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

Purpose

This paper reports on the deliberations of the Bills Committee on Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill (the Bill).

Background

Mutual evaluation conducted by the Financial Action Task Force

2. The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 with 36 member jurisdictions. The FATF Recommendations are recognized by the International Monetary Fund and the World Bank as the international anti-money laundering and counter-terrorist financing (AML[1]) standards. Having joined FATF in 1990, Hong Kong is obliged to implement FATF's requirements and is subject to a process of Mutual Evaluation by FATF to monitor progress made by jurisdictions in implementing FATF's requirements.

3. FATF conducted a Mutual Evaluation on Hong Kong in 2007-08 to assess the compliance of Hong Kong's AML regime with FATF's Recommendations which are the prevailing international AML standards. Whilst FATF recognized the strengths of Hong Kong's AML regime, they also identified, inter alia, the following issues -

(a) the lack of a statutory backing for customer due diligence (CDD) and record-keeping requirements;

(b) the lack of appropriate sanctions for breach of the above requirements;

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[1] For the purpose of this paper, references to "AML" include the meaning of both anti-money laundering and counter-terrorist financing.

(c) the limited range of regulators' supervisory and enforcement powers; and

(d) the absence of an AML regulatory regime for money service operators (MSOs) (i.e. remittance agents and money changers).

4. Based on the results of the Mutual Evaluation, 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 above issues and seek removal from the follow-up process about three to four years after the Mutual Evaluation, that is, by mid-2012 the latest.

Existing AML regulatory regime

5. At present, the CDD and record-keeping requirements for financial institutions are set out in the guidelines issued by the Monetary Authority (MA), the Securities and Futures Commission (SFC) and the Insurance Authority (IA) to the respective financial institutions under their regulation. Remittance agents and money changers (RAMCs) are 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 no statutory provision on powers to refuse registration or to access the premises or books/records of remittance agents and money changers for routine compliance checks.

6. Having regard to FATF's recommendations made upon its evaluation of Hong Kong, the Administration proposed that new legislation should be put in place to enhance the AML regulatory regime of the financial sectors. Following two rounds of public consultation on the legislative proposals in July 2009 and December 2009, the Administration introduced the Bill into the Legislative Council on 10 November 2010.

The Bill

7. The object of the Bill is to provide a legislative framework to implement the requirements of the FATF to -

(a) impose customer due diligence requirements and record-keeping requirements on specified financial institutions and to provide for the powers of the relevant authorities to supervise compliance with those requirements;

(b) regulate the operation of money changing and remittance service and licensing of money service operators; and

(c) establish the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal (the Tribunal) to review certain decisions of the relevant authorities made under the Bill.

8. The Bill consists of eight Parts and four Schedules[2]. The main provisions of the Bill include the following-

Commencement

(a) clause 1 provides that the legislation will commence on 1 April 2012. The Secretary for Financial Services and the Treasury (SFST) may amend the commencement date by notice in the Gazette;

Application to Government

(b) clause 3 provides that the legislation will apply in relation to the remittance service operated by the Postmaster General, except for provisions specified therein on MSO licensing requirements and provisions enabling the Commissioner of Customs and Excise (CCE) to impose a pecuniary penalty for AML breaches;

Requirements relating to CDD and record-keeping

(c) clause 5 stipulates that Schedule 2, which contains the CDD and record-keeping requirements, has effect with respect to financial institutions. That clause also provides that a contravention of a specified requirement of that Schedule constitutes an offence;

(d) Schedule 2 prescribes the detailed CDD and record-keeping requirements;

Supervision and investigations

(e) clause 9 provides for the powers of the relevant authorities to enter the business premises of financial institutions to conduct routine inspections. Clause 11 provides that the relevant authorities may initiate investigations if they have reasonable cause to believe that

[2] Unless otherwise specified, clauses, Parts and Schedules cited in this paper are clauses, Parts and Schedules of /to the Bill.

an offence under this legislation may have been committed or that a provision has been breached for the purpose of considering whether to exercise any disciplinary power;

Disciplinary actions by relevant authorities

(f) clause 21 empowers the relevant authorities to take disciplinary actions against financial institutions for breaches of the CDD and record-keeping requirements specified in Schedule 2. Under that clause, a relevant authority may publicly reprimand financial institutions, order financial institutions 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 by the relevant financial institutions as a result of the contravention;

Regulation of operation of money service

(g) 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 provided in clause 30(4). Clause 30 also provides that MSO licences are generally valid for two years;

(h) clause 50 empowers CCE to make regulations to provide for matters for the better carrying out of Part 5;

(i) under clause 42, a contravention of the regulations made under clause 50 and breaches of licence conditions and specified provisions concerning certain licensing matters 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) ;

(j) clause 81 provides for the transitional arrangements for RAMCs currently on the Police register maintained under OSCO. A RAMC is deemed to have been granted a licence as an MSO until the expiry of a period of 60 days from the commencement of the bill. However, if an RAMC applies for an MSO licence within that period, a MSO is deemed to have been granted a licence until the application is granted, refused or withdrawn, whichever is the earliest ;

(k) Schedule 3 specifies the fees payable in connection with MSO licensing matters;

The Tribunal

(l) clause 54 provides for the establishment of the Tribunal to review the relevant authorities' decisions under the Bill concerning the imposition of supervisory sanctions and MSO licensing matters; and

(m) Schedule 4 provides for the appointment and procedures of the Tribunal.

The Bills Committee

9. At the House Committee meeting on 12 November 2010, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon CHAN Kam-lam, the Bills Committee has held 15 meetings. The membership list of the Bills Committee is at **Appendix I**. The public including relevant trades and professional organizations have been invited to give views on the Bill. The Bills Committee received oral representations from four deputations at the meeting on 22 December 2010. As the Hong Kong Association of Banks (HKAB) provided a detailed submission to the Bill Committee in January 2011, the Bills Committee subsequently met with HKAB and the Administration on 17 February 2011 to discuss HKAB's submission. A list of the organizations which have submitted views to the Bills Committee is at **Appendix II**.

Deliberations of the Bills Committee

10. The ensuing part of the report summarizes the Bills Committee's deliberations on the Bill. The main subjects deliberated are set out below: -

(a) Application to Government (paragraphs 11 to 18)

(b) Customer due diligence and record-keeping requirements (paragraphs 19 to 27)

(c) Politically exposed persons (paragraphs 28 to 33)

(d) Supervisory and investigatory powers of the relevant authorities (paragraphs 34 to 69)

(e) Regulation of operation of money service (paragraphs 70 to 85)

(f) Criminal offences provided under the Bill (paragraphs 86 to 113)

(g) The Tribunal (paragraphs 114 to 126)

(h) Protection of legal professional privilege (paragraphs 127 to 131)

Application to Government (clause 3)

11. Clause 3 of the Bill provides that *"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."* The Bills Committee has requested the Administration to explain the background to this provision.

12. According to the Administration, the Post Office is a Government department operating as a Trading Fund. As set out in Schedule 1 to the subsidiary legislation on the Post Office Trading Fund (Cap. 430E), the Post Office may provide remittance services. The Post Office is not subject to the registration and other related requirements applicable to remittance agents under OSCO. Currently, the Post Office provides two types of remittance services, namely electronic remittance and money order to members of the public. In the mutual evaluation report on Hong Kong published in 2008, FATF highlighted that the Post Office which offers remittance services is "subject to relatively limited AML obligations and oversight" and recommended Hong Kong to undertake a formal assessment "to determine whether there is any justification for excluding [the Post Office] from the CDD requirements". Pursuant to FATF's comments, the Administration has conducted an assessment on the remittance services operated by the Post Office and concluded that it is subject to comparable money laundering/terrorist financing risks as its commercial counterparts. As such, the Administration proposes in the Bill that the AML requirements should be extended to the Post Office in order to fulfill FATF's requirement.

13. The Bills Committee has sought further explanation on the legal effect of clause 3, the reasons for specifying in the Bill the particular service and government department to which the future Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (the AML Ordinance) shall apply, and the justifications for excluding the Postmaster General from the application of certain provisions as specified in clause 3.

14. The Administration has explained that under section 66 of the Interpretation and General Clauses Ordinance (Cap. 1), no legislation shall be binding on the State unless it is expressly provided in the legislation or unless it appears by necessary implication that the State is bound by the legislation.

The legal effect of clause 3 is that the Government will be bound in respect of the remittance service operated by the Postmaster General.

15. According to the Administration, there is no other Government department except the Post Office that engages in any of the activities subject to requirements under the Bill. As such, for clarity sake, clause 3 provides that the AML Ordinance is to apply to the Government only in relation to the remittance services provided by the Post Office. Given that the Post Office is not a legal entity, the Bill provides that the AML Ordinance is binding on the Postmaster General. The term "Postmaster General" is defined under the Bill to include the Postmaster General, deputy postmaster general and assistant postmaster general, which is in line with the interpretation under the Post Office Ordinance (Cap. 98).

16. As regards the justifications for excluding the Postmaster General from the application of clause 21(2)(c) and (4), Part 5 and section 22 of Schedule 2 of the Bill as specified in clause 3, the Administration has explained as follows –

(a) While the supervisory sanctions[3] of public reprimand and order for remedial action will apply to the Postmaster General, it is not appropriate to subject individual civil servants to personal supervisory fines and daily pecuniary penalty when they carry out their duties in good faith. As the Postmaster General and staff of the Post Office are already subject to disciplinary mechanisms applicable to government employees, breaches and non-compliance committed by the Postmaster General and staff of the Post Office will be dealt with through the established mechanism as appropriate.

(b) The Post Office and the Customs and Excise Department (which is the licensing authority for MSOs) are parts of the Government. The Postmaster General, as civil servants, are already subject to integrity checking and disciplinary mechanism such that their "fitness and properness" should generally not be called into question. It is also very rare and unusual for one part of the Government to license another part of the Government. As such, the Postmaster General is exempted from the licensing requirements under Part 5 of the Bill.

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[3] Clause 21 of the Bill empowers the relevant authority to impose supervisory sanctions, namely public reprimand, order for remedial actions and supervisory fines, on financial institutions for breaches of the AML requirements set out in Schedule 2 of the Bill.

(c) The Post Office's operation does not provide for any branches and subsidiaries outside Hong Kong, therefore section 22 of Schedule 2[4] does not apply.

17. Taking note of the Administration's explanation, Dr Hon Margaret NG suggested revising clause 3, with reference to existing local legislation with express provisions on application of the legislation to the Government, in the following manner –

(a) to avoid giving rise to unintended effects, the provision should simply state that "this Ordinance applies to the Government" without specifying the particular service and government unit to which the Ordinance shall apply;

(b) rather than exempting the Postmaster General from the licensing requirements in providing remittance service, the Postmaster General (or the Government) should be deemed to have obtained a licence from CCE; and

(c) rather than specifying the exception provisions in clause 3, it should be stated in the respective provisions that the Postmaster General (or the Government) is exempted from the relevant requirements/sanctions.

18. Having regard to the drafting of similar legislative provisions and in the light of Dr NG's comments, the Administration agrees to revise clause 3 to expressly provide that the AML Ordinance applies to the Government (without specifying the particular service and government department to which the Ordinance shall apply), and make corresponding amendments to clauses 21 and 25 to exclude the application of clauses 21(2)(c) and (4) and Part 5 to the Government.

Customer due diligence and record-keeping requirements (Part 2 and Schedule 2)

Purpose of customer due diligence and record-keeping requirements

19. The Bills Committee has sought explanation on how the measures in the Bill would contribute to preventing/combating AML activities. The Administration has advised that the preventive measures (including CDD and record-keeping measures) to be implemented by financial institutions as set out in the Bill are intended to-

[4] Section 22 of Schedule 2 provides that a financial institution incorporated in Hong Kong must ensure that its branches and subsidiaries outside Hong Kong have procedures in place to ensure compliance with requirements similar to those imposed under Schedule 2 and inform the relevant authority if this is not possible and take additional measures to mitigate the risk.

(a) make it more difficult for criminals to make use of the financial system for money laundering and terrorist financing activities; and

(b) preserve an audit trail and relevant transaction records and documents to facilitate subsequent law enforcement agencies' investigation into money laundering or other criminal activities if necessary.

20. As revealed in local and overseas cases involving money laundering activities, the CDD requirements are instrumental to the detection of suspicious activities by financial institutions, which leads to reports being made to the relevant authorities for further investigation. The transaction records kept by financial institutions can also facilitate follow-up by law enforcement agencies and be used as evidence in legal proceedings.

Risk-based approach

21. The Bills Committee has noted the view of the Law Society of Hong Kong that the Bill should make clear that the application of a risk-based approach is a core principle that should be observed in relation to all aspects of the CDD process. HKAB has also expressed the view that the Bill should contain an overarching principle of a risk-based approach, and it is important to reflect the risk-based approach in the relevant provisions of the Bill for the following reasons:

(a) to accurately reflect the underlying principles of the FATF framework, which requires a sophisticated and contextual approach to the prevention of money laundering and terrorist financing;

(b) to ensure that CDD is clearly conceptualised as a process that involves more than a "tick box" approach; and

(c) to give financial institutions sufficient latitude to address the circumstances of each case and to direct resources to the areas of greatest risk. This is particularly important given the significant civil and criminal penalties that have been proposed in the Bill.

22. The Administration has explained that the risk-based approach has always been an important underlying principle for the FATF requirements in respect of CDD, and the various provisions in the Bill stipulating the specific requirements in relation to business relationships or customers of different risk profiles seek to reflect this important principle. On this premise and taking into account the deputations' views, the Administration agrees to amend sections 12(9) and (10) and 15 of Schedule 2 to provide for greater flexibility for financial institutions to determine the additional measures required under the

special requirements in accordance with the money laundering/ terrorist financing risk of the customer.

Definition of "beneficial owner"

23. The Law Society of Hong Kong and HKAB have suggested that the threshold in the definition of "beneficial owner" (which is currently defined in the Bill as owning or controlling 10% or more shareholding or voting rights of a customer or exercising ultimate control over the customer) should be relaxed to 25%, in line with that adopted in other comparable jurisdictions such as the United Kingdom, Australia and Singapore. They consider that the 10% threshold will create commercial disadvantage and substantial practical difficulties for financial institutions in Hong Kong.

24. The Administration has explained that the "beneficial owner" threshold of 10% for identification and verification is currently provided under the AML guidelines published by the Hong Kong Monetary Authority (HKMA), and banks have had no major difficulty in complying with this requirement. As the 10% threshold has been in operation for a long time with no specific compliance problem, the Administration does not see a strong ground for substantial relaxation. However, having regard to relevant overseas examples and the deputations' concerns with operational difficulty, the Administration agrees to HKAB's suggestion that financial institutions should be allowed to conduct verification of the identity of only those "beneficial owners" with 25% or greater shareholding or other form of control provided that the business relationships and customers are assessed not to be of high risk. The Administration will move a Committee Stage amendment (CSA) to add a new provision under section 2 of Schedule 2 to provide for such arrangement.

Record-keeping obligations

25. Hon WONG Ting-kwong has suggested specifying in the Bill that a copy of the records required to be kept under section 20 of Schedule 2 must be kept in Hong Kong, in order to facilitate inspection by the relevant authority.

26. The Administration has advised that under clauses 9(5) (for an inspection) and 12(2)(a) (for an investigation), an authorized person or investigator is empowered to require production by financial institutions or other persons concerned of specified records or documents within the time and at the place specified. Since financial institutions are obliged to meet the requirement for production of records or documents, with relevant sanctions for failure to comply with the obligations, the Administration does not consider it necessary to mandate that the records required to be kept under section 20 to be kept in Hong Kong.

Other issues relating to the customer due diligence and record-keeping requirements

27. Pursuant to the Bills Committee's request, the Administration and HKMA have held detailed discussions with HKAB on the latter's submission. The Administration has reported to the Bills Committee that these discussions have resulted in consensus amongst the concerned parties on many of the key issues covered in HKAB's submission. The Administration has shared the relevant draft CSAs to the Bill with HKAB, and HKAB is agreeable to those draft CSAs. The Administration has provided a summary of the major issues raised by HKAB and the Administration's responses in the Annex to LC Paper No. CB(1)2290/10-11(02). The Bills Committee has considered and supports the proposed amendments for addressing the concerns raised by HKAB.

Politically exposed persons

28. Under the Bill, in respect of customers falling within the definition of "politically exposed person" (PEP) in the Bill, financial institutions are required to undertake additional measures which include obtaining senior management's approval, taking adequate measures to establish the source of wealth/funds, and taking additional measures in monitoring their business relationship with the relevant persons.

29. Under Part 1 of Schedule 2 to the Bill, PEP refers to:

(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).

30. Some members including Hon Audrey EU and Hon James TO have expressed concern about the scope of persons covered by such a definition of PEP. They have asked about the reasons for excluding individuals who are or

have been entrusted with prominent public functions in the Mainland, Taiwan and Macau from the definition.

31. The Administration has explained that the definition of PEP in the Bill is crafted having regard to the prevailing international standards promulgated by FATF which highlights that PEPs means individuals who are or have been entrusted with prominent public functions in a foreign country. According to the Interpretation and General Clauses Ordinance (Cap. 1), foreign countries referred to countries other than the People's Republic of China. The list of family members covered in the definition is similar to the list under the relevant legislation in the United Kingdom. As to how financial institutions would know a person is a PEP, the Administration has advised that financial institutions only need to have regard to publicly available information and information in their possession when conducting PEP checks and there are commercial databases for conducting PEP checks.

32. Noting the Administration's explanation, the Bills Committee has sought further clarification on the CDD measures applicable to a customer or beneficial owner who is a person entrusted with prominent public functions but are not PEPs as defined under the Bill. The Administration has advised that in respect of such a customer or beneficial owner, financial institutions should assess whether the business relationship is considered as presenting high money laundering/ terrorist financing risks having regard to all factors and circumstances. If so, the financial institution must comply with the special CDD requirements as provided under sections 5(3)(c) and 15 of Schedule 2. The relevant authorities will set out in the guidelines to be issued under clause 7 the factors that financial institutions should take into account when assessing the money laundering/terrorist financing risk of business relationships. One of these factors is whether a person is entrusted with prominent public functions (if he or she is not a PEP as defined in the Bill).

33. The Administration has also confirmed that the CDD requirements under proposed sections 5(3)(c) and 15 of Schedule 2 are the same as those provided under proposed sections 5(3)(b) and 10 of Schedule 2 that are applicable to persons who fall within the definition of PEPs in the Bill. The regulatory arrangements, consequences for breaches of such requirements and sanctions are also the same, as both provisions are requirements under the Bill, to which the criminal/disciplinary sanctions under Parts 2 and 4 of the Bill and the supervision and investigatory powers of the relevant authorities under Part 3 of the Bill are applicable.

Supervisory and investigatory powers of the relevant authorities (Part 3 of the Bill)

34. Hon Audrey EU has expressed concern that the Bill seems to give the relevant authorities unfettered power to obtain documents and information from financial institutions without any safeguard for customers' privacy.

Hon James TO has expressed concern that the Bill may weaken the protection for customers of financial institutions as the authorized person may inspect and make copies of individual records arbitrarily, and even refer suspicious cases for investigation. To address these concerns, the Administration has provided information on the following -

(a) the relevant international requirements regarding routine inspections at the business premises of financial institutions (paragraph 35);

(b) the types of records and documents which the regulators would need access to in a routine inspection as distinguished from those required under an investigation (paragraphs 36);

(c) the feasibility of limiting the types of records and documents that can be obtained under clause 9(1)(b) to those required to be kept by financial institutions under the Bill (paragraph 37); and

(d) how the authorities would handle the copies of the records and documents made under clause 9(1)(b) (paragraph 39).

International requirements on relevant authorities' powers

35. The Administration has advised that FATF requires that regulators should have adequate powers to monitor and ensure compliance by financial institutions with the relevant AML requirements set out by FATF. Specifically, FATF requires that –

(a) the regulators should have the authority to conduct inspections of financial institutions, including onsite inspections, to ensure compliance. Such inspection should include the review of policies, procedures, books and records, and should extend to sample testing;

(b) the regulators should have the power to compel production of or to obtain access to all records, documents or information relevant to monitoring compliance. This includes all documents or information related to accounts or other business relationships, or transactions, including any analysis the financial institution has made to detect unusual or suspicious transactions; and

(c) the regulator's power to compel production of or to obtain access to records, documents or information for supervisory purposes should not be predicated on the need to require a court order.

Records and documents sought for inspections and investigations

36. Regarding the types of records and documents which the relevant authorities would need access to in a routine inspection vis-a-vis those in an investigation, the Administration has advised that when conducting such inspections, the regulators need to review the relevant policies and procedures of the financial institution, and conduct sample checking on the CDD process and record-keeping procedures and transaction monitoring to ascertain whether the financial institution has complied with the requirements under this Bill. In carrying out sample checking, the relevant authority may need to review the account opening documentation of customers, and account records recording transactions conducted, etc. For an investigation, the information that needs to be sought by the relevant authorities is more focused and in-depth, with the purpose of obtaining evidence for initiating disciplinary or criminal actions where appropriate.

37. On the suggestion of limiting the types of records and documents that can be obtained under clause 9(1)(b) to those required to be kept by financial institutions under the Bill, the Administration has responded that the authorities would need to review the relevant policies and procedures of the financial institution, which does not fall under the ambit of section 20 of Schedule 2 on the records or documents required to be kept by financial institutions. In addition, some records and documents are not severable, and it may be the case that only part of the documents would fall under the scope of the documents that are required to be kept. This may attract challenges to the authorities' powers to obtain the documents and impede the effectiveness of the enforcement regime. As such, the Administration does not consider it feasible to limit the types of record and documents covered under clause 9(1)(b).

38. The Administration has stressed that under clause 9 of the Bill, the exercise of the relevant authorities' powers to obtain records and documents are subject to safeguards, viz. the purpose of obtaining the records and documents must be to ascertain a financial institution's compliance with specified requirements (clause 9(1)), and the records and documents sought must relate to the business carried on or any transaction carried out by the financial institution (clause 9(1)(b)).

Handling of copies of records and documents obtained in an inspection or an investigation

39. Regarding the handling of copies of records and documents obtained in an inspection or an investigation, the Administration has advised that all information obtained by the relevant authorities during inspections or investigations, including the copies of records and documents obtained, are to be treated in confidence in accordance with the secrecy provisions provided under the Banking Ordinance (Cap. 155) (for MA), the SFO (for SFC), the

Insurance Companies Ordinance (Cap. 41) (for IA) and clause 48 of the Bill (for CCE). All the relevant authorities have internal procedures governing the treatment of copies of records and documents obtained, which requires these copies be destroyed or, where the copies are kept in the files, the records should be kept in safe custody and can only be accessed by authorized persons.

Scope of clause 9(3)(b) - "any other person"

40. Clause 9(3)(b) provides that an authorized person, in exercising the power under clause 9(1)(b) (i.e. 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.

41. In view of the wide powers given to the relevant authorities to require any person unconnected with the financial institution under routine inspection to provide documents and answer questions, the Bills Committee has sought clarification on the circumstances where a relevant authority may need documents or information from a third party. The Bills Committee has requested the Administration to consider restricting the application of clause 9(3) to persons who have certain business relationship with the financial institution under inspection.

42. The Administration has explained that such powers are 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 under section 5(1)(b) of Schedule 2, 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.

43. The Administration has stressed that 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, including: –

(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)).

44. Given that the categories of third parties who may be in possession of the relevant document, record or information may vary in different cases, the Administration considers that narrowing down the scope of persons covered under clause 9(3)(b) may prejudice the effective discharge of the relevant authorities' function of monitoring the compliance by financial institutions with specified provisions under the Bill by conducting routine inspections on financial institutions. As regards the suggestion of 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, the Administration has responded that the relevant authorities 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 such assessment, the Administration does not consider it appropriate to amend the proposed scope of clause 9(3)(b).

Application of clauses 9(8) and 12(7) to financial institutions regulated by a relevant authority other than the Monetary Authority

45. The Bills Committee has sought explanation on the rationale for the arrangement provided under clause 9(8) that, an authorized institution (AI) is not obliged to disclose any information or produce any record or document relating to the affairs of a customer to an authorized person authorized by a relevant authority other than MA 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 clause 9, i.e. ascertaining the compliance of a financial institution with the statutory obligations under the Bill.

46. The Administration has explained that clause 9(8), which was drafted based on section 180(9) of the Securities and Futures Ordinance (Cap. 571) (SFO), is a saving provision which seeks to preserve the confidentiality duty of an AI unless the relevant authority certifies that the disclosure is necessary for

the purposes of clause 9. Provisions similar to clause 9(8) can be found in other local legislation[5]. According to the Department of Justice (DoJ)'s advice, there is case law establishing that the banker's duty of confidentiality is an implied term in every contract when a bank account is opened and there is no need for a prospective customer to ask the bank to keep his affairs confidential. To preserve the duty of confidentiality AIs owe to their customers, clause 9(8) is to provide safeguards such that a relevant authority needs to certify that the disclosure is necessary before an authorized person (other than an authorized person authorized by the Monetary Authority) can exercise the powers provided under clause 9 in respect of the confidential information of AIs' customers.

47. Noting the Administration's explanation, Hon James TO has expressed the view that all financial institutions should have the duty of confidentiality to their customers, and it is inappropriate for the requirement of certifying the necessity of disclosure of information to be applied to the seeking of information from AIs only. He therefore suggests that the saving provision under clause 9(8) should be extended to all financial institutions. The Administration agrees to the suggestion and will move amendments to clauses 9(8) and 12(7)[6] to expand the coverage to include all financial institutions.

Appointment of "authorized persons" for routine inspection

48. Under clause 9(12) of the Bill, a relevant authority is empowered to *"authorize in writing any person, or any person belonging to a class of persons, as an authorized person"* for the purposes of clause 9. Since the powers of the authorized person specified in clause 9 are fairly wide, and an "authorized person" may not necessarily be an employee of the regulator, the Bills Committee has asked the Administration to explain the policy of the relevant authorities with respect to the authorization of persons to exercise the powers provided under clause 9. Hon James TO has expressed the view that the range of duties that may be handled by any out-sourced personnel appointed by a relevant authority should be suitably confined.

49. The Administration has advised that clause 9 was drafted with reference to section 180 of SFO. The established practice of SFC is to authorize its employees to conduct routine inspections under section 180 of SFO. Wherever it is necessary to bring in other persons, e.g. certified public accountants, to assist their employees to conduct a routine inspection, the inspection has always been conducted under the supervision of employees of SFC. According to the Administration, all the relevant authorities, viz. SFC,

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[5] Examples quoted by the Administration are section 152F(2) of the Companies Ordinance (Cap. 32) and section 28(5) of the Financial Reporting Council Ordinance (Cap. 588).

[6] Clause 12(7) is a saving provision to preserve the confidentiality duty of an AI when required by a relevant authority other than MA to produce information or records for the purposes of the relevant authority's investigation.

MA, IA and CCE have confirmed that they would adopt the established practice of SFC as their future policy in exercising the powers under clause 9 of the Bill.

Timing for making a statutory declaration

50. Dr Hon Margaret NG has expressed concern that the requirement under clause 12(5) and (6) on the person concerned to make statutory declaration in the presence of the investigator may put undue pressure on the person concerned. She has requested the Administration to clarify whether the person concerned would be required to make a statutory declaration immediately when required, and if that will be the case, the reason for such a requirement.

51. The Administration has advised that under clause 12(5), a requirement for a statutory declaration has to be made in writing and the relevant authorities have confirmed that a reasonable period of time will always be given for the person to make the statutory declaration required.

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

52. 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. The Bills Committee has sought explanation on the rationale for the provision, given that non-compliance with a requirement imposed under clause 9 or 12 is already an offence under clause 10 or 13.

53. The Administration has advised that clause 14 is similar to section 185 of SFO. From SFC's enforcement experience, there is a need for an authorized person or an investigator to apply to the Court of First Instance relating to non-compliance with requirements imposed under clause 9 or 12. While non-compliance with a requirement imposed under clause 9 or 12 may amount to an offence under clauses 10 or 13, a conviction under clauses 10 or 13 does not carry the effect of mandating the person to comply with the requirements imposed. Hence, without the provision for the relevant authorities to apply to the Court of First Instance for an order to comply with the requirements imposed, the relevant authorities' ability to collect information for an inspection or investigation may be hampered.

54. The Bills Committee has also considered whether a person being required to comply with requirements made under clause 9 or 12 should be allowed to make an application to the Court of First Instance to set aside the requirements. The Administration has advised that it is not aware of any legislation where a person may apply to the Court to set aside requirements imposed on him. However, if a person considers that the relevant authority has

abused its power by imposing an unreasonable requirement on him or her, he or she may lodge a judicial review against the relevant authority's requirement. The person may apply to the Court for interim relief pending the substantive hearing of the judicial review, or he/she may request the relevant authority for a stay of execution. In practice, the relevant authorities would not take the decision to initiate a prosecution under clauses 10 or 13 lightly. If a person has reasonable and genuine reason for failing to comply with a requirement imposed on him, the relevant authorities would not initiate a criminal prosecution against the person.

Execution of a magistrate's warrant

55. Under clause 17, a magistrate, who is satisfied by information on oath laid by an investigator, an authorized person or an employee or staff member of a relevant authority, issue a warrant to authorize 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 exercise the powers specified thereunder. Hon James TO has pointed out that the Police may apply for a warrant under clause 17 as currently drafted. If that is not the intended arrangement, the Administration should confirm that a warrant issued under clause 17 will not be executed by the Police alone. The Administration has advised that only an investigator, a person authorized under clause 9(12) or an employee or staff member of a relevant authority may apply for a warrant and that the relevant authorities have confirmed that the warrants to be issued under clause 17 will not be executed by the Police alone.

56. Hon James TO has also expressed concern that an authorized person is empowered, under clause 17(3)(b), to take any other step that appears to the authorized person to be necessary for preserving the record or document or preventing interference with the record or document produced under clause 17(2). As such an authorized person may order or require any person on the premises subject to a search warrant to perform a certain act, this may put the person concerned at risk of breaching clause 17(9) which is liable to a heavy fine and penalty under clause 17(10). Mr TO has therefore requested the Administration to clarify the effect of the provision and the legislative intent.

57. The Administration has confirmed that given the provision under clause 17(3)(b), it is possible for the authorized person to require a person on the premises to perform a certain act, for example, opening a locked drawer in order to ascertain whether relevant records and evidence are kept inside. From SFC's enforcement experience, this is necessary as the person may destroy the records and evidence kept in the locked drawer after the departure of the authorized person, if the authorized person has not inspected the contents of the locked drawer.

Procedures for sealing of documents

58. In relation to clause 17, Hon James TO has requested the Administration to consider whether express provisions on the procedure for sealing documents pending determination by the court on a claim for legal professional privilege should be included in the Bill.

59. In this regard, the legal advisor to the Bills Committee has provided some examples of legislative provisions on the sealing of documents, including Part XII of the Interpretation and General Clauses Ordinance (Cap. 1) (which concerns journalistic material), as well as Order 116 rule 7 & 8 (in relation to the OSCO) and Order 117A rule 16 & 17 of the Rules of the High Court (Cap. 4A) (in relation to the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)).

60. The Administration has advised that apart from those provisions referred to in the above paragraph, they are not aware of any other legislation containing provisions on sealing of documents. In the event that a person claims legal professional privilege over materials during the execution of a warrant, the authorized person will follow the common law in dealing with the material and the procedure to be adopted that has been considered by the Court of Appeal[7]. The authorized person will exercise his power of seizure in the presence of the person asserting the claim of privilege, and will place the disputed items in a container which is then sealed. The authorized person will inform the person asserting the claim of privilege that he must take steps to establish his claim within a specified period of time, failing which the sealed container will be opened and the seized items inspected. Given that there is established practice governing the handling of claims for privilege, the Administration does not consider it necessary to include a specific provision in this regard under the Bill.

61. Hon Audrey EU and Dr Hon Margaret NG have expressed the view that the ordinary public may not be aware of the document handling procedure that an authorized person is required to follow in response to a claim for legal professional privilege. To safeguard the rights of the persons subject to a search warrant and to avoid unnecessary disputes, it would be desirable to set out the procedure under the provisions in the Bill concerning the relevant authority's power to seize documents under warrants, such as clause 46 which provides for the grant of a warrant by a magistrate to an authorized person to enter into premises to search and seize evidence in relation to a suspected offence under clause 29 (unlicensed operation of money service).

62. The Administration has explained that a person's right to claim legal professional privilege is well established under common law and clause 80(1) of

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[7] Philip PH Wong, Kennedy YH Wong & Co and Philip (Nominees) Limited v The Commissioner of Independent Commission Against Corruption [2009] 5 HKLRD 379

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"*. Advice of DoJ confirms 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 legal professional privilege. After review, the Administration maintains that the view that 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. However, having regard to the members' comments, the Administration has assured the Bills Committee that the relevant authorities will be advised to provide in their future internal guidelines specific guidance to ensure that their frontline staff follow the proper procedures in dealing with claims for legal professional privilege over certain documents when taking enforcement actions.

Standard of proof for regulatory/disciplinary proceedings

63. Clause 77 provides that when a relevant authority needs to establish certain matters as provided in that clause for the purposes of any provision of the Bill (other than provisions relating to criminal proceedings or to an offence), the standard of proof is that applicable to civil proceedings. Pointing out that the Court of Final Appeal has given a judgment establishing that the civil standard of proof should apply in circumstances other than in criminal proceedings, Dr Hon Margaret NG has requested the Administration to explain the rationale for this clause and the consequence if the clause is deleted.

64. The Administration has explained that clause 77 is modelled on section 387 of SFO. It seeks to make it expressly clear that the standard of proof for the regulatory/disciplinary proceedings referred to under clause 77 is a civil one. It gives certainty to the standard of proof and avoids unnecessary challenge or dispute as to whether the proceedings for matters stated in clause 77(a) to (f) should be criminal in nature, particularly, in view of the possible severe consequences of the matters. As such, the Administration considers that clause 77 should not be deleted.

65. Hon James TO has expressed concern that in respect of the matters provided in clause 77, as the regulatory/disciplinary proceedings involved may substantially affect an individual's rights. In such cases, it would be more appropriate to apply a standard of proof higher than the civil standard. He has therefore requested the Administration to consider deleting this clause to allow for more flexibility.

66. The Administration has advised that in a Court of Appeal case[8], it was held that *"it is not necessary to apply a criminal standard in disciplinary proceedings since the civil standard is adequate to meet the requirements of justice in any given case"*. As such, there is no need to apply another standard of proof that is higher than the civil one but lower than the criminal one.

Prosecution powers

67. Clause 78 provides for prosecution of offences by a relevant authority. Hon James TO has sought explanation on why clause 78(1) only includes the offence of conspiracy to commit an offence under the AML Ordinance but not also other inchoate offences such as the offences of attempt or incitement to commit an offence under the Ordinance. He has suggested the Administration to consider establishing a mechanism for appointment of officers eligible to exercise the power provided under clause 78(2).

68. The Administration has explained that while clause 78(1) does not explicitly cover the inchoate offences, by virtue of section 101C of the Criminal Procedure Ordinance (Cap. 221), the reference to "offence" in clause 78(1) of the Bill includes a reference to aiding, abetting, counselling or procuring that offence and an incitement to commit the offence. However, since the offence of conspiracy to commit an offence is not covered by section 101C of Cap. 221, it is necessary to provide an express reference in the Bill to the offence of conspiracy under clause 78(1).

69. As regards the suggestion of establishing a mechanism for appointment of officers eligible to exercise the power provided under clause 78(2), the Administration has advised that clause 78 is modelled on section 388 of SFO which does not provide for such a mechanism. The operation of that provision under SFO does not give rise to any problem and there is no strong ground for departing from the arrangement under SFO. In all circumstances, the relevant authority will ensure that the employee or staff responsible for bringing a prosecution in its name is fit to do so.

<u>Regulation of operation of money service (Part 5)</u>

The depth and breadth of the provisions on the money service operators licensing regime

70. Dr Hon Margaret NG has expressed her observation that the provisions on the MSO licensing regime (i.e. Part 5 of the Bill) are very detailed. She has queried whether it is necessary to stipulate the licensing arrangements in such depth and detail, and how the relevant provisions compare with the relevant

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[8] A Solicitor v The Law Society of Hong Kong (CACV107/2005(unreported) and confirmed by the Court of Final Appeal in FACV 24/2007 and reported in (2008) 11 HKCFAR 117.

international standard and the legislation on other similar local licensing regimes. She has also asked whether the relevant trades find such detailed provisions on the licensing regime acceptable.

71. The Administration has advised that the introduction of the MSO licensing regime seeks to address the deficiency highlighted in FATF's mutual evaluation on Hong Kong that there is no formal AML regulatory regime for MSOs. The licensing regime provided under the Bill comprises the following elements as stipulated by FATF –

(a) there should be a designated competent authority to license MSOs, maintain a current list of the names and addresses of licensed MSOs and be responsible for ensuring compliance with licensing requirements;

(b) the relevant authority must be empowered to apply effective, proportionate and dissuasive sanctions for failure to comply with the AML requirements applicable to MSOs, and such sanctions should include the power to withdraw, restrict or suspend the MSO's licence; and

(c) the relevant authority must take necessary measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest in an MSO.

72. The key elements of the MSO regulatory regime provided under the Bill are similar to the corresponding legislation on licensing regimes for MSOs in other FATF member jurisdictions, such as the United Kingdom and Singapore. The extent of details covered by the proposed provisions on the MSO licensing regime are on a par with the legislation on other licensing regimes in respect of trades with smaller set-ups, such as that under the Estate Agents Ordinance (Cap. 511) and the Travel Agents Ordinance (Cap. 218). The Administration has also advised that many practitioners in the money services sector who attended the consultative sessions held in 2009 and 2010 on the legislative proposals for the Bill had requested that, for clarity and certainty, the licensing requirements and obligations on MSOs should be set out in detail under the Bill.

Definition of "money changing service"

73. Hon James TO has expressed concern about the exclusion of money changing service provided by hotels within their premises primarily for convenience of guests of the hotel from the proposed definition of "money changing service" in the Bill and suggested the Administration consider revising the provision.

74. The Administration has explained that the proposed scope of the licensing regime for money service operators is essentially the same as the existing regulation regime for those businesses provided under OSCO. The proposed exclusion of money service provided by hotels from the definition of money changing service is modeled on the relevant arrangements in the OSCO regime, taking into account that the FATF 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, the Administration had 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. In the light of the above, the Administration does not consider it appropriate to propose any change to the definition of "money changing service" in the Bill. However, the Administration assures the Bills Committee that it will keep the matter in view when the Bill has been enacted and implemented for a certain period.

Mobile operation of MSOs

75. Noting that the present drafting of Part 5 was based on the assumption that licensed MSOs would operate in fixed premises, Hon James TO has expressed the view that some MSOs may wish to conduct their business in a mobile manner instead of in fixed premises and the Administration should create a favourable business environment for such MSOs. Having considered Mr TO's view, the Administration agrees to modify the relevant provisions in the Bill to allow MSOs to operate either under the "mobile operation" mode or "fixed location" mode.

76. Taking note of the proposed revised licensing arrangements, the Chairman has expressed concern that a "fixed location" MSO would be tempted to change to a "mobile operation" MSO or even make a false claim that it is a "mobile operation" MSO, as the requirements to be imposed on "mobile operation" MSOs seemed to be less stringent. The Chairman has therefore alerted the Administration of the need to devise appropriate arrangements to facilitate the supervisory and enforcement work of relevant authority in respect of MSOs operating in the mobile mode.

77. The Administration has responded that the Customs and Excise Department would conduct inspections to ensure that a MSO would not make false claims on the mode of operation. As all MSOs (regardless of their mode of operation) would need to comply with the CDD and record-keeping requirements specified in Schedule 2 to the Bill, there would be little incentive for an MSO to switch from "fixed location" mode of operation to "mobile operation". "Mobile operation" MSOs would also be required to produce documents to CCE at the time and place required for inspection and investigation purposes.

Definition of "ultimate owner"

78. Under clause 30(3)(a), before granting a licence to an applicant who is an individual, CCE needs to be satisfied that the person is fit and proper persons to operate a money service. Where the applicant is a corporation, each director and each ultimate owner of that corporation must also be a fit and proper person to be associated with the business of operating a MSO. As the concept of "ultimate owner" is only applicable to an applicant which is a corporation under clause 30(3)(a), Hon James TO has asked the Administration to consider applying the concept also to sole proprietors and partnerships. The Administration agrees that it would be prudent to extend the application of the concept of "ultimate owner" also to sole proprietors and partnerships, and will move CSAs to this effect.

79. Hon James TO has expressed concern on whether the current drafting of the definition of "ultimate owner" under clause 24 would cause confusion to applicants in applying for a MSO licence, as a person may concurrently fall under paragraphs (a), (b) and (c) of the definition. The Administration has advised that an applicant would be required to provide the relevant information on all persons who fall within the definition of "ultimate owner" in the application form but he does not have to specify which category in the definition of "ultimate owner" each of these persons belongs to. CCE would only assess the ultimate owners as declared by the applicant in considering whether the ultimate owners are fit and proper. It is a criminal offence under clause 51 to provide false or misleading information in connection with a licence application.

Other amendments to be made to Part 5 pursuant to the Bills Committee's suggestions

80. Pursuant to the suggestions from Bills Committee members, the Administration has also agreed to move amendments to clauses under Part 5 of the Bill for the following purposes -

(a) adding a provision under clause 30(4)(b) to the effect that offences convicted in overseas jurisdictions mirroring those provided under clause 30(4)(a) which are not covered by clause 30(4)(b)(i) and (ii) would be covered[9];

(b) adding a provision similar to clause 18 of the Bill under Part 5, so that the authorized officer under clause 46 may require the

[9] Clause 30 provides for the grant of a licence by CCE. Clause 30(4)(a) and (b) provides that CCE in determining whether a person (in relation to an applicant) is fit and proper shall have regard to whether the person has been convicted of any of the offences specified therein. Sub-clause (4)(a) covers the specified offences under local legislation, whereas sub-clause (4)(b) covers the relevant types of offences convicted in a place outside Hong Kong.

production of a reproduction of a record or document in a legible form, irrespective of whether the record or document recorded in the information system is protected by a password or not, in order to enable an authorized officer to retrieve the relevant record or document from a computer system under clause 46 in case the computer system is protected by a password;

(c) amending clause 46(2)(d) such that the persons who may be detained would be limited to those who appear to the authorized officer to be, or likely to be, relevant to the investigation of the suspected offence; and

(d) extending the application of clause 47(5), which as currently drafted only applies to an arrest, to also allow the authorized officer using force reasonably necessary to effect a detention if a person forcibly resists or attempts to evade detention.

Money service operators' access to banking services

81. The Bills Committee has noted from the money services sector that there have been cases where banks have closed the accounts held by MSOs without giving reasons, causing hardship to these operators. The money service sector has expressed the view that banks should be more transparent in handling MSOs' accounts, and better safeguards should be introduced against arbitrary closure of bank accounts where the MSOs concerned have obtained a licence from the relevant authority and have not contravened any law. Noting the concerns and views of the MSO sector, the Bills Committee has asked the Administration to elaborate how the Bill would improve the business relationship between MSOs and banks and facilitate MSOs in accessing banking services.

82. The Administration has advised that whether or not to establish or maintain business relationships with particular customers is a matter for financial institutions, including banks, to decide. In considering whether to establish or maintain a business relationship with a customer, banks will take into account a number of factors including whether the business relationship would pose a risk to the bank and the ability of the bank to manage the risk. Given the nature of remittance business, which involves the movement of funds often in substantial amounts (whether in single transactions or over time), often across borders between jurisdictions, and often through (sometimes multiple) intermediaries, it is inherently a high-risk sector.

83. As to how the Bill would facilitate MSOs in accessing banking services, the Administration has advised that the regulatory requirements to be introduced under the Bill, in particular the requirement that MSOs will have to meet the licensing criteria, to be subject to CDD and record-keeping requirements and to

be supervised for compliance with those requirements, will give other financial institutions a degree of assurance in maintaining business relationships with them. Provided that a MSO is licensed under the AML Ordinance having met the licensing criteria and complies fully with the relevant statutory CDD and record-keeping requirements having regard to the relevant guidelines, HKMA does not see any reason in principle why a MSO should not be able to access banking services due to money laundering/terrorist financing risks.

84. Noting the Administration's advice, Hon Audrey EU and Hon James TO have expressed concern that upon enactment and implementation of the AML Ordinance, even if a MSO has met the licensing requirements and there is no evidence of any breach of the other requirements under the Bill, a bank may still terminate the account of the MSO. They have requested the Administration/HKMA to clarify what other risks would be of concern to the bank in respect of such a MSO, and whether the bank is obliged to give reasons for terminating a client's account.

85. HKMA has advised that AIs should give customers adequate notice of their intention to close accounts to allow them time to make other arrangements, and give reasons for the closure wherever possible. However, it may not always be possible for AIs to give reasons for closing individual accounts for legal reasons. For example, while provisions under OSCO[10] require any person who knows or suspects that any property is the proceeds of or has been used in connection with, or is intended to be used in connection with, an indictable offence to disclose that knowledge or suspicion to the Joint Financial Intelligence Unit, it is an offence to reveal or suggest that a disclosure has been made. Where accounts have been closed in these circumstances, AIs may be constrained from giving reasons to the customers concerned for closing accounts or from giving warnings to them about particular behaviour that might lead to account closure. However, within these constraints, HKMA will continue to expect AIs to give adequate notice and explain the reasons for closing account where possible.

Criminal offences provided under the Bill

Comparison with the criminal offence provisions of other jurisdictions

86. The Bills Committee has requested the Administration to provide a comparison between the criminal liabilities provided under the Bill and the relevant legislation of the United Kingdom (UK) and the United States (US).

87. According to the Administration, the UK Money Laundering Regulations 2007 (Regulation 45) provides that "a person who fails to comply with any requirement in [specified provisions under the Regulation including

[10] Sections 25A and 26 of the Organised and Serious Crimes Ordinance.

provisions on customer due diligence and record-keeping] is guilty of an offence". It also provides a defence that "a person is not guilty if he took all reasonable steps and exercised all due diligence to avoid committing the offence". In US, the "31 US Code 5322" provides for criminal liability where "a person willfully violates [specified provisions under that subchapter or a regulation prescribed under that subchapter including provisions on customer due diligence and record-keeping]". There is no statutory defence in the US legislation.

88. The Administration has advised that by comparison, the Bill provides that a financial institution commits an offence if it contravenes the statutory obligations knowingly or with an intent to defraud, and persons who are concerned in the management of a financial institution and persons who are employees of or are employed to work for a financial institution will be criminally liable if they knowingly or with an intent to defraud cause or permit the financial institution to contravene the requirements.

Criminal liability of employees of financial institutions

89. In view that frontline staff of financial institutions will be subject to criminal liability for breach of the statutory CDD and record-keeping requirements in the Bill, Hon James TO has requested the Administration to advise, if the criminal offences in respect of the statutory CDD and record-keeping requirements are removed, whether Hong Kong would still be able to seek the agreement of FATF to remove Hong Kong from FATF's regular follow-up process.

90. The Administration has advised that FATF requires member jurisdictions to ensure that "effective, proportionate and dissuasive" sanctions are available to deal with non-compliance of the AML requirements. It would be difficult for Hong Kong to justify that the sanctions available are "effective, proportionate and dissuasive" if no criminal offences in respect of the statutory CDD and record-keeping requirements are provided at all, especially when other jurisdictions, such as US, UK, Australia and Singapore have provided for criminal sanctions in their AML regime.

91. The Bills Committee shares the concern of HKAB that front-line staff acting in accordance with the advice or instructions from the compliance officer or other responsible officer who has made a wrong judgment leading to a breach of the relevant statutory requirements should not be subject to the criminal offence under clause 5(7). To address this concern, the Administration agrees to add a statutory defence under clause 5 for an employee of a financial institution or a person employed to work for a financial institution who has acted in accordance with the financial institution's established policies and procedures for the purpose of ensuring compliance with the relevant specified provision.

92. Under clauses 10(7) and 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 fail to comply with a requirement imposed on the financial institution under clause 9(3), (5), (9) or (10), or 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 clause 9(3) or (5). Requirements imposed under clause 9 are in relation to routine inspections by a relevant authority. Clauses 13(7) and 13(8) create similar offences in relation to requirements to provide information or produce documents or records imposed on a financial institution for investigation into an offence under the Bill.

93. Dr Hon Margaret NG has expressed concern that the provisions under clauses 10(7), 10(8), 13(7) and 13(8) will apply to an employee regardless of whether the employee possesses the necessary authority to "allow" the financial institution concerned to fail to comply with a relevant requirement or perform a relevant act. Hon James TO has expressed the view that criminal liability should not arise if it is not within an employee's power to stop his colleague from performing certain act even if he is aware that the act could lead to a breach. The members have asked the Administration to clarify these issues with reference to case law.

94. The Administration has explained that the provision of "causes or allows [an institution] to fail to comply" has also been used in section 184(3)(b) of SFO and section 31(3)(c) of the Financial Reporting Council Ordinance (Cap. 588). Clauses 10(7), 10(8), 13(7) and 13(8) of the Bill seek to capture circumstances where the requirement to provide information or produce documents or records is imposed on a financial institution. The financial institution's failure to comply with the requirements imposed by an investigator may be caused by an individual. For example, an investigator may require a financial institution to produce the account opening documentation of a customer for which the relevant authority suspected that the necessary CDD measures have not been completed. If the employee who represents the financial institution in dealing with the relevant authority is the person who has not followed the financial institution's internal procedures to complete the necessary CDD measures, he may claim that the document required had been lost causing the failure to produce the documents. In such circumstance, the person would be guilty of an offence under clause 13(7). The act of the person in such case would otherwise not be caught by clause 13 (1), (3), (5) or (6).

95. The Administration has further advised that, while a direct authority on the meaning of the word "allow" cannot be identified, the word "allow" has

been interpreted in a court judgment[11] as connoting "elements of awareness and capability of control". Depending on the facts and circumstances of the case, if an employee does not have any power to control the provision or otherwise of the information required to be produced by the financial institution concerned, the employee would not be caught by the offences under clauses 10(7), 10(8), 13(7) and 13(8).

96. Hon James TO considers that the judgment quoted by the Administration is not directly relevant to the situations covered by the Bill. To ensure certainty in the interpretation of the word, he suggested that the relevant public officer should, in delivering his speech upon the resumption of the Second Reading debate on the Bill, state expressly the legislative intent that the word "allow" in the relevant provisions (i.e. clauses 10(7), 10(8), 13(7) and 13(8) of the Bill) connotes "elements of awareness and capability of control". The Administration has accepted Mr TO's suggestion.

Specifying the person to be defrauded in the formulation of the offences under clauses 5(6) and (8)

97. The Bills Committee has sought explanation on the circumstances intended to be covered in the provisions for criminal offence with the element of "with intent to defraud" under clauses 5(6) and (8), and has requested the Administration to consider specifying the person(s) to be defrauded in the provisions.

98. The Administration's initial response was that, according to DoJ's advice, "intent to defraud" means an intention to practise a fraud on another person, or an intention to act to the prejudice of another person's right. There is no specification of any particular person(s) to be defrauded under such criminal provision and there is no requirement that economic loss should be caused. A general intent to defraud is sufficient to constitute the mental element of the offence. An example in the context of the Bill is where a frontline staff of a financial institution intentionally omits the verification of a customer's identity to conceal the fact known to him/her that the customer was opening the account under a false identity. In prosecuting an offence under clauses 5(6) and (8), the prosecution needs to prove that the defendant has an "intent to defraud" and has performed the relevant criminal act (i.e. contravening specified provisions or causing or permitting a financial institution to contravene specified provisions).

99. Noting the Administration's response, Hon James TO has expressed the view that the scope of the criminal offence provisions in the Bill should not be too wide and should be framed to confine to offences pertinent to the AML

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[11] The Administration advised at the Bills Committee on 16 May 2011 that the judgment was given by a court in an overseas jurisdiction in a case involving discharge of gas.

measures in the Bill. On this premise, he considers that the provisions should be revised to specify the person(s), such as the financial institution concerned and/or the relevant authority, to be defrauded. The Administration subsequently accepts Mr TO's view, and agrees to move CSAs to clause 5(6) to add "a relevant authority" after "with intent to defraud" and to clause 5(8) to add "the financial institution or a relevant authority" after "with intent to defraud".

Maximum level of fine for the offences provided for under clauses 5(6) and (8)

100. Hon Audrey EU has expressed concern whether the maximum fine of $1 million under clause 5(6) and (8) is proportionate to the severity of the offences, given that the offences involve a mental element of "with intent to defraud". Considering the potential amount of money involved in and profits gained in money laundering activities, Hon James TO and Hon WONG Ting-kwong have suggested that instead of setting the maximum fine under clause 5(6) and (8) at $1 million, the Administration should consider setting the maximum fine as a certain proportion to the possible profits gained by the financial institution or person convicted of an offence under either clause.

101. The Administration has clarified that the act of money laundering is criminalized under OSCO, and the object of the Bill is to provide a legislative framework to implement the preventive measures in accordance with the international anti-money laundering standard. According to DoJ's advice, the seriousness of the offence under clause 5(6) and (8) is reflected in the maximum length of the imprisonment term that can be imposed by the court upon conviction, standing alone or in combination with fine, having regard to the circumstances of the individual case.

102. The Administration has also pointed out that the maximum penalty for the offences under clause 5(6) and (8) is the same as the maximum penalty level for a similar offence under section 151(4) and (6) of SFO. Having considered the proposed penalty level for clauses 5(6) and (8) in light of the relativity of the penalty for offences of similar nature appropriate, the Administration sees no compelling policy ground for modification and believes that the composite penalty of a criminal fine and imprisonment are effective in dealing with the concerned contravention.

Criminal liability for partnerships

103. Clause 5(9) specifies that a fine imposed on a partnership on its conviction of an offence under clause 5 is to be paid out of the funds of the partnership. The Bills Committee has sought clarification on (a) whether the provision would relieve individual partners in a partnership of the liability to pay fines when the funds of the partnership are insufficient to meet the fine payment; and (b) if the relevant principle is already laid down in existing law, whether the provision is indeed necessary.

104. According to the Administration, the advice of DoJ is that under the common law, an unincorporated association such as a partnership cannot be charged in criminal proceedings unless there is an express provision in the statute. As regards the criminal liability of the partnership and/or partners to pay criminal fines, DoJ's advice is that while a case decided in the English Court of Appeal[12] has established that "where a partnership alone is indicted, any fine imposed can only be levied against the assets of the partnership" , there is no relevant case law in Hong Kong. Clause 5(9) seeks to make it clear that apart from individual partners, a partnership may also be prosecuted for an offence under the Bill for failing to observe the obligations set out under the specified provisions, and that any fine imposed on the partnership should be paid out of the funds of the partnership. Under such circumstances, individual partners would not be liable for the criminal fine even in the event that the funds of the partnership are insufficient to cover the criminal fine. Since the principle that any fine imposed on the partnership should be paid out of the partnership funds is not firmly established in Hong Kong case law, the Administration considers that clause 5(9) of the Bill as currently drafted is necessary.

105. With regard to the Administration's explanation, Hon James TO has asked about the reasons for not imposing liability on individual partners for the criminal fine imposed on a partnership. The Administration has advised that should an individual partner of a partnership "who is concerned in the management of the financial institution" possess the requisite mental element in respect of the breach, he/she would be liable under clause 5(7) or (8) of the Bill. The liability is similar to a shareholder controller, director or officer (of a corporation) "who is concerned in the management of the financial institution". The Administration therefore considers it inappropriate to impose additional criminal liability on individual partners in respect of the criminal proceedings taken against partnerships.

Handling of cases where a limited company convicted is unable to pay the criminal fine

106. Mr WONG Ting-kwong has expressed concern that an entity might form a limited company with little capital in order to circumvent the pecuniary liability imposed by the Bill. In this connection, he has asked about the handling of possible cases whereby a financial institution, being a limited company, has been convicted for a breach of the statutory requirements under the Bill but is unable to pay the criminal fine ordered by the Court.

107. The Administration has advised that the handling of such cases is governed by the relevant provisions under the Magistrates Ordinance (Cap. 227),

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[12] R v W. Stevenson & Sons (A Partnership) and Others [2008] 2 Cr. App. R. 14

the District Court Ordinance (Cap. 336) and the High Court Ordinance (Cap. 4). Under section 51 of Cap. 227, a magistrate may issue a warrant of distress for enforcing the payment of a fine. Section 21E of Cap. 4 and section 23 of Cap. 336 allow the Court of First Instance and District Court respectively to enforce a fine imposed in the same manner as a judgment for the payment of money. To enforce the payment of a fine as a judgment debt, the writ of fieri facias or other writ of execution may be issued under sections 21C and 21D of Cap. 4 and sections 68A and 68 of Cap. 336. Under a warrant of distress or a writ of fieri facias, distrained property may be sold to pay the fine handed down.

Criminal offences in respect of the MSO licensing regime

108. The Bills Committee has examined whether the penalty level (i.e. a fine at level 6 and 6-month imprisonment) under clause 29(2) for unlicensed operation of money service business is appropriate. Hon Audrey EU and Hon James TO have expressed concern that the penalty level may be too low.

109. The Administration has advised that the penalty level under clause 29(2) is already higher than the current penalty (a fine at level 5) for unregistered operation under OSCO, with the inclusion of a term of imprisonment. The penalty level under clause 29(2) is also on a par with the penalty levels for unlicensed operation under the Estate Agents Ordinance (Cap. 511) and the Travel Agents Ordinance (Cap. 218). As such, the Administration considers the penalty level under clause 29(2) appropriate which should provide sufficient deterrence against unlicensed MSO operations.

110. The Bills Committee notes that under clause 34(5)(c), CCE in notifying his decision to revoke a license would specify in the notice the time within which the licence is to be surrendered to him. However, the Bill does not provide an offence for failure to return a licence pursuant to the requirement. In response to the Bills Committee's suggestion, the Administration agrees to add a new clause 34(8) to provide for such an offence and the corresponding penalty of a fine capped at level 5.

111. Under clause 50, CCE may make regulations, which will be subsidiary legislation, for the better carrying out of the provisions and purposes of Part 5 of the Bill. The Bills Committee has sought information on the scope of matters to be covered by the regulations and whether breach of the regulations would be subject to regulatory and/or criminal sanctions. The Administration has initially responded that matters to be covered by the regulations to be made under clause 50 would be matters relating to licensing arrangements. An example would be the failure of a licensee to submit a regular report. As such, it was considered appropriate to impose regulatory sanctions, instead of criminal sanctions for failure to comply with the regulations.

112. Hon James TO considers that as regulations to be made under clause 50 will be subsidiary legislation, breach of certain requirements under the regulations may warrant criminal sanctions. He therefore has requested the Administration to reconsider whether breaches of the regulations should be subject to regulatory penalty only, and whether there is a need to include an enabling provision in the Bill such that the future regulations may provide for offences for breach of the regulations.

113. The Administration has subsequently advised that according to DoJ's advice, section 28(1)(e) of the Interpretation and General Clauses Ordinance (Cap,. 1), which is applicable to the regulations to be made under clause 50, provides that "subsidiary legislation may provide that a contravention or breach of the subsidiary legislation is an offence punishable on summary conviction by such fine not exceeding $5000 or by such term of imprisonment not exceeding 6 months as may be specified in the subsidiary legislation or by both such fine and imprisonment." As such, CCE in making the regulations under clause 50 will have the power to provide for an offence for breach of the regulations.

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal (Part 6 and Schedule 4)

Clause 63

114. Clause 63 provides that Part 6 of the Bill and Schedule 4 to the Bill 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. Hon James TO has expressed concern that clause 63 may create an inequitable situation between the party seeking a review and the relevant authority, as it appears that the latter is not subject to the same restriction in its exercise of powers leading to the decision which is the subject of the review.

115. The Administration has advised that clause 63, which was modelled on section 222 of SFO, seeks to preserve a bank's duty of confidentiality towards its customers, as in the case of clause 9(8) of the Bill which was modeled on section 180(9) of SFO. It does not affect any requirement on the AI to disclose information in relation to the affairs of the person making the application for review.

116. The Administration has further advised that while there is no identical restriction as the one provided under clause 63 on a relevant authority in exercising the power of inspection and investigation, there are other safeguards provided under clauses 9 and 12. The information that may be obtained by a relevant authority during an inspection must relate to the business carried on or any transaction carried out by the financial institution and the information that may be obtained during an investigation must relate to the investigation. It is

unlikely that the relevant authority could fulfill the above-mentioned requirements and obtain information from an authorized institution in relation to the affairs of a person that is not related to the one under inspection or investigation. The Administration therefore does not consider that clause 63 would create an inequitable situation in its operation.

Form and proof of orders of Tribunal

117. Clause 66(2) provides that a document purporting to be an order of the Tribunal signed by the chairperson of the Tribunal is presumed to be an order duly made and signed without further proof. The Bills Committee has requested the Administration to explain the rationale for this clause and to provide examples of similar provisions in other legislation.

118. The Administration has advised that the purpose of the provision is to facilitate efficient enforcement of the orders made by the Tribunal, by dispensing with the requirement for the Tribunal to prove that the orders it made have been duly made and signed. For example, to register an order of the Tribunal in the Court of First Instance, it is necessary for the Tribunal to produce the original of the order to the Registrar to the High Court without having to take other additional steps or measures to prove to the Registrar that the order has been duly made and signed. Similar provisions are present in a number of other ordinances, such as sections 225 and 263 of SFO, section 41 of the Deposit Protection Scheme Ordinance (Cap. 581) and section 101D of the Banking Ordinance (Cap 155).

Channels to lodge a complaint against the Tribunal

119. The Bills Committee has sought information on the channels for lodging a complaint against the Tribunal if a party to the review considers that the Tribunal has failed to properly discharge its duties under the Bill.

120. The Administration has advised that if the party to the review is dissatisfied with the determination of the review, he may appeal to the Court of Appeal if leave is granted by the Court of Appeal following the procedures set out in clause 70. A party to the review may lodge an appeal if he considers the determination of the review made by the Tribunal has been affected by the conduct of the chairperson and members of the Tribunal, although the conduct of the chairperson or the member(s) per se is itself not a subject for appeal or judicial review.

121. The Administration has further advised that a party dissatisfied with the conduct of the chairperson or the members may make a complaint to the Secretary for Financial Services and the Treasury who is the authority to appoint the chairperson and members of the Tribunal. Under proposed sections 2 and 3 of Schedule 4, the Secretary is empowered to remove the chairperson or the

panel members from office on grounds of, inter alia, neglect of duty, conflict of interest or misconduct.

Chairman as sole member of the Tribunal

122. Proposed section 9(1) of Schedule 4 allows parties to a review, upon mutual agreement, to choose whether a hearing by the full Tribunal or a Tribunal with the chairperson as the sole member. Proposed section 9(2) of Schedule 4 provides that the chairperson may also determine an application as the sole members of the Tribunal if it is –

(a) an application made to the Tribunal under clause 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 clause 68(2) for a stay of execution of a specified decision.

123. Hon Albert HO has requested the Administration to consider whether the circumstances under which the chairperson may sit as the sole member of the Tribunal should be restricted to cases where only procedural matters are involved or where the contentious issue only involves a question of law. He has also requested the Administration to review whether the arrangement provided under proposed section 9(4) of Schedule 4 that "the chairperson must report to the Tribunal" after making a determination as the sole member of the Tribunal is appropriate.

124. The Administration has advised that since the application of proposed section 9(1) of Schedule 4 requires the consent from both parties to the review, if either one party of the review is of the view that a determination by the chairperson alone is not appropriate or is not in his interest, the person may disagree with such an arrangement. Under such circumstances, section 9(1) will not be applicable. The Administration does not see the benefit of restricting the application of proposed section 9(1) of Schedule 4 and circumscribing the rights of the parties to make use of proposed section 9(1) of Schedule 4.

125. However, the Administration agrees with Hon Albert HO's observation that the requirement for the chairperson to report to the Tribunal the making of the determination etc. under proposed section 9(4) of Schedule 4 in circumstances covered by section 9(1) of Schedule 4 is not necessary. As such, the Administration will move a CSA to remove the reference to subsection (1) under proposed section 9(4) of Schedule 4. On the other hand, as there is a need for the chairperson to keep the other members of the Tribunal informed of his/her decision on the application for a stay of execution of a specified decision under proposed section 9(2)(b), the Administration considers that proposed section 9(4) of Schedule 4 (after removal of the reference to subsection (1))

should be retained.

Notice for resignation under Schedule 4 not to take effect retrospectively

126. In response to Hon Albert HO's suggestion, the Administration will move CSAs to amend proposed sections 3(4)(a) and 4(4)(a) of Schedule 4 to ensure that a notice for resignation given by the chairman and members of the Tribunal cannot take effect retrospectively.

Protection of legal professional privilege

127. Clause 80(1) provides that the Bill does not affect any claims, rights or entitlements that would arise on the ground of legal professional privilege and clause 80(2) states that clause 80(1) "does not affect any requirement under this Ordinance to disclose the name and address of a client of a legal practitioner". The Bills Committee has sought information on whether provisions similar to clause 80(2) are present in other local legislation, and on the possible circumstances under which a legal practitioner would be required under the Bill to disclose the name and address of his/her client.

128. The Administration has advised that clause 80(2) was drafted based on section 380(5) of SFO and section 56(2) of the Financial Reporting Council Ordinance (Cap. 588). Apart from the two Ordinances, a number of other local legislation[13] also contain similar provisions requiring the disclosure of the name and address of a client of a legal practitioner while expressly protecting legal professional privilege. The three Ordinances relevant to anti-money laundering or counter-financing of terrorism, namely OSCO, the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) also provide for the protection of legal professional privilege. Similar to clause 80 of the Bill, section 3(9) of OSCO provides that "a person shall not under this section be required to furnish any information or produce any material relating to items subject to legal privilege, except that a lawyer may be required to furnish the name and address of his client". Section 2(14) of Cap. 405 and section 2(5) of Cap. 575 provide that nothing in that Ordinance shall require the disclosure of any items subject to legal privilege. DoJ has advised that the term "items subject to legal privilege" as defined under section 22(2) of Cap. 405, section 2(1) of OSCO and section 2(1) of Cap. 575 does not cover the name and address of a lawyer's client.

129. The Administration has further explained that the relevant authorities under the Bill may need to obtain the name and address of a client of a lawyer for various purposes, including for example to identify the whereabouts of the client in order to serve information production notices, interview notices and

[13] Extracts of relevant provisions are provided in the Annex to LC Paper CB(1)1236/10-11(03)

summonses. Removing the exception under clause 80(2), which is a commonly found provision under other relevant legislation, may hamper the relevant authorities' enforcement effort.

130. Noting the Administration's explanation, Hon James TO has suggested amending clause 80(2) to refer to the "name and correspondence address", instead of the "name and address", of a client of a legal practitioner. The Administration has responded that restricting the scope of disclosure under clause 80(2) to "correspondence address" which is unprecedented in other legislation may hamper the effective discharge of the relevant authorities' duties. For example, the correspondence address of a client of a lawyer may be a post office box which the relevant authority cannot validly serve a summons. Given the possible adverse impact on the relevant authorities' effective enforcement of the Bill, the Administration does not consider it appropriate to pursue the proposed amendment.

131. In the light of Hon Audrey EU's comments, the Administration will move a CSA to revise clause 80(2) to clarify that there is no specific requirement for the disclosure of the name and address of a client under the Bill.

Committee Stage amendments

132. The Bills Committee agrees to the CSAs to be moved by the Administration. It has not proposed any CSA to the Bill.

Recommendation

133. The Bills Committee supports the resumption of the Second Reading debate on the Bill on 29 June 2011.

Consultation with the House Committee

134. The House Committee was consulted on 17 June 2011 and supported the recommendation of the Bills Committee in paragraph 133.

Council Business Division 1
Legislative Council Secretariat
24 June 2011

Appendix I

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

Membership list

Chairman	Hon CHAN Kam-lam, SBS, JP
Deputy Chairman	Hon James TO Kun-sun
Members	Hon Albert HO Chun-yan Dr Hon David LI Kwok-po, GBM, GBS, JP Dr Hon Margaret NG Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP Dr Hon Philip WONG Yu-hong, GBS Hon Audrey EU Yuet-mee, SC, JP Hon WONG Ting-kwong, BBS, JP Hon CHIM Pui-chung Hon Starry LEE Wai-king, JP (up to 25 May 2011) Hon Paul CHAN Mo-po, MH, JP
Clerk	Ms Anita SIT
Legal Adviser	Miss Kitty CHENG

Appendix II

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

List of organizations which have submitted views to the Bills Committee

[#] 1. Hong Kong Association of Banks

2. The Hong Kong Association of Online Brokers

[@] 3. Hong Kong Institute of Certified Public Accountants

4. Hong Kong Institute of Chartered Secretaries

5. Hong Kong Investment Funds Association

[@] 6. Hong Kong Money Changer and Remittance Association

[@] 7. Hong Kong Securities Professionals Association

[@] 8. The Institute of Securities Dealers Limited

9. Law Society of Hong Kong

@ Deputations from these organizations attended the Bills Committee meeting on 22 December 2011.

Deputation from the organization attended the Bills Committee meeting on 17 February 2011.

Appendix III

List of abbreviations used in the report

AI	authorized institution
AML	anti-money laundering and counter-terrorist financing
AML Ordinance	the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (upon enactment of the Bill)
CCE	Commissioner of Customs and Excise
CDD	customer due diligence
CSA	Committee Stage amendment
DoJ	the Department of Justice
FATF	the Financial Action Task Force
HKAB	the Hong Kong Association of Banks
HKMA	the Hong Kong Monetary Authority
IA	the Insurance Authority
MA	the Monetary Authority
MSO	money service operator
OSCO	the Organized and Serious Crimes Ordinance (Cap. 455)
PEP	politically exposed person
RAMC	remittance agents and money changer
SFC	the Securities and Futures Commission
SFO	the Securities and Futures Ordinance (Cap. 571)
SFST	the Secretary for Financial Services and the Treasury
the Bill	the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill
the Tribunal	the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal
UK	the United Kingdom
US	the United States