

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 fourth meeting on
Tuesday, 28 April 2015, at 8:45 am
in Conference Room 2A 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 NG Leung-sing, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Kenneth LEUNG
Hon SIN Chung-kai, SBS, JP

Member absent : Hon Christopher CHEUNG Wah-fung, SBS, 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)713/14-15(01) — Submission from The Hong Kong Association of Banks (English version only)

LC Paper No. CB(1)784/14-15(01) — Administration's response to the submission from The Hong Kong Association of Banks

LC Paper No. CB(1)784/14-15(02) — List of follow-up actions arising from the discussion at the meeting on 13 April 2015

LC Paper No. CB(1)784/14-15(03) — Administration's response to issues raised at the meeting on 13 April 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 prepared by the Legal Service Division (Restricted to members only)

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

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)

Declaration of interest

The Chairman declared that he was a non-executive director of a bank.

Discussion

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

Clause-by-clause examination of the Bill

3. The Bills Committee scrutinized clauses 14 to 17 (up to the proposed section 8N of the Clearing and Settlement Systems Ordinance (Cap. 584) ("CSSO")), and clause 53 of the Bill.

Follow-up actions to be taken by the Administration

Offences and penalties in respect of contravention of requirements applying to designated systems

4. The proposed amendments to section 7 of CSSO (clause 14 of the Bill) provided for penalties on conviction on indictment for contravention of requirements applicable to designated systems. In the light of comment of the Legal Adviser to the Bills Committee, the Administration was requested to consider whether penalties on summary conviction should also be provided under section 7, so as to ensure consistency with the penalty provisions in respect of some other offences under the Bill where penalties were provided for on both conviction on indictment and summary conviction.

Licensing criteria for stored value facilities ("SVF") issuers and facilitators

5. Paragraph 8(b) in Part 2 of the proposed Schedule 3 to CSSO (clause 53 of the Bill) required that an applicable company holding the float or deposit of an SVF must state clearly and prominently in the contract between the applicable company and the user "any fee to be charged for redemption of outstanding stored value in the SVF, and any deadline for using or redeeming the stored value that remains on the facility". As it was one of the policy objectives of the Bill to enhance protection of consumers' interests in relation to users' float maintained by SVF issuers, the Administration was requested to respond to members' concerns/suggestions about:

- (a) allowing SVF issuers to charge and set deadline for users in redeeming the stored value in the facility. The practice would result in forfeiture of the unredeemed value after the deadline by the issuers; and
- (b) reviewing the relevant provisions with reference to existing measures adopted by banks for handling clients' deposits in frozen/dormant accounts (e.g. the banks might charge administrative fees on such accounts but could not set a deadline for clients for withdrawing the deposits/closing the accounts).

Licence fees payable by SVF licensees

6. The Administration was requested to provide information on actions the Hong Kong Monetary Authority ("HKMA") would consider taking when an SVF licensee had failed to pay licence fees as required under the proposed sections 8M or 8N of CSSO (clause 17 of the Bill), including how HKMA would protect the interest of the retail public by taking action to stop the operation of the SVF licensee in question so that it could not continue to collect payments from users.

(Post-meeting note: The Administration's written response was issued to members vide LC Paper No. CB(1)836/14-15(03) on 11 May 2015.)

II Any other business

Date of next meeting

7. The Chairman reminded members that the next two meetings would be held on 12 May 2015, at 10:45 am and 26 May 2015, at 4:30 pm respectively.

8. There being no other business, the meeting ended at 10:28 am.

Council Business Division 1
Legislative Council Secretariat
31 July 2015

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

**Fourth meeting on Tuesday, 28 April 2015, at 8:45 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000149 – 000315	Chairman	Introductory remarks	
000316 – 000704	Administration	Briefing by the Administration on its written response to the submission from The Hong Kong Association of Banks ("HKAB") (LC Paper No. CB(1)784/14-15(01))	
000705 – 001753	Chairman Mr CHAN Kin-por Mr NG Leung-sing Administration	<p>Declaration of interest by the Chairman</p> <p>Mr CHAN, Mr NG and the Chairman expressed the following views –</p> <p>(a) the Administration should strike a balance between regulation and market development, and ensure a level playing field for stored value facilities ("SVF"); and</p> <p>(b) the Administration should take into account the operation of banks in Hong Kong and pay heed to HKAB's concerns raised in its submission, with a view to minimizing the compliance costs of SVF issuers under the proposed regulatory regime.</p> <p>The Administration responded that –</p> <p>(a) the Administration would ensure regulatory consistency for all SVF issuers; and</p> <p>(b) the Administration was mindful of the compliance costs on banks under the proposed regulatory regime. Taking into account that licensed banks were already subject to stringent regulation under the Banking Ordinance (Cap. 155) ("BO"), a number of the regulatory requirements in the Bill would not be applicable to banks as SVF issuers of banks if related requirements were already in place under BO. The Administration had also discussed with HKAB to address its comments.</p> <p>Mr NG enquired whether the Administration would consider HKAB's view that, if a</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>wholly-owned subsidiary of a bank operated an SVF business, it should be exempt from the licensing requirements given that it was already governed by BO.</p> <p>The Administration advised that a subsidiary of a licensed bank was a separate legal entity, and that not all BO provisions (e.g. capital requirements) were applicable to the subsidiary of a bank. It would be necessary to subject such a subsidiary to the licensing requirements if it was to issue SVF. This arrangement was in line with the existing regulation of securities and insurance business undertaken by a subsidiary of an authorized institution.</p> <p>The Chairman expressed concern whether SVF issuers of banks and non-banks would be subject to the same regulatory requirements of the anti-money laundering ("AML") regime.</p> <p>The Administration advised that the same AML requirements would be imposed on all SVF issuers. As one of the licensing criteria set out in the proposed Schedule 3 to the Clearing and Settlement Systems Ordinance (Cap. 584) ("CSSO"), an SVF licensee was required to put in place in the SVF scheme adequate and appropriate systems of control for preventing or combating money laundering or terrorist financing.</p>	
001754 – 002400	Administration	<p>Briefing by the Administration on its written response to the issues arising from the meeting held on 13 April 2015 (LC Paper No. CB(1)784/14-15(03))</p>	
002401 – 002559	Chairman Mr CHAN Kin-por Administration	<p>On the liabilities of internet service providers ("ISP") under the proposed section 8C of CSSO, Mr CHAN considered that –</p> <p>(a) the liabilities were reasonable as an ISP would contravene the relevant requirements only if it knowingly and without a reasonable excuse promoted or otherwise assisted a person in issuing, or facilitating the issue of, an unlicensed SVF. Besides, when an alleged contravention occurred, HKMA would request the ISP to stop providing the network or internet portal services in question, before taking enforcement actions;</p>	

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		<p>and</p> <p>(b) the Administration should step up publicity to enhance ISP's understanding of the new regulatory regime, in particular the requirement that a person must obtain a licence from HKMA before it could issue, or facilitate the issue of, SVF in Hong Kong.</p> <p>The Administration advised that after passage of the Bill, HKMA would roll out education and publicity programmes to enhance the understanding of the objectives and operation of the new regulatory regime. HKMA would issue guidelines to facilitate compliance of the regulatory requirements.</p>	
Clause-by-clause examination of the Bill			
002600 – 003129	Chairman Administration Assistant Legal Adviser ("ALA")	<p><u>Clause 14 – Section 7 amended (requirements applying to designated systems)</u></p> <p>In the light of ALA's comment, the Administration agreed to consider whether penalties on summary conviction should be provided under section 7 in addition to the proposed penalties on conviction on indictment so as to ensure consistency with the penalty provisions in respect of some other offences under the Bill where penalties were provided for on both conviction on indictment and summary conviction.</p> <p><u>Clause 15 – Section 8 amended (safety and efficiency)</u></p> <p><u>Clause 16 – Part 2, Division 3 heading repealed (matters pertaining to functions and powers of Monetary Authority)</u></p>	The Administration to take action as paragraph 4 of the minutes
003130 – 003756	Administration Chairman Mr NG Leung-sing ALA	<p><u>Clause 17 – Part 2A added</u></p> <p>Part 2A</p> <p>Licensing and Supervision of Stored Value Facilities Division 1—Preliminary</p> <p><i>8A. Interpretation of Part 2A</i></p> <p>Noting that a "manager" ("經理") as defined in the proposed section 8A of CSSO would be a</p>	

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		<p>person principally responsible for the conduct of one or more of the licensee's affairs or business specified in the proposed Schedule 6 to CSSO, Mr NG enquired whether frontline staff involving in the affairs/business would also be held responsible.</p> <p>ALA sought clarification of the difference between appointment "by a person acting for or on behalf of the licensee" and appointment "by an arrangement with the licensee" in relation to the definition of "manager".</p> <p>The Administration advised that –</p> <p>(a) the proposed definition of "manager" was adopted from the definition of "manager" under section 2 of BO;</p> <p>(b) a manager could be appointed by an SVF licensee directly or indirectly. Both ways of appointment referred to by ALA were arrangements of indirect appointment;</p> <p>(c) the affairs/business of SVF licensee specified in the proposed Schedule 6 included the maintenance of the accounting systems, systems of control, computer systems, etc. of the licensee concerned. In practice, it was likely that the department head of respective affairs/business functions would be appointed by the licensee as the "manager". The proposed regulatory regime was not aimed to hold all frontline staff responsible for the licensee's affairs/business; and</p> <p>(d) HKMA would take actions (including initiating civil or criminal proceedings if appropriate) against a "manager" for his/her failing to meet the obligations in respect of the relevant affairs/business of an SVF licensee.</p>	
003757 – 004323	Administration Chairman Mr NG Leung-sing	<p>Division 2—Restriction Relating to Issue of Stored Value Facilities, etc.</p> <p><i>8B. Restriction relating to issue, etc. of stored value facilities</i></p> <p>In reply to Mr NG's enquiry about the meaning of "facilitate the issue" of an SVF, the</p>	

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		<p>Administration explained that a facilitator was applicable to the business model of certain multi-purpose card schemes (e.g. the previous Mondex Scheme) which involved two distinct functions, namely origination of electronic value for storage in multi-purpose cards, and distribution of the multi-purpose cards to end-users. A facilitator (e.g. Mondex) could be the originator of value and held the pool of funds which backed the stored value in circulation, but the SVF were issued and distributed by another entity (e.g. banks in the case of the Mondex Scheme).</p> <p>(Pages 4 and 5 of LC Paper No. CB(1)784/14-15(01))</p> <p><i>8C. Prohibition on promoting issue, etc. of stored value facilities in contravention of section 8B</i></p> <p><i>8D. Prohibition on entering into contracts, etc. for avoiding section 8B or 8C</i></p>	
004324 – 005432	Administration Chairman Mr SIN Chung-kai Mr CHAN Chi-chuen	<p>Division 3—Licensing</p> <p>Subdivision 1—Grant of Licence</p> <p><i>8E. Application for licence</i></p> <p><i>8F. Determination of application</i></p> <p>Mr SIN sought the reasons for using "裁奪" (instead of "裁定") in the Chinese text for the English expression "determination" in relation to HKMA's determination of application for SVF licence.</p> <p>The Administration advised that different equivalents (e.g. "決定", "釐定", "裁定" and "裁奪") could be used in the Chinese text for the English expression "determination" depending on the context. As the Chinese expression "裁奪" in 《現代漢語詞典》 carried the meaning of "考慮及決定", it could better reflect the meaning that HKMA had considered various information provided by the applicant before deciding on the application.</p> <p>Mr CHAN enquired whether HKMA would set a timeframe for determining an application for SVF</p>	

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		<p>licence.</p> <p>The Administration advised that –</p> <p>(a) the Bill did not specify a timeframe for processing applications for SVF licence. The time taken for vetting applications would vary depending on the business model, and the operation and scale of each SVF scheme. Subject to sufficient information provided by an applicant to satisfy HKMA that the minimum applicable licensing criteria were met, HKMA would make a decision on the application as soon as practicable; and</p> <p>(b) HKMA would issue guidelines on the required information/documents for making applications for a licence, as that would facilitate the processing of applications.</p> <p>Mr SIN asked if HKMA would disclose to the public the reasons for refusing an application for SVF licence.</p> <p>The Administration advised that –</p> <p>(a) section 50 of CSSO required HKMA to preserve secrecy with regard to all matters relating to the affairs of any person in the performance of HKMA's functions under CSSO. Hence, HKMA could not disclose the grounds of refusing an application for SVF licence. The disclosure might also adversely affect the operation of the company concerned. This was in line with HKMA's existing confidentiality obligation in respect of determination of application for bank licence under BO; and</p> <p>(b) the confidentiality provisions of CSSO would not bind an SVF licence applicant. The applicant could disclose HKMA's reasons for refusing the application to the public. The applicant could appeal to the Clearing and Settlement Systems Appeals Tribunal against HKMA's decision.</p> <p><i>8G. Bank regarded as licensee</i></p> <p><i>8H. Validity of licence</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
005433 – 012350	Administration Chairman Mr SIN Chung-kai Mr CHAN Chi-chuen ALA	<p>The Administration suggested and members agreed to scrutinize the proposed Schedule 3 to CSSO (clause 53 of the Bill) before resuming scrutiny of Clause 17.</p> <p><u>Clause 53 - Schedules 3 to 9 added</u></p> <p>Schedule 3 - Minimum Criteria</p> <p><i>Part 1 – Preliminary</i></p> <p><i>Part 2 – Criteria</i></p> <p>In reply to Mr SIN, the Administration advised that an SVF licensee was required to ensure, on an ongoing basis, that all the minimum criteria applicable to the licensee were fulfilled. HKMA would conduct on-site and off-site examinations to monitor compliance with the minimum criteria, and take actions (e.g. revocation of licence) against the licensee if it failed to meet any of the criteria.</p> <p>Discussion on paragraph 8(b) in Part 2 of the proposed Schedule 3 to CSSO, which required that an applicable company (i.e. SVF licensee) must state in the contract between the company and the user conditions relating to redemption of stored value that remained on the SVF, including any <u>fee</u> to be charged and any <u>deadline</u> set for using/redeeming the stored value.</p> <p>Mr CHAN considered that SVF issuers should not be allowed to set a fee/deadline on users for using/redeeming the stored value unless under special circumstances. He enquired whether there were provisions in the Bill imposing a limit or condition on the fee and deadline in question, and relevant overseas practices.</p> <p>ALA's views that allowing SVF licensee to set a deadline for redeeming the stored value that remained on an SVF would result in the users' forfeiture of the stored value after the deadline. This was not consistent with paragraph 8(a) in Part 2 of the proposed Schedule 3 requiring an SVF issuer to redeem in full the total of the stored value that remained on the facility as soon as practicable after being requested by the user to do so.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr SIN's views that –</p> <ul style="list-style-type: none">(a) as the stored value on an SVF was essentially the user's money in electronic form, it was unreasonable to allow SVF issuers to charge and set deadline for the user to use/redeem the stored value; and(b) the Administration should review the relevant provisions with reference to existing measures adopted by banks for handling clients' deposits in frozen/dormant accounts (e.g. the banks might charge administrative fees on such accounts but could not set a deadline for clients for withdrawing the deposits/closing the accounts), with a view to ensuring protection of consumers' interests. <p>The Administration advised that –</p> <ul style="list-style-type: none">(a) paragraph 8(b) was meant to require that an applicable company holding the float or deposit of an SVF should state <u>clearly and prominently</u> in the contract between the applicable company and the user <u>the fee and deadline, if any</u>, for using or redeeming the stored value that remained on the facility. It was not the intention of the provision to encourage SVF issuers to set any fee/deadline;(b) it would be a commercial decision for an SVF issuer to charge a fee or set a deadline for users to use/redeem the outstanding stored value in an SVF, having regard to factors such as the cost for administering the outstanding stored value;(c) HKMA noted that some SVF issuers might charge a fee or set a deadline for users to redeem the outstanding stored value in the SVF if it was left unused for a prolonged period and the remaining stored value was below a certain amount;(d) paragraph 8(b) would apply only if a fee/deadline was set and stated in the contract for using/redeeming the remaining stored value. If a deadline was not set, paragraph 8(a) would still apply;	

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		<p>(e) when considering an application for SVF licence, HKMA would duly consider, among other things, whether the fee and deadline imposed were reasonable. If necessary, HKMA would issue relevant guidelines to facilitate compliance with the Ordinance; and</p> <p>(f) the Administration would review the provisions in paragraphs 8(a) and 8(b) in the light of members' suggestions and overseas practices.</p> <p>ALA sought clarification as to whether an SVF licensee could engage in businesses that were unrelated to and separate from the principal business (i.e. the issue or facilitation of the issue of SVF), and whether it would need to obtain HKMA's consent for engaging in those other businesses.</p> <p>The Administration advised that –</p> <p>(a) paragraph 1(1) in Part 2 of the proposed Schedule 3 to CSSO provided that an SVF licensee should not carry out any business that was unrelated to its principal business; and</p> <p>(b) if the licensee intended to engage in a business unrelated to its principal business, it had to obtain HKMA's prior consent.</p> <p>The Chairman enquired whether the Administration would consider specifying that the issue or facilitation of issue of SVF was the only business that an SVF licensee could undertake so as to protect the users' float.</p> <p>The Administration advised that the proposed criteria on principal business (instead of the only business) of SVF had taken into account the possibility that an SVF licensee might engage in business that was incidental or complementary to the issue or facilitation of issue of SVF. HKMA would monitor the business activities of an SVF licensee on an ongoing basis to ensure its compliance with the criteria on principal business.</p> <p>In reply to ALA's enquiry, the Administration advised that under the proposed section 8I of</p>	<p>The Administration to take action as paragraph 5 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>CSSO, HKMA could attach conditions to an SVF licence to restrict the licensee from engaging in investment and lending activities.</p>	
<p>012351 – 013217</p>	<p>Administration Chairman ALA</p>	<p>The Bills Committee resumed scrutiny of Clause 17 of the Bill.</p> <p>Subdivision 2—Conditions of Licence</p> <p><i>8I. Monetary Authority may attach conditions to licence</i></p> <p>ALA enquired about the reasons for using "掌管" instead of "行政" in the Chinese text for the English expression "administration" in the proposed section 8I(2)(b)(i) and (ii).</p> <p>The Administration advised that the verb "掌管" instead of the noun "行政" was used to align with other verbs "管理", "使用及規管" used for the English expressions of "management" and "use and regulation" respectively. "掌管" was also a better verb to match with the non-abstract nature of the objects (i.e. the SVF float and deposit).</p> <p><i>8J. Procedural requirement for attaching conditions to new licence</i></p> <p><i>8K. Procedural requirement for attaching conditions to existing licence</i></p> <p><i>8L. Cancellation of conditions attached to licence</i></p>	
<p>013218 – 014232</p>	<p>Administration Chairman ALA Mr WONG Ting-kwong</p>	<p>Division 4—Obligation of Licensee</p> <p><i>8M. Licence fee payable by licensee that is not bank</i></p> <p><i>8N. Licence fee payable by licensee that is bank</i></p> <p>ALA enquired about the possible implications for an SVF licence if the licensee did not pay licence fees.</p> <p>Mr WONG enquired about the actions HKMA would consider taking when SVF licensee had failed to pay licence fees, including how HKMA would protect the interest of the retail public by taking action to stop the operation of the SVF licensee in question so that it could not continue to collect payments from users.</p>	<p>The Administration to take action as paragraph 6 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration advised that –</p> <p>(a) if an SVF licensee had failed to pay licence fee, HKMA would advise the licensee in writing that the fee was outstanding. If the licensee still did not pay the fee upon HKMA's written advice, HKMA could suspend or revoke the SVF licence, and/or take other actions such as imposing civil sanctions (e.g. issue of reprimand) on the licensee. HKMA would take action against the licensee in question promptly in order to protect the interest of SVF users concerned;</p> <p>(b) after its licence had been suspended or revoked, the SVF licensee could not accept new users or collect payments from them. It would also need to redeem the stored value that remained on the facility for existing users; and</p> <p>(c) as an SVF licensee would be required to put in place safeguarding measures that adequately protected the float, in particular to keep the float separate from other funds of the issuer, this should ensure sufficient funds for redemption of the outstanding stored value.</p> <p><i>8O. Obligation to ensure safety and efficiency of stored value facilities</i></p> <p><i>8P. Further provisions on safety and efficiency of stored value facilities</i></p>	
014233 – 014426	Chairman Administration	Date of next two meetings	