

LEGISLATIVE COUNCIL BRIEF

Banking Ordinance
(Chapter 155)

BANKING (AMENDMENT) BILL 2025

INTRODUCTION

A At the meeting of the Executive Council on 25 March 2025, the Council **ADVISED** and the Acting Chief Executive **ORDERED** that the Banking (Amendment) Bill 2025 (the Bill) at **Annex A** should be introduced into the Legislative Council (LegCo) to amend the Banking Ordinance (Cap. 155) (BO), with a view to facilitating information sharing among authorized institutions (AIs).

JUSTIFICATIONS

Increase in fraud and other financial crime

2. There has been a marked increase in fraud and the associated money laundering since the COVID-19 pandemic. The prevalent use and convenience of online banking and payment services have been exploited by criminals to deceive victims to hand over money, and to move and conceal illicit funds. This is a global problem, and Hong Kong is no exception. In 2024, 44 480 fraud cases were reported to the Hong Kong Police Force (HKPF) (i.e. more than double of less than 20 000 cases in 2021), involving an aggregate loss of \$9.15 billion. Victims often suffer significant hardship and stress¹.

¹ For example, a woman in her 90s had fallen victim to a scam and lost her life savings of more than \$400,000, and committed suicide in November 2022. More recently, a Mainland student in Hong Kong was deceived \$9.2 million by scammers. Both cases involve fund transfer from the victims' accounts to the fraudsters' accounts through the banking system.

Information gap impeding combat of fraud

3. The Hong Kong Monetary Authority (HKMA), the HKPF and the banking sector have put in place measures to combat fraud and the associated money laundering activities². Nevertheless, an information gap among AIs remains, and is being exploited by criminals to rapidly move and conceal illicit funds through the banking system. For example, when an AI has detected and taken action against an illicit activity, the criminals would often be able to carry on their illicit activities in mule accounts opened in other AIs. The first AI is unable to alert other AIs under the prevailing mechanism, owing to contractual and common law confidentiality obligations and statutory data privacy requirements. The information gap should be plugged as soon as possible.

4. Seeking to narrow the information gap, the HKPF, the HKMA and the Hong Kong Association of Banks (HKAB) jointly launched the Financial Intelligence Evaluation Sharing Tool (FINEST) in 2023. While FINEST allows rapid exchange of information among participating AIs (i.e. ten retail banks at present), it is only applicable to corporate accounts owing to confidentiality and data privacy concerns, when 90% of mule accounts used in fraud-related money laundering activities are actually individual accounts. We see the need to expand AI-to-AI information sharing to cover individual accounts.

Proposed mechanism of AI-to-AI information sharing

5. The proposed mechanism to be effected through the Bill will further narrow the information gap abovementioned. It will provide a “safe harbour” for AIs to share with each other information of both corporate and individual accounts on a voluntary basis, when AIs become aware of suspected prohibited conduct (i.e. money laundering³, terrorist financing or financing of proliferation of weapons of mass destruction). The proposed mechanism has the following key features –

- (a) The information to be disclosed under the voluntary mechanism includes that related to an AI’s customer who may be related to

² For instance, the HKPF has been running the Fraud and Money Laundering Intelligence Taskforce and the Anti-Deception Coordination Centre since 2017, with the support of the HKMA and the participation of 28 retail banks at present. Public-private joint campaigns have also been launched to enhance public awareness.

³ Fraud is one of the predicate offences of money laundering.

any prohibited conduct, and an entity, account or transaction associated with that customer⁴.

- (b) An AI may request another AI to disclose information to assist it in conducting an inquiry for detecting or preventing any prohibited conduct. An AI may disclose information to the requesting AI in response to such a request, or disclose information on its own initiative to another AI and the Joint Financial Intelligence Unit (JFIU), comprising staff from the HKPF and the Customs and Excise Department, to alert the recipient AI of suspected crime. The information may be disclosed on a bilateral or one-to-many basis through FINEST or other secure platforms to be designated by the HKMA. Where an AI has reasonable grounds to believe that obtaining the consent of the entity to which the information relates would risk prejudicing the conduct of inquiries for the detection or prevention of prohibited conduct, the information may be disclosed without obtaining the consent of the relevant entity.
- (c) AIs will be protected from prosecution or civil action for disclosing or using information under the mechanism (i.e. providing a “safe harbour” for AIs), provided that the AIs that made the disclosure acted in good faith and with reasonable care and comply with specified confidentiality requirements. Where (i) a disclosure of information is required or permitted by law or is ordered by a court; or (ii) a use of information is for detecting or preventing prohibited conduct, such disclosure or use does not constitute a breach of obligation of confidence owed by the AIs. AIs must put in place adequate systems and controls satisfactory to the HKMA. The “safe harbour” will encourage reasonable information sharing among AIs by offering legal protection to AIs, while striking an appropriate balance between detecting and preventing illicit activities and safeguarding data privacy and confidentiality. The HKMA will issue guidelines to facilitate AIs’ compliance.

6. We envisage that the proposed information sharing mechanism

⁴ Examples include: (i) bank account numbers; (ii) personal data (e.g. name, date of birth, Hong Kong Identify Card number) of the concerned customers and the counterparties, beneficial owners or connected parties of the customers; (iii) details of relevant transactions (e.g. the counterparties); and (iv) reasons why the transactions or activities may be involved in a prohibited conduct.

will enable earlier interception of illicit funds by AIs and the relevant law enforcement agencies (LEAs), and expedite intelligence gathering by the LEAs. In addition, the proposed mechanism will complement the existing suspicious transaction reporting regime under the Organized and Serious Crimes Ordinance (Cap. 455)⁵ (OSCO), by enhancing the quality of the suspicious transaction reports filed by AIs with the benefits of more comprehensive information.

7. Despite its voluntary nature, we expect that AIs will actively participate in the proposed information sharing mechanism. The banking sector is concerned about fraud. Participation in the proposed information sharing mechanism will help AIs mitigate the negative impacts of fraud on their customers. For reference, FINEST, the participation in which is also voluntary, is currently participated by ten retail banks accounting for around 75% of all accounts.

International practice

8. The Financial Action Task Force (FATF)⁶ advocates effective information sharing as part of a well-functioning anti-money laundering and counter-financing of terrorism framework. Timely exchange of information is a key element of the FATF standards. The United States, the United Kingdom and Singapore have introduced legislation permitting financial institutions and other regulated entities to share information to help detect and prevent crime. The proposed mechanism is in line with FATF's guidance, and is largely comparable with the legislation of the aforementioned advanced economies.

Considerations on personal data privacy

9. When formulating the Bill, we have taken into account personal data privacy, which should be balanced with the need to protect customers of AIs from fraud and the banking system from being exploited by criminals. The Bill stipulates that AIs can only disclose or use relevant information for detecting or preventing prohibited conduct, and the information will only be disclosed via secure channels. If an AI fails to comply with the conditions

⁵ Under the relevant provisions in OSCO and similar provisions in the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575), AIs are required to report to the LEAs any suspected dealing in proceeds of crime.

⁶ FATF is the international anti-money laundering and counter-financing of terrorism standard setting body. Hong Kong has been a FATF member since 1991 in the capacity of Hong Kong, China.

specified in the Bill⁷, the AI will not be covered by the protection of the “safe harbour”. The HKMA may also revoke its approval for the AI concerned to participate in the information sharing mechanism, or take other supervisory actions.

10. We have consulted the Office of the Privacy Commissioner for Personal Data (PCPD) from the perspective of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO). The PCPD’s comments have been incorporated in the Bill.

OTHER OPTIONS

11. Relying on the existing exemption for prevention or detection of crime⁸ as provided for under the PDPO is not feasible as it would not give AIs any protection from the confidentiality obligations imposed by any contract, enactment other than the PDPO, rule of conduct or other provisions. Seeking a customer’s consent before an AI discloses the customer’s information is also not feasible, as a person involved in criminal activities would surely not give consent and this would even run the risk of tipping off the criminals.

12. Having explored the options above, we consider that amendments to the BO are necessary to implement the proposed information sharing mechanism through legislative means.

THE BILL

13. The main provisions of the Bill are set out below –

(a) **clause 1** sets out the short title and provides for commencement⁹;

(b) **clause 4 adds a new Part XIIAA to the BO, which contains the following provisions –**

⁷ Including, among others, the confidentiality requirements and the need to act in good faith and with reasonable care.

⁸ Section 58(2) of the PDPO.

⁹ It is proposed that the Amendment Ordinance enacted on the basis of the Bill will come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette. Between the enactment and commencement of the Amendment Ordinance, the HKMA will prepare for the implementation of the new provisions, including the preparation of guidelines.

- (i) **section 68AA** defines certain expressions used in the Part;
- (ii) **section 68AAB** provides that an AI may request information from another AI in certain circumstances;
- (iii) **section 68AAC** provides that an AI may disclose information to another AI in response to a request under section 68AAB, or on the AI's own initiative in certain circumstances, to assist in detecting or preventing prohibited conduct;
- (iv) **section 68AAD** provides for onward disclosure of information to other AIs, where this may assist in detecting or preventing prohibited conduct;
- (v) **section 68AAE** sets out the requirements of correcting inaccurate information when the disclosing AI becomes aware of such;
- (vi) **section 68AAF** sets out the confidentiality requirements for AIs that disclose or otherwise use information;
- (vii) **section 68AAG** provides for a "safe harbour" for AIs' disclosure or use of information if the specified conditions are met;
- (viii) **section 68AAH** provides that the HKMA may approve an AI to access a platform designated for the mechanism provided that the AI has adequate systems and controls;
- (ix) **section 68AAI** provides for AIs' duty to keep relevant records and information;
- (x) **section 68AAJ** provides for access to information by a JFIU officer or an operator of a designated platform;
- (xi) **section 68AAK** provides that an AI, the Monetary Authority, a JFIU officer or an operator of a designated platform is entitled not to comply with a data access request in relation to information disclosed under the mechanism;

- (xii) **section 68AAL** empowers the Monetary Authority to issue guidelines and give directions in relation to information sharing among AIs; and
- (xiii) **section 68AAM** provides for the Monetary Authority's power to designate platforms for information sharing among AIs.

B 14. The existing provisions being amended are at **Annex B**.

LEGISLATIVE TIMETABLE

15. The legislative timetable is as follows -

Publication in the Gazette	28 March 2025
First Reading and commencement of Second Reading debate	2 April 2025
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

16. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the BO. It has no productivity, environmental, family and gender implications.

Civil Service and Financial Implications

17. The HKPF currently operates the FINEST, which will require expansion to its current capacity. Any additional resource requirement so arising will be absorbed by the HKPF. The HKMA will absorb any additional resource requirements in dealing with applications from AIs to participate in the mechanism and in preparing necessary guidelines.

Economic and Sustainability Implications

18. The proposal will be conducive to detecting financial crime, thereby safeguarding Hong Kong's banking system from being exploited for prohibited conduct and enhancing Hong Kong's status as an international financial centre. Apart from the aforementioned implications, there are no other sustainability implications.

PUBLIC CONSULTATION

19. The HKMA conducted a public consultation (covering the banking sector) on the proposed mechanism from January to March 2024. The HKAB and the PCPD have also been consulted on the detailed proposals of the Bill. Separately, the LegCo Panel on Financial Affairs was briefed on the proposal on 7 October 2024. Members were generally supportive and urged that the proposal be implemented quickly in view of the continuing increase in fraud cases.

PUBLICITY

20. We will issue a press release on the gazettal of the Bill, and will arrange a spokesperson to answer media enquiries.

BACKGROUND

21. In recent years, there has been a sharp increase in financial crime, especially fraud, around the world, including in Hong Kong, leading to increased concern in society. Apart from inflicting losses on victims, such crime also affects consumer confidence in digital financial services and imposes potential impacts on the stability and integrity of the banking system.

22. Despite the concerted efforts of the HKMA, the HKPF and the banking sector, we consider that more initiatives should be put in place to better address the issue of fraud and money laundering via networks of accounts maintained by criminals. One of such initiatives is the expansion of FINEST to include personal account information, and this is expected to greatly enhance FINEST's ability to prevent and detect crime.

ENQUIRIES

23. Enquiries relating to the brief can be directed to Mr Timothy Wong, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2067, or Mr Trevor Keen, Consultant (Anti-Money Laundering) of the Hong Kong Monetary Authority, at 2878 1128.

Financial Services and the Treasury Bureau
26 March 2025

A BILL TO

Amend the Banking Ordinance to introduce a voluntary mechanism for authorized institutions to request or disclose information for the detection or prevention of crimes; to make safe harbour provisions for authorized institutions disclosing information under the mechanism or using information so disclosed by other authorized institutions; to provide for related matters; and to make related amendments.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Banking (Amendment) Ordinance 2025.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

2. Banking Ordinance amended

The Banking Ordinance (Cap. 155) is amended as set out in sections 3 and 4.

3. Long title amended

The long title, after “brokers;”—

Add

“to make safe harbour provisions for authorized institutions disclosing or using information for detecting or preventing crimes;”.

4. Part XIIAA added

After Part XII—

Add

“Part XIIAA

Sharing of Information among Authorized Institutions

Division 1—Interpretation

68AA. Interpretation of Part XIIAA

In this Part—

business relationship (業務關係), as between an entity and an authorized institution, means a business, professional or commercial relationship that—

- (a) has an element of duration; or
- (b) at the time the entity first contacts the authorized institution in the entity’s capacity as a potential customer of the authorized institution, the authorized institution expects to have an element of duration;

Cap. 615 (《第 615 章》) means the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615);

dealing (處理), in relation to any property, includes—

- (a) receiving or acquiring the property;

- (b) concealing or disguising the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
- (c) disposing of or converting the property;
- (d) bringing into or removing from Hong Kong the property; and
- (e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise);

designated platform (指定平台) means a platform designated by the Monetary Authority under section 68AAM(1);

designated platform operator (指定平台營運者), in relation to a designated platform, means the operator of the designated platform identified in a notice published under section 68AAM(1);

entity (實體) means a natural person, a body of persons (incorporated or unincorporated) or a legal arrangement, and includes—

- (a) a corporation;
- (b) a partnership; and
- (c) a trust;

information (資料) includes data, text, images, videos, sound codes and any combination of them;

JFIU officer (聯合財富情報組人員) means a public officer who is a member of the Joint Financial Intelligence Unit established and operated jointly by the Hong Kong Police Force and the Customs and Excise Department;

money laundering (洗錢)—

- (a) means dealing with any property that is the proceeds of—
 - (i) an indictable offence; or
 - (ii) any conduct that would constitute an indictable offence if it had occurred in Hong Kong; and
- (b) includes money laundering as defined by section 1 of Part 1 of Schedule 1 to Cap. 615;

occasional transaction (非經常交易) means a transaction between an authorized institution and an entity that does not have a business relationship with the authorized institution;

platform (平台) includes an electronic system and any other mechanism;

prohibited conduct (受禁行為) means—

- (a) money laundering;
- (b) terrorist financing as defined by section 1 of Part 1 of Schedule 1 to Cap. 615; or
- (c) financing of proliferation of weapons of mass destruction as defined by section 2(1) of the Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526);

relevant entity (相關實體), in relation to an authorized institution, means—

- (a) an entity with which the authorized institution maintains or has maintained a business relationship; or
- (b) an entity for which the authorized institution has conducted or has been requested to conduct an occasional transaction.

Division 2—Safe Harbour for Sharing of Information

68AAB. Request for information from other authorized institutions

- (1) An authorized institution (*institution A*) may in the circumstances specified in subsection (2) request from another authorized institution (*institution B*)—

- (a) information that relates to—

- (i) a relevant entity of institution A (*entity A*); or
- (ii) an entity (*associated entity A*), account or transaction associated with—

(A) entity A; or

(B) an occasional transaction that institution A has conducted or has been requested to conduct for entity A; or

- (b) information that relates to—

- (i) an entity that institution A has reasonable grounds to believe is a relevant entity of institution B (*entity B*); or
- (ii) an entity (*associated entity B*), account or transaction associated with—

(A) entity B; or

(B) an occasional transaction that institution B has conducted or may have conducted for entity B,

without having to obtain the consent of entity A, entity B, associated entity A, associated entity B or any other entity associated with the account or transaction.

- (2) The circumstances are that—

- (a) institution A becomes aware of one or more activities—

(i) by entity A, entity B, associated entity A or associated entity B; or

(ii) in relation to the account or transaction associated with entity A or entity B or associated with an occasional transaction referred to in subsection (1)(a)(ii)(B) or (b)(ii)(B) (*associated account or transaction*),

that in the opinion of institution A warrant inquiries by institution A for assessing whether the entity or associated account or transaction may be, or may have been, involved in or associated with any prohibited conduct;

- (b) institution A knows that institution B has, or has reasonable grounds to believe that institution B is likely to have, information relating to the entity or associated account or transaction that may assist institution A in its inquiries for detecting or preventing any prohibited conduct; and

- (c) institution A has reasonable grounds to believe that seeking the consent referred to in subsection (1) would risk prejudicing institution A's conduct of the inquiries referred to in paragraph (b).

- (3) Institution A may, in a request under subsection (1), disclose any information to institution B without having to obtain the consent of any entity to which the information relates, if institution A has reasonable grounds to believe that—

- (a) the information—

(i) is relevant to the request; and

- (ii) may assist institution B to respond to the request; and
 - (b) seeking the consent would risk prejudicing institution A's conduct of the inquiries referred to in subsection (2)(b).
- (4) A request under subsection (1)—
 - (a) may only be made on a designated platform, except with the Monetary Authority's prior written approval for the request to be otherwise made; or
 - (b) if the Monetary Authority has given prior written approval for the request to be made otherwise than on a designated platform—may only be made in compliance with any condition that the Monetary Authority imposes on the approval.
- (5) A request under subsection (1) must—
 - (a) state that it is made under subsection (1);
 - (b) identify—
 - (i) the entity, account or transaction that is the subject of the request; and
 - (ii) the information that is disclosed for the purposes of this Part; and
 - (c) state the grounds for institution A to believe that the information requested may assist institution A in its inquiries referred to in subsection (2)(b).

68AAC. Disclosure of information to other authorized institutions

- (1) In response to a request from an authorized institution (*requesting institution*) under section 68AAB(1), the authorized institution to which the request is made (*requested institution*) may in the circumstances

- specified in subsection (2) disclose to the requesting institution—
 - (a) any information that relates to an entity, account or transaction identified in the request; or
 - (b) subject to subsection (3), any information that relates to an entity, account or transaction not identified in the request,
 without having to obtain the consent of any entity to which the information relates.
- (2) The circumstances are that the requested institution has reasonable grounds to believe that—
 - (a) the disclosure may assist the requesting institution in its inquiries referred to in section 68AAB(2)(b); and
 - (b) seeking the consent referred to in subsection (1) would risk prejudicing the requesting institution's conduct of the inquiries.
- (3) Subsection (1)(b) does not apply unless the requested institution has reasonable grounds to believe that the entity, account or transaction is associated with an entity, account or transaction identified in the request.
- (4) An authorized institution (*disclosing institution*) may in the circumstances specified in subsection (5) disclose on its own initiative to another authorized institution (*receiving institution*) any information that relates to—
 - (a) a relevant entity of the disclosing institution; or
 - (b) an entity (*associated entity*), account or transaction (*associated account or transaction*) associated with—
 - (i) the relevant entity; or

- (ii) an occasional transaction that the disclosing institution has conducted or has been requested to conduct for the relevant entity, without having to obtain the consent of any entity to which the information relates.
- (5) The circumstances are that—
 - (a) the disclosing institution becomes aware of one or more activities—
 - (i) by the relevant entity or associated entity; or
 - (ii) in relation to the associated account or transaction, that the disclosing institution has reasonable grounds to believe indicate that the entity or associated account or transaction may be, or may have been, involved in or associated with any prohibited conduct;
 - (b) the disclosing institution is of the opinion that the information may assist the receiving institution in detecting or preventing any prohibited conduct; and
 - (c) the disclosing institution has reasonable grounds to believe that seeking the consent referred to in subsection (4) would risk prejudicing the receiving institution's detection or prevention of any prohibited conduct.
- (6) A disclosure under subsection (1) or (4)—
 - (a) may only be made on a designated platform, except with the Monetary Authority's prior written approval for the disclosure to be otherwise made; or
 - (b) if the Monetary Authority has given prior written approval for the disclosure to be made otherwise

- than on a designated platform—may only be made in compliance with any condition that the Monetary Authority imposes on the approval.
- (7) A disclosure under subsection (1) or (4) must identify the information that is disclosed for the purposes of this Part.

68AAD. Onward disclosure of information to other authorized institutions

- (1) Subsection (2) applies if an authorized institution (*disclosing institution*) has disclosed any information to another authorized institution (*receiving institution*) under section 68AAC(4).
- (2) The receiving institution may in the circumstances specified in subsection (3) disclose the information to another authorized institution (*further institution*) without having to obtain the consent of any entity to which the information relates.
- (3) The circumstances are that—
 - (a) the receiving institution has reasonable grounds to believe that any entity, account or transaction to which the information relates may be, or may have been, involved in or associated with any prohibited conduct;
 - (b) the receiving institution is of the opinion that disclosing the information may assist the further institution in detecting or preventing any prohibited conduct; and
 - (c) the receiving institution has reasonable grounds to believe that seeking the consent referred to in subsection (2) would risk prejudicing the further institution's detection or prevention of any prohibited conduct.

- (4) Subsection (2) does not authorize the receiving institution to disclose the name of the disclosing institution or any information that may enable the disclosing institution to be identified, without the disclosing institution's prior written consent.
- (5) A disclosure under subsection (2)—
 - (a) may only be made on a designated platform, except with the Monetary Authority's prior written approval for the disclosure to be otherwise made; or
 - (b) if the Monetary Authority has given prior written approval for the disclosure to be made otherwise than on a designated platform—may only be made in compliance with any condition that the Monetary Authority imposes on the approval.
- (6) A disclosure under subsection (2) must identify the information that is disclosed for the purposes of this Part.

68AAE. Correction of inaccurate information

- (1) If an authorized institution that has disclosed any information under section 68AAB(3), 68AAC(1) or (4) or 68AAD(2) (*disclosing institution*) to another authorized institution (*receiving institution*) becomes aware that the information is or has become inaccurate, the disclosing institution must correct the inaccuracy as soon as reasonably practicable after becoming aware of the inaccuracy.
- (2) If the disclosing institution that has made a correction under subsection (1) becomes aware that the correction is or has become inaccurate, the disclosing institution must correct the inaccuracy as soon as reasonably practicable after becoming aware of the inaccuracy.

- (3) The disclosing institution may, for correcting an inaccuracy under subsection (1) or (2), disclose any information to the receiving institution without having to obtain the consent of any entity to which the information relates.
- (4) A disclosure under subsection (3)—
 - (a) if the information containing the inaccuracy that the disclosure seeks to correct (*inaccurate information*) was disclosed on a designated platform—may only be made on that designated platform; or
 - (b) if the inaccurate information was disclosed otherwise than on a designated platform with the Monetary Authority's prior written approval—may only be made in compliance with any condition that the Monetary Authority imposes on the approval.
- (5) A disclosure under subsection (3) must identify the information that is disclosed for the purposes of this Part.

68AAF. Sharing of information: confidentiality requirements

- (1) Unless required or permitted by law or when ordered by a court, an authorized institution must not disclose the fact that the authorized institution has disclosed information under section 68AAB(3), 68AAC(1) or (4), 68AAD(2) or 68AAE(3).
- (2) Subsection (1) does not prohibit the fact from being disclosed to—
 - (a) a JFIU officer;
 - (b) the Monetary Authority; or
 - (c) a designated platform operator.

- (3) An authorized institution to which any information is disclosed under section 68AAB(3), 68AAC(1) or (4), 68AAD(2) or 68AAE(3)—
 - (a) may only disclose the information—
 - (i) as required or permitted by law; or
 - (ii) when ordered by a court; and
 - (b) may only otherwise use the information for detecting or preventing any prohibited conduct.

68AAG. Safe harbour provisions

- (1) If the conditions specified in subsection (2) are met, a disclosure under section 68AAB(3) in a request under section 68AAB(1), or a disclosure under section 68AAC(1) or (4), 68AAD(2) or 68AAE(3)—
 - (a) is not to be treated as a breach of any restriction on disclosure of information imposed by any contract, enactment, rule of conduct or other provision; and
 - (b) does not render the authorized institution that made the disclosure liable in damages for any loss arising out of the disclosure or any act or omission in consequence of the disclosure.
- (2) The conditions are that—
 - (a) the authorized institution that made the disclosure acted in good faith and with reasonable care in making the disclosure; and
 - (b) the authorized institution complies with section 68AAF(1) in relation to the disclosure.
- (3) A disclosure under section 68AAB(3), 68AAC(1) or (4), 68AAD(2) or 68AAE(3) does not constitute an offence under—

- (a) section 25A(5) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405);
- (b) section 25A(5) of the Organized and Serious Crimes Ordinance (Cap. 455); or
- (c) section 14(6) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).
- (4) An authorized institution's disclosure of information under section 68AAF(3)(a) or use of information under section 68AAF(3)(b) is not to be treated as a breach of any obligation of confidence owed by the authorized institution.

Division 3—Access to Designated Platforms and Duty to Keep Records and Information

68AAH. Access to designated platforms by authorized institutions

- (1) The Monetary Authority may give a written approval for an authorized institution to access a designated platform for the purposes of this Part if the Monetary Authority is satisfied that the authorized institution has adequate systems of control for ensuring the authorized institution's compliance with the requirements under this Part.
- (2) An authorized institution may only access a designated platform for the purposes of this Part if the Monetary Authority's approval for doing so is in force.

68AAI. Duty to keep records and information

- (1) An authorized institution must keep, for a period specified in subsection (2)—
 - (a) a record of any request for information under section 68AAB(1) that it makes or receives; and

- (b) any information that it discloses or receives under this Part.
- (2) The period is—
 - (a) if the record or information relates to an entity with which the authorized institution maintains or has maintained a business relationship—the duration of that relationship and an additional period of at least 5 years beginning on the date on which the relationship ends; or
 - (b) if the record or information relates to any other entity—a period of at least 5 years beginning on the date on which the request or disclosure is made.
- (3) The Monetary Authority may, by a written notice to an authorized institution, require the authorized institution to keep any record or information for a period specified by the Monetary Authority that is longer than that referred to in subsection (2), if—
 - (a) the Monetary Authority is satisfied that the record or information is relevant to an ongoing criminal or other investigation; or
 - (b) the record or information is relevant to any other purpose as specified by the Monetary Authority in the notice.
- (4) Despite subsection (1), an authorized institution to which a notice is given under subsection (3) must keep the relevant record or information for the period specified in the notice.
- (5) Any record or information required to be kept under this section must be kept by—
 - (a) for a record that consists of a document, or information contained in a document—

- (i) keeping the original of the document; or
- (ii) keeping a copy of the document in an information system; or
- (b) for a record that consists of information, or information not contained in a document—keeping the information in an information system.
- (6) An authorized institution must produce any record or information that it keeps under this section to the Monetary Authority at the Monetary Authority's request.
- (7) In subsection (5)—
information system (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553).

Division 4—Miscellaneous Provisions

68AAJ. Access to information by JFIU officers and designated platform operators

- (1) A JFIU officer may access, whether through a designated platform or otherwise—
 - (a) any information disclosed under section 68AAC(4) or 68AAD(2); or
 - (b) any information disclosed under section 68AAE(3) for correcting an inaccuracy in information disclosed under section 68AAC(4) or 68AAD(2).
- (2) Despite section 120, a JFIU officer may disclose any information that the officer has accessed under subsection (1) to another JFIU officer for detecting or preventing any prohibited conduct.
- (3) A designated platform operator may, subject to any condition that the Monetary Authority may impose,

access any information disclosed on the designated platform that it operates for operating the designated platform.

68AAK. Data access requests in relation to disclosed information

For the purposes of section 20(3)(ea) of the Personal Data (Privacy) Ordinance (Cap. 486), an authorized institution, the Monetary Authority, a JFIU officer or a designated platform operator is entitled not to comply with a data access request within the meaning of section 2(1) of that Ordinance in relation to any information disclosed under section 68AAB(3), 68AAC(1) or (4), 68AAD(2) or 68AAE(3).

68AAL. Monetary Authority may issue guidelines and give directions

- (1) The Monetary Authority may issue guidelines relating to any matter under this Part by notice published in the Gazette or in another way that the Monetary Authority considers appropriate.
- (2) A notice published under subsection (1) is not subsidiary legislation.
- (3) If the Monetary Authority considers it necessary for ensuring compliance with this Part, the Monetary Authority may give a written direction to an authorized institution directing it to take an action, or refrain from taking an action, as specified in the direction.

68AAM. Designation of platforms

- (1) The Monetary Authority may, by notice published in the Gazette, designate a platform for the purposes of this Part.

- (2) The Monetary Authority must, in a notice under subsection (1), identify the operator of the designated platform.
- (3) A notice published under subsection (1) is not subsidiary legislation.”.

Explanatory Memorandum

The main object of this Bill is to amend the Banking Ordinance (Cap. 155) (*Ordinance*) to—

- (a) introduce a voluntary mechanism for institutions authorized under the Ordinance (*authorized institutions*) to request or disclose information for the detection or prevention of crimes (*sharing mechanism*); and
 - (b) make safe harbour provisions for authorized institutions disclosing information under the sharing mechanism or using information so disclosed by other authorized institutions.
2. Clause 1 sets out the short title and provides for commencement.
 3. Clause 3 amends the long title of the Ordinance in view of the amendments made by the Bill.
 4. Clause 4 adds to the Ordinance a new Part XIIAA (sharing of information among authorized institutions). The Part contains 13 new sections (new sections 68AA to 68AAM) divided into 4 Divisions.
 5. New section 68AA in Division 1 (interpretation) of the new Part XIIAA defines certain expressions used in the Part.
 6. Division 2 (safe harbour for sharing of information) of the new Part XIIAA contains 6 new sections (new sections 68AAB to 68AAG). New section 68AAB provides that an authorized institution may request information from another authorized institution for detecting or preventing certain crimes.
 7. New section 68AAC provides that an authorized institution may disclose information to other authorized institutions for detecting or preventing certain crimes. New section 68AAD sets out the

conditions and requirements for the onward disclosure of information.

8. New section 68AAE requires an authorized institution that has disclosed any information to correct any inaccuracy in the information.
9. New section 68AAF sets out the confidentiality requirements with which an authorized institution that participates in the sharing mechanism must comply.
10. New section 68AAG contains safe harbour provisions for authorized institutions participating in the sharing mechanism. In particular, an authorized institution that discloses any information in compliance with the relevant requirements is protected from liabilities in relation to the disclosure.
11. Division 3 (access to designated platforms and duty to keep records and information) of the new Part XIIAA contains new sections 68AAH and 68AAI which respectively provide for authorized institutions to access platforms designated for the sharing mechanism, and authorized institutions' duty to keep records and information.
12. Division 4 (miscellaneous provisions) of the new Part XIIAA contains 4 new sections (new sections 68AAJ to 68AAM) which deal with miscellaneous matters relating to the sharing mechanism.

To regulate banking business and the business of taking deposits; to make provision for the supervision of authorized institutions so as to provide a measure of protection to depositors; to promote the general stability and effective working of the banking system; to make provision for the supervision of money brokers; and to provide for matters incidental thereto or connected therewith.

(Amended 4 of 1997 s. 2)

(Format changes—E.R. 6 of 2019)

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