

**立法會**  
**Legislative Council**

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**Paper for the House Committee Meeting  
on 21 February 2003**

**Legal Service Division Report on Bills of Exchange (Amendment) Bill 2003**

**I. SUMMARY**

1. **Object of the Bill**                      To permit the presentment of cheques in the form of electronic records by banks inter se.
  
2. **Comments**
  - (a)    The Bill only introduces provisions permitting banks to present cheques inter se in the form of electronic records that comprise of cheque imaging and cheque truncation. The necessary practical, technical and operational arrangements and security requirements are left to the banks themselves.
  
  - (b)    The electronic presentment is intended to apply to cheques of a value less than \$20,000. The physical presentment is no longer obligatory for such cheques but the drawee bank may still call for it within the time specified in the statutory provision.
  
3. **Public Consultation**                The Hong Kong Association of Banks has been informed of the proposed amendments. The banking industry appears to have reached consensus on the control policies and procedures for the imaging process and operations.
  
4. **Consultation with LegCo Panel**                The Panel for Financial Affairs was briefed on the subject on 2 December 2002.
  
5. **Conclusion**                            No difficulties in relation to the legal and drafting aspects of the Bill have been observed. Subject to Members' views, the Bill is ready for resumption of Second Reading Debate.

## **II. REPORT**

### **Object of the Bill**

To amend the Bills of Exchange Ordinance (Cap. 19) (the Ordinance) by adding provisions permitting the alternative mode of presentment of cheques in the form of electronic records by banks inter se and to provide for incidental matters.

### **LegCo Brief Reference**

2. G4/19/1C Pt 4 issued by the Financial Services and the Treasury Bureau on 12 February 2003.

### **Date of First Reading**

3. 19 February 2003.

### **Comments**

4. The Bill introduces provisions (the proposed new section 73A) permitting the alternative mode of presentment of cheques in the form of electronic records by banks inter se. An electronic record of a cheque comprises the image of its front and back (i.e. cheque imaging) and the essential information relating to it (i.e. cheque truncation). For the purpose of the provisions, the essential information relating to a cheque means its serial number assigned by the drawee bank, the identification code of the drawee bank printed on it, the account number of its drawer on which the cheque is drawn, and the amount drawn.

5. Section 52(4) of the Ordinance requires physical presentment of a cheque for payment and the physical delivery of the cheque to the drawee bank after it has been paid. Provisions (the proposed new section 73B) are therefore required to release the presenter bank from both of the statutory obligations in order that the electronic presentment scheme may lawfully proceed. Similarly, the existing section 85 of the Ordinance that only refers to the original unindorsed cheque as evidence of payment must be amended to allow a copy of an unindorsed cheque to serve as such evidence (the proposed new section 85(2)).

6. The proposed new section 73A(1) merely permits the electronic presentment of cheques for payment without substituting the existing requirement of physical presentment. A drawee bank may still call for the original cheque before noon on the next business day following the day of that cheque's presentment in accordance with the proposed section 73A(1). When this happens, the electronic

presentment is disregarded and all rules applicable to physical presentment again apply. Such request for the original cheque does not mean that cheque has been dishonoured by non-payment.

7. The Bill does not provide for the practical, technical and operational arrangements and the security measures necessary for the implementation of the electronic presentment of cheques for payment. The banks have to make the arrangements themselves. The Administration intends that the electronic presentment will, as a start, apply only to cheques of a value less than \$20,000. This is not stipulated in the Bill. It is specified in the Clearing House Rules of the Hong Kong Interbank Clearing Limited (HKICL). By the same token, the requirement of retaining the physical cheques paid after electronic presentment for six months by the collecting banks is also a requirement of the Clearing House Rules of HKICL and not of statutes.

### **Public Consultation**

8. According to the Administration, the proposed amendments have been discussed with the Hong Kong Association of Banks. The banking industry is aware of the development and has reached consensus on a common set of control policies and procedures for imaging process and operations.

### **Consultation with LegCo Panel**

9. At its meeting on 2 December 2002, the Panel on Financial Affairs was consulted on the Administration's proposal to amend the Ordinance. Members expressed the following concerns -

- (a) whether the quality of services for bank customers would be affected by the implementation of the proposed paperless cheque clearing system;
- (b) the rationale for pitching the threshold value at \$20,000; and
- (c) whether upon implementation of the new system the current processing time for cheques could be shortened to enable earlier payment to payees.

10. The Administration explained that the quality and scope of services for bank customers would not be undermined in any way as cheque-imaging and truncation only involved banks' internal cheque handling process. Since cheque imaging was a less expensive process, there would probably be room for banks to deploy resources saved to improve services to customers or to avoid the need to impose fees for cheque handling.

11. On the threshold value, the Administration advised that both HKMA and

the banking industry were inclined to adopt a conservative approach in setting the threshold value at the onset of the scheme. Hence, the threshold value was set at \$20,000 but not higher as in many other jurisdictions. It would be reviewed in the light of experience gained, in particular the instances of fraud involving cheques after the implementation of the new system.

12. Regarding efficiency gains in the processing of cheques, the Administration advised that the verification of cheques requiring special handling by payers would normally be conducted by telephone in the morning of "Day D+1" and this would take some time to accomplish. This verification process would still be required under the new system. Interest would accrue from the day the cheque was banked (Day D). Unless the payee needs to draw the money from his bank account in the small hours, accelerating payment to an earlier point in time on "Day D+1" would not give the payee any significant pecuniary benefit in normal circumstances. The Administration however agreed to see if the verification steps could be expedited so that payment of good cheques could be effected sooner than 3:30 p.m. on "Day D+1".

## **Conclusion**

13. The amendments introduced by the Bill are mainly technical in nature. No difficulties have been observed in relation to the legal and drafting aspects of the Bill. Subject to Members' views, the Bill is ready for the resumption of Second Reading Debate.

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