

LC Paper No. CB(1)1284/03-04(02)

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# ***Clearing and Settlement Systems Bill***

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***March 2004***



**HONG KONG MONETARY AUTHORITY**  
**香港金融管理局**

# Agenda

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- **Purpose of the Bill**
- **Drivers for the Bill**
- **International Precedents**
- **Overview of the Bill**
  - (1) Oversight
  - (2) Settlement Finality
  - (3) Powers of the MA
  - (4) Offences
  - (5) Appeals Tribunal
- **Public Consultation**
- **Conclusion**



# Purpose of the Bill

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To confer the Monetary Authority (MA) with statutory powers to -

- a) designate clearing and settlement systems (CSSs) to be subject to MA's oversight and,
- b) where appropriate, grant the designated system statutory protection to ensure settlement finality



# Drivers for the Bill

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- Suggestions from the IMF
  - Financial Sector Assessment Program (FSAP) 2002
  - explicit legislative provisions for CSS oversight and settlement finality
- Inclusion of HK\$ in the CLS
  - CLS enables co-ordinated settlement of foreign exchange transactions through links to major RTGS systems in the world
  - 11 major currencies already admitted into CLS
  - crucial to HK's status and functioning as an IFC
  - certainty of settlement finality is a pre-requisite for admission of HK\$ into CLS.



# International Precedents

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- **Statutory oversight**
  - Reserve Bank Act 1959 in Australia
  - Payment Clearing and Settlement Act 1996 in Canada
  - the Reserve Bank of New Zealand Amendment Act 2003
  - Article 105(2) of the Treaty establishing European Community and Article 3 of the Statute of the European System of Central Banks and the European Central Bank
  - Singapore and Switzerland are in the process of formulating similar legislation
- **Settlement Finality**
  - for all currencies in the CLS system (Australian dollar, Canadian dollar, Danish krone, euro, Japanese yen, Norwegian krone, pound sterling, Singapore dollar, Swedish krona, Swiss franc and US dollar)



# Overview of the Bill:

## (1) Oversight

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- The following CSSs already subject to HKMA's de facto oversight, e.g., through contractual arrangements-
  - HK\$ Clearing House Automated Transfer System (CHATS)
  - US\$ CHATS
  - Euro CHATS
  - Central Moneymarkets Unit (CMU)
  - settlement of paper cheques (cheque clearing)
  - cash settlement leg for Central Clearing and Settlement System (CCASS)



# Overview of the Bill:

## (1) Oversight

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- **Designation of systems**
  - the MA may designate a CSS as a “designated system” to be subject to MA’s oversight (clause 3(1))
  - criteria for designation (clause 3(3)): the system is or is likely to become a CSS whose proper functioning is material to -
    - the monetary or financial stability of HK; or
    - the functioning of HK as an IFC
  - eligibility for designation (clause 3(2)):
    - in operation in HK; or
    - accepts for clearing or settlement transfer orders denominated in HK\$
  - the MA may revoke designation if CSS no longer meets the designation criteria or eligibility requirements (clause 4)



# Overview of the Bill:

## (1) Oversight

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- Oversight aims to ensure safety and efficiency of CSS (clause 7)
  - Safety refers to:
    - certainty of settlement
    - reliability and robustness of operation
    - proper security control and data integrity
  - Efficiency refers to:
    - speed of operations
    - overall cost to participants
    - reasonable admission criteria
    - competition





# Overview of the Bill:

## (1) Oversight

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- Principal requirements for designated systems:
  - to notify the MA the names and particulars of the system operator and the settlement institution (clause 5)
  - to ensure the system is operated in a safe and efficient manner (clause 6)
  - to have proper operating rules in place (clause 6)
  - to comply with the request for information from the MA (clauses 10 and 52)



# Overview of the Bill:

## (2) Settlement Finality

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- **Finality of settlement**

- the MA to issue a certificate of finality to a designated system with settlement function and meeting operational requirements (clause 14)
- the certificate of finality activates the finality provisions of the Bill (clauses 16 - 30)
- the MA to suspend or revoke the certificate if the requisite criteria and requirements are no longer met (clause 15)

- **Scope of finality**

- Transfer order, disposition of property pursuant to a transfer order etc (clauses 17 - 18)
- any rights arising from the underlying economic transaction will not be affected (clauses 25 - 27)
- Finality for the purposes of all laws and not just insolvency laws



# Overview of the Bill:

## (3) Powers of the MA

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- **MA may:**
  - collect information from a CSS for determining whether it is important enough for designation (clause 51)
  - designate a CSS and revoke its designation (clauses 3 and 4)
  - issue certificate of finality and revoke/suspend such certificate (clauses 14 and 15)
  - exempt properly supervised overseas CSSs from oversight (clause 9)
  - collect information from designated system (clauses 10 and 52)
  - give directions to a CSS to bring it into compliance with the Ordinance (clause 11)
  - impose operating rules (clause 12)
  - make regulations, subject to negative vetting (clause 48)
  - issue guidelines (clause 53)



# Overview of the Bill:

## (4) Offences

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- **Contravention - liable to fine / imprisonment**
  - failure to inform name and particulars of system operator and settlement institution at time of designation (clause 5 (1) or (2))
  - failure to operate the designated system in a safe and efficient manner (clause 6(1))
  - proper operating rules not in place or changing operating rules without prior approval (clauses 6(2) and (3))
  - failure to submit information (clause 10(1) and 51(1))
  - failure to follow directions (clause 11(1))
  - failure of participants to notify insolvency (clause 28)
  - failure to comply with the orders of the Tribunal (clause 34(3))
  - confidentiality (clauses 49(1),(3),(4) and (5))
  - giving false information, misrepresentation in respect of designated system, false entry in document (clauses 43 - 45)



# Overview of the Bill:

## (5) Appeals Tribunal

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- ***“Clearing and Settlement Systems Appeals Tribunal”*** to be established
- **Jurisdiction of the Tribunal**
  - to review the MA’s decision on:
    - designation of CSS (clause 3(1))
    - revocation of designation (clause 4(1))
    - issuance of certificate of finality (clause 14(1))
    - revocation or suspension of certificate of finality (clause 15(1))
- **Composition of the Tribunal**
  - presided by a judge appointed by the Chief Executive on the recommendation of the Chief Justice (clause 32(3))
  - appointment of a panel of members (clause 32(4))



# Public Consultation

- **Several rounds of consultation with the following parties:**
  - CLS Services Ltd and its legal advisor in Hong Kong
  - Hong Kong Association of Banks
  - Hong Kong Bar Association
  - Hong Kong Exchanges and Clearing Ltd
  - Hong Kong Interbank Clearing Ltd
  - Hong Kong Society of Accountants
  - Law Society of Hong Kong
  - Official Receiver
  - Securities and Futures Commission
  - Leading insolvency practitioners
  - Settlement Institutions of the US dollar and Euro clearing systems in Hong Kong
- **They are all broadly supportive of the Bill and their comments are mainly of a technical nature**



# Concluding Remarks

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- The Bill is in line with international precedents and will achieve the following objectives:
  - To conform to IMF's suggestions
    - explicit statutory backing for oversight power and settlement finality
  - To confer settlement finality on payments in the CLS system and facilitate entry of HK dollar into the CLS system



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***End of Presentation***

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