

立法會
Legislative Council

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by the Administration)

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

**Minutes of the third meeting on
Monday, 13 April 2015, at 4:30 pm
in Conference Room 3 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 CHAN Kin-por, BBS, JP
Hon NG Leung-sing, SBS, 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 Starry LEE Wai-king, JP
- Public officers attending** : 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

Ms Lonnie NG
Acting Senior Assistant Law Draftsman
Department of Justice

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

Miss Sharon LO
Senior Council Secretary (1)9

Ms Sharon CHAN
Legislative Assistant (1)4

I Meeting with the Administration

Matters arising from previous meetings

(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
- LC Paper No. CB(1)714/14-15(01) -- List of follow-up actions arising from the discussion at the meeting on 23 March 2015
- LC Paper No. CB(1)714/14-15(02) -- Administration's response to the issues arising from the meeting held on 23 March 2015 and to the views provided by organizations/individuals on the Bill at the meeting or in their submissions
- LC Paper No. CB(1)714/14-15(03) -- Letter dated 23 March 2015 from Legal Service Division to the Administration
- LC Paper No. CB(1)714/14-15(04) -- Administration's response to Legal Service Division's letter dated 23 March 2015)

Clause-by-clause examination of the Bill

- (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
(*issued on 6 March 2015*) 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)

Discussion

The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Clause-by-clause examination of the Bill

2. The Bills Committee completed scrutiny of the long title and clauses 1 to 13 of the Bill.

Follow-up actions to be taken by the Administration

Transfer of personal data to place outside Hong Kong

3. The Administration was requested to:
- (a) address a member's concern about safeguards under the Bill to prevent transfer of personal data to places outside Hong Kong by operators of stored value facilities and retail payment systems ("RPS") before section 33 on "Prohibition against transfer of personal data to place outside Hong Kong except in specified circumstances" of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") could come into operation; and
 - (b) relay the concern to the Constitutional and Mainland Affairs Bureau about the timing to bring section 33 of PDPO into operation.

Amendments to sections 2 and 6 of the Clearing and Settlement Systems Ordinance (Cap. 584) ("CSSO") (under clauses 5 and 12)

Definition of retail payment system

4. In the light of comment of the Legal Adviser to the Bills Committee, the Administration was requested to consider amending the proposed definition of "retail payment system" in section 2 of CSSO to clarify that the "retail activities" included retail activities taking place in and outside Hong Kong.

Offences and penalties in respect of obligation to inform Monetary Authority ("MA") of name and address, etc.

5. The proposed new section 6(3) and (4) of CSSO provided for penalties on conviction on indictment for breaching the obligation to inform MA of the name and address, etc. of a payment system operator, whereas penalties were provided for conviction on indictment and summary conviction in respect of some other

offences under the Bill (e.g. contravention of restriction on activities carried out through designated RPS under the proposed new section 6A, and contravention of a condition attached to a consent given by MA for designated RPS under the proposed new section 6B). In the light of comment of Legal Adviser to the Bills Committee, the Administration was requested to consider whether penalties on summary conviction should be provided under the new section 6(3) and (4).

(Post-meeting note: The Administration's written response was issued to members vide LC Paper No. CB(1)784/14-15(03) on 27 April 2015.)

II Any other business

Date of next meeting

6. The Chairman reminded members that the next two meetings would be held on 28 April 2015, at 8:30 am and 12 May 2015, at 10:45 am respectively.
7. There being no other business, the meeting ended at 6:21 pm.

Council Business Division 1
Legislative Council Secretariat
31 July 2015

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

**Third meeting on Monday, 13 April 2015, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000140 – 000325	Chairman	Introductory remarks	
000326 – 001617	Chairman Administration	Briefing by the Administration on its response to the issues arising from the meeting held on 23 March 2015 and the views provided by organizations/individuals on the Bill (LC Paper No. CB(1)714/14-15(02))	
001618 – 002029	Chairman Mr CHAN Kam-lam Administration	<p>Mr CHAN sought the Administration's response to the concern of the Octopus Cards Limited ("OCL") that it would be the target of the proposed regulatory regime for stored value facilities ("SVF").</p> <p>The Administration advised that –</p> <p>(a) the proposed regulatory regime would apply to all SVF issued in Hong Kong in a fair and equal manner, and would not target OCL only; and</p> <p>(b) currently, OCL was subject to the "multi-purpose card" regulatory regime under the Banking Ordinance (Cap. 155) ("BO"). Given OCL's current business model and scale of operation and the total users' float with Octopus cards, OCL would likely be captured by the proposed regulatory regime in future. There were provisions in the Bill to allow pre-existing SVF issuers to transit to the new regulatory regime.</p>	
002030 – 002429	Chairman Mr NG Leung-sing Administration	Mr NG enquired about the organizational structure, powers and functions of the newly established Steering Group on Financial Technologies ("Fintech"), and considered that the Steering Group should collaborate with the relevant industries and regulators in the Mainland for taking forward Fintech development (e.g. internet financing) in Hong Kong.	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration advised that –</p> <ul style="list-style-type: none"> (a) the Steering Group was chaired by the Secretary for Financial Services and the Treasury, and comprised non-official members drawn from the industries and research and development institutions, as well as relevant Government officials and representatives from the financial regulators; (b) the Steering Group was tasked to advise the Financial Secretary on economic and business opportunities provided by the development of Fintech for Hong Kong, and the potential and measures of developing Hong Kong into a Fintech hub. The Steering Group would announce the progress of its work when appropriate; and (c) the Administration agreed to relay Mr NG's views regarding the need and advantages to collaborate with the Mainland and neighbouring areas to achieve synergies in Fintech development to the Steering Group. 	
002430 – 002847	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN reiterated his views that, in order to ensure compliance of SVF issuers and RPS operators with the requirements of the proposed regulatory regime, the law should 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.</p> <p>The Administration advised that –</p> <ul style="list-style-type: none"> (a) the proposed regulatory regime sought to regulate SVF issued and RPS operating in Hong Kong, and would not have jurisdiction over SVF issued outside Hong Kong; (b) the supervisory powers of the Hong Kong Monetary Authority ("HKMA") under BO and provided in the Bill could cover the activities of licensed banks and SVF issued and RPS operating in Hong Kong if HKMA considered such activities posed threat to the monetary/financial stability. However, 	

Time Marker	Speaker	Subject(s)	Action Required
		<p>HKMA did not have the powers to restrict the operations of SVF issued outside Hong Kong; and</p> <p>(c) HKMA would educate the public about the scope of the proposed regulatory regime, and alert them to the risks of using SVF issued outside Hong Kong.</p>	
002848 – 003252	Chairman Mr Kenneth LEUNG Administration	<p>Mr LEUNG's enquiry about safeguards under the Bill to prevent transfer of personal data by SVF and RPS operators to places outside Hong Kong before section 33 on "Prohibition against transfer of personal data to place outside Hong Kong except in specified circumstances" of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") could come into operation, and his view that the Government should bring section 33 of PDPO into operation early.</p> <p>The Administration advised that –</p> <p>(a) SVF and RPS operators had to observe other applicable statutory requirements including those in PDPO;</p> <p>(b) there were provisions in Schedule 3 to the Bill and other parts of the Bill to require SVF and RPS operators to ensure their operations, including the handling of personal data, were conducted in a prudent and safe manner that would not adversely affect the interests of users; and</p> <p>(c) the Administration would relay Mr LEUNG's concern to the Constitutional and Mainland Affairs Bureau about the timing to bring section 33 of PDPO into operation.</p>	The Administration to take action as paragraph 3 of the minutes
003253 – 003856	Chairman Mr Charles Peter MOK Administration	<p>Mr MOK reiterated his concerns about –</p> <p>(a) the liability provision in the proposed section 8C(3) (Clause 17 of the Bill) which seemed to target Internet service providers ("ISP"), and possible liabilities on ISP in respect of publication of advertisement relating to SVF under the proposed section 8ZZZJ; and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) the different approaches used for treating liabilities on ISP under various regulatory regimes (e.g. the regulatory regimes in respect of SVF and RSP, copyright, and human reproductive technology), which might confuse ISP and lead to difficulties in compliance.</p> <p>The Administration advised that –</p> <p>(a) the offence provisions under various regulatory regimes had taken into account the specific objectives and contexts concerned;</p> <p>(b) the proposed section 8C(3) was meant to stipulate explicitly the parties to be liable for the offence to prohibit "facilitation of issue of SVF" without a licence. There would be no difference in the liabilities on ISP or other persons in contravening the requirement under the provision. The provision did not impose a duty on the part of any person (including ISP) to verify the contents and accuracy of the promotional or advertisement materials provided by an SVF issuer; and</p> <p>(c) the Administration was studying comparable provisions in other local regulatory contexts in relation to exposures to ISP.</p>	
003857 – 004226	Chairman Administration	<p>The Chairman enquired whether the proposed regulatory regime would cover SVF issued outside Hong Kong (e.g. Oyster card used for the public transport system in London) which could be purchased and added value via online platforms, and whether there would be restriction on transfer of money from users' bank accounts in Hong Kong to accounts of SVF operators outside Hong Kong.</p> <p>The Administration advised that –</p> <p>(a) the proposed regulatory regime for SVF would not govern Oyster card and other travel smartcards issued outside Hong Kong, as these payment devices were likely single-purpose SVF, and not issued/used in Hong Kong; and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		(b) whether an SVF would be subject to the proposed regulatory regime, and whether restriction should be imposed on transfer of money to an SVF account, would be considered according to the relevant circumstances.	
Clause-by-clause examination of the Bill			
004227 – 004653	Administration Chairman	<p>Part 1</p> <p>Preliminary</p> <p><u>Clause 1 – Short title and commencement</u></p> <p><u>Clause 2 – Enactments amended</u></p> <p>Part 2</p> <p>Amendments to Clearing and Settlement Systems Ordinance</p> <p><u>Clause 3 – Long title amended</u></p> <p><u>Clause 4 – Section 1 amended (short title)</u></p>	
004654 – 005214	Chairman Assistant Legal Adviser ("ALA") Administration	<p><u>Clause 5 – Section 2 amended (interpretation)</u></p> <p><i>definition of "retail payment system"</i></p> <p>In reply to ALA's enquiry, the Administration clarified that "retail activities" in the proposed definition of "retail payment system" were not confined to retail activities taking place in Hong Kong, as the relevant system might involve cross-border retail payment transactions. (paragraph (b) of LC Paper CB(1)714/14-15(03) and paragraph 5 of LC Paper CB(1)714/14-15(04))</p> <p>In the light of comments by ALA and the Chairman, the Administration agreed to consider amending the proposed definition of "retail payment system" to clarify that the "retail activities" included retail activities taking place in and outside Hong Kong.</p>	The Administration to take action as paragraph 4 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
005215 – 005538	Chairman Administration ALA	<p><u>Clause 5 – Section 2 amended (interpretation)</u></p> <p><i>definition of "system operator"</i></p> <p>ALA sought the reasons for not including a person who was responsible for the operation of any other related functions in the proposed definition of "system operator" in relation to a clearing and settlement system. (paragraph (a) of LC Paper No. CB(1)714/14-15(03))</p> <p>The Administration's response as set out in paragraphs 2 to 4 of LC Paper No. CB(1)714/14-15(04)</p>	
005539 – 010444	Chairman Mr NG Leung-sing Administration	<p>Mr NG conveyed concerns from The Hong Kong Association of Banks ("HKAB") that, as banks in Hong Kong were already licensed and regulated under BO, and were deemed licensees in respect of SVF; it would be undesirable and unnecessary to subject banks to requirements of the proposed regulatory regime. (paragraph A of HKAB's submission (LC Paper No. CB(1)713/14-15(01))</p> <p>The Administration advised that –</p> <p>(a) as licensed banks were subject to regulatory requirements and on-going supervision by HKMA on a consolidated basis under BO, they would be deemed to be licensed to issue SVF as a line of business;</p> <p>(b) licensed banks would still be required to comply with the relevant requirements under the proposed regulatory regime if they decided to continue with or embark on SVF business. This would ensure regulatory consistency for all SVF issuers, and a level playing field between SVF issuers of banks and non-banks. Nevertheless, a number of regulatory provisions of the Bill would not be applicable to SVF issuers of banks if related requirements were already in place under BO; and</p> <p>(c) the Administration would provide a written response to HKAB's submission.</p>	

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010445 – 011241	Chairman Administration ALA	<p><u>Clause 6 – Sections 2A, 2B and 2C added</u></p> <p><i>2A. Interpretation: stored value facility</i></p> <p>ALA's enquiry about –</p> <p>(a) whether the purpose for making payment to a third person through an SVF should be stated in the new section 2A(3) (paragraph (c) of LC Paper No. CB(1)714/14-15(03)); and</p> <p>(b) if an SVF issuer offered to pay SVF users <u>interest</u> (or other form of incentives) on certain sums of money paid into and remained in the facility for a specified period, whether such kind of offer and arrangement would render the relevant SVF falling outside the scope of the proposed licensing scheme for SVF, and if so, whether the relevant SVF would be subject to the regulation of BO. (paragraph (d) of LC Paper No. CB(1)714/14-15(03))</p> <p>The Administration's responses as set out in paragraphs 6 to 8 of LC Paper No. CB(1)714/14-15(04)</p>	
011242 – 011413	Chairman ALA Administration	<p><i>2A. Interpretation: stored value facility</i></p> <p>In respect of the proposed definition of "single-purpose SVF" in the new section 2A(5), ALA enquired whether an SVF used as a means of making payments for both goods <u>and</u> services provided by the issuer (instead of "goods <u>or</u> services" in paragraph (b)(i)) would be regarded as a multi-purpose SVF.</p> <p>The Administration advised that as long as the goods and/or services were provided by the SVF issuer to the users (i.e. bilateral contractual arrangements only) and did not involve other service vendors, the SVF would be regarded as a single-purpose SVF.</p>	
011414 – 012338	Chairman Administration Mr CHAN Chi-chuen ALA	<p><u>Clause 6 – Sections 2A, 2B and 2C added</u></p> <p><i>2B. Interpretation: facilitator</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>2C. Monetary Authority may declare medium of exchange</i></p> <p>The Chairman sought examples of things which HKMA could declare as a medium of exchange under the proposed new section 2C.</p> <p>Mr CHAN enquired whether HKMA had declared other thing as a medium of exchange except the legal tender, and whether it was a criterion that the declared medium of exchange should be exchangeable for money.</p> <p>The Administration explained that HKMA adopted a very high threshold in the declaration of medium of exchange, i.e. the thing should be widely used and accepted in Hong Kong as a means of payment for goods and services. Apart from the existing legal tender, no other things had been declared by HKMA as a medium of exchange.</p>	
<p>012339 – 013616</p>	<p>Chairman Mr NG Leung-sing CHAN Kam-lam Administration ALA</p>	<p><u>Clause 7 – Section 3 heading amended (application)</u></p> <p><u>Clause 8 – Part 2 heading amended (designation and oversight)</u></p> <p><u>Clause 9 – Part 2, Division 1 heading amended (designation)</u></p> <p><u>Clause 10 – Section 4 amended (Monetary Authority may designate clearing and settlement systems)</u></p> <p>Discussion on the use of the terms "顯著干擾" ("significant disruption"), "顯著效率欠佳" ("significant inefficiency"), and "重大公眾利益" ("significant public interest") in the proposed new sections 4(3) and 4(3A)</p> <p>ALA sought the reasons for –</p> <p>(a) using "顯著" and "重大" in the Chinese text for "significant" in the English text of the provisions; and</p> <p>(b) replacing "重大干擾" in the Chinese text of the existing section 4(3) by "顯著干擾" in the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>new section 4(3), and whether it was intended to reflect a change in the magnitude of disruption.</p> <p>The Administration advised that the use of words "顯著" for "干擾" and "效率欠佳", and "重大" for "公眾利益" in the Chinese text had taken into account a better and more appropriate collocation in Chinese and that the replacement of "重大干擾" in the Chinese text of the existing section 4(3) by "顯著干擾" in the Bill was not intended to reflect a change in the magnitude of disruption.</p> <p>In response to Mr NG's enquiry about the objective criteria for HKMA to determine whether a matter was of "significant public interest" (vis-à-vis "public interest") for consideration of RPS designation, the Administration advised that HKMA would need to take into account the factors set out in the proposed new section 4(4A).</p> <p>Mr CHAN opined that HKMA should take into account the proper functioning of an RPS and such importance to the monetary stability in considering whether to designate the RPS.</p> <p>The Administration pointed out that, under the proposed new section 4(1)(a), HKMA would consider designation of an RPS if its proper functioning was material to the monetary/financial stability of Hong Kong; or material to the functioning of Hong Kong as an international financial centre.</p>	
013617 – 014958	Chairman Mr Charles Peter MOK ALA Administration	<p><u>Clause 11 – Section 5 amended (revocation of designation)</u></p> <p><u>Clause 12 – Section 6 amended (obligation to inform Monetary Authority of name and address, etc.)</u></p> <p>On the requirement for a system operator to inform HKMA of its name, address etc., and subsequent changes in the information, Mr MOK enquired –</p> <p>(a) whether the system operator must provide a postal address in Hong Kong, and if so,</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>whether such requirement should be explicitly stated in the provision; and</p> <p>(b) whether the proposed penalties for breaching the requirement (i.e. a fine of \$400,000 and imprisonment for two years on conviction on indictment) were reasonable compared to similar offences under other legislation in Hong Kong.</p> <p>The Administration advised that –</p> <p>(a) as RPS usually operated globally and their core computer systems might not necessarily be located in Hong Kong, the operators could provide addresses outside Hong Kong to HKMA. For SVF, the licensee must have a registered office in Hong Kong under the proposed licensing criteria, and hence should provide the address of its Hong Kong office;</p> <p>(b) the requirement to inform HKMA of name and address, etc. and the prescribed penalties in the new section 6 were adopted from existing provisions for the regulation of large scale clearing and settlement system operators. If necessary, HKMA could issue guidelines on the detail of information to be provided to facilitate compliance by RPS operators; and</p> <p>(c) the penalties prescribed in the proposed new section 6(3) and (4) were the maximum level of penalties which were the same as those provided in the existing section 41. The Court would determine the actual penalties having regard to the circumstances of individual cases, including the "reasonable excuse" provided by the RPS operator.</p> <p>ALA noted that the proposed new section 6(3) and (4) provided for penalties on <u>conviction on indictment</u> for breaching the requirement in subsections (1) and (2), whereas penalties were provided for both conviction on indictment and summary conviction in respect of some other offences under the Bill (e.g. contravention of restriction on activities carried out through designated RPS under the proposed new section 6A, and contravention of a condition attached to a</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>consent given by HKMA for designated RPS under the proposed new section 6B). The Administration should consider whether penalties on <u>summary conviction</u> should also be provided under the new section 6(3) and (4).</p> <p>The Administration advised that prescribing only penalties on conviction on indictment in the proposed new section 6 was in line with the arrangement under the existing section 41, and that it was likely the offence in the new section 6 would be tried on indictment.</p> <p>At the request of the Chairman, the Administration agreed to consider whether penalties on summary conviction should be provided for under the new section 6(3) and (4).</p>	<p>The Administration to take action as paragraph 5 of the minutes</p>
<p>014959 – 015208</p>	<p>Chairman Administration</p>	<p><u>Clause 13 – Sections 6A and 6B added</u></p> <p><i>6A. Restriction on activities carried out through designated retail payment systems</i></p> <p><i>6B. Monetary Authority may give consent for designated retail payment system to carry out activities not declared under section 4(4B)</i></p>	
<p>015209 – 015238</p>	<p>Chairman</p>	<p>Date of next two meetings</p>	