

**Bills Committee on  
Personal Data (Privacy) (Amendment) Bill 2011**

**Response to Submission by  
the Hong Kong Association of Banks**

This paper provides a response to the further submission from the Hong Kong Association of Banks (“HKAB”) of 2 March 2012 (LC Paper No. CB(2)1310/11-12(01)).

**Section 14A**

2. The proposed new section 14A empowers the Privacy Commissioner for Personal Data (“PCPD”) to obtain information from the persons specified in section 14A(2) to verify the accuracy of information in a data user return. The proposal is not that the PCPD may request for whatever document, record, information or thing as he likes. Rather, as stipulated in section 14A(1), the PCPD’s request must be made for the purpose of verifying the accuracy of information in a data user return.

3. Nevertheless, in view of the strong concern raised by HKAB and as the PCPD will in any case exercise his power reasonably, we will move a Committee Stage Amendment to add the word “reasonable” or “reasonably” as appropriate in section 14A(1), (4) and (5).

4. HKAB has also proposed some amendments to the proposed new section 14A(3). This subsection provides that a person may refuse to provide any document, record, information or thing, or any response to any question as specified in the written notice from the PCPD if the person is entitled or obliged under any other Ordinance to do so. HKAB has proposed to amend this to provide that a person may also refuse to accede to the PCPD’s requirement if he is permitted, entitled or obliged to do so under any legal or regulatory requirement or any direction or order of any regulatory authority or court to which that person is subject. The proposed amendment will open up wide grounds for a person to refuse to comply with the PCPD’s requirements. We do not consider such an amendment appropriate, bearing in mind that

under the proposed new section 14A, the PCPD can only obtain information for the purpose of verifying the accuracy of information in a data user return and that he will exercise his power reasonably.

### **Section 58(6)**

5. HKAB has expressed concern that the definition of “crime” in the proposed new section 58(6)(b) is likely to render financial institutions unable to comply with Recommendations 17 and 18 of the Financial Action Task Force (“FATF”) under which international financial institutions are permitted to exchange information with third-party financial institutions or overseas group members to implement policies and procedures for countering money laundering and terrorist financing.

6. Section 58 provides for exemption from Data Protection Principles 3 and 6 and section 18(1)(b) for the purposes of, among other things, the prevention or detection of crime. There would need to be strong justifications for extension of the exemption. HKAB’s proposal to extend the definition of “crime” to cover “any offence under the laws of a place outside Hong Kong” or “any offence under the laws of a place outside Hong Kong that is punishable as an offence under the laws of Hong Kong” would open wide grounds for invoking the exemption.

7. As advised by the Financial Services and the Treasury Bureau, the revised FATF Recommendations require member jurisdictions to ensure that financial institutions will implement internal policies and procedures against money laundering and terrorist financing, including sharing information within the financial group for the purpose of customer due diligence and money laundering and terrorist financing risk management. FATF specifically prescribes that adequate safeguards on the confidentiality and use of information exchange should be in place. Revised Recommendations 17 and 18 are not yet due for implementation. The issue of implementation will be dealt with by the Administration separately.