

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

Protection of Legal Professional Privilege

This note provides further information on clause 80(2) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill (“the Bill”).

2. Clause 80(1) provides that the Bill does not affect any claims, rights or entitlements that would arise on the ground of legal professional privilege and clause 80(2) further states that clause 80(1) “does not affect any requirement under this Ordinance to disclose the name and address of a client of a legal practitioner”.

3. Clause 80(2) was drafted based on section 380(5) of the Securities and Futures Ordinance (Cap 571) and section 56(2) of the Financial Reporting Council Ordinance (Cap 588). Apart from the two Ordinances, a number of other Ordinances also contain similar provisions requiring the disclosure of the name and address of a client of a legal practitioner while expressly protecting legal professional privilege. Extracts of some of these Ordinances are set out in **Annex A** for Members’ reference.

4. The three Ordinances relevant to anti-money laundering or counter-financing of terrorism, namely the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) (“DTROP”), the Organized and Serious Crimes Ordinance (Cap 455) (“OSCO”) and the United Nations (Anti-Terrorism Measures) Ordinance (Cap 575) (“UNATMO”) also provide for the protection of legal professional privilege. Similar to clause 80 of the Bill, section 3(9) of OSCO provides that “a person shall not under this section be required to furnish any information or produce any material relating to items subject to legal privilege, except that a lawyer may be required to furnish the name and address of his client”. Section 2(14) of DTROP and s2(5) of UNATMO provide that nothing in that Ordinance shall require the disclosure of any items subject to legal privilege. The Department of Justice advised that the term “items subject to legal privilege” as defined under section 22(2) of DTROP, section 2(1) of OSCO and section 2(1) of UNATMO (extracts set out in **Annex B**) does not cover the name and address of a lawyer’s client.

5. The relevant authorities under the Bill may need to obtain the name and address of a client of a lawyer for various purposes, including to identify the whereabouts of the client in order to serve information

production notices, interview notices and summonses. Removing the exception under clause 80(2), which is a commonly found provision under other relevant legislation, may hamper the relevant authorities' enforcement effort.

6. The Department of Justice has reviewed the drafting of clause 80(2) pursuant to Members' comment raised at the meeting on 13 January 2011. Subject to Members' comment, the Administration will consider the desirability of proposing a committee-stage amendment to revise the provision as follows to clarify that there is no specific requirement for the disclosure of the name and address of a client under the Bill :

- (a) add the word "made" after "any requirement" in the English text such that it reads "[s]ubsection (1) does not affect any requirement made under this Ordinance to disclose the name and address of a client of a legal practitioner..."; and
- (b) revise the Chinese text such that it reads "根據本條例作出的披露法律執業者(不論該法律執業者是否在香港取得資格以大律師身分執業或以律師身分行事)的客戶的姓名或名稱及地址的要求，不受第(1)款影響。".

7. In response to the request from a Member made at the meeting on 24 January 2011, we have reviewed the submissions received and confirmed that the Law Society of Hong Kong and the Hong Kong Bar Association had not made any comment relating to "legal professional privilege" in response to the past public consultations conducted by the Administration or the Bills Committee's invitation for views on the Bill.

Financial Services and the Treasury Bureau
2 February 2011

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE
Section:	380	Heading:	Immunity

- (1) A person shall not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, in respect of any act done or any omission made by reason only of-
 - (a) his performance or purported performance in good faith of any function (including that under each of the paragraphs of section 5(1)) under any of the relevant provisions; or
 - (b) his furtherance or purported furtherance in good faith of any regulatory objective, or performance or purported performance in good faith of any function, pursuant to or consequent upon any written direction given by the Chief Executive under section 11.
- (2) Nothing in subsection (1) applies to a person appointed as an auditor under section 153.
- (3) A person who complies with a requirement made under any provision of this Ordinance shall not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, to any person by reason only of that compliance.
- (4) Subject to subsection (5), nothing in this Ordinance affects any claims, rights or entitlements which would, apart from this Ordinance, arise on the ground of legal professional privilege.
- (5) Nothing in subsection (4) affects any requirement under this Ordinance to disclose the name and address of a client of a legal practitioner (whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor).

Chapter:	588	Title:	FINANCIAL REPORTING COUNCIL ORDINANCE
Section:	56	Heading:	Legal professional privilege

- (1) Subject to subsection (2), this Ordinance does not affect any claims, rights or entitlements that would, apart from this Ordinance, arise on the ground of legal professional privilege.
- (2) Subsection (1) does not affect any requirement under this Ordinance to disclose the name and address of a client of a legal practitioner (whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor).

Chapter:	426	Title:	OCCUPATIONAL RETIREMENT SCHEMES ORDINANCE
Section:	76	Heading:	Legal professional privilege

A barrister or solicitor admitted under the Legal Practitioners Ordinance (Cap 159) shall not be required under this Ordinance to disclose any information (other than the name and address of a client) or produce any record or other document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in the court.

(Enacted 1992)

Chapter:	32	Title:	COMPANIES ORDINANCE
Section:	150	Heading:	Saving for solicitors and bankers

Expanded Cross Reference:

142, 143, 144, 145, 145A, 145B, 146, 146A, 147, 148, 149

Nothing in sections 142 to 149 shall require disclosure to the Financial Secretary or to an inspector appointed by him- <* Note - Exp. X-Ref.: Sections 142, 143, 144, 145, 145A, 145B, 146, 146A, 147, 148, 149 *>

- (a) by a solicitor of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) by a body corporate's bankers as such of any information as to the affairs of any of their customers other than the body corporate. (Amended 6 of 1984 s. 105)

(Added 4 of 1963 s. 8)
[cf. 1948 c. 38 s. 175 U.K.]

Chapter: 405	Title: DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE
Section: 22	Heading: Supplementary provisions to sections 20 and 21

"items subject to legal privilege" (享有法律特權的品目) means-

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made-
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them, but excluding, in any case, any communications or item held with the intention of furthering a criminal purpose;

[cf. 1986 c. 32 s. 29 U.K.]

Chapter: 455	Title: ORGANIZED AND SERIOUS CRIMES ORDINANCE
Section: 2	Heading: Interpretation

"items subject to legal privilege" (享有法律特權的品目) means-

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made-
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them, but excludes any such communications or items held with the intention of furthering a criminal purpose;

(Enacted 1994)

[cf. 1986 c. 32 s. 38 U.K.]

Chapter: 575 Title: UNITED NATIONS (ANTI-TERRORISM MEASURES)
ORDINANCE
Section: 2 Heading: **Interpretation**

"items subject to legal privilege" (享有法律特權的品目) has the same meaning as in section 2(1) of the Organized and Serious Crimes Ordinance (Cap 455);