

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1092/14-15  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/3/14/1

**Bills Committee on Clearing and Settlement Systems  
(Amendment) Bill 2015**

**Minutes of the second meeting on  
Monday, 23 March 2015, at 2:45 pm  
in Conference Room 1 of the Legislative Council Complex**

- Members present** : Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)  
Hon CHAN Kam-lam, SBS, JP  
Hon WONG Ting-kwong, SBS, JP  
Hon Starry LEE Wai-king, JP  
Hon CHAN Kin-por, BBS, JP  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon Kenneth LEUNG  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon SIN Chung-kai, SBS, JP
- Member absent** : Hon NG Leung-sing, SBS, JP
- Public officers attending** : Miss Salina YAN, JP  
Deputy Secretary for Financial Services and the  
Treasury (Financial Services)1
- Mr Jackie LIU  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services)5

Ms Jenny LEE  
Assistant Secretary for Financial Services and the  
Treasury (Financial Services)(5)1

Mr Esmond LEE, JP  
Executive Director (Financial Infrastructure)  
Hong Kong Monetary Authority

Mr LI Shu-pui  
Head (Financial Infrastructure Development)  
Hong Kong Monetary Authority

Mr Daniel LEONG  
Senior Manager (Financial Infrastructure Development)  
Hong Kong Monetary Authority

Ms Yvonne TSUI  
Senior Counsel  
Hong Kong Monetary Authority

**Attendance by invitation : Deputations**

Internet Professional Association

Mr Joe LOK  
Council Member

The Association of Cloud and Mobile Computing Professionals

Mr Emil CHAN  
Chairman

UnionPay International Ltd.

Mr LI Wai-ching  
Senior Manager (Operation Department)

PayPal Pte. Ltd

Ms Jane SONG  
Legal Counsel

Deloitte Touche Tohmatsu

Mr CHAN Yat-man  
Partner

MasterCard International Inc.

Ms Anna YIP  
Head of Hong Kong and Macau

Individual

Dr Witman HUNG

Octopus Cards Limited

Mr Sunny CHEUNG Yiu-tong  
Chief Executive Officer

**Clerk in attendance** : Ms Connie SZETO  
Chief Council Secretary (1)4

**Staff in attendance** : Mr YICK Wing-kin  
Assistant Legal Adviser 8

Ms Angel SHEK  
Senior Council Secretary (1)4

Ms Sharon CHAN  
Legislative Assistant (1)4

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**I Meeting with deputations and the Administration**

Meeting with deputations

(LC Paper No. CB(1)656/14-15(01) — Submission from PayPal Pte. Ltd  
(English version only)

LC Paper No. CB(1)656/14-15(02) — Submission from MasterCard  
International Inc (English version  
only)

LC Paper No. CB(1)682/14-15(01) — Joint submission from Internet Professional Association and the Association of Cloud and Mobile Computing Professionals (Chinese version only)

LC Paper No. CB(1)684/14-15(01) — Speaking note of the Chief Executive Officer of Octopus Cards Limited (Chinese version only))

*Submissions/letters from organizations not attending the meeting*

(LC Paper No. CB(1)656/14-15(03) — Submission from Independent Commission Against Corruption (English version only)

LC Paper No. CB(1)656/14-15(04) — Submission from Consumer Council (English version only)

LC Paper No. CB(1)656/14-15(05) — Submission from CLS Bank International (English version only)

LC Paper No. CB(1)656/14-15(06) — Submission from Visa Hong Kong Limited (English version only)

LC Paper No. CB(1)656/14-15(07) — Submission from Hong Kong Bar Association (English version only)

LC Paper No. CB(1)656/14-15(08) — Submission from The DTC Association (English version only))

Meeting with the Administration

(LC Paper No. CB(1)656/14-15(09) — List of follow-up actions arising from the discussion at the meeting on 2 March 2015

LC Paper No. CB(1)656/14-15(10) — Administration's response to issues raised at the meeting on 2 March 2015

Other relevant papers

- LC Paper No. CB(3)390/14-15 — The Bill
- LC Paper No. CB(1)615/14-15(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)
- File Ref: B&M/2/1/20C — Legislative Council Brief
- LC Paper No. LS36/14-15 — Legal Service Division Report
- LC Paper No. CB(1)590/14-15(01) — Background brief on Clearing and Settlement Systems (Amendment) Bill 2015 prepared by the Legislative Council Secretariat)

The Chairman welcomed representatives of the Administration and deputations to the meeting. He reminded the deputations that their written submissions provided to the Bills Committee and views presented at the meeting would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

Discussion

2. The Bills Committee received views from eight deputations attending the meeting, and noted the six written submissions from organizations which did not attend the meeting (Index of proceedings attached at **Appendix**).
3. The Administration was requested to provide a consolidated written response to the views expressed by deputations at the meeting and in the written submissions.

*(Post meeting note: The Administration's consolidated written response was issued to members vide the Annex to LC Paper No. CB(1)714/14-15(02) on 10 April 2015.)*

Follow-up actions to be taken by the Administration

*Market development and financial innovation*

4. The Administration was requested to provide written responses to address the concerns/views raised by members and deputations as follows:

- (a) besides ensuring the safety and soundness of stored value facilities ("SVF") and retail payment systems ("RPS") and protecting the interests of users, the Bill should adopt an "embrasive and forward looking approach" facilitating the development of new/innovative SVF/RPS products/technologies in the market; and
- (b) the Bill should facilitate small and medium-sized SVF/RPS operators to enter the Hong Kong market through encouraging open data interchange ("ODI") between the systems of banks and those of SVF/RPS operators, which would be conducive to creating a level playing field for various operators and ensuring healthy market development.

5. The Administration was requested to provide information on the experiences of major overseas jurisdictions in implementing ODI for their financial services sectors, including the relevant legislation and regulations in place in these jurisdictions, and consider the need to take forward ODI for the financial services sector in Hong Kong through developing relevant guidelines.

*Regulation of SVF licensees and designated RPS*

6. The Administration was requested to provide written responses to address the concerns/views raised by members and deputations as follows:

- (a) the difficulty for the Hong Kong Monetary Authority ("HKMA") to ensure effective regulatory oversight of overseas SVF and RPS operating in Hong Kong with their systems/operations mainly located outside Hong Kong; whereas the local SVF and RPS operators would in effect be subject to closer supervision; and
- (b) HKMA should consider making reference to similar measures adopted under the current regime for combating illegal betting activities to require banks to restrict the transfer of clients' money to accounts of unlicensed SVF (including SVF operating overseas and not targeting at the Hong Kong public) or those of RPS

operators which had breached the relevant regulatory requirements, in order to ensure compliance with the requirements of the proposed regulatory regime.

7. The Administration was requested to provide information on HKMA's supervisory approach over licensed SVF or designated RPS (e.g. whether approval would be required for new products/services provided by a licensed SVF or designated RPS operator, or a new fee charged on their users; and whether the approval mechanism would operate on an ex ante or ex post basis).

*Liabilities on internet service providers ("ISP")*

8. The Administration was requested to compare the liabilities of ISP or exemptions for ISP in respect of their services provided to unlicensed SVF under the proposed regulatory regime with those arising from their services for unlicensed business operations under other local legislation, and explain the reasons for imposing different liabilities/exemptions on ISP under different regulatory regimes.

9. Given that subsections (1) and (2) of the proposed section 8C (Clause 17 of the Bill) had provided that any person must not knowingly promote or otherwise assist another person in issuing, or facilitating the issue of, an unlicensed SVF, the Administration was requested to explain the policy intent to specify in subsection (3) that "a reference to promoting or otherwise assisting" included "by means of providing network or internet portal access or any other technological means" as the subsection seemed to target the relevant offence at ISP.

10. The Administration was requested to provide information on the enforcement actions to be taken against a non-complying ISP, including how HKMA could ensure the ISP concerned would terminate its web hosting and other internet services to an unlicensed SVF as the ISP's systems/operations might be located overseas, and the relevant services were provided/accessible through Internet which was boundary free.

*(Post meeting note: The Administration's consolidated written response was issued to members vide the Annex to LC Paper No. CB(1)714/14-15(02) on 10 April 2015.)*

## **II Any other business**

### Date of next meeting

11. The Chairman reminded members that the next two meetings would be held on 13 April 2015, at 4:30 pm and 28 April 2015, at 8:30 am respectively.
12. There being no other business, the meeting ended at 5:28 pm.

Council Business Division 1  
Legislative Council Secretariat  
10 July 2015



**Proceedings of the Bills Committee on Clearing and Settlement Systems  
(Amendment) Bill 2015**

**Second meeting on Monday, 23 March 2015, at 2:45 pm  
in Conference Room 1 of the Legislative Council Complex**

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000145 – 000524	Chairman	Introductory remarks	
<b>Presentation of views by deputations and the Administration's initial responses</b>			
000525 – 000812	Internet Professional Association ("IPA")	Presentation of views [LC Paper No. CB(1)682/14-15(01)]	
000813 – 001324	The Association of Cloud and Mobile Computing Professionals ("ACMCP")	Presentation of views [LC Paper No. CB(1)682/14-15(01)]	
001325 – 001734	UnionPay International Ltd ("UPI")	Presentation of views as highlighted below –  (a) UPI supported the proposed regulatory regime for stored value facilities ("SVF") and retail payment systems ("RPS") as it would help promote market development and financial innovation in SVF and RPS; and  (b) there should be guidelines on the detailed operation of the proposed regulatory regime (e.g. procedures for revoking an SVF licence) to facilitate compliance.	
001735 – 002032	PayPal Pte. Ltd ("PayPal")	Presentation of views [LC Paper No. CB(1)656/14-15(01)]	
002033 – 002228	Deloitte Touche Tohmatsu ("DTT")	Presentation of views as highlighted below –  (a) DTT supported the proposed regulatory regime as it would help enhance consumers' confidence in the usage of SVF and RPS, and promote healthy development of the relevant markets; and  (b) guidelines and practice notes on matters such as risk management and internal controls should be issued for reference of the SVF/RPS industry.	

Time Marker	Speaker	Subject(s)	Action Required
002229 – 002434	MasterCard International Inc. ("MCI")	Presentation of views [LC Paper No. CB(1)656/14-15(02)]	
002435 – 002938	Dr Witman HUNG	Presentation of views [LC Paper No. CB(1)682/14-15(01)]	
002939 – 003358	Octopus Cards Limited ("OCL")	Presentation of views [LC Paper No. CB(1)684/14-15(01)]	
003359 – 004340	Chairman Administration	<p>The Administration's initial responses to deputations' views –</p> <p>(a) the proposed regulatory regime would enhance the confidence of the retail public in SVF and RPS, and provide certainty and clarity to industry players in setting up and operating relevant business in Hong Kong;</p> <p>(b) the Administration attached importance to ensuring financial safety and facilitating innovation in the development of SVF and RPS and other financial services in Hong Kong, and would strive to ensure proper regulation and facilitate market development;</p> <p>(c) under the current proposal, small SVF market players, i.e. SVF with limited usage and a float size of not more than \$1 million, would be exempted from the proposed regulatory regime;</p> <p>(d) issues relating to financial innovation were outside the scope of the Clearing and Settlement Systems (Amendment) Bill 2015 ("the Bill"). Relevant suggestions might be followed up in other contexts (e.g. the Steering Group on Financial Technologies ("the Steering Group"));</p> <p>(e) the Bill provided for the legislative framework for SVF and RPS while the details of operation would be set out in guidelines to be issued by the Monetary Authority (i.e. Hong Kong Monetary Authority ("HKMA"));</p> <p>(f) the proposed regulatory regime would be applied consistently. All persons must</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>obtain a licence from HKMA for the issue or facilitate the issue of SVF, and comply with the relevant requirements for issuing/operating SVF in Hong Kong;</p> <p>(g) a "facilitator" of an SVF was defined under the Bill as one that provided value to the SVF issuer which determined the extent to which the issuer might provide its customers with electronic value. A person who provided ancillary services (e.g. payment gateways) which assisted the issuer in the SVF business would not be captured by the definition; and</p> <p>(h) an SVF licensee would be given a period of not less than 14 days to make oral/written representations <u>before</u> HKMA attached new or varied conditions on the licence.</p>	
004341 – 005759	Chairman Mr CHAN Kam-lam Mr SIN Chung-kai Dr Witman HUNG ACMCP Administration	<p>Mr CHAN's views that the proposed regulatory regime would help expand SVF and RPS markets in Hong Kong and promote their healthy development. He sought deputations' views whether there were issues in the Bill that might hamper the development of SVF and RPS markets.</p> <p>Dr HUNG considered that the Bill should facilitate small and medium-sized SVF/RPS operators ("SMEs") to enter the Hong Kong market through encouraging open data interchange ("ODI") between the systems of banks and those of SVF/RPS operators, which would be conducive to creating a level playing field for various operators.</p> <p>Mr SIN invited deputations' views on whether and how the Bill should incorporate provisions on ODI.</p> <p>ACMCP pointed out that in some major jurisdictions (e.g. the United Kingdom), guidelines were already in place requiring banks and financial institutions to standardize formats in their systems, etc. to facilitate ODI with their clients.</p> <p>The Administration advised that currently, banks provided e-banking services to enterprises</p>	The Administration to take action as paragraph 4 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>including SMEs to facilitate transfer/collection of payments and meet their business needs. Issues relating to ODI for standardizing formats for exchanging data and financial innovation were outside the scope of the Bill, and should be followed up in other contexts.</p> <p>At the request of the Chairman, the Administration agreed to provide information on the experiences of major overseas jurisdictions in implementing ODI for their financial services sectors, including the relevant legislation and regulations in place in these jurisdictions; and consider the need to take forward ODI for the financial services sector in Hong Kong through developing relevant guidelines.</p>	<p>The Administration to take action as paragraph 5 of the minutes.</p>
005800 – 010033	Chairman Mr SIN Chung-kai MCI	<p>In reply to Mr SIN's request for MCI to elaborate on its views on the proposed RPS designation system [LC Paper No. CB(1)656/14-15(02)], MCI said that –</p> <p>(a) it supported the Bill in providing a regulatory framework for RPS and agreed that the regulator should issue guidelines and practice notes on the detailed operation and best practices for industry's reference and to facilitate compliance; and</p> <p>(b) in view of rapid development in RPS products/services, HKMA's approval should not be required for each new product/service provided by an operator.</p>	
010034 – 010822	Chairman Mr Charles Peter MOK ACMCP Administration	<p>Discussion on whether and how ODI should be taken forward in Hong Kong in respect of the SVF and RPS markets.</p> <p>With reference to the existing system adopted by banks for inter-bank transfer of money, ACMCP explained the operation and potential benefits of ODI between the systems of banks and SVF/RPS operators in Hong Kong.</p> <p>Mr MOK opined that ODI would facilitate more innovations in application-programming interface among different payment facilities and systems to cater for users' needs. He enquired whether the Administration would take forward ODI for the financial services sector in Hong Kong.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration advised that the Bill did not restrict ODI or enforce a particular standardized format for data exchange between the systems of banks and those of SVF/RPS or among the systems of SVF/RPS in Hong Kong. The Administration would be willing to work with stakeholders to look into the potential of the financial technology sector.</p>	
<p>010823 – 011815</p>	<p>Chairman Mr CHAN Chi-chuen OCL Administration</p>	<p>In reply to Mr CHAN, OCL elaborated on its concerns that –</p> <ul style="list-style-type: none"> <li>(a) it might be difficult for HKMA to ensure effective regulatory oversight of overseas SVF and RPS operating in Hong Kong. Given that their systems/operations were mainly located outside Hong Kong, they might circumvent the relevant regulatory requirements, whereas the local SVF/RPS operators (including OCL) would in effect be subject to closer supervision; and</li> <li>(b) the Administration should clarify whether the float safeguarding measures must ensure full protection of the float at all times in order to meet the relevant regulatory requirement.</li> </ul> <p>The Administration stressed that –</p> <ul style="list-style-type: none"> <li>(a) the proposed regulatory regime would be applied consistently to all SVF issued in Hong Kong in a fair and equal manner. While banks were deemed to be licensed to issue SVF, they would be subject to the same regulatory requirements applied to SVF licensees;</li> <li>(b) an SVF licensee must put in place adequate risk management policies and procedures for float management, in particular to keep the float separate from other funds of the issuer to ensure adequate protection of the float; and</li> <li>(c) if an overseas issuer operated an SVF in Hong Kong without a licence, it would have committed an offence. HKMA would take appropriate regulatory actions and, if necessary, seek assistance from the relevant authority of the issuer's home jurisdiction in taking enforcement actions. HKMA would</li> </ul>	<p>The Administration to take action as paragraph 6(a) of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		also alert the public of the unlicensed SVF business.	
011816 – 012306	Chairman Mr Kenneth LEUNG Administration	<p>Mr LEUNG enquired about the supervisory approach towards non-bank SVF licensees vis-à-vis bank licensees, and whether there would be subsidiary legislation prescribing the details of the SVF licensing regime.</p> <p>The Administration advised that –</p> <p>(a) under the proposed regulatory regime, any person intending to issue, or facilitate the issue of, SVF in Hong Kong must obtain a licence from HKMA. Licensed banks would be deemed to be licensed to issue SVF. The deeming provisions would not cover restricted licence banks and deposit-taking companies. In conducting SVF business, the licensed banks would need to comply with the same regulatory requirements as those on non-bank licensees; and</p> <p>(b) the detailed operation of the SVF licensing regime would be set out in the guidelines to be issued by HKMA, which were not subsidiary legislation.</p>	
012307 – 014506	Chairman Mr SIN Chung-kai Mr Charles Peter MOK Mr Kenneth LEUNG Dr Witman HUNG IPA Administration	<p>Mr SIN sought deputations' views as to whether the proposed regulatory regime would pose any obstacles to the development of new/innovative SVF/RPS products/technologies.</p> <p>Mr LEUNG enquired if there would be particular issues of financial innovation that the Bill should address.</p> <p>Dr HUNG and IPA opined that –</p> <p>(a) the Bill should be sufficiently broad to accommodate the development of new/innovative SVF/RPS products/technologies (e.g. new technologies for payments and authentication of SVF users' identity) to provide certainty to the industry and cater for the rapid technological development in the SVF and RPS markets, so as to avoid frequent amendments to the relevant legislation;</p>	

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		<p>(b) measures should be put in place to facilitate SMEs to enter the Hong Kong SVF and RPS markets, and create a level playing field for various operators. The Administration should consult SMEs, and not just large SVF/RPS operators, when taking forward relevant initiatives; and</p> <p>(c) in promoting the development of SVF and RPS markets in Hong Kong, the Administration should encourage the employment of local talents and adoption of locally developed technologies by enterprises.</p> <p>Mr MOK sought clarification –</p> <p>(a) whether legislative amendments would be required for establishing or facilitating ODI between the systems of banks and those of SVF/RPS operators or among the SVF/RPS operators in Hong Kong; and</p> <p>(b) when the Administration would consider it necessary to step in (either through a legislative approach or other means) instead of relying on market forces, in taking forward ODI for the financial services sector in Hong Kong.</p> <p>The Chairman remarked that the Steering Group should gauge the views of SMEs and the younger generation in the information technology industries on issues relating to financial innovation.</p> <p>In response to the views/enquiries raised by members/deputations above, the Administration advised that –</p> <p>(a) the proposed regulatory regime would not hinder the development of new/innovative SVF/RPS products/technologies as it did not prescribe or preempt a particular choice of format, standard or technology, in relation to the operations or data transmission of a designated system or an SVF scheme;</p> <p>(b) the Administration did not see the need at the present stage to provide for ODI between the systems of banks and those of SVF/RPS</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>through legislative means, and the Bill did not prohibit ODI. However, any enforcement through legislation on the use of a particular technology or technological standard might hinder the development of the payment industry given the rapidly changing technological environment. That said, the Administration would consider using other channels or platforms for exploring with the relevant stakeholders and consider measures to facilitate financial innovation taking into account market needs and industry's views; and</p> <p>(c) the proposed regulatory regime would facilitate SMEs to enter the SVF and RPS markets, and employment of local human capital. For instance, SVF with limited usage and a float size of not more than \$1 million would be exempted from the regulatory regime, and SVF licensees were required to have physical presence in Hong Kong.</p>	
<p>014507 – 015721</p>	<p>Chairman Mr Charles Peter MOK OCL Administration</p>	<p>Mr MOK sought OCL's clarification of its concern that the proposed regulatory regime would target at OCL.</p> <p>OCL reiterated its concerns about –</p> <p>(a) the difficulty for HKMA to ensure effective regulatory oversight of overseas SVF with their systems/operations mainly located outside Hong Kong; and</p> <p>(b) it might suppress innovation if HKMA's approval was required for each new product/service provided by a licensed SVF, or a new fee charged on its users.</p> <p>The Chairman and Mr MOK opined that HKMA should adopt a risk-based supervisory approach with focus on the compliance with regulatory requirements to ensure proper protection of the float, etc.</p> <p>Mr LEUNG stressed the importance to ensure protection of consumers' interests in using SVF/RPS including related new products/services.</p>	



Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr MOK enquired whether the approval mechanism for new products/services provided by a licensed SVF or designated RPS operator would operate on an ex ante or ex post basis. He opined that there should be clear and objective criteria for determining whether a new product/service would require HKMA's approval.</p> <p>The Administration advised that in determining whether a new product/service provided by a licensed SVF or designated RPS would require approval, or subject to conditions, HKMA would consider factors including the nature of the new product/service (for instance, change from a device-based to a non-device-based SVF) and potential risks on financial safety or stability. SVF issuers and RPS operators were expected to conduct adequate due diligence and proper risk assessment of all new products and services before such products and services were launched.</p>	<p>The Administration to take action as paragraph 7 of the minutes.</p>
<p>015722 – 021026</p>	<p>Chairman Mr Charles Peter MOK Mr SIN Chung-kai MCI IPA Administration</p>	<p>Mr MOK sought assessment of the impact of the proposed regulatory regime on SMEs intending to set up SVF/RPS business in Hong Kong, or SMEs providing services to SVF/RPS operators.</p> <p>The Chairman considered that SMEs might have difficulties in setting up and operating SVF/RPS business in view of the substantial resources requirement and heavy compliance costs.</p> <p>MCI pointed out that –</p> <p>(a) companies like MCI would provide the payment network for issuance of pre-paid cards. It might not be suitable for SMEs to operate SVF/RPS business given the substantial resources requirement and risks associated with float management; and</p> <p>(b) HKMA should issue guidelines on the operation details of the proposed regulatory regime, in particular the float management requirements.</p> <p>IPA stressed the importance to ensure a level playing field for SMEs to enter the SVF/RPS market, and enable SMEs to use SVF/RPS at lower costs by including provisions relating to ODI in the Bill.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration advised that there were provisions in the Bill to exempt certain types of SVF (including SVF with limited usage and float size less than \$1 million) from regulation.</p> <p>Mr SIN stressed the need for HKMA to strike a balance between financial innovation and regulation of SVF and RPS to ensure soundness and safety of these payment facilities.</p>	
021027 – 022619	Chairman Administration	<p>Briefing by the Administration on its responses to issues arising from the discussions at the meeting on 2 March 2015 (LC Paper No. CB(1)656/14-15(10))</p>	
022620 – 023130	Chairman Mr SIN Chung-kai Administration	<p>Referring to the current regime for combating illegal betting activities, Mr SIN enquired whether HKMA would require banks to restrict the transfer of clients' money to accounts of unlicensed SVF (including SVF operating overseas and not targeting the Hong Kong public) or those of RPS operators which had breached the relevant regulatory requirements, in order to ensure compliance with the requirements of the proposed regulatory regime.</p> <p>The Administration advised that in taking enforcement actions, HKMA would look into the circumstances of each case, such as whether the SVF/RPS operators in question intended to circumvent certain regulatory requirements.</p> <p>At the request of Mr SIN, the Administration agreed to provide supplementary information on his enquiry above.</p>	<p>The Administration to take action as paragraph 6(b) of the minutes.</p>
023131 – 024354	Chairman Mr Charles Peter MOK Administration	<p>Mr MOK expressed the following concerns –</p> <p>(a) given that subsections (1) and (2) of the proposed section 8C (Clause 17 of the Bill) had provided that <u>any person</u> must not knowingly promote or otherwise assist another person in issuing, or facilitating the issue of, an unlicensed SVF, the specification in subsection (3) that "a reference to promoting or otherwise assisting" included "by means of providing network or internet portal access or any other technological</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>means" seemed to target the relevant offence at Internet service providers ("ISP");</p> <p>(b) the liabilities imposed on ISP under the proposed regulatory regime were different from those imposed on ISP under other local regulatory regimes (e.g. the regulatory regimes in respect of copyright, or control of obscene and indecent articles); and</p> <p>(c) how HKMA could ensure a non-complying ISP would terminate its web hosting and other internet services to an unlicensed SVF as the ISP's systems/operations might be located overseas, and the relevant services were provided/accessible through internet which was boundary free.</p> <p>The Administration advised that –</p> <p>(a) the specification in subsection (3) in relation to ISP services was meant to stipulate explicitly the parties who might become liable in order to prohibit "facilitation of issue of SVF" without a licence; and</p> <p>(b) the liabilities in question were considered reasonable, i.e. a person would commit an offence only if he/she, <u>knowingly and without a reasonable excuse</u>, promoted or otherwise assisted another person in issuing, or facilitating the issue of, an unlicensed SVF. ISP did not have an obligation to ascertain whether an SVF was licensed before providing services to it, nor was the SVF operator required to inform its service providers about its licensing status. The liability provisions had taken into account the specific objectives and context of the proposed regulatory regime, and struck a balance in view of the operation of SVF and its service providers.</p> <p>At the request of Mr MOK, the Administration agreed to provide supplementary written responses to his concerns above.</p>	<p>The Administration to take action as paragraphs 8 to 10 of the minutes.</p>

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
024355 – 024417	Chairman	Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
10 July 2015