,  
66 Queensway,  
Hong Kong  
Fax No.: 2810 1773  
E-mail Address: [r32-consultation@sb.gov.hk](mailto:r32-consultation@sb.gov.hk)

## Annex A

### **Membership of the Financial Action Task Force (FATF)**

FATF has 34 member jurisdictions, two Regional organisations and eight associate members –

#### **(a) 34 member jurisdictions –**

Argentina	France	Republic of Korea	South Africa
Australia	Germany	Luxembourg	Spain
Austria	Greece	Mexico	Sweden
Belgium	Hong Kong, China	The Netherlands	Switzerland
Brazil	Iceland	New Zealand	Turkey
Canada	India	Norway	United Kingdom
China	Ireland	Portugal	United States
Denmark	Italy	Russian Federation	
Finland	Japan	Singapore	

#### **(b) two regional organisations–**

##### **(i) the European Commission :**

the European Commission is the executive body of the European Union which currently consists of 28 member states: Austria\*; Belgium\*; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark\*; Estonia; Finland\*; France\*; Germany\*; Greece\*; Hungary; Ireland\*; Italy\*; Latvia; Lithuania; Luxembourg\*; Malta; the Netherlands\*; Poland; Portugal\*; Romania; Slovakia; Slovenia; Spain\*; Sweden\*; and the UK\* (*the 15 countries marked with an asterisk \* are also member jurisdictions of FATF*); and

(ii) the Gulf Co-operation Council :

the Gulf Co-operation Council consists of six countries: the Kingdom of Bahrain; Kuwait; the Sultanate of Oman; Qatar; the Kingdom of Saudi Arabia; and the United Arab Emirates; and

(c) eight **associate members** –

- (i) Asia/Pacific Group on Money Laundering (APG);
- (ii) Caribbean Financial Action Task Force (CFATF) ;
- (iii) Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) ;
- (iv) Eurasian Group (EAG);
- (v) Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG);
- (vi) Financial Action Task Force of Latin America (GAFILAT);
- (vii) Inter Governmental Action Group against Money Laundering in West Africa (GIABA); and
- (viii) Middle East and North Africa Financial Action Task Force (MENAFATF).

**FATF's Recommendation 32**

**32. Cash Courier**

Countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including through a declaration system and/or disclosure system.

Countries should ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing, money laundering or predicate offences, or that are falsely declared or disclosed.

Countries should ensure that effective, proportionate and dissuasive sanctions are available to deal with persons who make false declaration(s) or disclosure(s). In cases where the currency or bearer negotiable instruments are related to terrorist financing, money laundering or predicate offences, countries should also adopt measures, including legislative ones consistent with Recommendation 4, which would enable the confiscation of such currency or instruments.

## **List of Acronyms and Abbreviations**

AML	Anti-money laundering
AMLO	Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance
APG	Asia/Pacific Group on Money Laundering
AUD	Australian dollar
BNIs	Bearer negotiable instruments
C&ED	Customs and Excise Department
CBNIs	Currency and bearer negotiable instruments
CFATF	Caribbean Financial Action Task Force
CFT	Counter-financing of terrorism
EAG	Eurasian Group
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
GAFILAT	Financial Action Task Force of Latin America
GIABA	Inter-Governmental Action Group Against Money Laundering in West Africa
JFIU	Joint Financial Intelligence Unit
LEAs	Law enforcement agencies
ME	Mutual evaluation

MENAFATF	Middle East and North Africa Financial Action Task Force
MONEYVAL	Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
R32	Recommendation 32
RGCS	Red and Green Channel System
SGD	Singapore dollar
UK	The United Kingdom
US	The United States of America
USD	United States dollar

### **List of Exchange Rates**

The following exchange rates have been adopted throughout the document. They are based on the exchange rates as at 1 June 2015.

AUD 1	=	HK\$6.0
EUR 1	=	HK\$8.6
SGD 1	=	HK\$5.8
USD 1	=	HK\$7.8

