

**Nature and scrutiny procedure of notices/regulations and guidelines
to be made or published under the
Anti-Money Laundering and Counter-Terrorist
Financing (Financial Institutions) Bill**

Clauses under which notices, regulations or guidelines are made or published	Subsidiary Legislation	Scrutiny Procedure
<p><u>Clause 1(2)</u> Subject to subsection (4), this Ordinance, except this section, comes into operation on 1 April 2012.</p> <p><u>Clause 1(4)</u> The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend the date specified in subsection (2).</p>	✓	Subject to LegCo's scrutiny under section 34 of Cap. 1
<p><u>Clause 2(2)</u> The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Part 2 of Schedule 1¹.</p>	✓	Subject to LegCo's scrutiny under section 34 of Cap. 1
<p><u>Clause 6</u> The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Schedule 2².</p>	✓	Subject to LegCo's scrutiny under section 34 of Cap. 1

¹ Part 2 of Schedule 1 provides for the interpretation of "appointed insurance agent", "authorized institution", "authorized insurance broker", "authorized insurer", "Commissioner", "financial institution", "Insurance Authority", "licensed corporation", "licensed money service operator", "Monetary Authority", "Postmaster General", "relevant authority" and "Securities and Futures Commission".

² Schedule 2 provides for the requirements relating to customer due diligence and record-keeping.

Clauses under which notices, regulations or guidelines are made or published	Subsidiary Legislation	Scrutiny Procedure
<p><u>Clause 7(1)</u> A relevant authority³ may publish in the Gazette any guideline that it considers appropriate for providing guidance in relation to the operation of any provision of Schedule 2⁴.</p>	<p style="text-align: center;">x (Administrative guidelines)⁵</p>	<p>Subject to LegCo's general scrutiny but not amendment</p>
<p><u>Clause 23(1)</u> A relevant authority must, before it first exercises its power to impose a pecuniary penalty referred to in section 21(2)(c), publish in the Gazette and in any other manner that it considers appropriate, guidelines to indicate the manner in which it proposes to exercise that power.</p>	<p style="text-align: center;">x (Administrative guidelines)⁵</p>	<p>Subject to LegCo's general scrutiny but not amendment</p>
<p><u>Clause 44(1)</u> The Commissioner must, before he or she first exercises the power to impose a pecuniary penalty referred to in section 42(2)(c), publish in the Gazette and in any other manner that the Commissioner considers appropriate, guidelines to indicate the manner in which the Commissioner proposes to exercise that power.</p>	<p style="text-align: center;">x (Administrative guidelines)⁵</p>	<p>Subject to LegCo's general scrutiny but not amendment</p>

³ Under Part 2 of Schedule 1 to the Bill, "relevant authority" -

- (a) in relation to an authorized institution, means the Monetary Authority;
- (b) in relation to a licensed corporation, means the Securities and Futures Commission
- (c) in relation to an authorized insurer, appointed insurance agent or authorized insurance broker, means the Insurance Authority; and
- (d) in relation to a licensed money service operator or to the Postmaster General, means the Commissioner ("Commissioner", under Part 2 of Schedule 1, means the Commissioner of Customs and Excise, any Deputy Commissioner of Customs and Excise, any Assistant Commissioner of Customs and Excise or a person to whom the Commissioner of Customs and Excise has delegated any of his or her functions under clause 26 of the Bill).

⁴ Schedule 2 provides for the requirements relating to customer due diligence and record-keeping.

⁵ There are express provisions in the Bill providing that guidelines published under clauses 7(1), 23(1) and 44(1) are not subsidiary legislation (see clauses 7(6), 23(3) and 44(3)).

Clauses under which notices, regulations or guidelines are made or published	Subsidiary Legislation	Scrutiny Procedure
<p><u>Clause 49</u> The Commissioner may, by notice published in the Gazette, amend Schedule 3⁶.</p>	✓	Subject to LegCo's scrutiny under section 34 of Cap. 1
<p><u>Clause 50</u> The Commissioner of Customs and Excise may make regulations for the better carrying out of the provisions and purposes of this Part⁷.</p>	✓	Subject to LegCo's scrutiny under section 34 of Cap. 1
<p><u>Clause 57(2)</u> The Secretary may, by notice published in the Gazette, amend Schedule 4⁸.</p>	✓	Subject to LegCo's scrutiny under section 34 of Cap. 1
<p><u>Clause 75</u> The Chief Justice may make rules -</p> <ul style="list-style-type: none"> (a) providing for matters relating to the registration of an order of the Tribunal in the Court of First Instance under section 67(1); or (b) regulating the procedure for the hearing of appeals under section 70. 	✓	Subject to LegCo's scrutiny under section 34 of Cap. 1

⁶ Schedule 3 provides for the various fees payable under the Bill.

⁷ "This Part" refers to Part 5 of the Bill which provides for the regulation of operation of money service.

⁸ Schedule 4 contains provisions relating to Anti-money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal (the Tribunal).

Clauses under which notices, regulations or guidelines are made or published	Subsidiary Legislation	Scrutiny Procedure
<p><u>Clause 76</u></p> <p>(1) The Chief Executive in Council may make regulations for the better carrying out of the provisions and purposes of this Ordinance (except Part 5⁹).</p> <p>(2) Without limiting subsection (1), the regulations may include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any principal legislation or provisions of any subsidiary legislation).</p>	✓	Subject to LegCo's scrutiny under section 34 of Cap. 1

⁹ Part 5 of the Bill provides for the regulation of operation of money service.