COMMISSIONER OF BANKING
HONG KONG

香 港
銀 行 業 監 理 處

Our Ref.: CB/BANK/109

3 March 1989

The Chief Executive
All Authorised Institutions

Dear Sir/Madam,

Prevention of criminal use of the banking system for the purpose of money laundering

I enclose a copy of a guideline setting out certain principles to be followed by authorised institutions in order to minimize the risk of their becoming involved in money laundering. This guideline is issued under section 7(3) of the Banking Ordinance 1986, having regard to the Commissioner's responsibilities in section 7(2)(c) & (d) of the Ordinance, which are to promote sound business practices in the banking industry.

Background

Banks and other financial institutions may be used unwittingly as intermediaries for the transfer or deposit of funds derived from criminal activity. Criminals and their associates use the financial system to make payments and to transfer funds from one account to another; to hide the source and beneficial ownership of money; and to provide storage for bank-notes, gold, etc., through safe-deposit facilities. These activites are commonly referred to as money-laundering.

Public confidence in banks, and hence their stability, can be undermined by adverse publicity as a result of inadvertent association by banks with criminals. In addition, banks may lay themselves open to direct losses from fraud, either through negligence in screening undesirable customers or where the integrity of their own officers has been undermined through association with criminals.

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The issue of how to prevent criminals laundering the proceeds of crime through the financial system has attracted increasing attention from legislative authorities, law enforcement agencies and banking supervisors in a number of countries.

Guideline

Recently the national banking supervisory authorities represented on the Basle Committee on Banking Regulations and Supervisory Practices* have issued a statement designed to encourage ethical standards of professional conduct among banks and other financial institutions. The statement encourages banks' management to put in place effective procedures to ensure that all persons conducting business with their institutions are properly identified; that transactions that do not appear legitimate are discouraged; and that co-operation, where the law permits, with law enforcement authorities is achieved.

Banks in the countries represented on the Committee are being urged to follow the principles in the statement; and the Committee has sought support for it from other supervisory authorities.

Hong Kong, as a major international financial centre, without exchange controls, and occupying a strategic position in South East Asia is particularly susceptible to being used by criminals to launder money. It is therefore apposite that the lead set by the BIS Committee be followed here in order to draw attention to the need for institutions to have appropriate defences against becoming unwittingly involved in money laundering. The wording of the attached guideline is modelled closely therefore on the statement of the Basle Committee.

* The Committee comprises representatives of the central banks and supervisory authorities of the Group of Ten countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, United Kingdom, United States) and Luxembourg.

I consider effective procedures to implement the guideline to be part of the internal controls which all prudently managed authorised institutions should have in place, and as such we will have regard to their existence, content, and effectiveness when conducting our supervision.

The Hong Kong Association of Banks, the Hong Kong Deposit-taking Companies Association, the Banking Advisory Committee, and the Deposit-taking Companies Advisory Committee have been consulted and fully support the guideline.

Drug Trafficking legislation

You will be aware of the recently published Bill concerned with drug trafficking, which will, inter alia, require banks and deposit-taking companies to report suspicious transactions to the authorities. The associations of banks and deposit-taking companies have devised model codes designed to assist their members develop procedures to facilitate compliance with the Bill's provisions. This exemplifies the type of internal arrangements envisaged by the new Banking Ordinance guideline.

Yours faithfully,

A W Nicolle
Commissioner of Banking

c.c. Local Representative Offices

BANKING ORDINANCE (Chapter 155)

Prevention of criminal use of the banking system for the purposes of money-laundering

A guideline issued by the Commissioner of Banking under section 7(3)

I. Purpose

Banks and other financial institutions may unwittingly be used as intermediaries for the transfer or deposit of money derived from criminal activity. The intention behind such transactions is often to hide the beneficial ownership of funds. The use of the financial system in this way is of direct concern to police and other law enforcement agencies; it is also a matter of concern to the Commissioner of Banking and the managements of authorised institutions, since public confidence in banks may be undermined through their association with criminals.

This Guideline is intended to outline some basic policies and procedures that managements of authorised institutions should ensure are in place within their institutions with a view to assisting in the suppression of money-laundering through the banking system, national and international. The Guideline thus sets out to reinforce existing best practices among authorised institutions and, specifically, to encourage vigilance against criminal use of the payments system, implementation by authorised institutions of effective preventive safeguards, and co-operation with law enforcement agencies.

II. Customer identification

With a view to ensuring that the financial system is not used as a channel for criminal funds, authorised institutions should make reasonable efforts to determine the true identity of all customers requesting the institution's services. Particular care should be taken to identify the ownership of all accounts and those using safe-custody facilities. All authorised institutions should institute effective procedures for obtaining identification from new customers. It should be an explicit policy that significant business transactions will not be conducted with customers who fail to provide evidence of their identity.

III. Compliance with laws

Management of authorised institutions should ensure that business is conducted in conformity with high ethical standards and that laws and regulations pertaining to financial transactions are adhered to. As regards transactions executed on behalf of customers, it is accepted that institutions may have no means of knowing whether the transaction stems from or forms part of criminal activity. Similarly, in an international context it may be difficult to ensure that cross-border transactions on behalf of customers are in compliance with the regulations of another country. Nevertheless, institutions should not set out to offer services or provide active assistance in transactions which they have good reason to suppose are associated with money-laundering activities.

IV. Co-operation with law enforcement authorities

Authorised institutions should co-operate fully with law enforcement authorities to the extent permitted by contractual obligations relating to customer confidentiality. Care should be taken to avoid providing support or assistance to customers seeking to deceive law enforcement agencies through the provision of altered, incomplete or misleading information. Where institutions become aware of facts which lead to the reasonable presumption that money held on deposit derives from criminal activity or that transactions entered into are themselves criminal in purpose, appropriate measures, consistent with the law and having regard to the contractual obligations of the institution concerned, should be taken, for example, to deny assistance, sever relations with the customer and close or freeze accounts.

V. Adherence to the Guideline

All authorised institutions should formally adopt policies consistent with the principles set out in this Guideline and should ensure that all members of their staff concerned, wherever located, are informed of the institution's policy in this regard. Attention should be given to staff training in matters covered by the Guideline. To promote adherence to these principles, institutions should implement specific procedures for customer identification and for retaining internal records of transactions. Arrangements for internal audit may need to be extended in order to establish an effective means of testing for general compliance with the Guideline.

3 March 1989 Commissioner of Banking

銀行業條例（香港法例第155章）

防止銀行系統被非法用來使不正當獲得的金錢合法化

銀行監理專員根據第7(3)條的規定而發出的指引

Ⅰ． 目的

銀行及其他金融機構可能會在不知情之下，被利用作為轉移或存放非法活動所得金錢的媒介。這類交易背後的目的，通常是為了隱瞞款項受益權所有人的身份。利用金融體系作這種用途，是警方及其他執法機構直接關注的問題，同時亦是銀行監理專員及認可機構管理階層所關心的問題，因為銀行如果與罪犯有交往，會損害公眾人士對銀行的信心。

本指引旨在概略地說明若干基本政策和程序，認可機構的管理階層應確保其機構切實執行，以協助遏止本地及國際銀行系統被用來使非法獲得的金錢合法化（亦稱「洗錢」），因此，本指引的目的，是加強各認可機構之間的現行優良慣例，特別是鼓勵認可機構提高警覺，防範付款系統被非法利用，並實施有效的防範措施以及與執法機構合作。

Ⅱ． 客戶身份

為確保金融體系不會被利用作為傳送非法款項的渠道，認可機構應作出合理的努力，確定所有要求其提供服務的客戶的真正身份，特別是謹慎辨別所有戶口擁有人及使用保管設施人士的身份。所有認可機構應制定有效的程序，向新客戶取得身份證明，並在政策上明確規定不與未能提供身份證明的客戶進行巨額交易。

Ⅲ． 嚴守法例

認可機構的管理階層，應確保他們按照高度的道德標準進行業務，並且依據有關財務交易的法規經營。至於代表客戶進行的交易，有關方面承認認可機構可能無法知悉該項交易是否源於犯罪活動或屬於犯罪活動的一部分。同樣，在國際交易中，也可能難以確保代表客戶進行的跨國交易，是符合其他國家的規例。不過，認可機構若有充分理由推測某些交易是與「洗錢」活動有關，便不應向有關客戶提供服務或積極給予協助。

Ⅳ． 與執法當局合作

在有關客戶資料保密的約定義務所容許的程度下，認可機構應與執法當局充分合作。對於試圖透過提供經更改、不完整或誤導的資料，以隱瞞執法機構的客戶，認可機構應慎加處理，避免向其提供支援或協助。當認可機構知悉一些事實，並根據該等事實合理地推斷客戶的存款乃來自犯罪活動，或已進行的交易本身是為着達到犯罪的目的，便應在符合法例規定並且顧及有關機構的約定義務的情況下，採取適當措施，例如拒絕給予協助、與客戶中斷關係以及結束或凍結帳戶。

Ⅴ． 依循指引辦事

所有認可機構均應按照本指引所訂原則，正式制定政策，並確保所有有關員工，無論是派駐何處，都知悉機構在這方面的政策。進行員工訓練時，亦應留意指引所規定各點。為協助員工依循指引辦事，認可機構應訂立明確的程序，以識別客戶的身份及保留各項交易的內部紀錄。此外，亦須擴大內部審核措施，以確立有效的途徑，考查員工是否普遍遵守指引的規定。

銀行監理專員黎格義

一九八九年三月三日