

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

Application to Government

Purpose

This note explains the intended binding effect of clause 3 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill (“the Bill”).

Background

2. Under section 66 of the Interpretation and General Clauses Ordinance (Cap 1), no legislation shall be binding on the State unless it is expressly provided in the legislation or unless it appears by necessary implication that the State is bound by the legislation. Clause 3 of the Bill provides that *“This Ordinance, except section 21(2)(c) and (4), Part 5 and section 22 of Schedule 2, applies to the Government in respect of the remittance service operated by the Postmaster General.”* The legal effect of clause 3 is that the Government will be bound in respect of the remittance service operated by the Postmaster General.

Justification

3. In its mutual evaluation on Hong Kong conducted in 2008, the Financial Action Task Force categorically highlighted that Hong Kong should review the situation where the Post Office which operates remittance services was not subject to AML regulation. The bill seeks inter alia to address the above issue. Noting that the Post Office’s remittance services are essentially similar to those provided by its commercial counterparts, we have proposed to subject the Post Office to the same obligations as its commercial competitors in respect of its remittance services.

4. No other government department engages in any of the activities subject to requirements the Bill. As such, for clarity sake,

clause 3 provides that the Bill is to apply to the Government only in relation to the remittance services provided by the Post Office. Given that the Post Office has no legal personality, the Ordinance is made binding on the Postmaster General (PMG). PMG is defined to include the Postmaster General, deputy postmaster general and assistant postmaster general under the Bill, which is in line with the interpretation under the Post Office Ordinance (Cap 98).

Exceptions

5. All provisions of the Bill will be applicable to the Post Office's remittance services except s21(2)(c) and (4), Part 5 and s22 of Schedule 2, for reasons set out below.

s21(2)(c) and (4): supervisory fines and daily pecuniary penalty for failure to take remedial actions

6. Section 21 of the Bill empowers the relevant authority to impose supervisory sanctions, namely public reprimand, order for remedial actions and supervisory fines, on financial institutions for breaches of the AML requirements set out in Schedule 2 of the Bill. The supervisory sanctions of public reprimand and order for remedial action will apply to PMG. It is not appropriate to subject individual civil servants to personal supervisory fines and daily pecuniary penalty when they carry out their duties in good faith. As PMG and staff of the Post Office are already subject to disciplinary mechanisms applicable to government employees, breaches and non-compliance committed by PMG and staff of the Post Office will be dealt with through the established mechanism as appropriate.

Part 5: licensing regime for money service operators

7. The Post Office and the Customs and Excise Department (which is the licensing authority for money service operators) are both parts of the Government. The PMG, as civil servants, are already subject to integrity checking and disciplinary mechanism such that their "fitness and properness" should generally not be called into question. It is also very rare and unusual for one part of the Government to license

another part of the Government. As such, PMG is exempted from the licensing requirements set out under Part 5 of the Bill.

s22 of Schedule 2: duties extend to branches and subsidiaries outside Hong Kong

8. Section 22 of Schedule 2 provides that a financial institution incorporated in Hong Kong must ensure that its branches and subsidiaries outside Hong Kong have procedures in place to ensure compliance with requirements similar to those imposed under Schedule 2 and inform the relevant authority if this is not possible and take additional measures to mitigate the risk. The Post Office's operation does not provide for any branches and subsidiaries outside Hong Kong, therefore this provision does not apply to PMG.

**Financial Services and the Treasury Bureau
7 December 2010**