

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

**The Scope of Clause 9(3)(b) of the Anti-Money Laundering and
Counter-Terrorist Financing (Financial Institutions) Bill**

This note sets out the rationale for the proposed scope of clause 9(3)(b) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill (“the Bill”).

2. Clause 9 of the Bill provides for the power to enter business premises etc. for routine inspection. Clause 9(3)(b) provides that an authorized person, in exercising the power under clause 9(1)(b) (viz. power to inspect or make copies of record or document), may require “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 give the authorized person access to such record or document, and produce the record or document within the time and at the place specified by the authorized person and to answer any question regarding the record or document.

3. The power to have access to relevant records or documents in possession of a third party other than financial institutions and to require answers to questions on the relevant records or documents is necessary for the relevant authorities to ascertain whether the financial institution has complied with the statutory obligations under the Bill. For example, to ascertain whether a securities firm has made frequent cheque payments to unverified third parties upon its customer’s instructions, for which the financial institution should have conducted appropriate scrutiny as required by clause 5(1)(b) of Schedule 2 of the Bill, it may be necessary to exercise this power to obtain copies of cheques issued by the financial institution from the banks on which the cheques are drawn. Since the cheques issued by the financial institution would no longer be in the financial institution’s possession, the relevant authority would not be able to obtain them from the financial institution and would have to obtain them from the bank.

4 The exercise of an authorized person’s powers under clause 9(3)(b) on a third party other than the financial institution under inspection is subject to a number of safeguards-

- (a) as with all powers provided under clause 9, the power may only be exercised to ascertain a financial institution's compliance with specified provisions under the Bill (Clause 9(1));
- (b) the record or document the authorized person seeks to have access to must relate to the business carried on or any transaction carried out by the financial institution (Clause 9(1)(b));
- (c) the authorized person must have reasonable cause to believe that the person has information relating to or is in possession of any record or document referred to in subsection (1)(b) (Clause 9(3)(b)); and
- (d) the authorized person must have reasonable cause to believe that the record or document or information sought cannot be obtained by exercising his/her power under Clause 9(3)(a) over the financial institution (Clause 9(7)).

5. Given that the categories of third parties who may be in possession of the relevant document, record or information may differ in different cases, narrowing down the scope of persons covered under clause 9(3)(b) may prejudice the effective discharge of the relevant authority's duty in conducting routine inspections on financial institutions.

6. The relevant authorities have considered carefully the suggestions made by a Member at the meeting on 7 January 2011 that the relevant authorities should consider adding a safeguard such that a relevant authority may only exercise the power over third parties who are directly or indirectly connected with the financial institution. They are concerned that such restriction may give rise to possible challenges as to what constitute a sufficient connection for a person to fall under the ambit of the clause which may prejudice their ability to ascertain the compliance of financial institutions. In view of the above assessment, we have no plan to amend the proposed scope of clause 9(3)(b).

**Financial Services and the Treasury Bureau
20 January 2011**