

立法會
Legislative Council

LC Paper No. CB(3) 949/10-11

Ref : CB(3)/B/FST/1 (10-11)

Tel : 2869 9550

Date : 24 June 2011

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

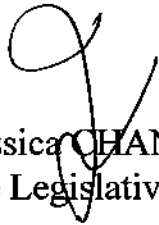
Council meeting of 29 June 2011

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

Committee stage amendments

The Second Reading debate on the above Bill will be resumed at the Council meeting of 29 June 2011. Subject to the Bill receiving a Second Reading, the President has given permission for the Secretary for Financial Services and the Treasury to move amendments to the Bill at its Committee stage.

2. As directed by the President, the amendments are attached for Members' consideration.


(Ms Jessica CHAN)
for Clerk to the Legislative Council

Encl.

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

Committee Stage

Amendments to be moved by the Secretary for
Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
3	By deleting the clause and substituting— “3. Application to Government This Ordinance applies to the Government, except as otherwise expressly provided.”.
5(6)	By adding “any relevant authority” after “with intent to defraud”.
5(8)	By adding “the financial institution or any relevant authority” after “with intent to defraud”.
5	By adding— “(8A) In any proceedings for an offence under subsection (7) against a person who is an employee of a financial institution or is employed to work for a financial institution, it is a defence for the person to prove that he or she acted in accordance with the policies and procedures established and maintained by the financial institution for the purpose of ensuring compliance with the relevant specified

provision.”.

- 5(10) In the definition of *specified provision*, by deleting “(3), (5) or (6)” and substituting “(3) or (5)”.
- 9(4)(a) In the Chinese text, by deleting “限期” and substituting “期限”.
- 9(5)(a) In the Chinese text, by deleting “限期” and substituting “期限”.
- 9 By deleting subclause (8) and substituting—
“(8) This section is not to be construed as requiring a financial institution to disclose any information or produce any record or document relating to the affairs of any of its customers to an authorized person who is appointed by a relevant authority (referred to in this section as *other regulatory authority*) other than the relevant authority in relation to the financial institution, unless the other regulatory authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of this section.”.
- 9(15) In the definition of *business premises*, in paragraph (f), by deleting “carries on business” and substituting “may operate a money service”.
- 12 By deleting subclause (7) and substituting—

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

- (a) the customer is a person whom the investigator has reasonable cause to believe may be able to give information relevant to the investigation; and
- (b) the other regulatory authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of the investigation.”.

18(1) In the Chinese text, by deleting “以可閱讀形式將該項資料或事項或其有關部分” and substituting “將該項資料或事項或其有關部分以可閱讀形式”.

18(2) By deleting “who may” and substituting “who is empowered to”.

21 By adding—

- “(9) The powers specified in subsections (2)(c) and (4) are not exercisable in relation to the

Government.”.

24

By deleting the definition of *ultimate owner* and substituting—

“*ultimate owner* (最終擁有人)—

- (a) in relation to an individual—
 - (i) means another individual who ultimately owns or controls the money service business of the first-mentioned individual; or
 - (ii) if the first-mentioned individual is acting on behalf of another person, means the other person;
- (b) in relation to a partnership, means an individual who—
 - (i) is entitled to or controls, directly or indirectly, not less than a 10% share of the capital or profits of the partnership;
 - (ii) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights in the partnership; or
 - (iii) exercises ultimate control over the management of the partnership; and
- (c) in relation to a corporation, means an individual who—
 - (i) owns or controls, directly or indirectly, including through a trust

or bearer share holding, not less than 10% of the issued share capital of the corporation;

- (ii) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights at general meetings of the corporation; or
- (iii) exercises ultimate control over the management of the corporation.”.

25 By adding “the Government nor to” after “does not apply to”.

27(1) By deleting paragraph (b) and substituting—

“(b) in respect of each licensee—

- (i) if the licensee is licensed to operate a money service at specified premises, the address of every premises at which the licensee may operate a money service; or
- (ii) in any other case, the correspondence address of the licensee.”.

29 By deleting subclause (1) and substituting—

“(1) A person commits an offence if the person operates a money service without a licence.”.

29 By deleting subclause (4).

30(2) By deleting “at the premises specified in the licence”.

30

By deleting subclause (3) and substituting—

“(3) The Commissioner may grant a licence to an applicant only if the Commissioner is satisfied that—

(a) (i) where the applicant is an individual—

(A) the individual is a fit and proper person to operate a money service; and

(B) if there is an ultimate owner in relation to the individual, the ultimate owner is a fit and proper person to be associated with the business of operating a money service;

(ii) where the applicant is a partnership—

(A) each partner in the partnership is a fit and proper person to operate a money service; and

(B) if there is an ultimate owner in relation to the partnership, the ultimate owner is a fit and proper person to be associated with the business of operating a money service; or

(iii) where the applicant is a

corporation—

(A) each director of the corporation is a fit and proper person to be associated with the business of operating a money service; and

(B) if there is an ultimate owner in relation to the corporation, the ultimate owner is a fit and proper person to be associated with the business of operating a money service; and

(b) in relation to an application to operate a money service at any particular premises—

(i) the premises are suitable to be used for the operation of a money service; and

(ii) where the premises are domestic premises, the applicant has secured the written consent of every occupant of the premises for any authorized person as defined by section 8 to enter the premises for the purpose of exercising the powers under section 9.”.

- 30(4)(b) (a) By adding before subparagraph (i)—
“(ia) for an offence in respect of an act that would have constituted an offence specified in paragraph (a)(i), (ii), (iii) or (iv) had it been done in Hong Kong;”.
- (b) In the Chinese text, by deleting “被裁定犯” and substituting “被裁定”.
- (c) In subparagraph (i), in the Chinese text, by adding “犯” before “關乎”.
- (d) In subparagraph (ii), in the Chinese text, by adding “犯” before “任何罪行”.
- 30(9)(b) In the Chinese text, by deleting “申請人” and substituting “持牌人或申請人(視乎情況所需而定)”.
- 33 By deleting paragraph (a) and substituting—
“(a) specify—
(i) in relation to a licence to operate a money service at specified premises, the address of every premises at which the licensee may operate a money service; or
(ii) in any other case, the correspondence address of the licensee;”.
- 34(1) By deleting paragraph (a) and substituting—
“(a) the Commissioner is of the opinion that in relation to a licence—
(i) where the licensee is an individual—
(A) the individual is no longer a fit and

proper person to operate a money service; or

(B) if there is an ultimate owner in relation to the individual, the ultimate owner is no longer a fit and proper person to be associated with the licensee's business of operating a money service;

(ii) where the licensee is a partnership—

(A) any partner in the partnership is no longer a fit and proper person to operate a money service; or

(B) if there is an ultimate owner in relation to the partnership, the ultimate owner is no longer a fit and proper person to be associated with the licensee's business of operating a money service; or

(iii) where the licensee is a corporation—

(A) any director of the corporation is no longer a fit and proper person to be associated with the licensee's business of operating a money service; or

(B) if there is an ultimate owner in relation to the corporation, the ultimate owner is no longer a fit and proper person to be associated with the licensee's business of

operating a money service; or”.

- 34 By adding—
- “(8) If a person whose licence is revoked does not surrender the licence to the Commissioner within the time specified in the notice given to the person under subsection (4), the person commits an offence and is liable on conviction to a fine at level 5.”.
- 36(1) By deleting “In relation to a licensee that is a corporation, a person must not become an ultimate owner of the corporation” and substituting “A person must not become an ultimate owner of a licensee”.
- 38 By deleting subclause (1) and substituting—
- “(1) A licensee who is licensed to operate a money service at premises specified in the licence must not operate a money service at any premises other than those specified premises unless the Commissioner has, on an application of the licensee, added the new premises to the licence.”.
- 38 By adding—
- “(8) A licensee who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.”.
- New By adding—
- “38A. Application to operate at particular premises**

- (1) A licensee who is not required under the licence to operate a money service at particular premises must not operate a money service at any particular premises unless the Commissioner has, on an application of the licensee, added the premises to the licence.
- (2) An application under this section must be made in the form and manner specified by the Commissioner.
- (3) The Commissioner may grant an application under this section on payment of the fee specified in Schedule 3 and may impose any condition that the Commissioner thinks fit.
- (4) The Commissioner may grant an application under this section only if the Commissioner is satisfied that—
 - (a) the premises in respect of which the application is made are suitable to be used for the operation of a money service; and
 - (b) where the premises referred to in paragraph (a) are domestic premises, the licensee has secured the written consent of every occupant of the premises for any authorized person as defined by section 8 to enter the premises for the purpose of exercising the

powers under section 9.

- (5) If the Commissioner refuses to grant an application under this section, the Commissioner must inform the licensee by notice in writing.
- (6) A notice under subsection (5) must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (7) The Commissioner must, as soon as reasonably practicable after granting an application under this section, amend the relevant particulars in the register.
- (8) A licensee who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.”.

40(1)

By deleting “If a licensee intends to cease to operate a money service at the premises or any of the premises specified in the licence with effect from a particular date (*date of cessation*)” and substituting “If a licensee intends to cease to operate a money service or (if applicable) to cease to operate a money service at any of the premises specified in the licence with effect from a particular date (referred to in this section as *date of cessation*)”.

- 42(1)(c) By adding “38(1), 38A(1),” after “37(1),”.
- 45 In the Chinese text, by adding “員” after “獲授權人”.
- 46(2)(c) By deleting “and” at the end.
- 46(2) By deleting paragraph (d) and substituting—
“(d) detain any person found on the premises who appears to the officer to be, or to be likely to be, able to give information relevant to the investigation of the suspected offence until the premises have been searched;”.
- 46(2) By adding—
“(e) if any information or matter contained in a record or document found on the premises is recorded otherwise than in a legible form but is capable of being reproduced in a legible form, require any person—
(i) who appears to the officer to be in charge of the premises; or
(ii) who appears to the officer to be, or to be likely to be, able to produce a reproduction of the recording of the information or matter,
to produce a reproduction of the recording of the information or matter, or the relevant part of the recording, in a legible form; and
(f) if any information or matter contained in a record or document found on the premises is recorded in

an information system, require any person—

- (i) who appears to the officer to be in charge of the premises; or
- (ii) who appears to the officer to be, or to be likely to be, able to produce a reproduction of the recording of the information or matter,

to produce a reproduction of the recording of the information or matter, or the relevant part of the recording, in a form that enables the information or matter to be reproduced in a legible form.”

- 47(1)(b)(iii) In the Chinese text, by deleting “該人員” and substituting “該人”.
- 47(5) By adding “or detention” after “arrest” (wherever appearing).
- 52 By adding “, other than an indictable offence,” after “for an offence”.
- 53
 - (a) In the definition of *specified decision*, in paragraph (d)—
 - (i) in subparagraph (xi), by deleting “or” at the end;
 - (ii) by adding—
 - “(xia) to refuse to grant an application to operate a money service at particular premises under section 38A; or”.
 - (b) In the Chinese text, in the definition of 審裁處, by deleting the full stop and substituting a semicolon.
 - (c) In the Chinese text, in the definition of 覆核申請, by

deleting the semicolon and substituting a full stop.

- 77 In the Chinese text, by adding “乎” after “或(f)段(視”.
- 80(2) (a) By adding “made” after “any requirement”.
 (b) In the Chinese text, by adding “的要求” after “地址”.
- New By adding immediately before clause 87—
“86A. Section 130 amended (Suitability of premises for keeping records or documents)
 Section 130(1), after “under this Ordinance”—
Add
 “or the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (of 2011)”.
- Schedule 1,
 Part 1, section 1 In the definition of *terrorist financing*—
 (a) in paragraph (a), by deleting “or facilitate the commission of any terrorist act” and substituting “one or more terrorist acts”;
 (b) in paragraph (b), by deleting “having reasonable grounds to believe that” and substituting “being reckless as to whether”.
- Schedule 2,
 section 1(1) In the definition of *beneficial owner*—
 (a) by deleting paragraphs (a) and (b) and substituting—
 “(a) in relation to a corporation—
 (i) means an individual who—
 (A) owns or controls, directly or indirectly, including through

a trust or bearer share holding, not less than 10% of the issued share capital of the corporation;

(B) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights at general meetings of the corporation; or

(C) exercises ultimate control over the management of the corporation; or

(ii) if the corporation is acting on behalf of another person, means the other person;

(b) in relation to a partnership—

(i) means an individual who—

(A) is entitled to or controls, directly or indirectly, not less than a 10% share of the capital or profits of the partnership;

(B) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights in the partnership; or

(C) exercises ultimate control over the management of the partnership; or

- (b) In subsection (1)(b), by adding “, subject to subsection (2),” after “identifying the beneficial owner and”.
- (c) In subsection (1)(c), in the Chinese text, by deleting “金融”.
- (d) In subsection (1)(d)(i), by deleting “verifying” and substituting “taking reasonable measures to verify”.
- (e) By adding—
 - “(2) Except where a situation referred to in section 15 of this Schedule exists, if an individual is a beneficial owner of a customer by virtue of paragraph (a)(i)(A) or (B), (b)(i)(A) or (B) or (c)(i) of the definition of *beneficial owner* in section 1(1) of this Schedule, the financial institution is not required to verify the identity of the individual unless—
 - (a) for an individual falling within paragraph (a)(i)(A) of that definition, the individual owns or controls, directly or indirectly, including through a trust or bearer share holding, not less than 25% of the issued share capital of the relevant corporation;
 - (b) for an individual falling within paragraph (a)(i)(B) of that definition, the individual is, directly or indirectly, entitled to exercise or control the exercise of not less than 25% of the voting rights at general meetings of the relevant corporation;
 - (c) for an individual falling within paragraph (b)(i)(A) of that definition, the individual is entitled to or controls, directly or

indirectly, not less than a 25% share of the capital or profits of the relevant partnership;

- (d) for an individual falling within paragraph (b)(i)(B) of that definition, the individual is, directly or indirectly, entitled to exercise or control the exercise of not less than 25% of the voting rights in the relevant partnership; or
- (e) for an individual falling within paragraph (c)(i) of that definition, the individual is entitled to a vested interest in not less than 25% of the capital of the relevant trust property, whether the interest is in possession or in remainder or reversion and whether it is defeasible or not.”.

Schedule 2,
section 3

By deleting subsection (5).

Schedule 2,
section 4(1)

By deleting “section 2(a)” and substituting “section 2(1)(a)”.

Schedule 2,
section 4

By adding—

“(1A) If a customer of a financial institution not falling within subsection (2) has in its beneficial ownership chain an entity that falls within that subsection, the financial institution is not required, when carrying out the measure set out in section 2(1)(b) of this Schedule in respect of the beneficial owners in that chain in any of the circumstances set out in section 3(1)(a), (b) and

(c) of this Schedule, to identify, or verify the identities of, the beneficial owners of that entity or of any person in that chain beyond that entity.”.

Schedule 2,
section 4(3)

By deleting “section 2(a)” and substituting “section 2(1)(a)”.

Schedule 2,
section 4(4)(b)

By deleting “pension scheme” and substituting “provident, pension, retirement or superannuation scheme (however described)”.

Schedule 2,
section 4

By deleting subsection (5).

Schedule 2,
section 4(6)

By deleting “section 2(b)” and substituting “section 2(1)(b)”.

Schedule 2,
section 6(1)

- (a) In paragraph (a)(ii), by adding “or” at the end.
- (b) By deleting paragraph (b).

Schedule 2,
section 9

- (a) In paragraph (a), by deleting “section 2(a)” and substituting “section 2(1)(a)”.
- (b) In paragraph (b), by deleting “, including obtaining from appropriate persons or authorities certificates certifying that the documents provided by the customer are true copies of the originals”.

Schedule 2,
section 10(1)(b)

By deleting “adequate” and substituting “reasonable”.

Schedule 2,
section 10(2)(b)

By deleting “adequate” and substituting “reasonable”.

Schedule 2,
section 12(3)(b)

In the Chinese text, by deleting “金融”.

Schedule 2,
section 12(4)

- (a) In paragraph (b), in the Chinese text, by adding “主管” after “其他有關”.
- (b) In paragraph (c), in the Chinese text, by adding “主管” after “其他有關”.

Schedule 2,
section 12

By deleting subsection (9) and substituting—

“(9) Where a financial institution is a beneficiary institution in a domestic wire transfer—

- (a) if the wire transfer is not accompanied by the information required under subsection (3)(b), it must as soon as reasonably practicable—
 - (i) obtain the information from the institution from which it receives the transfer instruction; and
 - (ii) if the information cannot be obtained, either—
 - (A) consider restricting or terminating its business relationship with the institution referred to in subparagraph (i); or
 - (B) take reasonable measures to mitigate the risk of money laundering or terrorist financing involved; or
- (b) if the financial institution is aware that the accompanying information that purports

to be the information required under subsection (3)(b) is incomplete or meaningless, it must as soon as reasonably practicable take reasonable measures to mitigate the risk of money laundering or terrorist financing involved.”.

Schedule 2,
section 12

By deleting subsection (10) and substituting—

“(10) Where a financial institution is a beneficiary institution in a wire transfer that is not a domestic wire transfer—

(a) if the wire transfer is not accompanied by all of the information required under subsection (3), it must as soon as reasonably practicable—

(i) obtain the missing information from the institution from which it receives the transfer instruction; and

(ii) if the missing information cannot be obtained, either—

(A) consider restricting or terminating its business relationship with the institution referred to in subparagraph (i); or

(B) take reasonable measures to mitigate the risk of money laundering or terrorist financing involved; or

- (b) if the financial institution is aware that any of the accompanying information that purports to be the information required under subsection (3) is incomplete or meaningless, it must as soon as reasonably practicable take reasonable measures to mitigate the risk of money laundering or terrorist financing involved.”.

Schedule 2,
section 13(3)

By deleting the definition of *remittance transaction* and substituting—

“*remittance transaction* (匯款交易) means a transaction for sending, or arranging for the sending of, money to a place outside Hong Kong.”.

Schedule 2,
section 14(1)

In the Chinese text, by adding “服務” after “建立代理銀行”.

Schedule 2,
section 14(2)

In the Chinese text, by adding “服務” after “建立代理銀行”.

Schedule 2,
section 15

By deleting paragraphs (a) and (b) and substituting—

“(a) where a business relationship is to be established—

- (i) obtain approval from its senior management to establish the business relationship; and

(ii) either—

- (A) take reasonable measures to establish the relevant customer’s or

beneficial owner's source of wealth and the source of the funds that will be involved in the business relationship; or

(B) take additional measures to mitigate the risk of money laundering or terrorist financing involved;

(b) where a business relationship has been established—

(i) obtain approval from its senior management to continue the business relationship;

(ii) if there is a beneficial owner in relation to the relevant customer, take reasonable measures to verify the beneficial owner's identity so that the financial institution is satisfied that it knows who the beneficial owner is; and

(iii) either—

(A) take reasonable measures to establish the relevant customer's or beneficial owner's source of wealth and the source of the funds that are involved in the business relationship; or

(B) take additional measures to mitigate the risk of money laundering or terrorist financing involved; or

(c) where an occasional transaction is to be carried

out, take additional measures to mitigate the risk of money laundering or terrorist financing involved.”.

Schedule 2,
section 17

In the Chinese text, in the heading, by adding “服務” after “代理銀行”.

Schedule 2,
section 17(1)

In the Chinese text, by adding “服務” after “代理銀行”.

Schedule 2,
section 17(2)

- (a) By adding “and (d)(iii)” after “subsection (1)(c)”.
- (b) By adding “or jurisdiction” after “place” (wherever appearing).
- (c) In the Chinese text, by adding “即屬” after “某法團”.

Schedule 2,
section 18(3)(a)

- (a) In subparagraph (ii), by deleting “(practising)”.
- (b) In subparagraph (iii), by deleting “who is practising as a Chartered Secretary” and substituting “practising”.

Schedule 2,
section 18

By deleting subsection (4) and substituting—

- “(4) A financial institution that carries out a customer due diligence measure by means of an intermediary must—
 - (a) immediately after the intermediary has carried out that measure, obtain from the intermediary the data or information that the intermediary has obtained in the course of carrying out that measure, but nothing in this paragraph requires the financial institution to obtain at the same time from the intermediary a copy of any

document, or a record of any data or information, that is obtained by the intermediary in the course of carrying out that measure; and

- (b) ensure that the intermediary will, if requested by the financial institution within the period referred to in section 20(2) or (3) of this Schedule, as the case requires, provide to the financial institution a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out that measure as soon as reasonably practicable after receiving the request.”.

Schedule 2,
section 18(7)

In the definition of *certified public accountant (practising)*, by deleting “*certified public accountant (practising)* (執業會計師)” and substituting “*certified public accountant* (會計師)”.

Schedule 2,
section 19

By deleting subsection (2) and substituting—

- “(2) A financial institution that carries out wire transfers must establish and maintain effective procedures for identifying and handling wire transfers in relation to which section 12(5) of this Schedule has not been complied with.”.

Schedule 2,
section 20(4)

In the Chinese text, by adding “(視乎情況所需而定)” after “(3)款”.

- Schedule 2,
section 20
- By deleting subsection (6).
- Schedule 2,
section 22
- (a) In the heading, by deleting “**subsidiaries**” and substituting “**subsidiary undertakings**”.
- (b) In subsection (1)(b), by deleting “the financial institution” and substituting “a financial institution”.
- (c) In subsection (2), in the Chinese text, by deleting “該金融機構” and substituting “該機構”.
- (d) In subsection (3), in the Chinese text, in the definition of 分行, by deleting “機構所經營的業務” and substituting “機構所經營”.
- Schedule 3
- By deleting “38 & 49]” and substituting “38, 38A & 49]”.
- Schedule 3
- In item 3, in the Chinese text, by deleting “複本”.
- Schedule 3
- By adding—
- | | |
|-------------------------------------|------------|
| “10. Application to operate a money | 2,220 |
| service at particular premises | for each |
| | business |
| | premises”. |
- Schedule 4,
section 3
- By deleting subsection (4) and substituting—
- “(4) A notice of resignation takes effect—
- (a) on the date the Secretary receives the notice; or
- (b) if a later date is specified in the notice, on that later date.”.

Schedule 4,
section 4

By deleting subsection (4) and substituting—

“(4) A notice of resignation takes effect—

- (a) on the date the Secretary receives the notice; or
- (b) if a later date is specified in the notice, on that later date.”.

Schedule 4,
section 9(4)

By deleting “(1) or”.