

**Bills Committee on
Anti-money Laundering and Counter-terrorist Financing
(Financial Institutions) Bill**

Criminal Liability of Employees

This note provides examples of other legislation which contains provisions that subject employees of an institution to criminal liability for non-compliance of that institution with the relevant legislation.

2. Under clause 5(7) and (8) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill (“the Bill”), an employee of a financial institution (amongst others) who knowingly or with intent to defraud causes or permits the financial institution to contravene a specified provision commits an offence. The formulation for the offence under clause 5(7) and (8) was modeled on that under section 180(16)(b) of the Securities and Futures Ordinance (Cap 571) and section 31(7) and (8) of the Financial Reporting Council Ordinance (Cap 588). Employee’s criminal liability for non-compliance of the employer under specified circumstances can also be found under other legislation, for example the Race Discrimination Ordinance (“RDO”)(Cap602), albeit with a slightly content (the relevant provisions are set out in the **Annex**).

3. The customer due diligence and record-keeping obligations provided under the Bill are typically carried out by frontline staff of financial institutions. As such, even if the financial institutions and their senior management have put in place a comprehensive internal policy or procedure to fulfill such requirements, it would create a loophole in the anti-money laundering regime if frontline staff who deliberately disregard the internal policy or procedure which in turn causes the financial institution to breach the statutory obligation are not subject to appropriate sanctions under this Bill. We have not received any objection to the proposal that employees should be subject to criminal sanctions in specified circumstances in the two rounds of public consultation conducted in July and December 2009 respectively. In response to the comment received during the public consultations that a clear mental threshold should be set, we have specified in the criminal provisions that only breaches committed “knowingly” or “with intent to defraud” would lead to criminal sanctions.

Provisions relevant to employees' liability under the Race Discrimination Ordinance

Chapter:	602	Title:	RACE DISCRIMINATION ORDINANCE
Section:	48	Heading:	Aiding unlawful acts

- (1) A person who knowingly aids another person to do an act made unlawful by this Ordinance is to be treated for the purposes of this Ordinance as himself or herself doing an unlawful act of the like description.
- (2) For the purposes of subsection (1), an employee or agent for whose act the employer or principal is liable under section 47 (or would be so liable but for section 47(3)) is deemed to aid the doing of the act by the employer or principal.
- (3) A person (“the first-mentioned person”) does not under this section knowingly aid another person (“the second-mentioned person”) to do an unlawful act if—
 - (a) the first-mentioned person acts on a statement made to him or her by the second-mentioned person that, by reason of any provision of this Ordinance, the act which the first-mentioned person aids would not be unlawful; and
 - (b) it is reasonable for the first-mentioned person to rely on that statement.
- (4) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (3)(a) which in a material respect is false or misleading commits an offence and is liable on conviction to a fine at level 4.