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**CB(1)2425/10-11(01)**

**By Email**

9 June 2011

Ms Anita SIT  
Clerk to Bills Committee on the Anti-Money Laundering  
and Counter-Terrorist Financing (Financing Institutions) Bill  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms SIT,

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

**Response to the Matters Discussed  
at the Bills Committee meeting on 2 June 2011**

We wish to provide the following response in relation to matters discussed at the Bills Committee meeting on 2 June 2011.

**Clause 46**

2. Some Members suggested that an express provision on the procedure of sealing of documents over which claims for legal professional

privilege (“LPP”) has been made should be added under clause 46. As we have explained at the meeting, a person’s right to claim LPP over certain material is well established in common law and clause 80(1) of the Bill clearly stipulates that “this Ordinance does not affect any claims, rights or entitlements that would, apart from this Ordinance, arise on the ground of legal professional privilege”. Upon further consultation with the Department of Justice, we confirm that the exercise of the power to seize records and documents by the relevant authority under clause 46 will also be subject to any claim of LPP.

3. As set out in Bills Committee Paper No. CB(1)2355/10-11(01), we are not aware of any legislation, other than Order 116 rule 7 & 8 and Order 117A rule 16 & 17 of the Rules of the High Court (Cap 4A), that contains provisions on sealing of documents where there is already specific provision on the protection of LPP. After review, we remain of the view that since there is established practice governing the handling of claims for LPP on certain documents, it is not necessary to include an express provision on sealing of documents under clause 46 or other provisions concerning the relevant authority’s power to seize documents under warrants under the Bill.

4. On the other hand, having considered Members’ comments, we will advise the relevant authorities to provide in their future internal guidelines specific guidance to ensure that their frontline staff follow the proper procedures in dealing with claims for LPP over certain documents when taking enforcement actions.

#### **Schedule 1 Clause 1 – Definition of “money changing service”**

5. A Member expressed concerns about the exclusion of money changing service provided by hotels within their premises primarily for the convenience of guests of the hotel from the definition of “money changing service” and suggested the Administration to revise the provision.

6. As we have explained at the meeting, the proposed scope of the licensing regime for money service operators is essentially the same as the existing registration regime for these businesses provided under the Organized and Serious Crimes Ordinance (Cap 455) (“OSCO”). The proposed exclusion

of money changing service provided by hotels from the definition of money changing service is modeled on the relevant arrangements in the OSCO regime, noting that the Financial Action Task Force did not raise any specific compliance issues in respect of the exclusion of hotels under the OSCO registration regime at its last mutual evaluation on Hong Kong. Besides, we did not receive any adverse comment from stakeholders or the public on this proposed exclusion which was set out in the public consultation document issued in December 2009.

7. In light of the above, we will not propose any change to the definition of “money changing service” in the Bill. That said, we will keep the matter in view when we revisit the provisions under this Bill after it has been implemented for certain period.

#### **Textual Amendments to the Chinese Draft for Clauses 34(8) and 46(2)(d)**

8. Upon Members’ suggestion, we will revise the Chinese draft of clauses 34(8) and 46(2)(d) as follows-

##### *Clause 34(8)*

“如任何人的牌照遭撤銷，但該人並沒有在根據第(4)款給予該人的通知指明的期限內，該人並沒有將該牌照交回關長，該人即屬犯罪，一經定罪，可處第5級罰款。”

##### *Clause 46(2)(d)*

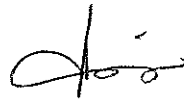
“扣留任何在覺得於該處所內發現，而該人員覺得的某人有能力(或相當可能有能力)提供攸關涉嫌罪行的調查的資料的人情況下，扣留該人，直至該處所搜查完畢為止；”

#### **Textual Amendments to Clauses 9(8), 9(15) and 12(7)**

9. Further to the amendments proposed in the Bills Committee papers No. CB(1)2290/10-11(03) and CB(1)2355/10-11(02), we propose to make further textual amendments to clauses 9(8), 9(15) and 12(7) and the Chinese

text of section 2 of schedule 2 to enhance the internal consistency of the Bill.  
The amendments proposed are set out in **Annex**.

Yours sincerely,



(Ms Angelina KWAN)  
for Secretary for Financial Services and the Treasury

**Proposed Textual Amendments to Clauses 9(8), 9(15) and 12(7) and the Chinese text of section 2(2) of Schedule 2**

*Clause 9(8)*

“This section is not to be construed as requiring a financial institution to disclose any information or produce any record or document relating to the affairs of any of its customers to an authorized person who is appointed by a relevant authority (**referred to in this section as other regulatory authority**) other than the relevant authority in relation to the financial institution, unless the other regulatory authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of this section.”

*Clause 9(15) – Definition of “business premises”*

“(f) in relation to a licensed money service operator, means any premises at which the licensed money service operator ~~carries on business~~ **may operate a money service** as shown in the register maintained under section 27; and”

*Clause 12(7)*

“Neither this section nor section 11 is to be construed as requiring a financial institution to disclose any information or produce any record or document relating to the affairs of any of its customers to an investigator who is directed or appointed to investigate a matter by a relevant authority (**referred to in this section as other regulatory authority**) other than the relevant authority in relation to the financial institution, unless ...”

*Section 2(2) of Schedule 2 (Chinese text)*

“(2) 除在本附表第15條提述的情況下，如任何個人憑藉本附表第1(1)條中**實益擁有人**的定義的(a)(i)(A)或(B)、(b)(i)(A)或(B)或(c)(i)段，而屬某客戶的實益擁有人，有關金融機構無需核實該人的身分，但在以下情況下除外 —

- (a) 就該定義的(a)(i)(A)段所指的個人而言，該人直接或間接地擁有或控制(包括透過信託或持票人股份持有)有關法團已發行

股本的不少於25%；

- (b) 就該定義的(a)(i)(B)段所指的個人而言，該人直接或間接地有權行使有關法團的成員大會上的投票權的不少於25%，或支配該比重的投票權的行使；
- (c) 就該定義的(b)(i)(A)段所指的個人而言，該人直接或間接地有權攤分或控制有關合夥的資本或利潤的不少於25%；
- (d) 就該定義的(b)(i)(B)段所指的個人而言，該人直接或間接地有權行使在有關合夥的投票權的不少於25%，或支配該比重的投票權的行使；或
- (e) 就該定義的(c)(i)段所指的個人而言，該人有權享有有關信託財產的既得權益的不少於25%，而不論該個人是享有該權益的管有權、剩餘權或復歸權，亦不論該權益是否可予廢除。”