

LEGISLATIVE COUNCIL BRIEF

ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING (FINANCIAL INSTITUTIONS) BILL

INTRODUCTION

At the meeting of the Executive Council on 19 October 2010, the Council ADVISED and the Chief Executive ORDERED that the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill (“the Bill”), at **Annex A**, should be introduced into the Legislative Council (“LegCo”).

A

JUSTIFICATIONS

Hong Kong’s compliance with international AML standards

2. The Financial Action Task Force (“FATF”), the international anti-money laundering (“AML”) ¹ standard-setter, conducted a Mutual Evaluation (“ME”) on Hong Kong in 2007-08 to assess the compliance of Hong Kong’s AML regime with the FATF Recommendations which are the prevailing international AML standards. While FATF recognized the strengths of Hong Kong’s AML regime, they also highlighted inter alia that the lack of statutory backing for the customer due diligence (“CDD”) ² and record-keeping requirements (which are relatively new requirements introduced before the ME on Hong Kong), the lack of appropriate sanctions for these requirements, the limited range of regulators’ supervisory and enforcement powers, and the absence of an AML regulatory regime for money service operators (“MSOs”) (viz. remittance agents and money changers (“RAMCs”)) were major deficiencies that should be addressed.

3. On the basis of the outcome of the ME, FATF resolved that Hong Kong should be put on a regular follow-up process and be required to report to FATF on a regular basis on improvement actions taken or planned. According to FATF’s procedures, Hong Kong is expected to have addressed the major deficiencies and seek removal from the follow-up process about three to four years after the ME, i.e. by mid-2012 at the latest. If Hong Kong fails to get removal from the follow-up process within a reasonable period due to absence of substantial improvements, FATF may apply enhanced scrutiny and monitoring on Hong Kong which could severely affect Hong Kong’s status as an international financial centre.

¹ For the purpose of this paper, references to “AML” include the meaning of both anti-money laundering and counter financing of terrorism (CFT).

² CDD refers to the measures enabling financial institutions to establish the identity of each customer. Such measures generally include identification of customers and verification of customers’ identity.

Legislative Proposals

4. At present, the CDD and record-keeping requirements applicable to FIs are set out in the existing guidelines issued by the Monetary Authority (“MA”), the Securities and Futures Commission (“SFC”) and the Insurance Authority (“IA”) to their respective regulatees. The legislative proposals largely reflect the existing CDD and record-keeping requirements in these guidelines, with specific provisions to provide for suitable supervisory and enforcement powers of the regulators and sanctions against non-compliance, having regard to FATF’s requirements.

5. The Financial Services and the Treasury Bureau (“FSTB”), in conjunction with MA, SFC, IA and the Customs and Excise Department (“C&ED”), has conducted two rounds of public consultation on the legislative proposals in July 2009 and December 2009 respectively. The key elements of the legislative proposals are set out below.

Coverage and Regulatory Authorities

6. With reference to FATF’s requirements, the CDD and record-keeping requirements specified in the new legislation will apply to FIs including banks and deposit-taking companies (collectively referred to as “authorized institutions”³), licensed corporations in the securities sector, authorized insurers, appointed insurance agents, authorized insurance brokers and MSOs. In line with the institutional approach adopted in the existing financial regulatory regime, MA, SFC and IA will be designated as the relevant authorities for supervising AML compliance by the banking, securities and insurance sectors respectively. The Commissioner of Customs and Excise (“CCE”) will be designated as the relevant authority for the MSO sector.

7. As the Post Office provides a remittance service similar to those provided by commercial MSOs, the Postmaster General (PMG)⁴ will be required to fulfill the CDD and record-keeping requirements stipulated under the legislation with regard to the Post Office’s remittance business. Same as any MSOs, in case of AML breaches, PMG will be subject to supervisory sanctions viz. public reprimand and orders for remedial action (save for pecuniary penalty as PMG will be subject to disciplinary mechanisms applicable to government employees in case of AML breaches) as well as criminal prosecution.

Statutory Obligations

8. The new legislation will stipulate the CDD and record-keeping obligations to be met by FIs, and set out the circumstances under which CDD should be conducted, the thresholds over which CDD is required for

³ Multi-purpose cards issued by an authorized institution are covered by the Bill. However, in view of the minimal money laundering risks involved in the transactions through multi-purpose cards, we will exempt the application of the CDD and record-keeping requirements for multi-purpose cards with maximum stored value not exceeding HK\$3,000.

⁴ In line with section 2 of the Post Office Ordinance, Cap. 98, the Postmaster General will be defined for the purpose of the AML regulatory regime to include “the Postmaster General of Hong Kong, the deputy postmaster general and every assistant postmaster general”.

occasional transactions, the CDD measures applicable to customers of different risk profiles, the classification of customers of different risk profiles, the specific requirements on wire transfers and remittance transactions, the requirements for ongoing due diligence, treatment of pre-existing accounts, circumstances under which FIs may rely on third parties to perform CDD, the actions required when FIs are unable to complete CDD, the types of records required to be maintained and the period for record retention.

9. To enable Hong Kong to take prompt action in reflecting future changes made by FATF to the international AML standards in local legislation, which is important to ensure Hong Kong's continued compliance with the FATF requirements, the statutory CDD and record-keeping requirements will be prescribed in a Schedule as part of the new legislation which may be amended by the Secretary for Financial Services and the Treasury ("SFST") by notice in the Gazette. Such amendments will be subject to negative vetting by LegCo. The new legislation will empower the relevant authorities to issue guidelines to facilitate AML compliance by FIs. Such guidelines will be non-statutory in nature but will have evidential value in determining whether any statutory requirement has been breached.

Powers of the Relevant Authorities

10. The new legislation will provide for a range of supervisory and enforcement powers of the relevant authorities similar to those provided to SFC under Part VIII of the Securities and Futures Ordinance, Cap. 571 ("SFO"), which is the latest piece of legislation enacted on financial regulation. Under the new legislation, relevant authorities may enter FIs' business premises and inspect FIs' books and records, initiate investigations into suspected breaches, apply for court warrants for search and seizure and initiate summary prosecutions. The exercise of such powers of the relevant authorities will be subject to appropriate procedural safeguards provided under the legislation. For example, inspections can only be carried out at a reasonable time; an inspector/investigator must provide evidence of authorization; search and seizure can only be done with court warrants; and self-incriminating evidence shall not be used against a person in criminal proceedings.

11. We also propose that the provisions on CDD and record-keeping requirements under the new legislation should be included in the definition of "relevant provisions" in Schedule 1 to the SFO. This is to enable SFC to deal with suspected cases involving multiple non-compliant acts more effectively by drawing on its powers under the SFO where circumstances so warrant, such as where the non-compliant acts by its regulated entities involve breaches of the SFO provisions as well as breaches of the CDD and record-keeping requirements stipulated under the new legislation.

Sanctions

12. FATF specifically requires that effective, proportionate and persuasive sanctions should be available to deal with breaches of AML obligations. The new legislation will empower the relevant authorities to impose supervisory

sanctions for breaches, including issuing orders for remedial actions, issuing public reprimands and imposing fines on FIs under their supervision. Taking into account the comments received in the consultation exercise that criminal sanctions applicable to cases of more culpable nature should be subject to a clear mental threshold, the legislation will stipulate that an FI commits an offence if it contravenes the statutory obligations knowingly or with an intent to defraud and the FI shall be liable to criminal fines and/or imprisonment upon summary conviction or conviction on indictment, and persons who are concerned in the management of an FI and persons who are employees of or are employed to work for an FI will be criminally liable if they knowingly or with an intent to defraud cause or permit the FI to contravene the requirements.

Licensing Regime for MSOs

13. RAMCs are currently subject to the statutory requirements to register with the Police and keep transaction records under sections 24B and 24C of the Organized and Serious Crimes Ordinance (Cap. 455) (“OSCO”). There is however no statutory provision of powers to refuse registration and to access RAMC’s premises or books/records for routine compliance checks. FATF’s ME on Hong Kong highlighted that the AML regulation for this sector should be enhanced. Under the new legislation, any person who wishes to operate money changing and/or remittance services as a business is required to obtain an MSO licence from CCE. The licensing requirement will not apply to business entities operating money changing or remittance services incidental to transactions related to their main business (e.g. retail businesses accepting Renminbi in transactions) so as to avoid undue compliance burden on them.

14. The new legislation will provide for the details of the MSO licensing regime to be administered by CCE, including the functions and powers of CCE as the licensing authority, “fit and proper” criteria for applicants of MSO licences, and an offence for unlicensed MSO operations. MSO licences will generally be renewable every two years. The grant and renewal of an MSO licence is subject to payment of a licence fee, which is determined based on the principle of cost recovery. To facilitate smooth migration of RAMCs from the existing registration system to the new MSO licensing regime, the new legislation will provide for a 60-day transitional period for RAMC registrants to apply for an MSO licence. RAMCs registered under OSCO immediately before the commencement of the new legislation will be deemed licensed until the end of the 60-day transitional period or, if an application for an MSO licence is lodged, until the application is granted, refused or withdrawn, as the case may be.

Review and Appeal Mechanism

15. To provide for proper checks and balances, an independent Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Tribunal (“the Tribunal”) will be established to review decisions made by the relevant authorities under the new legislation, including their decisions to impose supervisory sanctions and CCE’s licensing decisions.

The Tribunal will comprise a Chairperson (who must be a person eligible to be appointed as a judge of the High Court) and two members to be appointed by SFST. The Chairperson and members of the Tribunal shall not be public officers. A person who is dissatisfied with a decision of the Tribunal may appeal to the Court of Appeal.

Commencement of new legislation

16. The new legislation will come into operation on 1 April 2012. This has taken into account the requirement for Hong Kong to seek removal from FATF's follow-up process by mid-2012 at the latest. Assuming passage of the Bill in Q2/2011, this would allow a period of nearly one year for the concerned FIs to make necessary preparation for the implementation of the new legislation. SFST is however given a power under the new legislation to amend that date by Gazette notice to cater for unforeseeable circumstances after enactment.

THE BILL

17. The main provisions of the Bill are set out below:

- (a) clause 1 of the Bill provides that the legislation will commence on 1 April 2012. SFST may amend the commencement date by notice in the Gazette;
- (b) clause 3 of the Bill provides that the legislation will apply in relation to the remittance service operated by PMG, except for specific provisions therein on MSO licensing requirements and provisions enabling the CCE to impose a pecuniary penalty for AML breaches;
- (c) clause 5 of the Bill stipulates that Schedule 2, which contains the CDD and record-keeping requirements, has effect with respect to FIs. That clause also provides that a contravention of a specified requirement of that Schedule constitutes an offence;
- (d) clause 9 of the Bill provides for the powers of the relevant authorities to conduct routine inspections. Clause 11 provides that the relevant authorities may initiate investigations if they have reasonable cause to believe that an offence under this legislation may have been committed and when they are considering whether to take disciplinary actions against a regulatee;
- (e) clause 21 of the Bill empowers the relevant authorities to impose supervisory sanctions on FIs for breaches of the CDD and record-keeping requirements specified in Schedule 2. Under that clause, a relevant authority may publicly reprimand FIs and order FIs to take remedial actions and to pay pecuniary penalties up to a maximum limit of HK\$10 million or three times the profit gained or costs avoided;

- (f) Part 5 of the Bill (viz clauses 24 to 52) provides for an MSO licensing regime to be administered by CCE. CCE is empowered to grant, renew, refuse, suspend or revoke an MSO licence, and impose or vary the conditions of an MSO licence. The matters to be considered by CCE in determining whether an applicant is a “fit and proper” person before granting or renewing an MSO licence are stipulated in clause 30. That clause also provides that MSO licences are generally valid for two years;
- (g) clause 50 of the Bill empowers CCE to make regulations to provide for matters for the better carrying out of Part 5. Under clause 42, a contravention of these regulations may lead to disciplinary actions by CCE(viz. public reprimand, order for remedial actions and order to pay a pecuniary penalty not exceeding HK\$1 million) CCE's disciplinary powers can also be exercised in relation to breaches of licence conditions and specified provisions concerning certain licensing matters;
- (h) clause 81 of the Bill stipulates the transitional arrangements for RAMCs currently on the Police register maintained under OSCO. A RAMC is deemed to be licensed as an MSO until the expiry of a period of 60 days from the commencement of the legislation. However, if an RAMC applies for an MSO licence within that period, the RAMC is deemed to be licensed until the application is granted, refused or withdrawn, whichever is the earliest ;
- (i) clause 54 of the Bill provide for the establishment of the Tribunal to review the relevant authorities’ decisions under the legislation concerning the imposition of supervisory sanctions and MSO licensing matters;
- (j) clause 78 of the Bill provides that the relevant authorities may prosecute offences under this legislation summarily in their own name;
- (k) clause 89 of the Bill amends the SFO by adding the provisions on CDD and record-keeping requirements under this legislation to the definition of “relevant provisions” in Schedule 1 to the SFO; and
- (l) Schedule 1 of the Bill sets out the interpretation provisions. Schedule 2 prescribes the detailed CDD and record-keeping requirements. Schedule 3 specifies the fees payable in connection with MSO licensing matters. Schedule 4 provides for the appointment and procedures of the Tribunal.

LEGISLATIVE TIMETABLE

18. The legislative timetable will be:

Publication in the Gazette

29 October 2010

First Reading and commencement of the Second Reading debate	10 November 2010
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

B 19. The proposal has economic and financial and civil service implications, which are set out at **Annex B**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, environmental or sustainability implications. The new legislation will apply to the Government in respect of the remittance service operated by PMG.

PUBLIC CONSULTATION

20. As mentioned in paragraph 5 above, FSTB has conducted two rounds of public consultation to gauge the views from the public and the relevant financial sectors on the legislative proposals. During the first round of three-month public consultation on the conceptual framework of the proposed legislation commenced in July 2009, FSTB organized seven consultative sessions and received 39 written submissions. The majority of the respondents acknowledged the importance of Hong Kong's compliance with international AML standards, and there was broad support for our proposal to introduce legislation to prescribe the CDD and record-keeping requirements and the attendant sanctions, and to put in place a licensing regime for RAMCs.

C 21. The second-round consultation on the detailed legislative proposals was launched in December 2009. We organized eight consultative sessions and received 45 written submissions during the two-month consultation period. We also attended a public hearing session organized by the LegCo Financial Affairs Panel ("the Panel") on 24 May 2010. Responses received were generally supportive of our legislative proposals. Comments received are mainly on the technical and operational aspects of the proposed AML regime and clarifications on the compliance requirements under the proposals. Major views received with the Government's response are summarized vide the consultation conclusion at **Annex C**.

22. In drawing up the Bill, we have taken into account comments received in the public consultations and modified some earlier proposals. Key changes made include doing away with the across-the-board requirement to conduct CDD on all pre-existing accounts, removing the personal civil liability of officers of FIs and clarifying the CDD requirements for beneficiaries of life insurance policies.

23. The Panel was briefed on the conceptual framework and the detailed legislative proposals on 11 June 2009 and 14 December 2009 respectively. Members of the Panel expressed support for the legislative proposals in principle and the introduction of the Bill into LegCo. Some of them

specifically highlighted the possible concerns of the RAMC sector under the proposed regime and hoped that the new regulation would improve the sector's operational environment and facilitate the sector in gaining access to banking services.

PUBLICITY

24. The Bill will be published in the Gazette on 29 October 2010. A press release will be issued. An FSTB spokesman will be available to answer general media and public enquiries.

BACKGROUND

25. FATF is an inter-governmental body which was established in 1989. It currently comprises 36 member jurisdictions. The FATF Recommendations are recognized by the International Monetary Fund and the World Bank as the international AML standards. Hong Kong joined FATF as a member in 1990. Hong Kong is obliged to implement the FATF's requirements and is subject to a process of ME by FATF to monitor progress made by jurisdictions in implementing the FATF's requirements.

ENQUIRIES

26. Enquiries in relation to the Bill should be directed to Ms Angelina Kwan, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)⁷, at 2528 9734.

**Financial Services Branch
Financial Services and the Treasury Bureau
27 October 2010**

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill

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A BILL

To

Provide for the imposition of requirements relating to customer due diligence and record-keeping on specified financial institutions; to provide for the powers of the relevant authorities to supervise compliance with those requirements and other requirements under this Ordinance; to provide for the regulation of the operation of a money service and the licensing of money service operators; to establish a review tribunal to review certain decisions made by the relevant authorities under this Ordinance; and to provide for incidental and related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance.
- (2) Subject to subsection (4), this Ordinance, except this section, comes into operation on 1 April 2012.
- (3) This section comes into operation on the day on which this Ordinance is published in the Gazette.
- (4) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend the date specified in subsection (2).

2. Interpretation

- (1) Schedule 1 contains interpretation provisions that apply to this Ordinance in accordance with their terms.
- (2) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Part 2 of Schedule 1.

3. Application to Government

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.

4. Immunity

- (1) A relevant authority or any other person does not incur any civil liability for anything done or omitted to be done by the relevant authority or the person in good faith in the performance or purported performance of a function conferred or imposed on the relevant authority by or under this Ordinance.
 - (2) The protection conferred by subsection (1) does not affect any liability of the Government for the thing done or omitted to be done by a public officer in the performance or purported performance of the relevant function.
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Part 2

Requirements Relating to Customer Due Diligence and Record-keeping

5. Schedule 2 has effect with respect to financial institutions

- (1) Subject to subsections (2), (3) and (4), Schedule 2 has effect with respect to financial institutions.
- (2) Schedule 2 has effect with respect to an authorized insurer only in relation to long term business carried on by the insurer.
- (3) Schedule 2 has effect with respect to an appointed insurance agent or authorized insurance broker only in relation to any transaction carried out by the appointed insurance agent or authorized insurance broker involving a contract of insurance described in column 3 of Part 2 of the First Schedule to the Insurance Companies Ordinance (Cap. 41).
- (4) Schedule 2 does not apply in relation to the issue by an authorized institution of any multi-purpose card as defined by section 2(1) of the Banking Ordinance (Cap. 155) in which the maximum value that can be stored does not exceed \$3,000.
- (5) If a financial institution knowingly contravenes a specified provision, the financial institution commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (6) If a financial institution, with intent to defraud, contravenes a specified provision, the financial institution commits an offence and is liable—

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.
- (7) If a person who is an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution knowingly causes or knowingly permits the financial institution to contravene a specified provision, the person commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (8) If a person who is an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution, with intent to defraud, causes or permits the financial institution to contravene a specified provision, the person commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.
- (9) A fine imposed on a partnership on its conviction of an offence under this section is to be paid out of the funds of the partnership.
- (10) In this section—
 - long term business* (長期業務) has the meaning given by section 2(1) of the Insurance Companies Ordinance (Cap. 41);
 - specified provision* (指明的條文) means section 3(1), (3) or (4), 5(1) or (3), 6(1) or (2), 7(2), 9, 10(1) or (2), 11(1) or (2), 12(3), (4), (5), (6), (8), (9) or (10), 13(2), 14(1) or (2), 15, 16,

17(1), 18(4), 19(1), (2) or (3), 20(1), (2), (3), (5) or (6), 21, 22(1) or (2) or 23 of Schedule 2.

6. Amendment of Schedule 2

The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Schedule 2.

7. Relevant authority may publish guidelines

- (1) A relevant authority may publish in the Gazette any guideline that it considers appropriate for providing guidance in relation to the operation of any provision of Schedule 2.
- (2) A guideline published by the Monetary Authority, Securities and Futures Commission or Insurance Authority may incorporate or refer to a guideline or document, or any part of a guideline or document, from time to time issued or published by the Monetary Authority, Securities and Futures Commission or Insurance Authority under the relevant Ordinance.
- (3) A relevant authority may from time to time amend the whole or any part of any guideline published under this section in a manner consistent with the power to publish the guideline under this section, and—
 - (a) the other provisions of this section apply, with necessary modifications, to the amendments to the guideline as they apply to the guideline; and
 - (b) any reference in this or any other Ordinance to the guideline (however expressed) is, unless the context otherwise requires, to be construed as a reference to the guideline as so amended.
- (4) A failure by any person to comply with a provision in any guideline published under this section does not by itself render the person liable to any judicial or other proceedings but, in any proceedings under this Ordinance before any court, the guideline is admissible in evidence; and if any provision set

out in the guideline appears to the court to be relevant to any question arising in the proceedings, the provision must be taken into account in determining that question.

- (5) In considering whether a person has contravened a provision of Schedule 2, a relevant authority must have regard to any provision in the guideline published under this section that is relevant to the requirement.
- (6) A guideline published under this section is not subsidiary legislation.
- (7) In this section—

relevant Ordinance (有關條例)—

- (a) in relation to the Insurance Authority, means the Insurance Companies Ordinance (Cap. 41);
 - (b) in relation to the Monetary Authority, means the Banking Ordinance (Cap. 155); and
 - (c) in relation to the Securities and Futures Commission, means the Securities and Futures Ordinance (Cap. 571).
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Part 3

Supervision and Investigations

8. Interpretation of Part 3

In this Part—

authorized person (獲授權人), except in section 17, means a person authorized under section 9(12);

investigator (調查員) means a person directed or appointed to investigate any matter under section 11.

9. Power to enter business premises etc. for routine inspection

(1) For the purpose of ascertaining whether a financial institution is complying or has complied with, or is likely to be able to comply with, the requirement specified under subsection (2), an authorized person may at any reasonable time—

- (a) enter the business premises of the financial institution;
- (b) inspect, and make copies or otherwise record details of, any record or document relating to the business carried on, or any transaction carried out, by the financial institution; and
- (c) make inquiries of—
 - (i) the financial institution; or
 - (ii) subject to subsection (6), any other person, whether or not connected with the financial institution, whom the authorized person has reasonable cause to believe to have information relating to, or to be in possession of, any record or document referred to in paragraph (b),

concerning any record or document referred to in paragraph (b), or concerning any transaction carried out

in the course of the business carried on by the financial institution.

- (2) The specified requirement is the requirement not to contravene—
 - (a) any provision of this Ordinance;
 - (b) any notice or requirement given or imposed under this Ordinance;
 - (c) any of the conditions of any licence under this Ordinance; or
 - (d) any other condition imposed under this Ordinance.
- (3) Subject to subsection (8), an authorized person in exercising any power under subsection (1)(b) may require—
 - (a) the financial institution; or
 - (b) subject to subsection (7), any other person, whether or not connected with the financial institution, whom the authorized person has reasonable cause to believe to have information relating to, or to be in possession of, any record or document referred to in subsection (1)(b),
to do any of the acts specified in subsection (4).
- (4) The specified acts are—
 - (a) to give the authorized person access to any record or document referred to in subsection (1)(b), and produce the record or document within the time and at the place specified by the authorized person; and
 - (b) to answer any question regarding the record or document.
- (5) Subject to subsection (8), an authorized person in exercising any power under subsection (1)(c) may require the financial institution or the other person referred to in subsection (1)(c) to—
 - (a) give the authorized person access to any record or document referred to in subsection (1)(b), and produce

the record or document within the time and at the place specified by the authorized person; and

- (b) answer any question raised for the purposes of subsection (1)(c).
- (6) An authorized person may only exercise the power under subsection (1)(c)(ii) if the authorized person has reasonable cause to believe that the information sought cannot be obtained by the exercise of the power under subsection (1)(c)(i).
- (7) An authorized person may only exercise the power under subsection (3)(b) if the authorized person has reasonable cause to believe that the record or document or the information sought cannot be obtained by the exercise of the power under subsection (3)(a).
- (8) If an authorized person is authorized under subsection (12) by a relevant authority other than the Monetary Authority, this section is not to be construed as requiring an authorized institution, not being the financial institution as referred to in subsection (1), to disclose any information or produce any record or document relating to the affairs of a customer to the authorized person unless the relevant authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of this section.
- (9) If a person gives an answer in accordance with a requirement imposed under subsection (3) or (5), the authorized person may in writing require the person to verify, within the time specified in the requirement, the answer by statutory declaration.
- (10) If a person does not give an answer in accordance with a requirement imposed under subsection (3) or (5) for the reason that the information concerned is not within the person's knowledge, the authorized person may in writing require the person to verify, within the time specified in the requirement, that fact and reason by statutory declaration.

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- (11) A statutory declaration under subsection (9) or (10) may be taken by the authorized person.
- (12) A relevant authority may authorize in writing any person, or any person belonging to a class of persons, as an authorized person for the purposes of this section.
- (13) A relevant authority must provide an authorized person authorized by it with a copy of its authorization.
- (14) When exercising a power under this section, an authorized person must as soon as reasonably practicable produce a copy of the relevant authority's authorization for inspection.
- (15) In this section—
- business premises*** (業務處所)—
- (a) in relation to an authorized institution, means any premises used by the institution in connection with its business, including—
 - (i) the institution's principal place of business in Hong Kong;
 - (ii) a local branch or local office established or maintained by the institution;
 - (iii) a place of business of the institution used solely for the purposes of—
 - (A) the administration of the affairs or business of the institution;
 - (B) the processing of transactions; or
 - (C) the storage of documents, data or records; and
 - (iv) a place of business of the institution, or a place of business of the institution belonging to a class of places of business, declared in a notice under section 2(14)(ca) of the Banking Ordinance (Cap. 155) not to be a place of business, or a class of places of business, for the purposes of the

definition of *local office* in section 2(1) of that Ordinance;

- (b) in relation to a licensed corporation, means its premises as approved by the Securities and Futures Commission under section 130(1) of the Securities and Futures Ordinance (Cap. 571);
- (c) in relation to an authorized insurer, means any premises at which the insurer carries on business;
- (d) in relation to an appointed insurance agent, means—
 - (i) any premises at which the principal of the agent carries on business; and
 - (ii) if the agent carries on business in any non-domestic premises other than the premises referred to in subparagraph (i), the non-domestic premises;
- (e) in relation to an authorized insurance broker, means any premises at which the broker carries on business;
- (f) in relation to a licensed money service operator, means any premises at which the licensed money service operator carries on business as shown in the register maintained under section 27; and
- (g) in relation to the Postmaster General, means—
 - (i) any premises at which the Postmaster General operates a remittance service; and
 - (ii) any premises at which the remittance service operated by the Postmaster General is managed;

local branch (本地分行), in relation to an authorized institution, has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

local office (本地辦事處), in relation to an authorized institution, has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155).

10. Offences for non-compliance with requirements imposed under section 9

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement imposed on the person under section 9(3), (5), (9) or (10).
- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (3) A person commits an offence if the person—
 - (a) in purported compliance with a requirement imposed on the person under section 9(3) or (5), produces any record or document or gives any answer that is false or misleading in a material particular; and
 - (b) knows that, or is reckless as to whether, the record or document or the answer is false or misleading in a material particular.
- (4) A person who commits an offence under subsection (3) is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (5) A person commits an offence if the person, with intent to defraud, fails to comply with a requirement imposed on the person under section 9(3), (5), (9) or (10).
- (6) A person commits an offence if the person, with intent to defraud, produces any record or document or gives any answer that is false or misleading in a material particular in

purported compliance with a requirement imposed on the person under section 9(3) or (5).

- (7) A person commits an offence if, being a person who is an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution, the person, with intent to defraud, causes or allows the financial institution to fail to comply with a requirement imposed on the financial institution under section 9(3), (5), (9) or (10).
- (8) A person commits an offence if, being a person who is an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution, the person, with intent to defraud, causes or allows the financial institution to produce any record or document or give any answer that is false or misleading in a material particular in purported compliance with a requirement imposed on the financial institution under section 9(3) or (5).
- (9) A person who commits an offence under subsection (5), (6), (7) or (8) is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (10) Despite anything in this Ordinance, no criminal proceedings may be instituted against a person under subsection (1), (3), (5), (6), (7) or (8) in respect of any conduct if—
 - (a) proceedings have previously been instituted against the person for the purposes of section 14(2)(b) in respect of the same conduct; and
 - (b) those proceedings remain pending or because of the previous institution of those proceedings, no proceedings may again be lawfully instituted against the person for

the purposes of that section in respect of the same conduct.

11. Relevant authorities may appoint investigators

- (1) If a relevant authority—
 - (a) has reasonable cause to believe that an offence under this Ordinance may have been committed; or
 - (b) for the purpose of considering whether to exercise any power under section 21 or 42, has reason to inquire whether a financial institution has contravened a specified provision as defined by section 5(10) or a provision specified in section 42(1),the relevant authority may in writing direct one or more of the persons specified in subsection (2) or, with the consent of the Financial Secretary, appoint one or more other persons, to investigate the matter.
- (2) The specified persons are—
 - (a) in relation to the Monetary Authority, persons appointed by the Financial Secretary under section 5A(3) of the Exchange Fund Ordinance (Cap. 66);
 - (b) in relation to the Securities and Futures Commission, its employees;
 - (c) in relation to the Insurance Authority, public officers employed in the Office of the Commissioner of Insurance; and
 - (d) in relation to the Commissioner, public officers employed in the Customs and Excise Department.
- (3) The costs and expenses incurred by an investigator who—
 - (a) is appointed under subsection (1) with the consent of the Financial Secretary; and
 - (b) is not a person specified in subsection (2),

may be paid out of moneys provided by the Legislative Council.

- (4) A relevant authority must provide an investigator with a copy of its direction or appointment.
- (5) Before first imposing any requirement on a person under section 12(2), (3), (4) or (5), an investigator must produce a copy of the relevant authority's direction or appointment to that person for inspection.

12. Powers of investigators to require production of records or documents etc.

- (1) This section applies to—
 - (a) a person in relation to whom an investigator is directed or appointed to investigate any matter under section 11;
 - (b) a person whom an investigator has reasonable cause to believe to be in possession of any record or document that contains, or is likely to contain, information relevant to an investigation under section 11; or
 - (c) a person whom an investigator has reasonable cause to believe to be otherwise in possession of information relevant to an investigation under section 11.
- (2) An investigator may in writing require a person in relation to whom this section applies to—
 - (a) produce, within the time and at the place specified in the requirement, any record or document specified in the requirement that—
 - (i) is or may be relevant to the investigation; and
 - (ii) is in the person's possession;
 - (b) attend before the investigator at the time and place specified in the requirement, and answer any question relating to any matter under investigation that may be raised by the investigator;

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- (c) respond to any written question relating to any matter under investigation that may be raised by the investigator; and
 - (d) give the investigator all other assistance in connection with the investigation that the person is reasonably able to give.
 - (3) If a person produces a record or document in accordance with a requirement imposed under subsection (2)(a), the investigator may require the person to give an explanation or further particulars in respect of the record or document.
 - (4) If a person gives any answer, response, explanation or particulars in accordance with a requirement imposed under subsection (2) or (3), the investigator may in writing require the person to verify, within the time specified in the requirement, the answer, response, explanation or particulars by statutory declaration.
 - (5) If a person does not give any answer, response, explanation or particulars in accordance with a requirement imposed under subsection (2) or (3) for the reason that the information concerned is not within the person's knowledge or in the person's possession, the investigator may in writing require the person to verify, within the time specified in the requirement, that fact and reason by statutory declaration.
 - (6) A statutory declaration under subsection (4) or (5) may be taken by the investigator.
 - (7) If an investigator is directed or appointed to investigate a matter by a relevant authority other than the Monetary Authority, neither this section nor section 11 is to be construed as requiring an authorized institution to disclose any information or produce any record or document relating to the affairs of a customer to the investigator unless—
 - (a) the customer is a person whom the investigator has reasonable cause to believe may be able to give information relevant to the investigation; and

- (b) the relevant authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of the investigation.
- (8) An investigator—
 - (a) may make interim reports on the investigation to the relevant authority; and
 - (b) must make interim reports on the investigation to the relevant authority as soon as reasonably practicable after being required by the relevant authority to do so.
- (9) An investigator must, as soon as reasonably practicable after he or she completes the investigation, make a final report on the investigation to the relevant authority.
- (10) A relevant authority may, with the consent of the Secretary for Justice, publish a report made under this section.

13. Offences for non-compliance with requirements imposed under section 12

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement imposed on the person under section 12(2), (3), (4) or (5).
- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (3) A person commits an offence if the person—
 - (a) in purported compliance with a requirement imposed on the person under section 12(2) or (3), produces any record or document, or gives any answer, response, explanation or further particulars, that is or are false or misleading in a material particular; and

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- (b) knows that, or is reckless as to whether, the record or document, or the answer, response, explanation or further particulars, is or are false or misleading in a material particular.
- (4) A person who commits an offence under subsection (3) is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (5) A person commits an offence if the person, with intent to defraud, fails to comply with a requirement imposed on the person under section 12(2), (3), (4) or (5).
- (6) A person commits an offence if the person, with intent to defraud, produces any record or document, or gives any answer, response, explanation or further particulars, that is or are false or misleading in a material particular in purported compliance with a requirement imposed on the person under section 12(2) or (3).
- (7) A person commits an offence if, being a person who is an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution, the person, with intent to defraud, causes or allows the financial institution to fail to comply with a requirement imposed on the financial institution under section 12(2), (3), (4) or (5).
- (8) A person commits an offence if, being a person who is an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution, the person, with intent to defraud, causes or allows the financial institution to produce any record or document, or give any answer, response, explanation or further particulars, that is or are false or misleading in a material particular in purported compliance with a

- requirement imposed on the financial institution under section 12(2) or (3).
- (9) A person who commits an offence under subsection (5), (6), (7) or (8) is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (10) Despite anything in this Ordinance, no criminal proceedings may be instituted against a person under subsection (1), (3), (5), (6), (7) or (8) in respect of any conduct if—
- (a) proceedings have previously been instituted against the person for the purposes of section 14(2)(b) in respect of the same conduct; and
 - (b) those proceedings remain pending or because of the previous institution of those proceedings, no proceedings may again be lawfully instituted against the person for the purposes of that section in respect of the same conduct.
- (11) A person is not excused from complying with a requirement imposed on the person under section 12 only on the ground that to do so might tend to incriminate the person.
- (12) If a person is convicted by a court on a prosecution instituted as a result of the findings of an investigation under section 11, the court may order the person to pay to the relevant authority the whole or a part of the costs and expenses of the investigation and the relevant authority may recover the whole or the part of the costs and expenses as a civil debt due to it.
- (13) If a relevant authority receives an amount under an order made under subsection (12) in respect of any of the costs and expenses of an investigation, and all or any of the costs and expenses have already been paid out of moneys provided by the Legislative Council, the relevant authority must pay to the

Financial Secretary the amount received under the order to the extent that it has already been paid out of moneys provided by the Legislative Council.

14. Application to Court of First Instance relating to non-compliance with requirements imposed under section 9 or 12

- (1) If a person fails to comply with a requirement imposed by an authorized person under section 9(3), (5), (9) or (10) or by an investigator under section 12(2), (3), (4) or (5), the authorized person or the investigator may apply by originating summons to the Court of First Instance for an inquiry into the failure.
- (2) On an application under subsection (1), the Court of First Instance may—
 - (a) on being satisfied that there is no reasonable excuse for the person not to comply with the requirement, order the person to comply with the requirement within the time specified by the Court; and
 - (b) on being satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and that other person had been guilty of contempt of court.
- (3) An originating summons under subsection (1) is to be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).
- (4) Despite anything in this Ordinance, no proceedings may be instituted against a person for the purposes of subsection (2)(b) in respect of any conduct if—
 - (a) criminal proceedings have previously been instituted against the person under section 10(1), (3), (5), (6), (7) or (8) or 13(1), (3), (5), (6), (7) or (8) in respect of the same conduct; and
 - (b) those criminal proceedings remain pending or because of the previous institution of those criminal proceedings, no

criminal proceedings may again be lawfully instituted against the person under that section in respect of the same conduct.

15. Use of incriminating evidence in proceedings

- (1) If an investigator requires a person to give an answer or response to a question or to give an explanation or further particulars under section 12(2) or (3), the investigator must ensure that the person has first been informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the requirement and of the question and answer or response, or the explanation or further particulars.
- (2) Despite anything in this Ordinance and subject to subsection (3)—
 - (a) if an investigator requires a person to give an answer or response to a question or to give an explanation or further particulars under section 12(2) or (3); and
 - (b) the answer or response, or the explanation or further particulars, might tend to incriminate the person and the person so claims before giving the answer or response or giving the explanation or further particulars,the requirement and the question and answer or response, or the explanation or further particulars, are not admissible in evidence against the person in criminal proceedings in a court of law.
- (3) Subsection (2) does not apply to criminal proceedings in which the person is charged with an offence under section 13(1), (3), (5), (6), (7) or (8), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the answer or response, or the explanation or further particulars.

16. Lien claimed on records or documents

If a person claims a lien on any record or document in the person's possession that is required to be produced under this Part—

- (a) the lien does not affect the requirement to produce the record or document;
- (b) no fees are payable for or in respect of the production; and
- (c) the production does not affect the lien.

17. Magistrate's warrants

- (1) If a magistrate is satisfied by information on oath laid by an investigator, a person authorized under section 9(12), or an employee or staff member of a relevant authority that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document that may be required to be produced under this Part, the magistrate may issue a warrant authorizing a person specified in the warrant, a police officer, and any other person as may be necessary to assist in the execution of the warrant, to—
 - (a) enter the premises, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and
 - (b) search for, seize and remove any record or document that the person specified in the warrant or the police officer has reasonable cause to believe may be required to be produced under this Part.
- (2) If an authorized person has reasonable cause to believe that a person found on the premises is employed in connection with a business that is or has been carried on on the premises, the authorized person may require that person to produce for examination any record or document that—
 - (a) is in the possession of that person; and
 - (b) the authorized person has reasonable cause to believe may be required to be produced under this Part.

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- (3) An authorized person may, in relation to any record or document required to be produced under subsection (2)—
 - (a) prohibit any person found on the premises from—
 - (i) removing the record or document from the premises;
 - (ii) erasing anything from, adding anything to or otherwise altering anything in, the record or document; or
 - (iii) otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document;
 - (b) take any other step that appears to the authorized person to be necessary for—
 - (i) preserving the record or document; or
 - (ii) preventing interference with the record or document.
 - (4) Any record or document removed under subsection (1) may be retained—
 - (a) for a period not exceeding 6 months beginning on the day of its removal; or
 - (b) if the record or document is or may be required for the purpose of any criminal proceedings or any proceedings under this Ordinance, for any longer period that may be necessary for the purpose of those proceedings.
 - (5) If an authorized person removes any record or document under this section, the authorized person must, as soon as reasonably practicable after the removal, give a receipt for the record or document.
 - (6) An authorized person who has removed any record or document under this section may permit any person who would be entitled to inspect the record or document but for the

removal to inspect it and to make copies or otherwise record details of it at all reasonable times.

- (7) An authorized person who enters any premises under this section must, if required, produce the warrant for inspection.
- (8) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property that has by virtue of this section come into the possession of a relevant authority, as it applies to property that has come into the possession of the police.
- (9) A person commits an offence if the person—
 - (a) without reasonable excuse, fails to comply with a requirement or prohibition imposed on the person under subsection (2) or (3); or
 - (b) obstructs an authorized person exercising a power conferred by subsection (2) or (3).
- (10) A person who commits an offence under subsection (9) is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (11) In this section—

authorized person (獲授權人) means a person authorized by a warrant issued under subsection (1) to carry out the acts set out in paragraphs (a) and (b) of that subsection.

18. Production of information in information systems etc.

- (1) If any information or matter contained in a record or document is recorded otherwise than in a legible form but is capable of being reproduced in a legible form, any person who is empowered to require the production of the record or document under this Part is also empowered to require the production of a reproduction of the recording of the

information or matter, or the relevant part of the recording, in a legible form.

- (2) If any information or matter contained in a record or document is recorded in an information system, any person who may require the production of the record or document under this Part is also empowered to require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a form that enables the information or matter to be reproduced in a legible form.

- (3) In this section—

information system (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553).

19. Inspection of records and documents seized etc.

- (1) If an authorized person or an investigator has taken possession of any record or document under this Part, the authorized person or the investigator must permit any other person who would be entitled to inspect the record or document had the authorized person or the investigator not taken possession of it under this Part to inspect it and to make copies or otherwise record details of it at all reasonable times.
- (2) A person who gives a permission under subsection (1) may impose any reasonable condition as to security or otherwise that the person thinks fit.

20. Destruction of documents etc.

- (1) A person commits an offence if the person destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document that the person is required by an authorized person or an investigator to produce under this Part, with intent to conceal, from the authorized person or the investigator, facts or matters capable of being disclosed by the record or document.

- (2) A person who commits an offence under subsection (1) is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
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Part 4

Disciplinary Actions by Relevant Authorities

21. Relevant authorities may take disciplinary actions

- (1) Subject to sections 22 and 23, if a financial institution contravenes a specified provision as defined by section 5(10), the relevant authority may exercise any one or more of the powers specified in subsection (2).
- (2) The specified powers are—
 - (a) to publicly reprimand the financial institution;
 - (b) to order the financial institution to take, by a date specified by the relevant authority, any action specified by the relevant authority for the purpose of remedying the contravention; and
 - (c) to order the financial institution to pay a pecuniary penalty not exceeding the amount that is the greater of—
 - (i) \$10,000,000; or
 - (ii) 3 times the amount of the profit gained, or costs avoided, by the financial institution as a result of the contravention.
- (3) A financial institution that is ordered to pay a pecuniary penalty under this section must pay the penalty to the relevant authority within—
 - (a) 30 days; or
 - (b) any longer period that the relevant authority may specify by notice under section 22(2),after the order has taken effect as a specified decision under section 74.
- (4) If a financial institution fails to comply with an order to take remedial action made under subsection (1), the relevant

authority may further order the financial institution to pay a daily pecuniary penalty not exceeding \$100,000 for each day on which the failure continues after the date specified in the order as being the date by which the remedial action must be taken.

- (5) The Court of First Instance may, on an application of a relevant authority made in the manner specified in subsection (6), register an order to pay a pecuniary penalty made under subsection (1) or (4) in the Court of First Instance and the order is, on registration, to be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.
- (6) For the purpose of making an application under subsection (5), the relevant authority must produce to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the original and a copy of the order.
- (7) A relevant authority must pay into the general revenue any pecuniary penalty received by it under an order made under this section.
- (8) If a relevant authority has exercised a power under subsection (1) in respect of a financial institution, the relevant authority may disclose to the public details of its decision, the reasons for which the decision was made, and any material facts relating to the case.

22. Procedural requirements in respect of exercise of powers under section 21

- (1) A relevant authority may only exercise its powers under section 21 in respect of a financial institution after giving the financial institution a reasonable opportunity to be heard.
- (2) If a relevant authority exercises a power under section 21 in respect of a financial institution, the relevant authority must

inform the financial institution of its decision by notice in writing.

- (3) A notice under subsection (2) must include—
 - (a) a statement of the reasons for the decision;
 - (b) in so far as applicable, the terms in which the financial institution is reprimanded under the decision;
 - (c) in so far as applicable, the action that the financial institution is required to take under the decision;
 - (d) in so far as applicable, the amount of any pecuniary penalty imposed under the decision and, if the penalty is to be paid within a period other than that specified in section 21(3)(a), the period within which it is required to be paid; and
 - (e) a statement that the financial institution may apply to the Review Tribunal for a review of the decision.

23. Guidelines on how relevant authorities exercise power to impose pecuniary penalty

- (1) A relevant authority must, before it first exercises its power to impose a pecuniary penalty referred to in section 21(2)(c), publish in the Gazette and in any other manner that it considers appropriate, guidelines to indicate the manner in which it proposes to exercise that power.
 - (2) In exercising its power to impose a pecuniary penalty referred to in section 21(2)(c), the relevant authority must have regard to the guidelines published by it under subsection (1).
 - (3) Guidelines published under subsection (1) are not subsidiary legislation.
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Part 5

Regulation of Operation of Money Service

Division 1

Preliminary

24. Interpretation of Part 5

In this Part—

authorized officer (獲授權人員) means a person appointed under section 45;

director (董事) includes any person occupying the position of director by whatever name called;

licence (牌照) means a licence granted under section 30 or renewed under section 31 and includes a licence that is deemed to have been granted under section 81;

register (登記冊) means the register of licensees maintained by the Commissioner under section 27;

ultimate owner (最終擁有人), in relation to a corporation, means an individual who—

- (a) owns or controls, directly or indirectly, including through a trust or bearer share holding, not less than 10% of the issued share capital of the corporation;
- (b) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights at general meetings of the corporation; or
- (c) exercises ultimate control over the management of the corporation.

25. Persons to whom this Part does not apply

This Part does not apply to—

- (a) an authorized institution;
- (b) a licensed corporation that operates a money service that is ancillary to the corporation's principal business;
- (c) an authorized insurer that operates a money service that is ancillary to the insurer's principal business;
- (d) an authorized insurance broker that operates a money service that is ancillary to the broker's principal business; or
- (e) an appointed insurance agent that operates a money service that is ancillary to the agent's principal business.

26. Delegation of functions

- (1) Subject to subsection (2), the Commissioner of Customs and Excise may in writing delegate any of his or her functions under this Ordinance to any public officer employed in the Customs and Excise Department.
- (2) The Commissioner of Customs and Excise must not delegate any of the functions under this section or section 50.

27. Commissioner to maintain register of licensees

- (1) The Commissioner must maintain a register of licensees, in any form the Commissioner thinks fit, containing—
 - (a) the name of every licensee; and
 - (b) in respect of each licensee, the address of every premises at which the licensee may operate a money service under the licensee's licence.
- (2) The register is to be kept at the office of the Commissioner.
- (3) The register must be made available for inspection by members of the public to enable any of them to ascertain whether he or she is dealing with a licensee.

- (4) Members of the public are entitled, without charge, to inspect the register during normal office hours.

28. Certified copy of register or entry in register admissible as evidence

- (1) Any person may, on payment of the fee specified in Schedule 3, obtain—
 - (a) a certified copy or an uncertified copy of the register or of an entry in or extract from the register; or
 - (b) a certificate by the Commissioner stating that the name of a person has been entered on or removed from the register or has not been entered on the register.
- (2) A copy of the register, or of an entry in or extract from the register, purporting to be certified by the Commissioner is admissible in evidence in any criminal or civil proceedings on production without further proof and is evidence of the facts stated in the copy.
- (3) The fact that the name of a person does not appear on a copy of the register purporting to be certified by the Commissioner is evidence that the person was not, at the date on which the copy is so certified, licensed.
- (4) A certificate purporting to be signed by the Commissioner and stating that the name of a person has been entered on or removed from the register, or has not been entered on the register, is admissible in evidence in any criminal or civil proceedings on production without further proof and is to be conclusive evidence of the facts stated in the certificate.

Division 2

Licence for Operating Money Service

29. Restriction on operating money service

- (1) A person commits an offence if the person operates a money service—
 - (a) without a licence; or
 - (b) at any premises other than those specified in a licence granted to the person.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) If a person is convicted of an offence under this section, the magistrate may order that the person is to be disqualified from holding a licence for a period specified in the order beginning on the date of the order.
- (4) A licence held by a person against whom an order is made under subsection (3) ceases to have effect from the date of the order.

30. Grant of licence

- (1) An application for the grant of a licence—
 - (a) must be made to the Commissioner in the form and manner specified by the Commissioner; and
 - (b) must be accompanied by the fee specified in Schedule 3.
- (2) The Commissioner may, on an application under subsection (1), grant to the applicant a licence to operate a money service at the premises specified in the licence.
- (3) The Commissioner may grant a licence to an applicant only if the Commissioner is satisfied that—

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- (a)
 - (i) where the applicant is an individual, the individual is a fit and proper person to operate a money service;
 - (ii) where the applicant is a partnership, each partner in the partnership is a fit and proper person to operate a money service; or
 - (iii) where the applicant is a corporation, each director and each ultimate owner of the corporation is a fit and proper person to be associated with the business of operating a money service;
 - (b) the premises in respect of which the application is made are suitable to be used for the operation of a money service; and
 - (c) where the premises referred to in paragraph (b) are domestic premises, the applicant has secured the written consent of every occupant of the premises for any authorized person as defined by section 8 to enter the premises for the purpose of exercising the powers under section 9.
- (4) In determining whether a person is a fit and proper person under subsection (3)(a), the Commissioner must, in addition to any other matter that the Commissioner considers relevant, have regard to the following—
- (a) whether the person has been convicted of—
 - (i) an offence under section 5(5), (6), (7) or (8), 10(1), (3), (5), (6), (7) or (8), 13(1), (3), (5), (6), (7) or (8), 17(9), 20(1), 60(2) or 65(3);
 - (ii) an offence under section 14(1) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) for a contravention of section 7 or 8 of that Ordinance;
 - (iii) an offence under section 25(1), 25A(5) or (7) of, or any offence specified in Schedule 1 to, the Drug

Trafficking (Recovery of Proceeds) Ordinance (Cap. 405); or

- (iv) an offence under section 25(1), 25A(5) or (7) of, or any offence specified in Schedule 1 or 2 to, the Organized and Serious Crimes Ordinance (Cap. 455);
 - (b) whether the person has a conviction in a place outside Hong Kong—
 - (i) for an offence relating to money laundering or terrorist financing; or
 - (ii) for an offence for which it was necessary to find that the person had acted fraudulently, corruptly or dishonestly;
 - (c) whether the person has persistently failed to comply with any requirement imposed under this Ordinance or any regulation made by the Commissioner under section 50;
 - (d) whether the person, being an individual, is an undischarged bankrupt or is the subject of any bankruptcy proceedings under the Bankruptcy Ordinance (Cap. 6);
 - (e) whether the person, being a corporation, is in liquidation or is the subject of a winding up order, or there is a receiver appointed in relation to it.
- (5) On granting a licence, the Commissioner may impose any condition that the Commissioner thinks fit.
- (6) If the Commissioner imposes any condition on a licence, the Commissioner must, at the time the licence is granted, inform the licensee by notice in writing.
- (7) An imposition of any condition under subsection (5) takes effect at the time the notice under subsection (6) is received by the licensee, or at the time specified in the notice under subsection (6), whichever is the later.

- (8) If the Commissioner refuses to grant a licence under this section, the Commissioner must inform the applicant by notice in writing.
- (9) A notice under subsection (6) or (8) must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the licensee or applicant, as the case requires, may apply to the Review Tribunal for a review of the decision.
- (10) Subject to section 34, a licence granted under this section is valid for 2 years or, if the Commissioner considers it appropriate in any particular case, any other period determined by the Commissioner, beginning on the date on which it is granted.

31. Renewal of licence

- (1) A licensee may apply to the Commissioner for a renewal of the licensee's licence.
- (2) An application for the renewal of a licence—
 - (a) must be made not later than 45 days before the licence is due to expire;
 - (b) must be made to the Commissioner in the form and manner specified by the Commissioner; and
 - (c) must be accompanied by the fee specified in Schedule 3.
- (3) The Commissioner may, on an application under subsection (2), renew the licence.
- (4) Section 30(3) and (4) applies to an application for renewal of a licence under this section as it applies to an application for a licence.
- (5) On renewing a licence, the Commissioner may amend or remove any condition of the licence previously imposed on the licensee, or impose any new condition on the licensee, that the Commissioner thinks fit.

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- (6) If the Commissioner amends or removes any condition or imposes any new condition, the Commissioner must, at the time the licence is renewed, inform the licensee by notice in writing.
 - (7) An amendment, removal or imposition of any condition under subsection (5) takes effect at the time the notice under subsection (6) is received by the licensee, or at the time specified in the notice under subsection (6), whichever is the later.
 - (8) If the Commissioner refuses to renew a licence under this section, the Commissioner must inform the licensee by notice in writing.
 - (9) A notice under subsection (6) or (8) must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
 - (10) A licence in respect of which an application for renewal is made under this section and which expires before the determination of the application by the Commissioner remains in force—
 - (a) until the licence is renewed; or
 - (b) if the renewal is refused, until the Commissioner's decision to refuse to renew the licence takes effect, unless the application is withdrawn or the licence is revoked or suspended under section 34.
 - (11) A renewal granted under this section takes effect—
 - (a) on the day following the expiration of the licence; or
 - (b) if subsection (10) applies, on the day following the day on which the licence would have expired but for that subsection.
 - (12) Subject to section 34, a licence renewed under this section is valid for 2 years or, if the Commissioner considers it

appropriate in any particular case, any shorter period determined by the Commissioner, beginning on the date on which it is renewed.

32. Amendment of conditions in licence

- (1) The Commissioner may, in relation to a licence, amend or remove any condition of the licence previously imposed on the licensee, or impose any new condition on the licensee, if the Commissioner is satisfied that it is reasonable to do so in the circumstances.
- (2) If the Commissioner amends or removes any condition or imposes any new condition in respect of a licence, the Commissioner must inform the licensee by notice in writing.
- (3) A notice under subsection (2) must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (4) An amendment, removal or imposition of any condition under this section takes effect at the time the notice under subsection (2) is received by the licensee, or at the time specified in the notice under subsection (2), whichever is the later.

33. Form of licence

A licence is to be in a form specified by the Commissioner and must—

- (a) specify the address of every premises at which the licensee may operate a money service;
- (b) be endorsed with the conditions imposed or amended under section 30, 31 or 32; and
- (c) specify the period for which the licence is valid.

34. Revocation or suspension of licence

- (1) The Commissioner may exercise any of the powers specified in subsection (2) if—
 - (a) the Commissioner is of the opinion that in relation to a licence—
 - (i) where the licensee is an individual, the individual is no longer a fit and proper person to operate a money service;
 - (ii) where the licensee is a partnership, any partner in the partnership is no longer a fit and proper person to operate a money service; or
 - (iii) where the licensee is a corporation, any director or any ultimate owner of the corporation is no longer a fit and proper person to be associated with the licensee's money service business; or
 - (b) a licensee operates a money service at any domestic premises, and—
 - (i) any occupant of the premises revokes his or her written consent previously given for any authorized person as defined by section 8 to enter the premises for the purpose of exercising the powers under section 9; or
 - (ii) any new occupant of the premises refuses to give such a written consent.
- (2) The specified powers are—
 - (a) to revoke the licence; or
 - (b) to suspend the licence for a period specified by the Commissioner or until the occurrence of an event specified by the Commissioner.
- (3) The Commissioner may only exercise a power under subsection (1) after giving the licensee a reasonable opportunity to be heard.

- (4) If the Commissioner exercises a power under subsection (1) in respect of a licence, the Commissioner must inform the licensee of the decision by notice in writing.
- (5) A notice under subsection (4) must include—
 - (a) a statement of the reasons for the decision;
 - (b) for a decision to suspend a licence, the duration and terms of the suspension;
 - (c) for a decision to revoke a licence, the time within which the licence is to be surrendered to the Commissioner; and
 - (d) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (6) A revocation or suspension of a licence under this section takes effect at the time specified in the notice under subsection (4).
- (7) If a licence is revoked or suspended under this section, no licence fee paid in respect of the grant or renewal of the licence is to be refunded.

35. Commissioner’s approval required in respect of persons proposing to become licensee’s directors

- (1) In relation to a licensee that is a corporation, a person must not become a director of the corporation unless the Commissioner has, on an application of the licensee, given his or her approval in writing.
- (2) An application for the approval of the Commissioner under this section—
 - (a) must be made in the form and manner specified by the Commissioner; and
 - (b) must be accompanied by the fee specified in Schedule 3.
- (3) The Commissioner may give an approval under this section only if the Commissioner is satisfied that the person in

relation to whom the application is made is a fit and proper person to be associated with the licensee's money service business.

- (4) In determining whether a person is a fit and proper person under subsection (3), the Commissioner must, in addition to any other matter that the Commissioner considers relevant, have regard to the matters specified in section 30(4)(a), (b), (c), (d) and (e).
- (5) If the Commissioner refuses to give an approval under this section, the Commissioner must inform the licensee by notice in writing.
- (6) A notice under subsection (5) must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (7) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

36. Commissioner's approval required in respect of persons proposing to become licensee's ultimate owners

- (1) In relation to a licensee that is a corporation, a person must not become an ultimate owner of the corporation unless the Commissioner has, on an application of the licensee, given his or her approval in writing.
- (2) An application for the approval of the Commissioner under this section—
 - (a) must be made in the form and manner specified by the Commissioner; and
 - (b) must be accompanied by the fee specified in Schedule 3.
- (3) The Commissioner may give an approval under this section only if the Commissioner is satisfied that the person in relation to whom the application is made is a fit and proper

person to be associated with the licensee's money service business.

- (4) In determining whether a person is a fit and proper person under subsection (3), the Commissioner must, in addition to any other matter that the Commissioner considers relevant, have regard to the matters specified in section 30(4)(a), (b), (c), (d) and (e).
- (5) If the Commissioner refuses to give an approval under this section, the Commissioner must inform the licensee by notice in writing.
- (6) A notice under subsection (5) must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (7) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

37. Commissioner's approval required in respect of persons proposing to become licensee's partners

- (1) In relation to a licensee that is a partnership, a person must not become a partner in the partnership unless the Commissioner has, on an application of the licensee, given his or her approval in writing.
- (2) An application for the approval of the Commissioner under this section—
 - (a) must be made in the form and manner specified by the Commissioner; and
 - (b) must be accompanied by the fee specified in Schedule 3.
- (3) The Commissioner may give an approval under this section only if the Commissioner is satisfied that the person in relation to whom the application is made is a fit and proper person to operate a money service.

- (4) In determining whether a person is a fit and proper person under subsection (3), the Commissioner must, in addition to any other matter that the Commissioner considers relevant, have regard to the matters specified in section 30(4)(a), (b), (c), (d) and (e).
- (5) If the Commissioner refuses to give an approval under this section, the Commissioner must inform the licensee by notice in writing.
- (6) A notice under subsection (5) must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (7) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

38. Adding new business premises

- (1) If a licensee wishes to operate a money service at any premises other than those specified in the licence, the licensee may apply to the Commissioner to add the new premises to the licence.
- (2) An application under this section must be made in the form and manner specified by the Commissioner.
- (3) The Commissioner may grant an application under this section on payment of the fee specified in Schedule 3 and may impose any condition that the Commissioner thinks fit.
- (4) The Commissioner may grant an application under this section only if the Commissioner is satisfied that—
 - (a) the premises in respect of which the application is made are suitable to be used for the operation of a money service; and
 - (b) where the premises referred to in paragraph (a) are domestic premises, the licensee has secured the written

consent of every occupant of the premises for any authorized person as defined by section 8 to enter the premises for the purpose of exercising the powers under section 9.

- (5) If the Commissioner refuses to grant an application under this section, the Commissioner must inform the licensee by notice in writing.
- (6) A notice under subsection (5) must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (7) The Commissioner must, as soon as reasonably practicable after granting an application under this section, add the relevant particulars to the register.

39. Licensee’s duty to notify Commissioner of changes in particulars

- (1) If there is any change in the particulars that are provided to the Commissioner in connection with a licensee’s application under section 30 or 31, the licensee must notify the Commissioner in writing of the change within one month beginning on the date on which the change takes place.
- (2) For the purposes of subsection (1), particulars that are provided in connection with a licensee’s application under section 30 or 31 include particulars notified under that subsection.
- (3) The Commissioner must, as soon as reasonably practicable after receiving a notification under subsection (1), amend any relevant particulars in the register if necessary.
- (4) A licensee who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

- 40. Licensee’s duty to notify Commissioner of cessation of business**
- (1) If a licensee intends to cease to operate a money service at the premises or any of the premises specified in the licence with effect from a particular date (*date of cessation*), the licensee must—
 - (a) before the date of cessation, notify the Commissioner in writing of that intention and the date of cessation; and
 - (b) return the licence to the Commissioner for cancellation or amendment within 7 days beginning on the date of cessation.
 - (2) The Commissioner must, as soon as reasonably practicable after receiving a licence under subsection (1)(b)—
 - (a) cancel or amend the licence; and
 - (b) remove the relevant particulars from the register.
 - (3) If a licence is returned for cancellation under this section, no licence fee paid in respect of the grant or renewal of the licence is to be refunded.
 - (4) A licensee who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

41. Licence ceases to be valid on death etc. of licensee

A licence ceases to be valid—

- (a) if the licensee is an individual, on the death of the individual;
- (b) if the licensee is a partnership, on the dissolution of the partnership; or
- (c) if the licensee is a corporation, on the commencement of winding up of the corporation.

Division 3

Commissioner's Disciplinary and Other Powers

42. Commissioner may take disciplinary actions

- (1) Subject to sections 43 and 44, the Commissioner may exercise any one or more of the powers specified in subsection (2) if a licensee—
 - (a) contravenes any regulation made under section 50;
 - (b) contravenes any of the conditions of the licensee's licence; or
 - (c) contravenes section 35(1), 36(1), 37(1), 39(1) or 40(1).
- (2) The specified powers are—
 - (a) to publicly reprimand the licensee;
 - (b) to order the licensee to take, by a date specified by the Commissioner, any action specified by the Commissioner for the purpose of remedying the contravention; and
 - (c) to order the licensee to pay a pecuniary penalty not exceeding \$1,000,000.
- (3) A licensee who is ordered to pay a pecuniary penalty under this section must pay the penalty within—
 - (a) 30 days; or
 - (b) any longer period that the Commissioner may specify by notice under section 43(2),
after the order has taken effect as a specified decision under section 74.
- (4) If a licensee fails to comply with an order to take remedial action made under subsection (1), the Commissioner may further order the licensee to pay a daily pecuniary penalty not exceeding \$10,000 for each day on which the failure

continues after the date specified in the order as being the date by which the remedial action must be taken.

- (5) The Court of First Instance may, on an application of the Commissioner made in the manner specified in subsection (6), register an order to pay a pecuniary penalty made under subsection (1) or (4) in the Court of First Instance and the order is, on registration, to be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.
- (6) For the purpose of making an application under subsection (5), the Commissioner must produce to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the original and a copy of the order.
- (7) If the Commissioner has exercised his or her powers under subsection (1) in respect of a licensee, the Commissioner may disclose to the public details of the decision, the reasons for which the decision was made, and any material facts relating to the case.

43. Procedural requirements in respect of exercise of powers under section 42

- (1) The Commissioner may only exercise the powers under section 42 in respect of a licensee after giving the licensee a reasonable opportunity to be heard.
- (2) If the Commissioner exercises a power under section 42 in respect of a licensee, the Commissioner must inform the licensee of the decision by notice in writing.
- (3) A notice under subsection (2) must include—
 - (a) a statement of the reasons for the decision;
 - (b) in so far as applicable, the terms in which the licensee is reprimanded under the decision;

- (c) in so far as applicable, the action that the licensee is required to take under the decision;
- (d) in so far as applicable, the amount of any pecuniary penalty imposed under the decision and, if the penalty is to be paid at a time other than that specified in section 42(3)(a), the time within which it is required to be paid; and
- (e) a statement that the licensee may apply to the Review Tribunal for a review of the decision.

44. Guidelines on how Commissioner exercises power to impose pecuniary penalty

- (1) The Commissioner must, before he or she first exercises the power to impose a pecuniary penalty referred to in section 42(2)(c), publish in the Gazette and in any other manner that the Commissioner considers appropriate, guidelines to indicate the manner in which the Commissioner proposes to exercise that power.
- (2) In exercising the power to impose a pecuniary penalty referred to in section 42(2)(c), the Commissioner must have regard to the guidelines published under subsection (1).
- (3) Guidelines published under subsection (1) are not subsidiary legislation.

45. Commissioner may appoint authorized officers

The Commissioner may appoint in writing any public officer employed in the Customs and Excise Department to be an authorized officer for the purposes of this Part.

46. Warrant to enter premises to remove evidence of commission of offence

- (1) If a magistrate is satisfied by information on oath that there are reasonable grounds to suspect that an offence under section 29 has been committed or is being committed on any

- premises, the magistrate may issue a warrant authorizing an authorized officer to—
- (a) enter and search the premises; and
 - (b) seize, remove or detain—
 - (i) any record or document, or any cash or other article, found on the premises that is, or appears to the authorized officer to be, or to contain, or to be likely to be or to contain, evidence of the commission of the suspected offence; and
 - (ii) anything that the authorized officer has reasonable cause to believe may be required as evidence in proceedings for the suspected offence.
- (2) An authorized officer authorized under subsection (1) may—
- (a) call on any person to assist the officer in entering and searching the premises that the officer is empowered to enter and search under that subsection;
 - (b) break into and forcibly enter the premises;
 - (c) remove by force any person or thing obstructing the officer in the exercise of those powers; and
 - (d) detain any person found on the premises until the premises have been so searched.
- (3) An authorized officer who enters any premises under this section must, if required, produce the warrant for inspection.
- (4) A person who obstructs an authorized officer exercising a power conferred by a warrant or by subsection (2) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

47. Authorized officer’s power to arrest and search, etc.

- (1) An authorized officer may, without a warrant, arrest a person or detain a person for further enquiries if—

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- (a) the authorized officer has reasonable grounds to suspect that the person has committed or is committing an offence under section 29; and
 - (b) it appears to the authorized officer that service of a summons is impracticable because—
 - (i) the name of the person is unknown to, and cannot readily be ascertained by, the authorized officer;
 - (ii) the authorized officer has reasonable grounds to suspect that a name given by the person as his or her name is not the person's true name;
 - (iii) the person has failed to give a satisfactory address for service of the summons; or
 - (iv) the authorized officer has reasonable grounds to suspect that an address given by the person as an address for service of the summons is not a valid address.
- (2) An authorized officer who arrests or detains a person under this section must, if requested, produce evidence of his or her appointment as an authorized officer.
 - (3) An authorized officer who arrests a person under this section must immediately take the person to a police station or, if in the opinion of the authorized officer further enquiries are necessary, first to an office of the Customs and Excise Department and then to a police station, there to be dealt with in accordance with the Police Force Ordinance (Cap. 232).
 - (4) A person, whether arrested or not, must not be detained for more than 48 hours without being charged and brought before a magistrate.
 - (5) If a person forcibly resists or attempts to evade arrest under this section, the authorized officer may use any force that is reasonably necessary to effect the arrest.
 - (6) If an authorized officer has arrested a person under this section, the officer may—

- (a) search the person, or the place at which the person has been arrested and its surrounding areas, for anything that may be related to the suspected offence; and
 - (b) take possession of anything found as a result of the exercise of the power under paragraph (a) that the authorized officer has reasonable grounds to suspect is related to the suspected offence.
- (7) A person may be searched only by an authorized officer of the same sex.

Division 4

Miscellaneous

48. Preservation of secrecy

- (1) Except in the performance of a function under this Ordinance, or for the purpose of carrying into effect a provision of this Ordinance or doing anything required or authorized under this Ordinance, a specified person—
- (a) must preserve and aid in preserving secrecy with regard to any matter coming to the specified person's knowledge—
 - (i) in the performance of any function under this Ordinance, or in carrying into effect any provision of this Ordinance; or
 - (ii) in the course of assisting any other person in the performance of any function under this Ordinance, or in carrying into effect any provision of this Ordinance;
 - (b) must not communicate any matter referred to in paragraph (a) to any other person other than the person to whom the matter relates; and

- (c) must not suffer or permit any other person to have access to any record or document that comes into the specified person's possession—
 - (i) in the performance of any function under this Ordinance, or in carrying into effect any provision of this Ordinance; or
 - (ii) in the course of assisting any other person in the performance of any function under this Ordinance, or in carrying into effect any provision of this Ordinance.
- (2) Despite subsection (1), a specified person may—
 - (a) disclose information that has already been made available to the public;
 - (b) disclose information with a view to the institution of, or for the purposes of, any criminal proceedings in Hong Kong;
 - (c) disclose information with a view to the commencement of, or for the purposes of, any investigation carried out in Hong Kong under the laws of Hong Kong;
 - (d) disclose information for the purpose of seeking advice from, or giving advice by, counsel, a solicitor or other professional adviser, who is acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance;
 - (e) disclose information in connection with any judicial or other proceedings to which the specified person is a party; and
 - (f) disclose information in accordance with an order of a court, magistrate or tribunal, or in accordance with a law of Hong Kong or a requirement imposed under a law of Hong Kong.
- (3) Despite subsection (1), the Commissioner may—

- (a) disclose information in the form of a summary compiled from any information in the Commissioner's possession, including information provided by persons under any provision of this Ordinance, if the summary is so compiled as to prevent particulars relating to the business or identity, or the trading particulars, of any person from being ascertained from it;
 - (b) disclose information to the Review Tribunal;
 - (c) subject to subsection (4), disclose information to—
 - (i) the Financial Secretary;
 - (ii) the Monetary Authority;
 - (iii) the Insurance Authority;
 - (iv) the Securities and Futures Commission;
 - (v) the Privacy Commissioner for Personal Data;
 - (vi) The Ombudsman; or
 - (vii) a public officer authorized by the Financial Secretary under subsection (10);
 - (d) subject to subsection (4), disclose information to an authority or regulatory organization outside Hong Kong that, in the opinion of the Commissioner—
 - (i) performs functions similar to the functions of the Commissioner under this Ordinance or regulates, supervises or investigates banking, insurance or other financial services; and
 - (ii) is subject to adequate secrecy provisions; and
 - (e) disclose information with the consent of the person from whom the information was obtained or received and, if the information relates to a different person, with the consent also of the person to whom the information relates.
- (4) The Commissioner may disclose information under subsection (3)(c) and (d) only if the Commissioner is satisfied that—

- (a) it is desirable or expedient that the information should be disclosed in the interest of licensees or their customers, or in the public interest; or
 - (b) the disclosure will enable or assist the recipient of the information to perform the recipient's functions and it is not contrary to the interest of licensees or their customers, or to the public interest, that the information should be so disclosed.
- (5) The Commissioner may, in disclosing any information under subsection (3), impose any condition that the Commissioner considers appropriate.
- (6) Without limiting subsection (5), the Commissioner may impose a condition that—
 - (a) the person to whom the information is disclosed; and
 - (b) any person obtaining or receiving the information (whether directly or indirectly) from that person,must not disclose the information to any other person without the consent of the Commissioner.
- (7) Subsection (3)(e) does not require the Commissioner to disclose in or in relation to any civil proceedings any information that the Commissioner may disclose, or has disclosed, under that subsection.
- (8) A person who—
 - (a) contravenes subsection (1); or
 - (b) knowing that the condition referred to in subsection (6) has been imposed in relation to a disclosure of information made under subsection (3), contravenes, or aids, abets, counsels or procures any person to contravene, that condition,commits an offence.
- (9) A person who commits an offence under subsection (8) is liable—

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (10) The Financial Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (3)(c)(vii).
- (11) In this section—
- specified person* (指明人士) means—
- (a) the Commissioner;
 - (b) a person employed in the Customs and Excise Department; or
 - (c) a person assisting the Commissioner in the performance of a function under this Ordinance.

49. Amendment of Schedule 3

The Commissioner may, by notice published in the Gazette, amend Schedule 3.

50. Regulations

The Commissioner of Customs and Excise may make regulations for the better carrying out of the provisions and purposes of this Part.

51. Offence to provide false information in connection with application for licence etc.

- (1) A person commits an offence if the person, in connection with an application for the grant or renewal of a licence—
- (a) makes a statement that is false or misleading in a material particular; and
 - (b) knows that, or is reckless as to whether, the statement is false or misleading in a material particular.

-
- (2) A person commits an offence if the person, in connection with an application for the grant or renewal of a licence—
- (a) omits a material particular from a statement with the result that the statement is rendered false or misleading; and
 - (b) knows that, or is reckless as to whether, the material particular is omitted from the statement.
- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

52. Time limit for prosecution

Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings may be instituted for an offence under this Part within 12 months after the offence is discovered by, or comes to the notice of, the Commissioner.

Part 6

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal

Division 1

Interpretation

53. Interpretation of Part 6

In this Part—

application for review (覆核申請) means an application made under section 58(1);

parties (各方), in relation to a review, means—

- (a) the specified authority that made the specified decision in question; and
- (b) the person who makes the application for review;

review (覆核) means a review of a specified decision by the Tribunal under section 59(1);

Secretary (局長) means the Secretary for Financial Services and the Treasury;

specified authority (指明當局)—

- (a) in relation to a specified decision falling within paragraph (a) of the definition of *specified decision*, means the Monetary Authority;
- (b) in relation to a specified decision falling within paragraph (b) of the definition of *specified decision*, means the Securities and Futures Commission;
- (c) in relation to a specified decision falling within paragraph (c) of the definition of *specified decision*, means the Insurance Authority; and

- (d) in relation to a specified decision falling within paragraph (d) of the definition of *specified decision*, means the Commissioner;

specified decision (指明決定) means—

- (a) a decision of the Monetary Authority to exercise any of the powers under section 21;
- (b) a decision of the Securities and Futures Commission to exercise any of the powers under section 21;
- (c) a decision of the Insurance Authority to exercise any of the powers under section 21;
- (d) a decision of the Commissioner—
 - (i) to exercise any of the powers under section 21;
 - (ii) to impose a licence condition under section 30;
 - (iii) to refuse to grant a licence under section 30;
 - (iv) to amend or impose a licence condition under section 31;
 - (v) to refuse to renew a licence under section 31;
 - (vi) to amend or impose a licence condition under section 32;
 - (vii) to revoke or suspend a licence under section 34;
 - (viii) to refuse to give approval to a person becoming a director of a licensee under section 35;
 - (ix) to refuse to give approval to a person becoming an ultimate owner of a licensee under section 36;
 - (x) to refuse to give approval to a person becoming a partner in a partnership that is a licensee under section 37;
 - (xi) to refuse to grant an application to add new premises to a licence under section 38; or
 - (xii) to exercise any of the powers under section 42;

Tribunal (審 裁 處) means the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal established by section 54.

Division 2

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal

54. Establishment of Tribunal

- (1) There is established a tribunal to be known as the “Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal” in English and “打擊洗錢及恐怖分子資金籌集（金融機構）覆核審裁處” in Chinese.
- (2) The Tribunal has jurisdiction to review specified decisions and to hear and determine any question or issue arising out of or in connection with any review, in accordance with this Part and Schedule 4.
- (3) If the Secretary considers it appropriate to do so, the Secretary may establish additional tribunals for the purposes of any reviews, and the provisions of this Ordinance apply, with necessary modifications, to each of those additional tribunals as they apply to the Tribunal.

55. Composition of Tribunal

- (1) Except as otherwise provided in Schedule 4, the Tribunal consists of—
 - (a) a chairperson; and
 - (b) 2 other members,
appointed by the Secretary.
- (2) The chairperson of the Tribunal must be a person who—

- (a) is eligible for appointment as a judge of the High Court under section 9 of the High Court Ordinance (Cap. 4); and
- (b) is not a public officer or is a public officer by virtue only of being the chairperson of a board or tribunal established under an Ordinance.

56. Chairperson and other members of Tribunal may be paid fees

- (1) The chairperson and other members of the Tribunal may be paid a fee for their services in an amount that the Secretary considers appropriate.
- (2) The amounts payable under this section are a charge on the general revenue.

57. Schedule 4 has effect

- (1) Schedule 4 has effect with respect to the Tribunal.
- (2) The Secretary may, by notice published in the Gazette, amend Schedule 4.

58. Application for review of specified decisions

- (1) A person who is aggrieved by a specified decision made in relation to the person may apply to the Tribunal for a review of the decision within the period ending 21 days after the notice informing the person of the decision has been sent.
- (2) Despite subsection (1) and subject to subsection (3), on an application by a person who is aggrieved by a specified decision—
 - (a) the Tribunal may by order extend the time within which an application for review of the specified decision may be made under subsection (1); and
 - (b) on the making of the order, the time within which the application may be made under subsection (1) is extended accordingly.

- (3) The Tribunal may only grant an extension under subsection (2)—
 - (a) after the applicant and the specified authority have been given a reasonable opportunity to be heard; and
 - (b) if it is satisfied that there is a good cause for granting the extension.
- (4) An application for review—
 - (a) must be in writing; and
 - (b) must state the grounds for the application.
- (5) The Tribunal must, as soon as reasonably practicable after receiving an application for review, send a copy of the application to the specified authority.

59. Determination of review by Tribunal

- (1) The Tribunal may determine a review of a specified decision by—
 - (a) confirming, varying or setting aside the decision and, if the decision is set aside, substituting for the decision any other decision that the Tribunal considers appropriate; or
 - (b) remitting the matter to the specified authority with any directions it considers appropriate.
- (2) If the Tribunal varies, or substitutes any other decision for, a specified decision under subsection (1)(a), the decision as varied or the other decision substituting for the specified decision may be any decision (whether more or less onerous than the decision varied or substituted) that the specified authority had power to make in respect of the person who makes the application for review in question, whether or not under the same provision as that under which the specified decision has been made.
- (3) In reviewing a specified decision, the Tribunal must give the parties to the review a reasonable opportunity to be heard.

- (4) For the purposes of proceedings before the Tribunal, matters of fact are to be established on a balance of probabilities.

60. Powers of Tribunal

- (1) Subject to Schedule 4, the Tribunal may, for the purposes of a review, on its own initiative or on the application of any party to the review—
- (a) receive and consider any material by way of oral evidence, written statements or documents, whether or not the material would be admissible in a court of law;
 - (b) determine the manner in which any material mentioned in paragraph (a) is received;
 - (c) by notice in writing signed by the chairperson of the Tribunal, require a person to attend before it at any sitting and to give evidence and produce any article, record or document in the person's possession or control relating to the subject matter of the review;
 - (d) administer oaths;
 - (e) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question that the Tribunal considers appropriate for the purpose of the review;
 - (f) order a witness to provide evidence for the purpose of the review by affidavit;
 - (g) order a person not to publish or otherwise disclose any material the Tribunal receives;
 - (h) prohibit the publication or disclosure of any material the Tribunal receives at any sitting, or any part of a sitting, that is held in private;
 - (i) stay any of the proceedings in the review on any grounds and on any terms and conditions that it considers appropriate having regard to the interests of justice; and
 - (j) determine the procedure to be followed in the review.

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- (2) A person commits an offence if the person, without reasonable excuse—
- (a) fails to comply with an order, notice, prohibition or requirement of the Tribunal made, given or imposed under subsection (1);
 - (b) disrupts any sitting of the Tribunal or otherwise misbehaves during any sitting of the Tribunal;
 - (c) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leaves the place where the person's attendance is so required without the permission of the Tribunal;
 - (d) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purpose of a review;
 - (e) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of that attendance; or
 - (f) threatens, insults or causes any loss to be suffered by the chairperson, or any other member, of the Tribunal at any time on account of the performance of the chairperson's or member's functions in that capacity.
- (3) A person who commits an offence under subsection (2) is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (4) A person is not excused from complying with an order, notice, prohibition or requirement of the Tribunal made, given or imposed under subsection (1) only on the ground that to do so might tend to incriminate the person.

61. Use of incriminating evidence given under compulsion

- (1) This section applies to any evidence, answer or information given or provided by a person in accordance with a requirement or order of the Tribunal imposed or made under section 60(1)(c), (e) or (f).
- (2) Despite anything in this Ordinance and subject to subsection (3), neither the evidence, answer or information given or provided by the person nor the requirement or order imposed or made by the Tribunal is admissible in evidence against the person in criminal proceedings in a court of law.
- (3) Subsection (2) does not apply to criminal proceedings in which the person is charged with an offence under section 60(2)(a), or under Part V of the Crimes Ordinance (Cap. 200), or with perjury, in respect of the evidence, answer or information.

62. Contempt dealt with by Tribunal

- (1) The Tribunal has the same powers as the Court of First Instance to punish for contempt.
- (2) Without limiting the powers of the Tribunal under subsection (1), the Tribunal has the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who, without reasonable excuse, engages in any conduct falling within section 60(2)(a), (b), (c), (d), (e) or (f).
- (3) The Tribunal must, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.
- (4) Despite anything in this Ordinance—
 - (a) no power may be exercised under this section to determine whether to punish a person for contempt in respect of any conduct if—

- (i) criminal proceedings have previously been instituted against the person under section 60(2) in respect of the same conduct; and
 - (ii) those criminal proceedings remain pending or because of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against the person under that section in respect of the same conduct; and
- (b) no criminal proceedings may be instituted against a person under section 60(2) in respect of any conduct if—
- (i) any power has previously been exercised under this section to determine whether to punish the person for contempt in respect of the same conduct; and
 - (ii) proceedings arising from the exercise of that power remain pending or because of the previous exercise of that power, no power may again be lawfully exercised under this section to determine whether to punish the person for contempt in respect of the same conduct.

63. Privileged information

This Part and Schedule 4 do not require an authorized institution, acting as the banker or financial adviser of a person who makes an application for review, to disclose information in relation to the affairs of any of its customers other than that person.

64. Costs

- (1) The Tribunal may, in relation to a review, by order award to—
- (a) any person whose attendance, whether or not as a witness, has been necessary or required for the purposes of the review; or
 - (b) any party to the review,

any sum that it considers appropriate in respect of the costs reasonably incurred by the person, or the party, in relation to the review and the application for review in question.

- (2) Costs awarded under subsection (1) must be paid by, and are recoverable as a civil debt from—
 - (a) if they are awarded to a person under subsection (1)(a), any party to the review that the Tribunal considers appropriate; or
 - (b) if they are awarded to a party to the review under subsection (1)(b), the other party to the review.
- (3) Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under subsection (1).

65. Notification of Tribunal determinations

- (1) The Tribunal must, as soon as reasonably practicable after completing a review, deliver—
 - (a) its determination and the reasons for the determination; and
 - (b) any order made under section 64 in relation to the review and the reasons for the order.
- (2) If a sitting, or any part of a sitting, of the Tribunal relating to a review is held in private, the Tribunal may by order prohibit the publication or disclosure of—
 - (a) its determination, or the reasons for the determination, referred to in subsection (1)(a), or any part of the determination or reasons; or
 - (b) an order, or the reasons for an order, referred to in subsection (1)(b), or any part of such an order or any part of the reasons for such an order.
- (3) A person commits an offence if the person, without reasonable excuse, fails to comply with an order of the Tribunal made under subsection (2).

- (4) A person who commits an offence under subsection (3) is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

66. Form and proof of orders of Tribunal

- (1) An order made by the Tribunal must be recorded in writing and be signed by the chairperson of the Tribunal.
- (2) A document purporting to be an order of the Tribunal signed by the chairperson of the Tribunal is, in the absence of evidence to the contrary, presumed to be an order of the Tribunal duly made and signed, without proof of its making, or proof of signature, or proof that the person signing the order was in fact the chairperson of the Tribunal.

67. Orders of Tribunal may be registered in Court of First Instance

- (1) After receiving a notice in writing given by the Tribunal in the manner prescribed by rules made by the Chief Justice under section 75, the Court of First Instance may register an order of the Tribunal in the Court of First Instance.
- (2) An order registered under subsection (1) is to be regarded for all purposes as an order of the Court of First Instance made within the jurisdiction of that Court.

68. Applications for stay of execution of specified decisions

- (1) Subject to subsections (2) and (3), the making of an application for review does not by itself operate as a stay of execution of the specified decision to which the application relates.
- (2) A person who makes an application for review or an application under section 58(2) may, at any time before the review or the application is determined by the Tribunal, apply

to the Tribunal for a stay of execution of the specified decision to which the application relates.

- (3) The Tribunal must, as soon as reasonably practicable after receiving an application under subsection (2), conduct a hearing to determine the application.
- (4) The Tribunal may by order grant the stay subject to any condition as to costs, payment of money into the Tribunal or other matters that the Tribunal considers appropriate.

69. Applications for stay of execution of determinations of Tribunal

- (1) A party to a review may, at any time after the determination of the review by the Tribunal, apply to the Tribunal for a stay of execution of the determination.
- (2) On an application under subsection (1), the Tribunal may by order grant the stay subject to any condition as to costs, payment of money into the Tribunal or other matters that the Tribunal considers appropriate.

Division 3

Appeals to Court of Appeal

70. Appeal to Court of Appeal with leave

- (1) Subject to subsection (2), if a party to a review is dissatisfied with the determination of the review, the party may appeal to the Court of Appeal against the determination on a question of law or a question of fact or a question of mixed law and fact.
- (2) No appeal may be made under subsection (1) unless leave to appeal has been granted by the Court of Appeal.
- (3) Leave to appeal for the purpose of subsection (2) may be granted—
 - (a) in respect of a particular issue arising out of the determination; and

- (b) subject to any condition that the Court of Appeal considers necessary in order to secure the just, expeditious and economical disposal of the appeal.
- (4) Leave to appeal for the purpose of subsection (2) may only be granted if the Court of Appeal is satisfied that—
 - (a) the appeal has a reasonable prospect of success; or
 - (b) there is some other reason in the interests of justice why the appeal should be heard.

71. Powers of the Court of Appeal

- (1) The Court of Appeal may, in relation to an appeal against a determination of the Tribunal—
 - (a) allow the appeal;
 - (b) dismiss the appeal;
 - (c) vary or set aside the determination and, if the determination is set aside, substitute for the determination any other determination that it considers appropriate; or
 - (d) remit the matter to the Tribunal or to the specified authority with any directions it considers appropriate.
- (2) If the Court of Appeal varies, or substitutes any other determination for, a determination under subsection (1)(c), the determination as varied or the other determination substituting for the determination may be any determination (whether more or less onerous than the determination varied or substituted) that the Tribunal had power to make in respect of the review in question, whether or not under the same provision as that under which the determination has been made.
- (3) In an appeal under this section, the Court of Appeal may make any order for payment of costs as it considers appropriate.

72. No stay of execution of Tribunal’s determination on appeal

- (1) Without prejudice to section 69, the lodging of an appeal under section 70 does not by itself operate as a stay of execution of the determination of the Tribunal appealed against.
- (2) If an appeal is lodged under section 70, the Court of Appeal may, on an application made to it by any party to the review, order a stay of execution of the determination of the Tribunal appealed against.
- (3) The Court of Appeal may, when making an order under subsection (2), impose any condition that the Court of Appeal considers appropriate, including conditions as to costs and payment of money into the Tribunal.

73. No other right of appeal

Subject to section 50 of the High Court Ordinance (Cap. 4) and section 70, the determination of the Tribunal is final and is not subject to appeal.

Division 4

Miscellaneous

74. Time when specified decisions take effect

- (1) Except as otherwise provided in this Ordinance, a specified decision takes effect—
 - (a) where, before the expiry of the period of 21 days specified in section 58(1), the person in relation to whom the decision is made notifies the specified authority in writing that the person will not apply for a review of the decision, at the time the person so notifies the specified authority;
 - (b) where, within the period of 21 days specified in section 58(1), the person neither notifies the specified authority

- that the person will not apply for a review of the decision nor applies for a review of the decision, at the time the period expires; or
- (c) where the person applies for a review of the decision within the period of 21 days specified in section 58(1)—
 - (i) if the decision is confirmed by the Tribunal, at the time the decision is so confirmed;
 - (ii) if the decision is varied, or substituted by another decision, by the Tribunal, at the time the decision is varied or substituted, subject however to the terms of the variation or substitution; or
 - (iii) if the application is withdrawn, at the time the application is withdrawn.
- (2) Despite subsection (1), the specified authority may, if it considers it appropriate in the public interest to do so in relation to a specified decision, specify in the notice in respect of the decision any time, other than that at which the decision is apart from this subsection to take effect, as the time at which the decision is to take effect, in which case the decision takes effect at the time so specified.

75. Power of Chief Justice to make rules

The Chief Justice may make rules—

- (a) providing for matters relating to the registration of an order of the Tribunal in the Court of First Instance under section 67(1); or
 - (b) regulating the procedure for the hearing of appeals under section 70.
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Part 7

Miscellaneous Provisions

76. Regulations by Chief Executive in Council

- (1) The Chief Executive in Council may make regulations for the better carrying out of the provisions and purposes of this Ordinance (except Part 5).
- (2) Without limiting subsection (1), the regulations may include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any principal legislation or provisions of any subsidiary legislation).

77. Standard of proof

If it is necessary for a relevant authority to establish or to be satisfied, for the purposes of any provision of this Ordinance (other than provisions relating to criminal proceedings or to an offence), that—

- (a) a person has contravened—
 - (i) any provision of any Ordinance;
 - (ii) any notice or requirement given or imposed under any Ordinance;
 - (iii) any of the conditions of any licence under this Ordinance; or
 - (iv) any other condition imposed under this Ordinance;
- (b) a person has been responsible for an unlawful act or omission;
- (c) a person has assisted, counselled, procured or induced any other person to do anything which results in the occurrence of any of the matters referred to in paragraph (a) or (b);

- (d) a person has been concerned in, or a party to, anything which results in the occurrence of any of the matters referred to in paragraph (a) or (b);
- (e) a person has attempted, or conspired with any other person, to commit anything which results in the occurrence of any of the matters referred to in paragraph (a) or (b); or
- (f) any of the matters referred to in paragraphs (a), (b), (c), (d) and (e) might occur,

it is sufficient for the relevant authority to establish, or to be satisfied as to, the matter referred to in paragraph (a), (b), (c), (d), (e) or (f), as the case requires, on the standard of proof applicable to civil proceedings in a court of law.

78. Prosecution of offences by relevant authorities

- (1) A relevant authority may prosecute an offence under this Ordinance, or an offence of conspiracy to commit such an offence, in its own name but if a relevant authority so prosecutes, the offence must be tried before a magistrate as an offence that is triable summarily.
- (2) For the purpose of the prosecution of an offence mentioned in subsection (1), an employee or staff member of the relevant authority who is not qualified to practise as a barrister or to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159)—
 - (a) may appear and plead before a magistrate in any case of which the employee or member has charge; and
 - (b) has, in relation to the prosecution, all the other rights of a person qualified to practise as a barrister or to act as a solicitor under that Ordinance.
- (3) This section does not derogate from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.

79. Giving of notices by relevant authorities

- (1) A notice or other document (however described) authorized or required to be given or sent by the Commissioner to a licensee under this Ordinance is to be regarded for all purposes as duly given or sent if it is left at, or sent by post to, the premises or any of the premises specified in the licensee's licence as premises at which the licensee may operate a money service.
- (2) Section 55 of the Insurance Companies Ordinance (Cap. 41) applies, with necessary modifications, in relation to the giving or sending of a notice or other document (however described) authorized or required to be given or sent by the Insurance Authority to a person under this Ordinance as it applies in relation to the giving or serving of a notice or other document referred to in that section.
- (3) Section 134 of the Banking Ordinance (Cap. 155) applies, with necessary modifications, in relation to the giving or sending of a notice or other document (however described) authorized or required to be given or sent by the Monetary Authority to a person under this Ordinance as it applies in relation to the serving of a notice referred to in that section.
- (4) Section 400 of the Securities and Futures Ordinance (Cap. 571) applies, with necessary modifications, in relation to the giving or sending of a notice or other document (however described) authorized or required to be given or sent by the Securities and Futures Commission to a person under this Ordinance as it applies in relation to the issuing or serving of a notice, direction or other document referred to in that section.

80. 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).

81. Transitional provision with regard to money changers and remittance agents carrying on business before commencement of this Ordinance

- (1) A person whose name was entered in the register maintained under section 24B(2) of the pre-amended Organized and Serious Crimes Ordinance as a money changer immediately before the commencement date is, on that date, deemed to have been granted a licence to operate a money service at all the premises entered in the register immediately before that date as premises at which the person carries on business as a money changer, and this Ordinance applies to the person accordingly.
- (2) A person whose name was entered in the register maintained under section 24B(2) of the pre-amended Organized and Serious Crimes Ordinance as a remittance agent immediately before the commencement date is, on that date, deemed to have been granted a licence to operate a money service at all the premises entered in the register immediately before that date as premises at which the person provides a service as a remittance agent, and this Ordinance applies to the person accordingly.
- (3) A licence deemed to have been granted under subsection (1) or (2) remains in force—
 - (a) until the expiry of the period of 60 days beginning on the commencement date; or
 - (b) if the person has applied for a licence under section 30 before the expiry of that period, until—
 - (i) the licence is granted;

- (ii) the Commissioner's decision to refuse to grant a licence takes effect; or
 - (iii) the application is withdrawn,
- whichever is the earliest.

(4) In this section—

commencement date (生效日期) means the date of commencement of this Ordinance;

money changer (貨幣兌換商) has the meaning given by section 24A of the pre-amended Organized and Serious Crimes Ordinance;

pre-amended Organized and Serious Crimes Ordinance (修訂前的《有組織及嚴重罪行條例》) means the Organized and Serious Crimes Ordinance (Cap. 455) in force immediately before the commencement date;

remittance agent (匯款代理人) has the meaning given by section 24A of the pre-amended Organized and Serious Crimes Ordinance.

Part 8

Consequential and Related Amendments

Division 1

Enactments Amended

82. Enactments amended

The enactments specified in Divisions 2, 3, 4, 5 and 6 are amended as set out in those Divisions.

Division 2

Amendment to Insurance Companies Ordinance (Cap. 41)

83. Section 53A amended (Secrecy)

After section 53A(3)(f)—

Add

“(fa) by the Insurance Authority to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal established under section 54 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (of 2010);”.

Division 3

Amendment to Post Office Ordinance (Cap. 98)

84. Section 7 amended (Exemption from liability)

Section 7(4)—

Repeal

everything after “any other postal”

Substitute

“authority—

- (a) all liability of the Government in respect of the money order, telegraph money order, postal order or postal note ceases; and
- (b) except in the case of fraud or wilful misbehaviour and except as provided under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (of 2010), no officer of the Post Office is to be liable in respect of the money order, telegraph money order, postal order or postal note after the payment.”.

Division 4

Amendment to Banking Ordinance (Cap. 155)

85. Section 120 amended (Official secrecy)

After section 120(5)(da)—

Add

- “(db) to the disclosure of information to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal established under section 54 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (of 2010);”.

Division 5

Amendment to Organized and Serious Crimes Ordinance (Cap. 455)

86. Part IVA repealed

Part IVA—

Repeal the Part.

Division 6

Amendments to Securities and Futures Ordinance (Cap. 571)

87. Section 180 amended (Supervision of intermediaries and their associated entities)

After section 180(2)(a)—

Add

“(ba) any provision of Part 2 (except section 6) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (of 2010);”.

88. Section 378 amended (Preservation of secrecy, etc.)

After section 378(3)(d)—

Add

“(ea) to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal established under section 54 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (of 2010);”.

89. Schedule 1 amended (Interpretation and general provisions)

Schedule 1, Part 1, section 1, definition of *relevant provisions*, after paragraph (c)—

Add

“(d) Part 2 (except section 6) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (of 2010);”.

Schedule 1

[s. 2]

Interpretation

Part 1

1. In this Ordinance—

currency (貨幣) includes a cheque and a traveller's cheque;

document (文件) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

function (職能) includes power and duty;

money (金錢) means money in whatever form or currency;

money changing service (貨幣兌換服務) means a service for the exchanging of currencies that is operated in Hong Kong as a business, but does not include such a service that is operated by a person who manages a hotel if the service—

- (a) is operated within the premises of the hotel primarily for the convenience of guests of the hotel; and
- (b) consists solely of transactions for the purchase by that person of non-Hong Kong currencies in exchange for Hong Kong currency;

money laundering (洗錢) means an act intended to have the effect of making any property—

- (a) that is the proceeds obtained from the commission of an indictable offence under the laws of Hong Kong, or of any conduct which if it had occurred in Hong Kong would constitute an indictable offence under the laws of Hong Kong; or
- (b) that in whole or in part, directly or indirectly, represents such proceeds,

not to appear to be or so represent such proceeds;

money service (金錢服務) means—

- (a) a money changing service; or
- (b) a remittance service;

property (財產) includes—

- (a) money, goods, choses in action and land, whether in Hong Kong or elsewhere; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a);

record (紀錄) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

remittance service (匯款服務) means a service of one or more of the following that is operated in Hong Kong as a business—

- (a) sending, or arranging for the sending of, money to a place outside Hong Kong;
- (b) receiving, or arranging for the receipt of, money from a place outside Hong Kong;
- (c) arranging for the receipt of money in a place outside Hong Kong;

Review Tribunal (覆核審裁處) means the Tribunal as defined by section 53;

terrorist financing (恐怖分子資金籌集) means—

- (a) the provision or collection, by any means, directly or indirectly, of funds—
 - (i) with the intention that the funds be used; or
 - (ii) knowing that the funds will be used,

- in whole or in part, to commit or facilitate the commission of any terrorist act (whether or not the funds are actually so used); or
- (b) making available funds or financial (or related) services, directly or indirectly, to or for the benefit of a person knowing that, or having reasonable grounds to believe that, the person is a terrorist or terrorist associate.
2. In the definition of *terrorist financing*, *funds* (資金), *terrorist* (恐怖分子), *terrorist act* (恐怖主義行為) and *terrorist associate* (與恐怖分子有聯繫者) have the meaning given by section 2(1) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).
3. A person who only provides to financial institutions a message system or other support systems for transmitting funds is not, for the purposes of this Ordinance, to be regarded as a person operating a remittance service.

Part 2

1. In this Ordinance—
- appointed insurance agent* (獲委任保險代理人) has the meaning given by section 2(1) of the Insurance Companies Ordinance (Cap. 41);
- authorized institution* (認可機構) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);
- authorized insurance broker* (獲授權保險經紀) has the meaning given by section 2(1) of the Insurance Companies Ordinance (Cap. 41);
- authorized insurer* (獲授權保險人) means an insurer authorized under the Insurance Companies Ordinance (Cap. 41);
- Commissioner* (關長) means the Commissioner of Customs and Excise, any Deputy Commissioner of Customs and Excise, any Assistant Commissioner of Customs and Excise or a

person to whom the Commissioner of Customs and Excise has delegated any of his or her functions under section 26;

financial institution (金融機構) means—

- (a) an authorized institution;
- (b) a licensed corporation;
- (c) an authorized insurer;
- (d) an appointed insurance agent;
- (e) an authorized insurance broker;
- (f) a licensed money service operator; or
- (g) the Postmaster General;

Insurance Authority (保險業監督) means the Insurance Authority appointed under section 4 of the Insurance Companies Ordinance (Cap. 41);

licensed corporation (持牌法團) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

licensed money service operator (持牌金錢服務經營者) means the holder of a licence as defined by section 24;

Monetary Authority (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66);

Postmaster General (郵政署署長) means the Postmaster General of Hong Kong, and includes the deputy postmaster general and every assistant postmaster general;

relevant authority (有關當局)—

- (a) in relation to an authorized institution, means the Monetary Authority;
- (b) in relation to a licensed corporation, means the Securities and Futures Commission;

- (c) in relation to an authorized insurer, appointed insurance agent or authorized insurance broker, means the Insurance Authority; and
- (d) in relation to a licensed money service operator or to the Postmaster General, means the Commissioner;

Securities and Futures Commission (證監會) means the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571).

Schedule 2 [ss. 3, 5, 6 & 7]

**Requirements Relating to Customer Due Diligence and
Record-keeping**

Part 1

Interpretation

1. Interpretation

(1) In this Schedule—

beneficial owner (實益擁有人)—

- (a) in relation to a customer that is a corporation, means an individual who—
 - (i) owns or controls, directly or indirectly, including through a trust or bearer share holding, not less than 10% of the issued share capital of the corporation;
 - (ii) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights at general meetings of the corporation; or
 - (iii) exercises ultimate control over the management of the corporation;
- (b) in relation to a customer that is a partnership, means an individual who—
 - (i) is entitled to or controls, directly or indirectly, not less than a 10% share of the capital or profits of the partnership;

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- (ii) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights in the partnership; or
 - (iii) exercises ultimate control over the management of the partnership;
- (c) in relation to a customer that is a trust, means—
- (i) an individual who is entitled to a vested interest in not less than 10% of the capital of the trust property, whether the interest is in possession or in remainder or reversion and whether it is defeasible or not;
 - (ii) the settlor of the trust;
 - (iii) a protector or enforcer of the trust; or
 - (iv) an individual who has ultimate control over the trust; and
- (d) in relation to a customer not falling within paragraph (a), (b) or (c)—
- (i) means an individual who ultimately owns or controls the customer; or
 - (ii) if the customer is acting on behalf of another person, means the other person;

business relationship (業務關係), as between a person and a financial institution, means a business, professional or commercial relationship—

- (a) that has an element of duration; or
- (b) that the financial institution, at the time the person first contacts the financial institution in the person's capacity as a potential customer of the financial institution, expects to have an element of duration;

correspondent banking (代理銀行服務) means the provision of banking services by an authorized institution to another

institution to enable the latter to provide services and products to its own customers;

customer due diligence measures (客戶盡職審查措施) means the measures set out in section 2 of this Schedule;

equivalent jurisdiction (對等司法管轄區) means—

- (a) a jurisdiction that is a member of the Financial Action Task Force, other than Hong Kong; or
- (b) a jurisdiction that imposes requirements similar to those imposed under this Schedule;

Financial Action Task Force (財務特別行動組織) means the Financial Action Task Force on Money Laundering established by the G-7 Summit held in Paris in 1989;

identification document (識別文件)—

- (a) in relation to an individual, means his or her identity card, certificate of identity, document of identity or travel document, as defined by section 2(1) of the Immigration Ordinance (Cap. 115);
- (b) in relation to a company as defined by section 2(1) of the Companies Ordinance (Cap. 32), means its certificate of incorporation issued under that Ordinance;
- (c) in relation to a non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 32), means its certificate of registration issued under that Ordinance;
- (d) in relation to a corporation that is incorporated in a place outside Hong Kong other than a company falling within paragraph (c), means its certificate of incorporation or registration, or any other document evidencing its incorporation, issued by an authority in that place that performs functions similar to those of the Registrar of Companies;
- (e) in relation to a partnership that carries on business in Hong Kong, means its business registration certificate

issued under section 6 of the Business Registration Ordinance (Cap. 310); and

- (f) in relation to a partnership that does not carry on business in Hong Kong, means its partnership agreement or any document evidencing its formation or registration issued by a governmental body;

legal person (法人) includes any public body and any body of persons, corporate or unincorporate;

politically exposed person (政治人物) means—

- (a) an individual who is or has been entrusted with a prominent public function in a place outside the People's Republic of China and—
 - (i) includes a head of state, head of government, senior politician, senior government, judicial or military official, senior executive of a state-owned corporation and an important political party official; but
 - (ii) does not include a middle-ranking or more junior official of any of the categories mentioned in subparagraph (i);
- (b) a spouse, a partner, a child or a parent of an individual falling within paragraph (a), or a spouse or a partner of a child of such an individual; or
- (c) a close associate of an individual falling within paragraph (a);

pre-existing customer (先前客戶), in relation to a financial institution, means a customer with whom the financial institution has established a business relationship before the date of commencement of this Ordinance;

public body (公共機構) includes—

- (a) any executive, legislative, municipal or urban council;
- (b) any Government department or undertaking;

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- (c) any local or public authority or undertaking;
 - (d) any board, commission, committee or other body, whether paid or unpaid, appointed by the Chief Executive or the Government; and
 - (e) any board, commission, committee or other body that has power to act in a public capacity under or for the purposes of any enactment.
- (2) For the purposes of paragraph (b) of the definition of *politically exposed person*, a person is a partner of an individual if the person is considered by the law of the place where the person and the individual live together as equivalent to a spouse of the individual.
- (3) For the purposes of paragraph (c) of the definition of *politically exposed person*, a person is a close associate of an individual if the person is—
- (a) an individual who has close business relations with the first-mentioned individual, including an individual who is a beneficial owner of a legal person or trust of which the first-mentioned individual is also a beneficial owner; and
 - (b) an individual who is the beneficial owner of a legal person or trust that is set up for the benefit of the first-mentioned individual.
- (4) For the purposes of this Schedule, a wire transfer is a transaction carried out by an institution (referred to in this Schedule as *ordering institution*) on behalf of a person by electronic means with a view to making an amount of money available to that person or another person (referred to in this Schedule as *recipient*) at an institution (referred to in this Schedule as *beneficiary institution*), which may be the ordering institution or another institution, whether or not one or more other institutions (referred to in this Schedule as *intermediary institutions*) participate in completion of the transfer of the money.

Part 2

Customer Due Diligence Requirements

Division 1

General

2. What are customer due diligence measures

The following measures are customer due diligence measures applicable to a financial institution—

- (a) identifying the customer and verifying the customer's identity on the basis of documents, data or information provided by—
 - (i) a governmental body;
 - (ii) the relevant authority or any other relevant authority;
 - (iii) an authority in a place outside Hong Kong that performs functions similar to those of the relevant authority or any other relevant authority; or
 - (iv) any other reliable and independent source that is recognized by the relevant authority;
- (b) if there is a beneficial owner in relation to the customer, identifying the beneficial owner and taking reasonable measures to verify the beneficial owner's identity so that the financial institution is satisfied that it knows who the beneficial owner is, including, where the customer is a legal person or trust, measures to enable the financial institution to understand the ownership and control structure of the legal person or trust;
- (c) if a business relationship is to be established, obtaining information on the purpose and intended nature of the

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- business relationship with the financial institution, unless the purpose and intended nature are obvious; and
- (d) if a person purports to act on behalf of the customer—
- (i) identifying the person and verifying the person's identity on the basis of documents, data or information provided by—
 - (A) a governmental body;
 - (B) the relevant authority or any other relevant authority;
 - (C) an authority in a place outside Hong Kong that performs functions similar to those of the relevant authority or any other relevant authority; or
 - (D) any other reliable and independent source that is recognized by the relevant authority; and
 - (ii) verifying the person's authority to act on behalf of the customer.

3. When customer due diligence measures must be carried out

- (1) Subject to section 4 of this Schedule, a financial institution must carry out customer due diligence measures in relation to a customer in the following circumstances—
- (a) subject to subsection (2), before establishing a business relationship with the customer;
 - (b) before carrying out for the customer an occasional transaction involving an amount equal to or above \$120,000 or an equivalent amount in any other currency, whether the transaction is carried out in a single operation or in several operations that appear to the financial institution to be linked;
 - (c) despite paragraph (b), before carrying out for the customer an occasional transaction that is a wire transfer involving an amount equal to or above \$8,000 or an

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- equivalent amount in any other currency, whether the transaction is carried out in a single operation or in several operations that appear to the financial institution to be linked;
- (d) when the financial institution suspects that the customer or the customer's account is involved in money laundering or terrorist financing;
 - (e) when the financial institution doubts the veracity or adequacy of any information previously obtained for the purpose of identifying the customer or for the purpose of verifying the customer's identity.
- (2) Despite subsection (1)(a), a financial institution may verify the identity of a customer and any beneficial owner of the customer after establishing a business relationship with the customer if—
- (a) this is necessary not to interrupt the normal conduct of business with regard to the customer; and
 - (b) any risk of money laundering or terrorist financing that may be caused by carrying out the verification after establishing the business relationship is effectively managed.
- (3) A financial institution that carries out verification after establishing a business relationship with a customer under subsection (2) must complete the verification as soon as reasonably practicable after establishing the business relationship.
- (4) If a financial institution is unable to comply with subsection (1) or (3), it—
- (a) must not establish a business relationship or carry out any occasional transaction with that customer; or
 - (b) if it has already established a business relationship with that customer, must terminate the business relationship as soon as reasonably practicable.

(5) In this section—

occasional transaction (非經常交易) means a transaction between a financial institution and a customer who does not have a business relationship with the financial institution.

4. Simplified customer due diligence

- (1) In any of the circumstances set out in section 3(1)(a), (b) and (c) of this Schedule, a financial institution may, instead of carrying out all the customer due diligence measures, carry out only the measures set out in section 2(a), (c) and (d) of this Schedule in relation to a customer if it has reasonable grounds to believe that the customer falls within subsection (2).
- (2) The customer is—
 - (a) a financial institution;
 - (b) an institution that—
 - (i) is incorporated or established in an equivalent jurisdiction;
 - (ii) carries on a business similar to that carried on by a financial institution;
 - (iii) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and
 - (iv) is supervised for compliance with those requirements by an authority in that jurisdiction that performs functions similar to those of any of the relevant authorities;
 - (c) a corporation listed on any stock exchange;
 - (d) an investment vehicle where the person responsible for carrying out measures that are similar to the customer due diligence measures in relation to all the investors of the investment vehicle is—

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- (i) a financial institution;
 - (ii) an institution that—
 - (A) is incorporated or established in Hong Kong;
 - (B) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and
 - (C) is supervised for compliance with those requirements; or
 - (iii) an institution that—
 - (A) is incorporated or established in an equivalent jurisdiction;
 - (B) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and
 - (C) is supervised for compliance with those requirements;
 - (e) the Government or any public body in Hong Kong; or
 - (f) the government of an equivalent jurisdiction or a body in an equivalent jurisdiction that performs functions similar to those of a public body.
- (3) In any of the circumstances set out in section 3(1)(a), (b) and (c) of this Schedule, a financial institution may, instead of carrying out all the customer due diligence measures, carry out only the measures set out in section 2(a), (c) and (d) of this Schedule in relation to a customer if it has reasonable grounds to believe that the product related to the transaction falls within subsection (4).
- (4) The product is—
- (a) a provident, pension, retirement or superannuation scheme (however described) that provides retirement benefits to employees, where contributions to the scheme are made by way of deduction from income from

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- employment and the scheme rules do not permit the assignment of a member's interest under the scheme;
- (b) an insurance policy for the purposes of a pension scheme that does not contain a surrender clause and cannot be used as a collateral; or
 - (c) a life insurance policy in respect of which—
 - (i) an annual premium of no more than \$8,000 or an equivalent amount in any other currency is payable; or
 - (ii) a single premium of no more than \$20,000 or an equivalent amount in any other currency is payable.
- (5) If a customer of a financial institution is a subsidiary of a corporation listed on any stock exchange, the financial institution is not required, in any of the circumstances set out in section 3(1)(a), (b) and (c) of this Schedule, to carry out the measure set out in section 2(b) of this Schedule in respect of the shares in the subsidiary that are held by that corporation.
- (6) If a customer of a financial institution is a solicitor or a firm of solicitors, the financial institution is not required, in any of the circumstances set out in section 3(1)(a), (b) and (c) of this Schedule, to carry out the measure set out in section 2(b) of this Schedule in relation to an account—
- (a) that is kept in the name of the customer;
 - (b) in which moneys or securities of the customer's clients are mingled; and
 - (c) that is managed by the customer as those clients' agent.
- (7) In this section—
- securities** (證券) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

5. Duty to continuously monitor business relationships

- (1) A financial institution must continuously monitor its business relationship with a customer by—
 - (a) reviewing from time to time documents, data and information relating to the customer that have been obtained by the financial institution for the purpose of complying with the requirements imposed under this Part to ensure that they are up-to-date and relevant;
 - (b) conducting appropriate scrutiny of transactions carried out for the customer to ensure that they are consistent with the financial institution’s knowledge of the customer and the customer’s business and risk profile, and with its knowledge of the source of the customer’s funds; and
 - (c) identifying transactions that—
 - (i) are complex, unusually large in amount or of an unusual pattern; and
 - (ii) have no apparent economic or lawful purpose, and examining the background and purposes of those transactions and setting out its findings in writing.
- (2) When a financial institution carries out its duty under subsection (1)(a) in relation to a pre-existing customer before it first carries out the customer due diligence measures in relation to the customer in accordance with the requirements under this Part, the financial institution is only required to review the documents, data and information relating to the customer that are held by it at the time it conducts the review.
- (3) If—
 - (a) a customer of a financial institution has not been physically present for identification purposes;
 - (b) a customer, or a beneficial owner of a customer, of a financial institution is known to the financial institution,

from publicly known information or information in its possession, to be a politically exposed person; or

- (c) a customer, or a beneficial owner of a customer, of a financial institution is involved in a situation referred to in section 15 of this Schedule,

the financial institution must, in monitoring its business relationship with the customer under this section, take additional measures to compensate for any risk of money laundering or terrorist financing that may be caused by the fact that the customer or beneficial owner is a customer or beneficial owner falling within paragraph (a), (b) or (c).

6. Provisions relating to pre-existing customers

- (1) In relation to a pre-existing customer who is not a customer to whom section 7 of this Schedule applies, a financial institution must, in addition to the situations specified in section 3(1)(d) and (e) of this Schedule, carry out the customer due diligence measures when—
 - (a) a transaction takes place with regard to the customer that—
 - (i) is, by virtue of the amount or nature of the transaction, unusual or suspicious; or
 - (ii) is not consistent with the financial institution's knowledge of the customer or the customer's business or risk profile, or with its knowledge of the source of the customer's funds;
 - (b) the financial institution becomes aware that, having regard to its current customer documentation standards, it lacks sufficient information about the customer; or
 - (c) a material change occurs in the way in which the customer's account is operated.

- (2) If a financial institution is unable to comply with subsection (1), it must terminate its business relationship with the customer as soon as reasonably practicable.

7. Provisions relating to pre-existing respondent banks

- (1) This section applies to a customer (referred to in this section as *respondent bank*) of an authorized institution—
- (a) that is an institution located in a place outside Hong Kong carrying on a business similar to that carried on by an authorized institution; and
 - (b) with which the first-mentioned authorized institution has established a correspondent banking relationship before the date of commencement of this Ordinance.
- (2) An authorized institution must terminate its correspondent banking relationship with a respondent bank on the date of commencement of this Ordinance unless—
- (a) it had carried out the measures set out in section 14(1) of this Schedule in relation to the respondent bank at some time before that date and was at that time satisfied that the anti-money laundering and anti-terrorist financing controls of the respondent bank were adequate and effective;
 - (b) it had documented its responsibilities and the responsibilities of the respondent bank before that date; and
 - (c) it was satisfied at some time before that date that, in respect of those of the respondent bank's customers who could directly operate the accounts it maintained for the respondent bank, the respondent bank—
 - (i) had verified the identities of those customers, and would continuously monitor its business relationships with those customers, in accordance with requirements similar to those imposed under this Schedule; and

- (ii) was able to provide to it, on request, the documents, data or information obtained by the respondent bank in relation to those customers in accordance with requirements similar to those imposed under this Schedule.

Division 2

Special Requirements

8. Requirements in this Division are additional to those in sections 3 and 5 of this Schedule

In addition to complying with the requirements under sections 3 and 5 of this Schedule, a financial institution must also comply with the requirements under this Division.

9. Special requirements when customer is not physically present for identification purposes

If a customer has not been physically present for identification purposes, a financial institution must carry out at least one of the following measures—

- (a) further verifying the customer's identity on the basis of documents, data or information referred to in section 2(a) of this Schedule but not previously used for the purposes of verification of the customer's identity under that section;
- (b) taking supplementary measures to verify all the information provided by the customer, including obtaining from appropriate persons or authorities certificates certifying that the documents provided by the customer are true copies of the originals;
- (c) ensuring that the payment or, if there is more than one payment, the first payment made in relation to the

customer's account is carried out through an account opened in the customer's name with—

- (i) an authorized institution; or
- (ii) an institution that—
 - (A) is incorporated or established in an equivalent jurisdiction;
 - (B) carries on a business similar to that carried on by an authorized institution;
 - (C) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and
 - (D) is supervised for compliance with those requirements by authorities in that jurisdiction that perform functions similar to those of the Monetary Authority.

10. Special requirements when customer is politically exposed person

- (1) If a financial institution knows, from publicly known information or information in its possession, that a customer or a beneficial owner of a customer is a politically exposed person, it must, before establishing a business relationship with the customer—
 - (a) obtain approval from its senior management; and
 - (b) take adequate measures to establish the customer's or beneficial owner's source of wealth and the source of the funds that will be involved in the proposed business relationship.
- (2) If a financial institution comes to know, from publicly known information or information in its possession, that an existing customer or a beneficial owner of an existing customer is a politically exposed person or has become a politically exposed

person, it must not continue its business relationship with the customer unless it—

- (a) has obtained approval from its senior management; and
- (b) has taken adequate measures to establish the customer's or beneficial owner's source of wealth and the source of the funds that are involved in the business relationship.

11. Special requirements for insurance policies

- (1) A financial institution must, whenever a beneficiary or a new beneficiary is identified or designated by the policy holder of an insurance policy—
 - (a) if the beneficiary is identified by name, record the name of the beneficiary;
 - (b) if the beneficiary is designated by description or other means, obtain sufficient information about the beneficiary to satisfy itself that it will be able to establish the identity of the beneficiary—
 - (i) at the time the beneficiary exercises a right vested in the beneficiary under the insurance policy; or
 - (ii) at the time of payout or, if there is more than one payout, the time of the first payout to the beneficiary in accordance with the terms of the insurance policy,whichever is the earlier.
- (2) A financial institution must carry out the measures specified in subsection (3)—
 - (a) at the time a beneficiary exercises a right vested in the beneficiary under an insurance policy; or
 - (b) at the time of payout or, if there is more than one payout, the time of the first payout to a beneficiary in accordance with the terms of an insurance policy,whichever is the earlier.

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- (3) The specified measures are—
- (a) verifying the beneficiary’s identity on the basis of documents, data or information provided by—
 - (i) a governmental body;
 - (ii) the relevant authority or any other relevant authority;
 - (iii) an authority in a place outside Hong Kong that performs functions similar to those of the relevant authority or any other relevant authority; or
 - (iv) any other reliable and independent source that is recognized by the relevant authority; and
 - (b) where the beneficiary is a legal person or trust—
 - (i) identifying its beneficial owners; and
 - (ii) if there is a high risk of money laundering or terrorist financing having regard to the particular circumstances of the beneficial owners, taking reasonable measures to verify the beneficial owners’ identities so that the financial institution knows who the beneficial owners are.

12. Special requirements for wire transfers

- (1) Subject to subsection (2), this section applies to a wire transfer involving an amount equal to or above \$8,000 or an equivalent amount in any other currency, that is carried out by a financial institution.
- (2) This section does not apply to the following wire transfers—
 - (a) a wire transfer between two financial institutions if each of them acts on its own behalf;
 - (b) a wire transfer between a financial institution and a foreign institution if each of them acts on its own behalf;
 - (c) a wire transfer if—

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- (i) it arises from a transaction that is carried out using a credit card or debit card (such as withdrawing money from a bank account through an automated teller machine with a debit card, obtaining a cash advance on a credit card, or paying for goods or services with a credit or debit card), except when the card is used to effect a transfer of money; and
 - (ii) the credit card or debit card number is included in the message or payment form accompanying the transfer.
 - (3) Before carrying out a wire transfer, a financial institution that is an ordering institution must record—
 - (a) the originator's name;
 - (b) the number of the originator's account maintained with the financial institution and from which the money for the wire transfer is paid or, in the absence of such an account, a unique reference number assigned to the wire transfer by the financial institution; and
 - (c) the originator's address or, in the absence of an address, the originator's customer identification number or identification document number or, if the originator is an individual, the originator's date and place of birth.
 - (4) The information mentioned in subsection (3)(a) and (c) must, before it is recorded, be verified by the financial institution on the basis of documents, data or information provided by—
 - (a) a governmental body;
 - (b) the relevant authority or any other relevant authority;
 - (c) an authority in a place outside Hong Kong that performs functions similar to those of the relevant authority or any other relevant authority; or
 - (d) any other reliable and independent source that is recognized by the relevant authority.

-
- (5) Subject to subsections (6) and (7), a financial institution that is an ordering institution must include in the message or payment form accompanying the wire transfer the information recorded under subsection (3) in relation to the transfer.
 - (6) A financial institution may, in relation to a domestic wire transfer, include in the message or payment form accompanying the transfer only the information recorded under subsection (3)(b) in relation to the transfer but if it does so, it must, on the request of the financial institution to which it passes on the transfer instruction or the relevant authority, provide to that financial institution or the relevant authority the information recorded under subsection (3)(a) and (c) in relation to the transfer within 3 business days after it receives the request.
 - (7) If more than one individual wire transfer from a single originator is bundled in a batch file for transmission to a recipient or recipients in a place outside Hong Kong, a financial institution is not required to comply with subsection (5) in relation to each of the wire transfers if—
 - (a) the information recorded under subsection (3)(b) is included in the message or payment form accompanying each transfer; and
 - (b) the batch file contains the information recorded under subsection (3).
 - (8) If a financial institution acts as an intermediary institution in a wire transfer, it must transmit all of the information that it receives with the transfer to the institution to which it passes on the transfer instruction.
 - (9) If a financial institution is a beneficiary institution in a domestic wire transfer and the wire transfer is not accompanied by the information required under subsection (3)(b), it must—
 - (a) obtain the information from the institution from which it receives the transfer instruction; and

- (b) if the information cannot be obtained, decide whether to refuse to accept the wire transfer having regard to the risk of money laundering or terrorist financing involved.
- (10) If a financial institution is a beneficiary institution in a wire transfer that is not a domestic wire transfer and the wire transfer is not accompanied by all of the information required under subsection (3), it must—
- (a) obtain the missing information from the institution from which it receives the transfer instruction; and
 - (b) if the missing information cannot be obtained, decide whether to refuse to accept the wire transfer having regard to the risk of money laundering or terrorist financing involved.

- (11) In this section—

business day (營業日) means any day other than—

- (a) a public holiday; or
- (b) a gale warning day or a black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

domestic wire transfer (本地電傳轉賬) means a wire transfer in which the ordering institution and the beneficiary institution and, if one or more intermediary institutions are involved in the transfer, the intermediary institution or all the intermediary institutions are financial institutions located in Hong Kong;

foreign institution (外地機構) means an institution—

- (a) that is located in a place outside Hong Kong; and
- (b) that carries on a business similar to that carried on by a financial institution;

originator (匯款人), in relation to a wire transfer, means—

- (a) the person from whose account with the ordering institution the money for the wire transfer is paid; or

- (b) in the absence of such an account, the person who instructs the ordering institution to carry out the wire transfer.

13. Special requirements for remittance transactions

- (1) This section applies to a remittance transaction, other than a wire transfer, involving an amount equal to or above \$8,000 or an equivalent amount in any other currency, that is carried out by a licensed money service operator.
- (2) Before carrying out a remittance transaction, a licensed money service operator must—
 - (a) identify the originator;
 - (b) verify the identity of the originator by reference to the originator's identification document; and
 - (c) record—
 - (i) the originator's name;
 - (ii) the originator's identification document number and, if the originator's identification document is a travel document, the place of issue of the travel document;
 - (iii) the originator's address;
 - (iv) the currency and amount involved; and
 - (v) the date and time of receipt of the instructions, the recipient's name and address and the method of delivery.
- (3) In this section—

originator (匯款人), in relation to a remittance transaction carried out by a licensed money service operator, means—

 - (a) the person from whose account with the licensed money service operator the money for the remittance is paid; or

- (b) in the absence of such an account, the person who instructs the licensed money service operator to carry out the remittance transaction;

remittance transaction (匯款交易) means a transaction for—

- (a) sending, or arranging for the sending of, money to a place outside Hong Kong;
- (b) receiving, or arranging for the receipt of, money from a place outside Hong Kong; or
- (c) arranging for the receipt of money in a place outside Hong Kong.

14. Special requirements for correspondent banking relationships

- (1) An authorized institution must, before establishing a correspondent banking relationship with an institution located in a place outside Hong Kong that carries on a business similar to that carried on by an authorized institution (referred to in this section as **proposed respondent bank**)—
 - (a) collect sufficient information about the proposed respondent bank to enable it to understand fully the nature of the proposed respondent bank's business;
 - (b) determine from publicly available information the reputation of the proposed respondent bank and the quality of its supervision by authorities in that place that perform functions similar to those of the Monetary Authority; and
 - (c) assess the anti-money laundering and anti-terrorist financing controls of the proposed respondent bank.
- (2) An authorized institution must not establish a correspondent banking relationship with a proposed respondent bank unless—
 - (a) it has obtained approval from its senior management;
 - (b) having complied with subsection (1), it is satisfied that the anti-money laundering and anti-terrorist financing

controls of the proposed respondent bank are adequate and effective;

- (c) it has documented its responsibilities and the responsibilities of the proposed respondent bank; and
- (d) it is satisfied that, in respect of those of the proposed respondent bank's customers who will be able to directly operate the accounts it is to maintain for the proposed respondent bank, the proposed respondent bank—
 - (i) will verify the identities of those customers, and will continuously monitor its business relationships with those customers, in accordance with requirements similar to those imposed under this Schedule; and
 - (ii) will be able to provide to it, on request, the documents, data or information obtained by the proposed respondent bank in relation to those customers in accordance with requirements similar to those imposed under this Schedule.

15. Special requirements in other high risk situations

A financial institution must, in a situation specified by the relevant authority in a notice in writing given to the financial institution and in any other situation that by its nature may present a high risk of money laundering or terrorist financing—

- (a) obtain approval from its senior management to establish or continue the business relationship concerned; and
- (b) take adequate measures to establish the relevant customer's or beneficial owner's source of wealth and the source of the funds that will be or are involved in the business relationship concerned.

Division 3

Prohibitions

16. Anonymous accounts etc.

A financial institution must not open, or maintain, any anonymous account or account in a fictitious name for any customer.

17. Correspondent banking relationships with shell banks

- (1) An authorized institution must not establish or continue a correspondent banking relationship with a corporation that—
 - (a) is incorporated in a place outside Hong Kong;
 - (b) is authorized to carry on banking business in that place;
 - (c) does not have a physical presence in that place; and
 - (d) is not an affiliate of a corporation that—
 - (i) is incorporated in a particular jurisdiction;
 - (ii) is authorized to carry on banking business in that jurisdiction; and
 - (iii) has a physical presence in that jurisdiction.
- (2) For the purposes of subsection (1)(c), a corporation has a physical presence in a place if—
 - (a) the corporation carries on banking business at any premises in that place; and
 - (b) at least one full-time employee of the corporation performs banking-related duties at those premises.
- (3) For the purposes of subsection (1)(d), a corporation is an affiliate of another corporation if—
 - (a) the corporation is a subsidiary of the other corporation;or

(b) at least one individual who is a controller of the corporation is at the same time a controller of the other corporation.

(4) In this section—

associate (相關者), in relation to a person entitled to exercise, or control the exercise of, voting rights in relation to, or holding shares in, a corporation, means any other person in respect of whom that first-mentioned person has an agreement or arrangement, whether oral or in writing, express or implied, with respect to the acquisition, holding or disposal of shares or other interests in that corporation or under which they act together in exercising their voting rights in relation to it;

controller (控制人), in relation to a corporation, means—

- (a) a person in accordance with whose directions or instructions the directors of the corporation, or of another corporation of which it is a subsidiary, are accustomed to act, but does not include any person in accordance with whose directions and instructions those directors are accustomed to act by reason only that they act on advice given by the person in his or her professional capacity; or
- (b) a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 50% of the voting rights at any general meeting of the corporation or of another corporation of which it is a subsidiary;

subsidiary (附屬公司) has the same meaning as in the Companies Ordinance (Cap. 32).

Division 4

Miscellaneous

18. Carrying out customer due diligence measures by means of intermediaries

- (1) Subject to subsection (2), a financial institution may carry out any customer due diligence measure by means of an intermediary specified in subsection (3) if—
 - (a) the intermediary consents in writing to be the financial institution's intermediary; and
 - (b) the financial institution is satisfied that the intermediary will on request provide a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out the customer due diligence measure without delay.
- (2) A financial institution that carries out a customer due diligence measure by means of an intermediary remains liable under this Ordinance for a failure to carry out that customer due diligence measure.
- (3) The specified intermediary is—
 - (a) any of the following persons who is able to satisfy the financial institution that they have adequate procedures in place to prevent money laundering and terrorist financing—
 - (i) a solicitor practising in Hong Kong;
 - (ii) a certified public accountant (practising) practising in Hong Kong;
 - (iii) a current member of The Hong Kong Institute of Chartered Secretaries who is practising as a Chartered Secretary in Hong Kong;

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- (iv) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) carrying on trust business in Hong Kong;
 - (b) a financial institution that is an authorized institution, a licensed corporation, an authorized insurer, an appointed insurance agent or an authorized insurance broker; or
 - (c) a lawyer, a notary public, an auditor, a professional accountant, a trust or company service provider or a tax advisor practising in an equivalent jurisdiction, or a trust company carrying on trust business in an equivalent jurisdiction, or an institution that carries on in an equivalent jurisdiction a business similar to that carried on by a financial institution mentioned in paragraph (b), that—
 - (i) is required under the law of that jurisdiction to be registered or licensed or is regulated under the law of that jurisdiction;
 - (ii) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and
 - (iii) is supervised for compliance with those requirements by an authority in that jurisdiction that performs functions similar to those of any of the relevant authorities.
- (4) A financial institution that carries out a customer due diligence measure by means of an intermediary must, immediately after the intermediary has carried out that measure, obtain from the intermediary the information that the intermediary has obtained in the course of carrying out that measure, but nothing in this subsection requires the financial institution to obtain from the intermediary copies of documents at the same time.
- (5) Subsection (3)(a) expires at the end of 3 years beginning on the date of commencement of this Ordinance.

(6) Nothing in this section prevents a financial institution from carrying out a customer due diligence measure by its agent but such a financial institution remains liable under this Ordinance for a failure to carry out that customer due diligence measure.

(7) In this section—

certified public accountant (practising) (執業會計師) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50).

19. Financial institutions to establish procedures

(1) A financial institution must establish and maintain effective procedures for determining whether a customer or a beneficial owner of a customer is a politically exposed person.

(2) A financial institution that carries out wire transfers must establish and maintain effective procedures for identifying and handling wire transfers that are not accompanied by all of the information required under section 12(3) of this Schedule.

(3) A financial institution must, in respect of each kind of customer, business relationship, product and transaction, establish and maintain effective procedures not inconsistent with this Ordinance for the purpose of carrying out its duties under sections 3, 4, 5, 9, 10 and 15 of this Schedule.

Part 3

Record-keeping Requirements

20. Duty to keep records

(1) A financial institution must—

(a) in relation to each transaction it carries out, keep the original or a copy of the documents, and a record of the data and information, obtained in connection with the

-
- transaction in accordance with Part 2 of this Schedule;
and
- (b) in relation to each of its customers, keep—
 - (i) the original or a copy of the documents, and a record of the data and information, obtained in the course of identifying and verifying the identity of the customer or any beneficial owner of the customer in accordance with Part 2 of this Schedule; and
 - (ii) the original or a copy of the files relating to the customer's account and business correspondence with the customer and any beneficial owner of the customer.
 - (2) Records required to be kept under subsection (1)(a) must be kept for a period of 6 years beginning on the date on which the transaction is completed, regardless of whether the business relationship ends during that period.
 - (3) Records required to be kept under subsection (1)(b) must be kept throughout the continuance of the business relationship with the customer and for a period of 6 years beginning on the date on which the business relationship ends.
 - (4) A relevant authority may, by notice in writing to a financial institution, require the financial institution to keep the records relating to a specified transaction or customer for a period specified by the relevant authority that is longer than that referred to in subsection (2) or (3), as the case requires, if—
 - (a) the relevant authority is satisfied that the records are relevant to an ongoing criminal or other investigation carried out by it; or
 - (b) the records are relevant to any other purposes as specified by the relevant authority in the notice.

- (5) A financial institution to whom a notice is given under subsection (4) must keep the relevant records for the period specified in the notice.
- (6) If a financial institution carries out a customer due diligence measure by means of an intermediary under section 18 of this Schedule, it must ensure that the intermediary will, if requested by the financial institution within the period referred to in subsection (2) or (3), as the case requires, provide to the financial institution a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out the customer due diligence measure as soon as reasonably practicable after receiving the request.

21. Manner in which records are to be kept

Records required to be kept under section 20 of this Schedule must be kept in the following manner—

- (a) if the record consists of a document, either—
 - (i) the original of the document must be kept; or
 - (ii) a copy of the document must be kept either on microfilm or in the database of a computer; or
- (b) if the record consists of data or information, a record of the data or information must be kept either on microfilm or in the database of a computer.

Part 4

Miscellaneous

22. Duties extended to branches and subsidiaries outside Hong Kong

- (1) A financial institution incorporated in Hong Kong must ensure that—

- (a) its branches; and
- (b) its subsidiary undertakings that carry on the same business as the financial institution in a place outside Hong Kong,

have procedures in place to ensure compliance with, to the extent permitted by the law of that place, requirements similar to those imposed under Parts 2 and 3 of this Schedule that are applicable to the financial institution.

- (2) If the law of the place at which a branch or subsidiary undertaking of a financial institution carries on business does not permit the application of any procedures relating to any of the requirements referred to in subsection (1), the financial institution must—

- (a) inform the relevant authority accordingly; and
- (b) take additional measures to effectively mitigate the risk of money laundering and terrorist financing faced by the branch or subsidiary undertaking as a result of its inability to comply with the requirement.

- (3) In this section—

branch (分行), in relation to a financial institution, means a branch of the financial institution outside Hong Kong at which it carries on a business similar to that carried on by the financial institution, whether or not the business of the branch is limited by the laws or regulations of the place in which the branch is situated and whether or not the branch is referred to as an agency in that place;

subsidiary undertaking (附屬企業) is to be construed in accordance with the Twenty-third Schedule to the Companies Ordinance (Cap. 32).

23. Financial institutions to prevent contravention of Part 2 or 3 of this Schedule

A financial institution must take all reasonable measures—

- (a) to ensure that proper safeguards exist to prevent a contravention of any requirement under Part 2 or 3 of this Schedule; and
 - (b) to mitigate money laundering and terrorist financing risks.
-

Schedule 3

[ss. 28, 30, 31,
35, 36, 37, 38 &
49]

Fees

Item	Particulars	Fee
		\$
1.	For certifying a copy of an entry in or extract from the register	160 per copy
2.	For providing an uncertified copy of an entry in, or extract from, the register	1 per page or portion of a page
3.	For providing a certificate specified in section 28(1)(b)	160 per copy
4.	Application for the grant of a licence plus for each additional business premises plus for each person who is subject to the fit and proper person test	3,310 2,220 860
5.	Application for the renewal of a licence plus for each additional business premises plus for each person who is subject to the fit and proper person test	790 355 860
6.	Application for an approval to become a licensee's director	860 for each

	person in relation to whom the application is made
7. Application for an approval to become a licensee's ultimate owner	860 for each person in relation to whom the application is made
8. Application for an approval to become a licensee's partner	860 for each person in relation to whom the application is made
9. Application to add new business premises	2,220 for each new business premises

Schedule 4

[ss. 54, 55, 57,
60 & 63]

Provisions Relating to Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal

1. Interpretation

(1) In this Schedule—

chairperson (主席) means the chairperson of the Tribunal;

ordinary member (普通成員) means a member of the Tribunal other than the chairperson;

panel member (委員) means a member of the panel of persons appointed under section 2(1) of this Schedule.

(2) In this Schedule—

application for review (覆核申請), *parties* (各方), *review* (覆核), *Secretary* (局長), *specified authority* (指明當局), *specified decision* (指明決定) and *Tribunal* (審裁處) have the same meaning as in Part 6.

2. Appointment of panel

(1) The Secretary must appoint a panel of persons whom the Secretary considers suitable for appointment as ordinary members of the Tribunal and who are not public officers.

(2) Subject to subsections (4) and (5), a panel member may be appointed for any term the Secretary considers appropriate.

(3) A person whose term of appointment or reappointment as a panel member has expired may be reappointed.

(4) A panel member may resign from office by giving notice in writing to the Secretary.

- (5) The Secretary may by notice in writing remove a panel member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
- (6) To avoid doubt, section 54(3) does not require the appointment of persons to more than one panel under subsection (1).

3. Tenure of chairperson

- (1) The term of appointment of a person as chairperson must not exceed 3 years.
- (2) A person whose term of appointment or reappointment as chairperson has expired may be reappointed.
- (3) The chairperson may resign from office by giving notice in writing to the Secretary.
- (4) A notice of resignation takes effect—
 - (a) on the date specified in the notice; or
 - (b) if a date is not specified, on the date the Secretary receives the notice.
- (5) The Secretary may by notice in writing remove the chairperson from office—
 - (a) if the chairperson is no longer qualified for appointment as chairperson under section 55(2); or
 - (b) on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.

4. Appointment of ordinary members

- (1) For the purpose of determining a review, the Secretary, on the recommendation of the chairperson, must appoint 2 panel members as ordinary members of the Tribunal in relation to the review.
- (2) Subject to subsections (3) and (5), a panel member who is appointed as an ordinary member is appointed to act in

relation to a specified review and may be reappointed after his or her term of appointment or reappointment as an ordinary member has expired.

- (3) An ordinary member may resign from office by giving notice in writing to the Secretary.
- (4) A notice of resignation takes effect—
 - (a) on the date specified in the notice; or
 - (b) if a date is not specified, on the date the Secretary receives the notice.
- (5) If an ordinary member ceases to be a panel member, he or she ceases to be an ordinary member.

5. Further provisions relating to chairperson and ordinary members

- (1) If the term of appointment of the chairperson expires after proceedings for a review have begun but before the review is determined, the person may continue to act as chairperson for the purpose of the review until the review has been determined.
- (2) Where there is a change in the membership of the Tribunal during the proceedings for a review, the proceedings may continue despite that change if the parties to the review so consent.
- (3) If the parties do not consent, the proceedings must be discontinued but they may begin anew.

6. Procedure

- (1) The chairperson must convene sittings of the Tribunal as often as necessary to enable the Tribunal to determine a review.
- (2) At any time after an application for review has been received, the chairperson may give directions to the parties to the review concerning—

- (a) procedural matters to be complied with by any of the parties; and
 - (b) the time within which those procedural matters are to be complied with.
- (3) At any sitting of the Tribunal, the chairperson and 2 ordinary members must be present.
- (4) The chairperson is to preside at every sitting of the Tribunal.
- (5) Every question before the Tribunal is to be determined by a majority of the votes cast by the chairperson and the ordinary members, except that a question of law is to be determined by the chairperson alone.
- (6) Subject to subsections (7) and (8), every sitting of the Tribunal must be held in public.
- (7) If the Tribunal, on its own initiative or on the application of any of the parties to the review, determines that in the interests of justice a sitting or any part of a sitting should not be held in public, the Tribunal may hold the sitting or that part of the sitting in private.
- (8) If an application is made under subsection (7) for a private sitting, any hearing of the application must be held in private.
- (9) At any sitting of the Tribunal relating to a review, the parties to the review are entitled to be heard—
 - (a) in person, or—
 - (i) in the case of a corporation, through an officer or employee;
 - (ii) in the case of a partnership, through a partner; or
 - (iii) in the case of a specified authority, through a representative; and
 - (b) through a solicitor or counsel or, with the leave of the Tribunal, through any other person.
- (10) The chairperson must prepare a record of the proceedings of every sitting of the Tribunal containing any particulars

relating to the proceedings that the chairperson considers appropriate.

(11) In this section—

representative (代表)—

- (a) in relation to the Monetary Authority, means a person appointed by the Financial Secretary under section 5A(3) of the Exchange Fund Ordinance (Cap. 66);
- (b) in relation to the Securities and Futures Commission, means an employee of the Commission;
- (c) in relation to the Insurance Authority, means a public officer employed in the Office of the Commissioner of Insurance; and
- (d) in relation to the Commissioner, means a public officer employed in the Customs and Excise Department.

7. Preliminary conferences

- (1) Subject to subsection (2), at any time after an application for review has been received, the chairperson may, on his or her own initiative or on the application of any party to the review, direct that a conference, to be attended by the parties or their representatives, is to be held for the purposes of—
 - (a) enabling the parties to prepare for the conduct of the review;
 - (b) assisting the Tribunal to determine issues for the purposes of the review; and
 - (c) generally securing the just, expeditious and economical conduct of the review.
- (2) The chairperson may only give a direction under subsection (1) if the parties to the review agree to the giving of the direction.
- (3) The chairperson may consider any material that has been submitted to the Tribunal in relation to the application by the

parties to the review before giving a direction under subsection (1).

- (4) The chairperson is to preside at a conference held in accordance with a direction given under subsection (1).
- (5) At a conference held in accordance with a direction given under subsection (1), the chairperson may—
 - (a) give any direction that he or she considers necessary or desirable for securing the just, expeditious and economical conduct of the review; and
 - (b) try to get the parties to the review to make all agreements as they ought reasonably to have made in relation to the review.
- (6) After a conference has been held in accordance with a direction given under subsection (1), the chairperson must report to the Tribunal on any matters relating to the conference that the chairperson considers appropriate.

8. Consent orders

- (1) At any time after an application for review has been received, the Tribunal or the chairperson may make any order that the Tribunal or the chairperson is entitled to make under any provision of this Ordinance, whether or not any other requirements applicable to the making of the order have been complied with, if—
 - (a) the parties to the review request, and agree to, the making of the order under this section by the Tribunal or the chairperson; and
 - (b) the parties consent to all of the terms of the order.
- (2) Despite anything in this Schedule or in Part 6, if the Tribunal or the chairperson makes an order under subsection (1), the order is to be regarded for all purposes as an order made by the Tribunal or the chairperson under the provision of this

Ordinance in question and to be in compliance with the requirements otherwise applicable to the making of the order.

(3) In this section—

order (命令) includes any finding, determination and any other decision.

9. Chairperson as sole member of Tribunal

- (1) If, at any time after an application for review has been made but before any sitting of the Tribunal is held to determine the review, the parties to the review by notice in writing inform the Tribunal that they have agreed that the review may be determined by the chairperson alone as the sole member of the Tribunal, the chairperson may determine the review as the sole member of the Tribunal.
- (2) The chairperson may also determine an application as the sole member of the Tribunal if it is—
 - (a) an application made to the Tribunal under section 58(2) for the grant of an extension of the time within which an application for review may be made; or
 - (b) an application made to the Tribunal under section 68(2) for a stay of execution of a specified decision.
- (3) If the chairperson determines a review as the sole member of the Tribunal under subsection (1) or (2), the Tribunal constituted by the chairperson as the sole member of the Tribunal is to be regarded for all purposes as the Tribunal constituted also by 2 ordinary members.
- (4) After the chairperson has made any determination under subsection (1) or (2)(b) as the sole member of the Tribunal, the chairperson must report to the Tribunal—
 - (a) the making of the determination and the reasons for the determination; and
 - (b) any other matters relating to the determination that the chairperson considers appropriate.

- (5) If there is an application described in subsection (2)(b) and the chairperson—
- (a) is precluded by illness, absence from Hong Kong or any other cause from performing the chairperson's functions; or
 - (b) considers it improper or undesirable that he or she should perform his or her functions in relation to the application,
- a judge or a deputy judge of the Court of First Instance must, on appointment by the Chief Justice for the purpose, determine the application as if he or she were the chairperson duly appointed under this Ordinance, and the provisions of this Ordinance are to apply to him or her accordingly.

10. Privileges and immunities

Except as otherwise provided in this Ordinance—

- (a) the Tribunal, its chairperson and ordinary members; and
- (b) the parties to a review and any witness, solicitor, counsel or other person involved in a review,

have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.

Explanatory Memorandum

The object of this Bill is to—

- (a) impose customer due diligence requirements and record-keeping requirements on specified financial institutions and provide for the powers of the relevant authorities to supervise compliance with those requirements;
- (b) regulate the operation of money changing and remittance services and provide for the licensing of operators of these services; and
- (c) establish the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal (*Tribunal*) to review certain decisions of the relevant authorities.

Part 1—Preliminary

2. Clause 1 provides that the Bill, when enacted (*the Ordinance*), is to come into operation on 1 April 2012. The Secretary for Financial Services and the Treasury (*Secretary*) may however amend that date by notice published in the Gazette.
3. Clause 2 applies Schedule 1 which contains interpretation provisions. The definitions of *financial institution*, *relevant authority* and *money service* can be found in that Schedule. Definitions in Part 2 of Schedule 1 may be amended by the Secretary by notice published in the Gazette.
4. Clause 3 provides for the application of the Ordinance to the Government in respect of the remittance service operated by the Postmaster General.
5. Clause 4 protects a relevant authority and other persons from civil liability for things done or omitted in good faith when performing functions under the Ordinance. However, any liability of the Government is not affected.

Part 2—Requirements Relating to Customer Due Diligence and Record-keeping

6. Clause 5 provides that Schedule 2, which contains the detailed requirements relating to customer due diligence and record-keeping, has effect with respect to financial institutions. It also makes provision for offences relating to breaches of these requirements.
7. Clause 7 empowers a relevant authority to publish guidelines for providing guidance in relation to the operation of the provisions of Schedule 2. These guidelines are not subsidiary legislation.

Part 3—Supervision and Investigations

8. Part 3 gives a relevant authority powers to supervise compliance with this Ordinance and to carry out investigations in respect of contraventions of the provisions of this Ordinance. They include the power to carry out routine inspections (clause 9), power to investigate suspected offences against the Ordinance (clauses 11 and 12) and power to enter premises and search for records and documents under a magistrate's warrant (clause 17).
9. Clauses 10, 13 and 20 create offences in relation to routine inspections and investigations. Clause 14 enables applications to be made to the Court of First Instance for an inquiry into a person's failure to comply with a requirement imposed under clause 9 or 12. The Court may order the person to comply with the requirement and punish the person in the same manner as if the person had been guilty of contempt of court.

Part 4—Disciplinary Actions by Relevant Authorities

10. Clause 21 enables a relevant authority to take disciplinary actions against a financial institution that has contravened a specified customer due diligence or record-keeping requirement. A relevant authority can publicly reprimand the financial institution, and order the financial institution to take remedial actions and to pay a pecuniary penalty not exceeding \$10,000,000 or 3 times the amount

of the profit gained or costs avoided as a result of the contravention, whichever is the greater.

11. Clause 23 requires a relevant authority to, before it first exercises the power to impose a pecuniary penalty, publish guidelines to indicate the manner in which it proposes to exercise the power.

Part 5—Regulation of Operation of Money Service

12. Part 5 regulates the operation of a money service. Clause 25 excludes certain persons from the operation of Part 5. They are authorized institutions and licensed corporations, authorized insurers, authorized insurance brokers or appointed insurance agents that operate a money service that is ancillary to their principal business.
13. Clause 26 allows the Commissioner of Customs and Excise (*Commissioner*), who is the relevant authority in relation to licensed money service operators (*licensees*), to delegate his or her functions under the Ordinance.
14. Clause 27 requires the Commissioner to maintain a register of licensees. Clause 28 provides for the admissibility of certified copies of entries in the register and certificates issued by the Commissioner.
15. Clauses 29 to 41 provide for matters relating to the licensing of money service operators. Clause 29 provides that it is an offence for a person to operate a money service without a licence or at any premises other than those specified in the person's licence.
16. Clauses 30, 31 and 34 provide for the grant, renewal and revocation and suspension of licences. Clause 32 empowers the Commissioner to amend existing licence conditions and impose new licence conditions. The Commissioner's approval is required before a person can become a licensee's director, ultimate owner or partner (clauses 35, 36 and 37) and before a licensee can operate a money service at premises not specified in the licence (clause 38).

17. Clauses 39 and 40 require a licensee to notify the Commissioner when there is any change in the particulars provided to the Commissioner in connection with the licensee's application for the grant or renewal of the licence and when the licensee intends to cease business. Clause 41 specifies when a licence ceases to be valid.
18. Clauses 42 to 47 provide for the disciplinary and other powers of the Commissioner. Clause 42 enables the Commissioner to take disciplinary actions against a licensee that has contravened a regulation made under clause 50, a licence condition or a specified provision of Part 5. The Commissioner can publicly reprimand the licensee, and order the licensee to take remedial actions and to pay a pecuniary penalty not exceeding \$1,000,000.
19. Clause 44 requires the Commissioner to, before the Commissioner first exercises the power to impose a pecuniary penalty, publish guidelines to indicate the manner in which the Commissioner proposes to exercise the power.
20. Clause 45 enables the Commissioner to appoint persons to be authorized officers. Under clause 46, these officers may, under a magistrate's warrant, enter premises and remove things that appear to be evidence of the commission of an offence under clause 29. They may, without a warrant, arrest persons whom they suspect have committed or are committing an offence under clause 29 (clause 47).
21. Clause 48 requires the Commissioner and other specified persons to preserve secrecy with regard to matters that come to their knowledge in the performance of functions under the Ordinance.
22. Clause 50 empowers the Commissioner to make regulations for the better carrying out of the provisions and purposes of Part 5.
23. Clause 51 makes it an offence for a person to give false or misleading information in connection with an application for the grant or renewal of a licence.

24. Clause 52 sets out the time within which proceedings may be instituted for an offence under Part 5.

Part 6—Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal

25. Clause 54 establishes the Tribunal, which has jurisdiction to review specified decisions as defined by clause 53. The Tribunal is to consist of a chairperson and 2 other members, both of whom are to be appointed by the Secretary (clause 55). Clause 57 provides that Schedule 4, which contains provisions concerning the procedures of the Tribunal, has effect with respect to the Tribunal.
26. Under clause 58, a person aggrieved by a specified decision may apply to the Tribunal for a review of the decision. The Tribunal may confirm, vary or set aside the decision or remit the matter to the authority concerned (clause 59).
27. Clauses 60, 62 and 64 set out the various powers of the Tribunal. Under clause 62, the Tribunal has the same powers as the Court of First Instance to punish for contempt. Clause 64 empowers the Tribunal to award costs to the parties to a review and other persons who attend a review.
28. Clause 61 provides that evidence or information given by a person in accordance with a requirement of the Tribunal is generally not admissible in evidence against the person in criminal proceedings. Clause 63 provides that authorized institutions are not required to disclose information in relation to their customers who are not involved in the review concerned.
29. Clause 65 requires the Tribunal to deliver its determination and the reasons for its determination. The Tribunal may prohibit the disclosure of its determination or the reasons for it where the sitting relating to the review is held in private.
30. Clause 66 provides for the form of the Tribunal's orders. Clause 67 provides that the Tribunal's orders may be registered in the Court

of First Instance. Orders so registered are regarded as orders of the Court of First Instance.

31. Clause 68 provides that the making of an application for review does not operate as a stay of execution of the specified decision concerned. The applicant may, before the review is determined, apply to the Tribunal for a stay of execution.
32. Clause 69 enables a party to a review to apply to the Tribunal for a stay of execution of the Tribunal's determination of the review.
33. Clauses 70 to 73 deal with appeals against the Tribunal's determination to the Court of Appeal. Clause 70 provides that an appeal may only be made with leave of the Court of Appeal. The Court of Appeal may allow or dismiss an appeal, or vary or set aside the determination or remit the matter to the Tribunal or the authority concerned (clause 71).
34. Clause 72 provides that the lodging of an appeal to the Court of Appeal does not operate as a stay of execution of the Tribunal's decision concerned. Any party to the review may apply to the Court of Appeal for a stay of execution.
35. Clause 74 provides for the time specified decisions take effect.
36. Clause 75 empowers the Chief Justice to make rules relating to the registration of the Tribunal's orders in the Court of First Instance and to make rules regulating the procedure for hearing appeals against the Tribunal's determinations.

Part 7—Miscellaneous Provisions

37. Clause 76 empowers the Chief Executive in Council to make regulations for the better carrying out of the provisions and purposes of the Ordinance except Part 5.
38. Clause 77 provides that when a relevant authority needs to establish specified matters, the standard of proof is the same as that applicable to civil proceedings.

39. Clause 78 provides for prosecution of offences by a relevant authority.
40. Clause 79 makes provision relating to the giving of notices by a relevant authority.
41. Clause 80 provides that the Ordinance does not affect any rights arising on the ground of legal professional privilege.
42. Clause 81 provides that money changers and remittance agents carrying on business immediately before the commencement date of the Ordinance are deemed to have been granted a licence to operate a money service. The deemed licence is valid for 60 days but if an application for a licence is made during that period, the deemed licence will be valid until the application is granted, refused or withdrawn, whichever first happens.

Part 8—Consequential and Related Amendments

43. Clauses 83 to 89 contain consequential and related amendments to 5 Ordinances.

Schedules

44. Schedule 1 contains interpretation provisions.
45. Schedule 2 contains requirements relating to customer due diligence and record-keeping. Section 1 of that Schedule contain interpretation provisions. Sections 2 to 7 of that Schedule contain general customer due diligence requirements. Section 2 of that Schedule sets out the customer due diligence measures applicable to financial institutions. Section 3 of that Schedule specifies when the customer due diligence measures must be carried out. Section 4 of that Schedule specifies the circumstances where a financial institution may carry out only some of the customer due diligence measures. Section 5 of that Schedule imposes a duty on financial institutions to continuously monitor their business relationships with their customers. Sections 6 and 7 of that Schedule contain provisions relating to pre-existing customers.

46. Under sections 8 to 15 of Schedule 2, additional requirements apply when the customer is not physically present for identification purposes or is a politically exposed person, when the transaction is a wire transfer or a remittance transaction or involves an insurance policy, when a financial institution proposes to establish a correspondent banking relationship with an institution outside Hong Kong, and in other high risk situations.
47. Sections 16 and 17 of Schedule 2 contain prohibitions. Section 16 of that Schedule prohibits anonymous accounts and section 17 of that Schedule prohibits the establishment of correspondent banking relationships with shell banks.
48. Section 18 of Schedule 2 provides that financial institutions may carry out any customer due diligence measure by means of an intermediary. Section 19 of that Schedule requires financial institutions to establish and maintain procedures for the purpose of carrying out their duties under specified sections of that Schedule.
49. Sections 20 and 21 of Schedule 2 set out the record-keeping requirements. Section 20 of that Schedule requires financial institutions to keep records for 6 years and section 21 of that Schedule prescribes the manner in which the records are to be kept.
50. Section 22 of Schedule 2 requires financial institutions to ensure that their branches and subsidiary undertakings outside Hong Kong have procedures in place to ensure compliance with requirements similar to those imposed under that Schedule. Section 23 of that Schedule requires financial institutions to take reasonable measures to ensure that proper safeguards exist to prevent a contravention of that Schedule.
51. Schedule 3 specifies the fees payable in connection with services provided by the Commissioner under Part 5.
52. Schedule 4 contains provisions relating to the members and procedures of the Tribunal. The Secretary is to appoint a panel of persons who are not public officers. For the purpose of determining a review, the Secretary will, on the recommendation of the

chairperson of the Tribunal, appoint 2 panel members as ordinary members of the Tribunal. The chairperson is to convene sittings of the Tribunal as often as necessary to enable the Tribunal to determine a review. In specified circumstances, the chairperson may determine a review as the sole member of the Tribunal.

Economic Implications

With the proposed statutory backing, our AML regime could better align with the international standards, thereby strengthening Hong Kong's status as an international financial centre.

2. As far as compliance cost is concerned, given that the AML requirements stipulated in the new legislation have been largely reflected in the existing administrative AML guidelines issued by MA, SFC and IA to their respective regulatees, the new legislation is not expected to bring a substantial increase in the compliance costs for these sectors.

3. On the other hand, the enhanced AML regulatory regime coupled with the new licensing requirements could mean considerable compliance burden for the RAMCs, especially for the smaller set-ups. Some of the smaller set-ups may hence opt out of the business or may choose to have underground operation in view of the increase in compliance costs and the enhanced sanctioning regime.

Financial and Civil Service Implications

4. In respect of C&ED, the administration of the new licensing regime for MSOs and the supervision of AML compliance by the licensees are new statutory functions to the Department. Subject to further examination and vetting in detail, C&ED's initial assessment is that up to around 90 additional posts will be required for taking up the new functions, involving around \$40 million per annum.

5. At present, IA's supervisory functions do not cover authorized insurance brokers and appointed insurance agents and its Supervision Division which is tasked to undertake supervision on long-term insurers' compliance with laws, regulation and other regulatory requirement focuses on the prudential regulation of the insurers. To support the implementation of the new AML legislation which will confer specific supervisory and enforcement powers on IA on AML matters, IA plans to increase its manpower resources for AML inspection purposes and establishing an enforcement team. IA's initial

assessment is that the proposal will require the creation of 15 non-civil service contract positions involving around \$10 million per annum.

6. The above represents the initial assessments of C&ED and IA on the new manpower resources required for the implementation of the legislation. FSTB will seek the additional resources required through the established channels as necessary.

7. The other two relevant authorities specified under the AML legislation, namely MA and SFC, will assess whether new resources will be required to implement the new legislation. Their requests for new resources, if any, will be considered under their established funding mechanisms.

8. Revenue will be generated from the proposed licensing regime for MSOs. It is estimated that the fees collected from granting MSO licences will generate about \$7 million in the initial year of operation¹. In the second and third year of operation, the annual revenue generated will be about \$0.4 million² and \$3 million³ respectively and it is expected that a similar pattern of revenue will follow thereafter. FIs' payment of supervisory fines imposed by regulatory authorities upon breach of requirements under the new legislation will go to General Revenue.

¹ For new applications.

² For new applications.

³ For new applications and renewal applications.

**Second-round Consultation on
the Detailed Legislative Proposals on
Anti-money Laundering Regulation for Financial Institutions –
Consultation Conclusion**

Introduction

1. Upon completion of the first-round consultation on the conceptual framework of the proposed anti-money laundering (AML) legislation in October 2009 and taking into account the comments received, the Financial Services and the Treasury Bureau (FSTB) launched the second-round consultation on 7 December 2009 on the detailed legislative proposals on the AML regulation for financial institutions which ended on 6 February 2010.
2. During the two-month consultation period, we have organized eight sector-specific consultative sessions for the banking, securities, insurance sectors and remittance agents and money changers which were attended by over 800 participants and received 45 written submissions from individuals, financial institutions, professional bodies and trade associations listed in the **Appendix**. In addition, we attended a public hearing session organized by the Legislative Council Financial Affairs Panel organized on 24 May 2010. Representatives of 12 trade bodies/associations attended the session.
3. There is broad support for the proposal to introduce legislation to codify the customer due diligence (CDD) and record-keeping requirements for financial institutions and put in place a licensing regime for money service operators (MSO)¹ with specific comments raised on the detailed proposals. This document summarizes the major comments by topics with the Administration's responses. FSTB has taken into account the views and comments received through the consultation in drawing up the Anti-money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill.
4. FSTB would like to take this opportunity to thank all respondents who

¹ We have renamed remittance agents and money changers to money service operators. The term "money service operators" is used throughout this document which has the same meaning as RAMCs as referred to in the Consultation Paper.

have sent in submissions or participated in the consultative sessions for their valuable views and comments.

Scope of the Legislation and Designated Relevant Authorities

Scope of the Legislation

5. The majority of the respondents agreed with the proposal that the new legislation should cover financial institutions which will be defined to mean authorized institutions under the Banking Ordinance, licensed corporations under the Securities and Futures Ordinance, authorized insurers, appointed insurance agents and authorized insurance brokers under the Insurance Companies Ordinance and MSOs.
6. There were individual suggestions that certain types of financial institutions, such as licensed corporations advising on corporate finance, market makers and reinsurers which do not involve in movement of funds should be exempted from the AML regime. We have reviewed the matter but are not in a position to relax the proposal because the Financial Action Task Force (FATF)'s definition of financial institutions required to be subject to AML regulation does not allow for exemption of these entities which may be subject to money laundering abuses. It is noted that these entities are currently subject to AML requirements provided under the guidelines issued by the regulators.

Designated Relevant Authorities

7. Respondents generally supported the proposal that AML regulatory regime should follow the institution-based approach adopted in the regulation of the financial market in Hong Kong. Some respondents highlighted the importance of ensuring consistency in AML regulation and enforcement on financial institutions from different financial sectors. The new legislation will provide for a uniform set of requirements applicable to all concerned sectors suitable measures to ensure consistency in enforcement by the relevant authorities. There will also be coordinated exchange programmes and communication platform amongst the regulators.

Obligations of Financial Institutions

8. Respondents generally agreed with the proposed CDD and record-keeping obligations, which reflect the relevant requirements in the FATF standards. While most of the questions raised by respondents were to seek clarification on implementation matters, they also raised certain key issues for consideration. These are explained below.

Definition of Customers

9. Many respondents commented that the proposed definition of “customer” is too broad. Upon review and discussion with the regulators, the word “customer” can be interpreted according to its plain ordinary meaning and financial institutions should not have difficulties in identifying who their customers are in business relationships or transactions. As such, we will not provide a definition of “customer” in the new legislation.

Delayed verification of customers’ identity

10. Respondents from the banking sector raised concern about the impact on the day-to-day operation of financial institutions if they are prohibited from carrying out transactions with a customer in all cases before verification of the customers’ identity has been completed. Upon review, we have revised the relevant legislative proposal to make it clear that delayed verification of customers’ identity will be allowed when it is necessary not to interrupt the normal conduct of business and any risk of money laundering or terrorist financing that may be caused is effectively managed.

Application of CDD to insurance beneficiaries

11. Respondents from the insurance sector raised concern on the inclusion of beneficiaries of life insurance policies in the definition of “beneficial owners” pointing out that there would be practical difficulties in conducting CDD on insurance beneficiaries at the time when the policies are entered into since the financial institutions would not have direct business relationship with the insurance beneficiaries until the time of payout. We noted the operational

difficulties raised by the insurance sector. On this issue, FATF has recently clarified the requirements regarding CDD for insurance beneficiaries at its meeting in June 2010. We will refine the relevant legislative proposal accordingly such that whilst insurance institutions are still required to identify the beneficiaries at the time of nomination by the policy holders, the beneficiary's identity can be verified at the time of payout.

Simplified due diligence (SDD)

12. A few respondents proposed that the financial institutions should be given the flexibility to apply SDD on customers when there is low risk according to their risk assessment and that they could also apply SDD to "low risk" customers from any jurisdiction outside the list of "equivalent jurisdictions". We are not in a position to take forward this proposed change from the compliance perspective because the FATF requirements do not permit financial institutions to exercise discretion in applying SDD on customers.

Enhanced due diligence (EDD)

13. A few respondents raised concern about the requirement to conduct EDD on customers where the customers could not be physically present for identification purpose and some further suggested that SDD should be applied in such non-face-to-face transactions. We are not in a position to take forward this proposed change from the compliance perspective because according to FATF's requirements, customers who could not be physically present for identification purpose is of higher money laundering/terrorist financing risk. We maintain the view that the additional measures required can address the higher risk involved in this circumstance and should not be removed.

Updating of existing accounts

14. Many respondents expressed strong views against the proposed requirement to apply CDD to all existing accounts within 2 years upon the commencement of the new legislation, citing the potential difficulties and administrative burden involved in updating customers' information especially for dormant accounts and clients based

overseas. They suggested that updating of customers' information of existing accounts should be required only upon the occurrence of specific events that warrant the need to conduct fresh CDD on existing customers.

15. The proposed requirement was introduced in response to suggestions from the industry during the first-round consultation that the new legislation should provide for a specified period of 6 to 18 months for financial institutions to complete the updating of customers' information of existing accounts. Upon review, we agree that the statutory requirement to update customers' information of existing accounts should be triggered only upon occurrence of specified events which will be prescribed in the new legislation.

AML obligation regarding wire transfers and remittances

16. A number of respondents from the insurance and securities sectors were concerned if the AML requirement for handling wire transfers (viz. to reject incoming payment when the originator's information is incomplete) would apply to their sectors, as they are only the recipients of funds from their clients' bank accounts for premium payments or securities transaction settlement and they do not have control over the fund transfer process. We have clarified at the consultative sessions that the AML requirements for handling wire transfers would be applicable only to those financial institutions providing wire transfers as a business which would mainly be authorized institutions and MSOs. The provisions with regard to "wire transfer" have been suitably formulated to make clear this point.
17. Respondents from the MSO sector commented that the AML requirement for wire transfers is too onerous and suggested to allow a more flexible approach to minimize disruption to their business. Upon review, we agree that financial institutions should be allowed to apply a risk-based approach in fulfilling the AML obligation to ask for the missing originator's information from the ordering financial institution and to decide on whether the wire transfer request should be turned down if the missing information cannot be obtained. We have revised the legislative proposal accordingly.

Obligation to ensure internal control and procedures

18. A number of respondents expressed reservation over the proposal to put in as an officers' duty to ensure that the financial institutions concerned maintains proper internal control and procedures for AML compliance, noting in particular that an officer could be liable to supervisory sanctions for non-compliance, apart from criminal sanctions provided under the legislation. Upon review, and having regard to the prevailing FATF's requirement for the duty to ensure internal control and procedures primarily rests with financial institutions, we have incorporated this specific duty as part of the financial institutions' obligations under the new legislation.

Powers of the Regulatory Authorities

19. Most of the respondents generally agreed that the relevant authorities should be provided with the proposed range of supervisory and enforcement powers, which are modeled on the existing powers available to SFC under Part VIII of SFO.
20. A few respondents raised questions on the necessity for the relevant authorities to be provided with an extensive range of powers. In this regard, it should be noted that it is a specific deficiency in Hong Kong's AML regime highlighted by FATF that our regulatory authorities should be given adequate powers to monitor and ensure compliance by financial institutions, including the authority to conduct inspections and the power to compel production of or to obtain access to all documents or information relevant to monitoring compliance, etc. The proposed range of powers would help meet the FATF requirements and facilitate effective compliance supervision by the relevant authorities. The new legislation will provide suitable checks and balances in the exercise of these powers by the regulatory authorities.
21. A couple of respondents highlighted the importance of preserving legal professional privilege under the new legislation in view of given range of powers to be made available to the relevant authorities. This accords with our policy intention to preserve the legal professional privilege in inspections and investigations by the relevant

authorities. We have included a provision in the new legislation for this purpose.

Offences and Sanctions

Criminal Offences

22. Most of the respondents agreed with the proposed criminal offence which is intended to catch those persons who contravene the statutory obligations knowingly or with an intent to defraud.
23. A few respondents questioned the need to introduce criminal liability under this legislation as there would be supervisory sanctions to deal with breaches. It should be noted that civil sanctions and criminal offences are provided in the AML regulatory legislation in the other major jurisdictions. Under our proposal, there are high mental thresholds for one to commit an offence, i.e. only if it is committed knowingly or with an intent to defraud. No one will be criminally liable for breaches committed inadvertently. We believe that our proposal for criminal offences would provide an effective and appropriate deterrent in dealing with breaches of more culpable nature.

Supervisory Sanctions

24. We did not receive any adverse views on the proposed range of supervisory sanctions, which include supervisory fines, public reprimands and orders for remedial actions.

Licensing for Money Service Operators

25. Most of the respondents supported the introduction of a licensing regime for MSOs and agreed with the proposed licensing criteria, the powers of the licensing authority and the transitional arrangement for existing MSOs to migrate to the licensing regime upon implementation of the new legislation.
26. A few respondents from the MSO sector suggested that consideration

be made to issue group MSO licences to entities which operate business on multiple locations. Upon review, noting that quite a number of existing MSOs are operating through multiple outlets, we agree that granting a group licence for these entities would enable the licensing authority to have an overall understanding of the managerial controls of these licensees and thus would facilitate more effective supervision. The relevant provisions of the new legislation and the fees schedule for MSO licences have been drawn up to cater for such licensing mode.

27. A few respondents suggested that a list of deemed MSO licensees should be published during the proposed 60-day transitional period so that the other financial institutions and members of the public who want to conduct transaction with a MSO can ascertain whether, in case that entity has not yet obtained a licence from C&ED, it has already applied for a licence under the new legislation and C&ED has not made a decision to reject the application. We see merit of such a suggestion. C&ED will consider administrative arrangement to provide such a list during the transitional period.

Review and Appeal Mechanism

28. There was broad support for the proposed establishment of an independent tribunal by statute to allow aggrieved parties to seek to review relevant decisions made by the regulatory authorities under the new legislation, including their decisions to impose supervisory sanctions and on MSO licensing matters. Decisions of the tribunal may be appealable to the Court of Appeal.

Commencement of the New Legislation

29. Individual MSO respondents emphasized that they should be given adequate time to prepare for implementation of the new legislation after its enactment. In this regard, we hope to complete the legislative exercise as soon as possible so as to allow the relevant sectors to make early preparation before the planned implementation of the new legislation on 1 April 2012.

List of Respondents

1. Australasian Compliance Institute Inc.
2. AXA Asia Pacific Holdings Limited
3. BOCI Securities Limited
4. Cheng Kin, Gary
5. Cheng Wing Hong, Vincent
6. Clifford Chance
7. CompliancePlus Consulting Limited
8. Deacons
9. EFA Secretarial Limited
10. Equity Trust, EQ Corporate Management (HK) Limited
11. Global Witness
12. Hong Kong Institute of Certified Public Accountants
13. Hong Kong Investment Funds Association
14. Hong Kong Securities Association
15. Hong Kong Securities Professionals Association
16. Hong Kong Tourism Board
17. Hong Kong Trustees' Association Ltd
18. Institute of Financial Planners of Hong Kong
19. Janna
20. KCS Hong Kong Limited
21. Macquarie Services (Hong Kong) Limited
22. Mizuho Corporate Bank Limited
23. Moneytt (Asia) Ltd.
24. Norton Rose Hong Kong
25. Offshore Incorporations HK Limited
26. Quam Securities Company Limited
27. Raymond Leung
28. Society of Trust and Estate Practitioners
29. Taifook Securities Company Limited
30. The Alternative Investment Management Association
31. The Association of Remittance Agents & Money Changers
32. The Hong Kong Association of Banks
33. The Hong Kong Association of Online Brokers Limited
34. The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies
35. The Hong Kong Confederation of Insurance Brokers
36. The Hong Kong Federation of Insurers
37. The Hong Kong Institute of Chartered Secretaries

38. The Law Society of Hong Kong
39. The Prudential Assurance Company Limited
40. The Western Union Company
41. Travelex Hong Kong Ltd
42. Tricor Services Limited
43. Vincent
44. 香港找換匯款代理商會
45. One respondent requested not to disclose his/her identity