

Guideline No. : 3.3.2

Our Ref: CB/POL/2/6

6 October 1995

The Chief Executive  
All authorized institutions

Dear Sir/Madam,

**Drug Trafficking (Recovery of Proceeds)(Amendment) Ordinance 1995**  
**Organized and Serious Crimes (Amendment) Ordinance 1995**

I am writing to draw your attention to the recent enactment of the Drug Trafficking (Recovery of Proceeds)(Amendment) Ordinance 1995 and the Organized and Serious Crimes (Amendment) Ordinance 1995. These Ordinances, except for Part IVA and section 35 of the former, came into effect on 1 September 1995. The commencement date of these remaining sections, which are related to detention of certain seized property and the powers of authorized officers, will be determined in due course.

Extracts of the two Amendment Ordinances relating to the money laundering provisions are enclosed for your reference. The amendments have tightened the money laundering provisions of the Drug Trafficking (Recovery of Proceeds) Ordinance (“DTRPO”) and the Organized and Serious Crimes Ordinance (“OSCO”) and have a significant bearing on the duty to report suspicious transactions, which are summarized below.

The new section 25(1) of DTRPO and OSCO creates the offence of dealing with any property, knowing or believing it in whole or in part directly or indirectly represents the proceeds of drug trafficking or of an indictable offence respectively. It is a defence under the Ordinances for a person to prove that he intended to disclose such knowledge, suspicion or matter to an authorized officer (as defined in section 3 of the two Ordinances) or has a reasonable excuse for his failure to make a disclosure in accordance with section 25A(2) of the Ordinances.

The amendments add a new section 25A to both DTRPO and OSCO. The new section 25A(1) for the first time imposes a clear statutory duty on a person, who knows or suspects that any property in whole or in part directly or indirectly represents the proceeds of drug trafficking or of an indictable offence, or was or is

intended to be used in that connection, to make a disclosure to an authorized officer. Section 25A(7) makes it an offence for a person to fail to make such disclosure.

The new section 25A(2) provides that if a person who has made the necessary disclosure does any act in contravention of section 25(1) and the disclosure relates to that act he does not commit an offence if:

- (a) the disclosure is made before he does that act and the act is done with the consent of an authorized officer; or
- (b) the disclosure is made after the person does the act and the disclosure is made on the person's own initiative and as soon as it is reasonable for him to make it.

Section 25A(3) provides that such disclosure shall not be treated as breach of contract or of any enactment restricting disclosure of information, and shall not render the person making the disclosure liable in damages for any loss arising out of the disclosure. Therefore, institutions need not fear breaching their duty of confidentiality owed to customers when making a disclosure under the Ordinances.

Furthermore the new section 25A(4) extends the provisions of section 25A to disclosures made by an employee to an appropriate person in accordance with the procedures established by his employer for the making of such disclosure in the same way as it applies to disclosures to an authorized officer. This provides protection to employees of authorized institutions against the risk of prosecution where they have reported knowledge or suspicion of money laundering transactions to the person designated by their employers.

A “tipping-off” offence is created under the new section 25A(5) of both Ordinances, under which 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 an investigation into money laundering activities.

We are now revising our Guideline on Money Laundering to take into account the legislative amendments mentioned above and the enactment of the OSCO, of which you were informed vide our letter dated 3 January 1995. In the meantime, this letter is intended to supplement the existing Guideline. You should take necessary steps to ensure that your staff are made aware of the effects of these legislative amendments, in particular, the statutory duties they impose to report suspicious transactions and the “tipping-off” offences.

Yours faithfully,

(D T R Carse)  
Deputy Chief Executive (Banking)

c.c. Hong Kong Association of Banks  
(Attn: Mr Ian Wilson)

The DTC Association  
(Attn: Mr C H Chan)