

**Bills Committee on Anti-Money Laundering and
Counter-Terrorist Financing (Financial Institutions) Bill**

**Information/response to be provided by the Administration in response to
Members' requests made at the meeting on 9 February 2011**

1. The Prosecution Division of the Department of Justice is requested to -
 - (a) advise whether revising the formulation of the offences under clauses 5(6) and (8) to specify the person to be defrauded, for example, "with intent to defraud the financial institution or a relevant authority" will create any problem/loophole;
 - (b) explain clearly why it is not appropriate to place the defence of reasonable excuse in the context of clause 10(3), (5) to (8); and
 - (c) attend the relevant Bills Committee meeting to discuss the above matters.
2. In relation to clauses 5(6) and (8), to reconsider setting the maximum fine at a higher level to be in proportion to the possible profits gained by the financial institution or person convicted of an offence under either of the clauses.
3. To advise the handling of possible cases whereby a financial institution, being a limited company, has been convicted for a breach of the statutory requirements under the Bill but is unable to pay the criminal fine handed down by the Court.
4. In relation to clause 9(8), to reconsider whether the same arrangement should apply to those financial institutions regulated by authorities other than the Monetary Authority.
5. To consider whether clause 80(2) can be amended to refer to the "name and correspondence address" of a client of a legal practitioner, instead of the "name and address".

6. In relation to clause 22, to provide samples of notices issued under the corresponding section under the Securities and Futures Ordinance (Cap. 571) ("SFO") for Members to better understand the level of details expected to be provided in a statement of reasons for the decision to impose supervisory sanctions for inclusion in a notice to be issued under clause 22(2).

7. In relation to clause 23, to provide-
 - (a) a copy of the guideline issued under the corresponding section under SFO for Members' reference; and
 - (b) information on the background to the provision in the context of SFO.

8. In relation to the definition of "ultimate owner" under clause 24 and other relevant provisions in Part 5, -
 - (a) to review whether the current formulation of the definition of "ultimate owner" will cause confusion to applicants in applying for a money service licence since a person may concurrently fall under paragraphs (a), (b) and (c) of the definition; and
 - (b) to confirm that in considering whether the ultimate owner(s) of an applicant for a money service licence is/are fit and proper for the purpose of considering whether to grant a licence to the applicant, the Commissioner for Customs and Excise would only assess the ultimate owner(s) as declared by the applicant in the application form.