

**Bills Committee on Clearing and Settlement Systems Bill**

**The Administration's Response to  
LegCo Assistant Legal Adviser's Letter of 22 April 2004**

**Requirement to give information (clause 10, 51 and 52)**

- (a) **If it is intended that the system operator or settlement institution of a designated system cannot refuse to provide information on the ground that the information is covered by privileges like the legal professional privilege and the privilege against self-incrimination, please consider the need to stipulate this clearly in the Bill. As you know, an express provision has been provided to disapply the common law privilege against self-incrimination in clause 34(4) of the Bill. Should the same be done for clauses 10, 51 and 52?**

We will consider appropriate Committee Stage Amendments ("CSAs") to make it clear that the system operator or settlement institution of a designated system cannot refuse to provide information on the ground that the information is privileged.

- (b) **While failure to comply with the requirement to give information under clauses 10 and 51 is an offence under the Bill, no similar sanction is provided for failure to comply with a request for information under clause 52. What sanction, if any, is available under the Bill for non-compliance with clause 52(4)?**

According to the Bill, the sanction for non-compliance with clause 52(4) is suspension or revocation of the certificate of finality (see clause 15(1)(b)). The absence of an offence provision in relation to such non-compliance is deliberate. However, on reflection, we consider that it may be desirable to introduce an appropriate offence provision and will consider a CSA in this regard.

**Clause 34(2)**

**Apart from clause 34(1)(c), should the privilege against disclosure provided in clause 34(2) also apply to clause 34(1)(e) and (f)?**

We agree with your suggestion. Clause 34(2) will be amended accordingly.

**References to “by notice published in the Gazette”**

**Clause 56 provides that the Chief Executive may, by notice published in the Gazette, amend Schedule 1 or 2. Since Schedules 1 and 2 will be part of the Ordinance if the Bill is enacted, any notice to amend the two Schedules would have legislative effect and is accordingly subsidiary legislation as defined in the Interpretation and General Clauses Ordinance (Cap.1). As such, section 34 of Cap.1 is applicable to such notice.**

We will make it clear that a notice to amend Schedule 1 or 2 is subsidiary legislation.

**Chinese text (wordings in question are underlined)**

**Clause 4(3)**

“(3) 根據本條撤銷對某指定系統作出的指定，不得以影響在撤銷生效前已透過該系統達成的就轉撥指令進行的任何交收的方式有效。”

**Why are these words necessary? It seems that the English text does not contain the meaning as reflected in these words.**

In the Chinese text, the structure “以...的方式有效“ is the equivalent to “operate so as to”. Such expression in Chinese is necessary to bring out the sense that the revocation shall not operate in such a way as to affect any previous settlement. “[O]perate” has been commonly rendered as “效力“ or “效用 “ in our legislation and “有效“ is just a synonym.

**Clause 6(2)(a)**

“(2) 指定系統的運作規則須 —

(a) 向參與者施加某些規定，而該等規定不得比根據本條例其他條文而向參與者施加的規定寬鬆；”

**Should the correct reference be “嚴苛” to reflect the meaning of the English text?**

In Article 7(2) of the Schedule to the Fugitive Offenders (Torture) Order (Cap.

503 sub leg I), the Chinese text for “in no way be less stringent” is “不應寬於”。 The use of “寬鬆” in this context accurately reflects the policy intention.

**Clause 26(4)**

“(4) 金融管理專員可應任何指定系統的系統營運者或交收機構的要求，藉憲報公告而豁免該系統營運者或交收機構，使該系統營運者或交收機構無須受到本條所規限；而當上述的豁免有效時，本條並不就任何由該系統營運者或交收機構(視屬何情況而定)以該身分作為第一參與者訂立的交易而適用。”

**Should “某” instead of “任何” be used to reflect the meaning of the English text?**

The legal effect of using “某” or “任何” is the same in this context. The use of either of them is to make the second reference to the subject tie in with the subject when it is mentioned the first time. Notwithstanding the above, we are prepared to amend the wording as you suggested.

**Clause 27(3)(c)**

“(c) 第二參與者在決定作出該轉撥或轉讓時，或第二參與者的主事人在決定安排第二參與者作出該轉撥或轉讓時，是受到就第一參與者產生(b)段所描述的效力此一意願所影響。”

**The English text does not contain the reference to “決定” as reflected in the Chinese text. Please make both texts match.**

This provision is modelled on section section 50(4) and (5) of the Bankruptcy Ordinance (Cap. 6). To make both texts match, a CSA will be introduced to the English text.

**Clause 27(4)**

“(4) 金融管理專員可應任何指定系統的系統營運者或交收機構的要求，藉憲報公告而豁免該系統營運者或交收機構，使該系統營運者或交收機構無須受到本條所規限；而當上述的豁免有效時，凡該系統營運者或交收機構(視屬何情況而定)以該身分作為第一參與者作出[任何?]轉撥或轉讓，本條並不就該轉撥或轉讓而適用。”

- (i) Should “某” instead of “任何” be used to reflect the meaning of “a system operator...”?**
- (ii) Should “任何” be added here to reflect the meaning of “any” in the English text?**

- (i) Same comment as provided on Clause 26(4).
- (ii) It is not necessary to add “任何“ in this context even though “any” appears in the English text. In the English language, the qualifiers to “transfer” appear after that word. In the Chinese language, however, all descriptions qualifying “transfer” appear before that word and there is no added value by adding “任何“ before “轉撥“. There is also no difficulty for readers to understand that the same subject matter is referred to when the second reference appears.

**Clause 28(1)(e)**

“(e) 該參與者的一名董事按《公司條例》(第 32 章)第 228A(1)條作出法定聲明。”

**Should “根據” instead of “按” be used to reflect the meaning of the English text?**

The word “under” may be conveyed in a number of ways in Chinese. In this context, we are of the view that “按“ is a more concise form of bringing out the sense. If “根據” is to be used, other wording like “作出一如根據...作出的法定聲明“ is to be added to make the sense complete.

**Clause 34(1)(c) and (e)**

“(c) 藉審裁處主席簽署的書面通知，要求某人到審裁處席前應訊，以及在第(2)款的規限下作證和交出由該人管有或控制並關乎該覆核的標的事項的任何物品、紀錄或文件；”

“(e) 訊問或安排訊問任何在審裁處席前應訊的人(不論訊問是否在經宗教式宣誓的情況下進行)，並要求該人據實回答審裁處認為為該覆核的目的而言屬適當的任何問題；”

**Why is “應訊” used as the Chinese rendition for “attend”? In a similar provision in the Deposit Protection Scheme Bill, the Chinese text for “attend” is “出席聆訊”. Please also refer to section 219 of Cap.571 as well.**

In the Deposit Protection Scheme Bill, “attend before” appears in clause 40(1)(c), (e) and (k) for which the Chinese texts are “出席...聆訊”, “在其席前”(i.e. without “聆訊“) and “到...席前應訊” respectively. In order to be consistent in this Bill, we have adopted “應訊” throughout which is a more concise form and reflects the same meaning.

**Clause 34(1)(k), (3)(c), (d) and (e)**

“(1)...

- (k) 命令該覆核的任何一方或任何被要求為該覆核的目的到審裁處席前應訊的人獲付訟費或費用；”

“(3)...

- (c) 在已根據第(1)款被審裁處要求到審裁處席前應訊後，未經審裁處准許而在他被如此要求在場時離開有關地方；
- (d) 阻礙任何人為覆核的目的到審裁處席前應訊、作證或交出任何物品、紀錄或文件，或阻嚇任何人以期他不為該目的作出該等作為；
- (e) 因任何人曾到審裁處席前應訊而威脅或侮辱他，或令他蒙受任何損失；或”

**Should “出席聆訊” instead of “應訊” be used as the Chinese rendition for “attend”? Please refer to the Chinese text for a similar provision in the Deposit Protection Scheme Bill (clause 40(3)(c), (d) and (e)).**

Same comment as above.

**Clause 47(3)(b)**

“(b) 確定是否信納任何事宜(包括信納某種情況是否存在)；或”

**The English text does not contain the meaning of “確定”. Please make both texts match.**

This provision is modelled on section 11(3) of the Securities and Futures Ordinance (Cap. 571). “確定是否” must not be omitted here because it would otherwise give an impression that the Monetary Authority must be satisfied as to any matter. The sense behind “satisfied” in this context is not strictly a positive one.

Hong Kong Monetary Authority  
Financial Services and the Treasury Bureau  
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