

**Bills Committee on Clearing and Settlement Systems Bill
Fourth meeting on 29 April 2004**

List of follow-up actions to be taken by the Administration

1. Given the Administration's policy intent that the Bill has extra-territorial application (LC Paper No. CB(1)1600/03-04(01)), the Administration has undertaken to consider making the extra-territorial effect of the Bill more explicit by introducing Committee Stage Amendments (CSAs) to the offence provisions to make it clear that these apply to persons both in and outside Hong Kong.
2. Clause 3(1) provides that the Monetary Authority (MA) may, by notice published in the Gazette, designate for the purposes of the Bill any clearing and settlement system. Under this arrangement, members of the public who need to check whether a clearing and settlement system is a designated system under the Bill may have to go through various notices published in the Gazette. To facilitate members of the public, the Administration is invited to consider providing a list of designated clearing and settlement systems for their easy reference. Some of the suggested options are set out as follows:
 - (a) To provide a list of designated systems in a Schedule to the Bill which will be amended by subsidiary legislation subject to the negative vetting of the Legislative Council; or
 - (b) To publish in the Gazette a consolidated list of designated systems whenever amendments are made to the list; or
 - (c) To maintain and make available to the public an updated list of designated systems, such as through uploading the list to the website of the Hong Kong Monetary Authority.
3. Clause 8(3) provides that "The Monetary Authority may appoint persons as agents or advisers to assist him in the performance of his functions under this Ordinance". To address members' concerns about the need and propriety of this subclause, the Administration is invited to consider the following issues:
 - (a) Whether clause 8(3) is superfluous given that section 5A(3) of the Exchange Fund Ordinance (Cap. 66) provides that the Financial Secretary may appoint persons to assist MA in the performance of his functions under the Exchange Fund Ordinance and any other Ordinance;
 - (b) If the need for clause 8(3) is established, the Administration is invited to examine the drafting of the subclause by making reference to section 9(3) of the Securities and Futures Ordinance (Cap. 571), which provides that "[t]he

Commission may engage consultants, agents and advisers to assist it in the performance of its functions". Members are particularly concerned about the phrase "appoint persons as agents" in clause 8(3), as it seems to imply that MA may delegate his authority to the appointed agents. If that is the case, the appointed agents may perform MA's functions under delegated authority, instead of taking up an assisting role. The Administration is therefore invited to consider whether it is appropriate to use the phrase "appoint persons as agents" and the term "agents" in clause 8(3); and

- (c) Whether it is appropriate to include the provision of clause 8(3) under clause 8 — "Functions of Monetary Authority".
4. In line with the Administration's proposal to extend the time limit in clause 5 from 3 days to 6 days, the Administration is invited to consider whether the requirement under clause 12(2)(c) for a system operator or settlement institution of a designated system to provide a copy of the relevant part of the amended operating rules to MA within a further period of 3 days should also be extended to 6 days.
5. Members note the Administration's reply (LC Paper No. CB(1)1665/03-04(01)) that it will consider appropriate 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. As the legal professional privilege and the privilege against self-incrimination are involved, the Administration is invited to consult the relevant professional bodies on the relevant provisions in the Bill and CSAs.