

For discussion  
on 14 May 2004

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

**The Administration's Response to Issues  
raised at the Meeting held on 29 April 2004**

**Purpose**

This paper sets out the Administration's response to questions raised by Members at the Bills Committee meeting on 29 April 2004 during clause-by-clause examination on Parts 1 and 2 of the Clearing and Settlement Systems Bill ("the Bill").

**Clause 3**

**Members invited the Administration to consider providing a list of designated clearing and settlement systems for the public's easy reference. Possible options are to provide a list of designated systems in a schedule to the Bill; to publish in the Gazette a consolidated list of designated systems whenever amendments are made to the list; or to maintain an updated list of designated systems on the website of the Hong Kong Monetary Authority (HKMA).**

2. We appreciate the need to provide clear and updated information to the public and have considered the various options to achieve this purpose. Our view is that it is not advisable to include a list of designated clearing and settlement systems as a schedule to the Bill. Such a schedule, being part of the legislation, will need to be amended whenever there is a designation or revocation of designation. The need for legislative amendments would delay the effective date of changes in designation and would complicate the HKMA's oversight work. Separately, while publishing a consolidated list of designated systems in the Gazette together with each notice on designation or revocation of designation has certain merits, we consider that it does not provide a source of reference which offers convenient access to the public on a timely basis.

3. The most effective means to provide timely information to the public is by maintaining an updated list of designated systems on the HKMA website. We

believe this should be welcome by members of the public. We note that the HKMA also publishes the current list of authorised institutions under the Banking Ordinance on its website.

**Clause 8(3)**

**(a) Members invited the Administration to consider whether this subclause is superfluous given that section 5A(3) of the Exchange Fund Ordinance (Cap.66) provides that the Financial Secretary may appoint persons to assist the Monetary Authority in the performance of his functions under Cap.66 and any other Ordinance.**

4. Section 5A(3) of the Exchange Fund Ordinance provides for the appointment by the Financial Secretary, not the Monetary Authority. Although the Monetary Authority could make the appointment if he has been so delegated under section 5B of Cap.66, the Administration considers it appropriate to retain clause 8(3) as this would allow the Monetary Authority to employ advisers or consultants for the purpose of the Bill directly.

**(b) Members invited the Administration to examine the drafting of the subclause by making reference to section 9(3) of the Securities and Futures Ordinance (Cap.571); to clarify whether the Monetary Authority would delegate his authority to the “agents” appointed under this subclause; and to consider whether it is appropriate to use the phrase “appoint persons as agents” and the term “agents”.**

5. As we explained at the meeting on 29 April 2004, “agents” appointed under clause 8(3) are to assist the Monetary Authority in the performance of his functions under this legislation. This sub-clause does not suggest in any sense that the Monetary Authority would delegate his functions and powers under the legislation to the agents. The word “agents” is also used in section 9(3) of the Securities and Futures Ordinance (Cap.571). In order to address Members’ concern about the reference to the appointment of “agents”, we intend to move a Committee Stage Amendment to refer to the appointment of advisers or consultants and drop the reference to “agents”. In any event, the appointment of consultants or advisers would not relieve the Monetary Authority of his duties under the Bill.

**(c) Members asked whether it is appropriate to include the provision of clause 8(3) under clause 8 – “Functions of Monetary Authority”.**

6. Clause 8 of the Bill sets out the functions of the Monetary Authority. Since clause 8(3) enables the Monetary Authority to appoint persons to assist him in the performance of his functions, we consider that it is appropriate to include the provision of clause 8(3) under clause 8.

**Clause 10**

**Members noted that the Administration would consider appropriate Committee Stage Amendments 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; and invited the Administration to consult the relevant professional bodies on legal professional privilege and the privilege against self-incrimination.**

7. On further deliberation, we consider that the relevant offence provisions in the Bill i.e. clauses 39 and 42 are adequate to serve the purpose of requesting information under clauses 10, 51 and 52. We do not propose any new power for the Monetary Authority to compel information from any person.

**Clause 12**

**Members invited the Administration 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 the Monetary Authority within a further period of 3 days should also be extended to 6 days, as in the case of clause 5.**

8. We would like to elaborate the explanation given at the meeting on 29 April 2004 as to why the Administration considers it not appropriate to extend the time limit of 3 days in clause 12(2)(c). Before the Monetary Authority exercises his powers under clause 12(1), he would have discussed the necessary amendment to the operating rules with a system operator or settlement institution. If the system operator or settlement institution refuses to co-operate, the Monetary Authority may impose the amendment on the operating rules so as to bring them into compliance with clause 6(1)(b). The direction under clause 12(1) may specify a period, being a period that is reasonable in the circumstances, within which the amendment shall be effected. We therefore believe that the

requirement for the system operator or settlement institution to submit a copy of the relevant part of the amended operating rules within a further period of three days as confirmation of its compliance with the direction is appropriate and sufficient.

Hong Kong Monetary Authority  
Financial Services and the Treasury Bureau  
12 May 2004