

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

**Provision of a Statutory Defence under Clause 10**

This note sets out the Administration's response to a Member's request for the Administration to consider whether the criminal provisions under clause 10(3), (5) to (8) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill ("the Bill") should allow for a defence of "reasonable excuse", in the same way as provided for in clause 10(1).

2. The Department of Justice ("DoJ") advised that the defence of reasonable excuse under clause 10(1) of the Bill is a negative averment which imposes a burden of proof on the accused seeking to avail himself thereof. On the other hand, each of the provisions in clause 10(3), (5) to (8) requires proof of a specific state of mind, which has to be proved by the prosecution.

3. DoJ opined that it would not be appropriate to place the defence of reasonable excuse in the context of clause 10(3), (5) to (8) as it would cause confusion and uncertainty. Taking clause 10(6) as an example, if it proved that the defendant, with intent to defraud, produces a record that is false in a material particular in purported compliance with the statutory requirement, the creation of a defence of "reasonable excuse" is in contradiction with the mental element of "with intent to defraud". It should be noted that the common law defence of "duress" is always available to a defendant, despite not set out as a statutory defence under the offence provision.

**Financial Services and the Treasury Bureau  
8 February 2011**