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**HONG KONG BAR ASSOCIATION**

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2 October 2009

Ms. Angelina Kwan  
for Secretary for Financial Services and the Treasury  
The Treasury Bureau  
18/F, Tower 1  
Admiralty Centre  
18 Harcourt Road  
Hong Kong

Dear Ms. Kwan

**Conceptual Framework of the Legislative Proposal to  
Enhance the Anti-Money Laundering Regulatory Regime  
in respect of the Financial Sectors**

We refer to your letters dated 9 July and 21 September 2009.

We are pleased to enclose herewith a copy of the submission of the Hong Kong Bar Association on the captioned consultation paper for your consideration, which has been endorsed by the Bar Council at its meeting held on 29 September 2009.

Yours sincerely,

Robert Whitehead, SC  
Vice-Chairman

Encl.

**香港大律師公會**

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**Submission of the Hong Kong Bar Association**  
**Conceptual in Framework of Legislative Proposal to Enhance the Anti-Money**  
**Laundering Regulatory Regime in respect of the Financial Sectors**

1. The Consultation Paper seeks views on the framework for proposed legislation to enhance the anti-money laundering ("AML") regulatory regime in respect of the financial sectors. It does not touch on matters which are directly relevant to the Bar.
2. However, the Bar has two comments on the proposals.
3. First, at para.3.6, it is proposed that in future legislation, AML authorities would be empowered to issue guidelines to facilitate regulatees' compliance with the requirements. These guidelines would be taken into account in deciding whether there are breaches of the relevant statutory requirements. The breaches will be punishable on summary conviction or by indictment (paras.5.4-5.5).
4. The objection to the proposal is that a financial institution or individual will be subject to serious criminal sanctions upon the breach of a guideline issued by the regulator, and not by a statutory provision in legislation which has been examined, debated and passed by the legislature.
5. Second, under para.5.4(b) an offence will be committed by an officer or manager of an institution on the basis of his/her "consent or connivance of, or recklessness", of an offence committed by the institutions.
6. In our view, if the offence can be prosecuted, summarily or an indictment, with penalties of fines and/or imprisonment (para.5.5), there must be an element of knowledge.

Hong Kong Bar Association

Dated: 2 October 2009

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