

Submission of the Hong Kong Bar Association
Conceptual in Framework of Legislative Proposal to Enhance the Anti-Money
Laundering Regulatory Regime in respect of the Financial Sectors

1. The Consultation Paper seeks views on the framework for proposed legislation to enhance the anti-money laundering (“AML”) regulatory regime in respect of the financial sectors. It does not touch on matters which are directly relevant to the Bar.
2. However, the Bar has two comments on the proposals.
3. First, at para.3.6, it is proposed that in future legislation, AML authorities would be empowered to issue guidelines to facilitate regulatees’ compliance with the requirements. These guidelines would be taken into account in deciding whether there are breaches of the relevant statutory requirements. The breaches will be punishable on summary conviction or by indictment (paras.5.4-5.5).
4. The objection to the proposal is that a financial institution or individual will be subject to serious criminal sanctions upon the breach of a guideline issued by the regulator, and not by a statutory provision in legislation which has been examined, debated and passed by the legislature.
5. Second, under para.5.4(b) an offence will be committed by an officer or manager of an institution on the basis of his/her “consent or connivance of, or recklessness”, of an offence committed by the intuitions.
6. In our view, if the offence can be prosecuted, summarily or an indictment, with penalties of fines and/or imprisonment (para.5.5), there must be an element of knowledge.

Hong Kong Bar Association

Dated: 2 October 2009