

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1233/14-15  
(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 fifth meeting on  
Tuesday, 12 May 2015, at 10:45 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 Starry LEE Wai-king, JP  
Hon CHAN Kin-por, BBS, JP  
Hon NG Leung-sing, SBS, JP  
Hon CHAN Chi-chuen  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon SIN Chung-kai, SBS, JP
- Members absent** : Hon WONG Ting-Kwong, SPS, JP  
Hon Charles Peter MOK, JP  
Hon Kenneth LEUNG
- 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

Ms Mandy NG  
Senior Government Counsel  
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

## **I Meeting with the Administration**

### Matters arising from previous meetings

(LC Paper No. CB(1)765/14-15(01) — Submission from Octopus Cards Limited (English version only)

LC Paper No. CB(1)791/14-15(01) — Submission from Edenred Hong Kong Ltd. (English version only and restricted to members)

LC Paper No. CB(1)836/14-15(01) — Administration's response to the submissions respectively from Octopus Cards Limited and Edenred Hong Kong Ltd.

LC Paper No. CB(1)836/14-15(02) — List of follow-up actions arising from the discussion at the meeting on 28 April 2015

LC Paper No. CB(1)836/14-15(03) — Administration's response to issues raised at the meeting on 28 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)

Discussion

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

Clause-by-clause examination of the Bill

3. The Bills Committee scrutinized clause 17 (up to the proposed section 8ZZZA of the Clearing and Settlement Systems Ordinance (Cap. 584) ("CSSO")), and clause 53 (the proposed Schedules 5, 6 and 7) of the Bill.

Follow-up actions to be taken by the Administration

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

4. In the proposed section 8 of Schedule 3 to CSSO (clause 53 of the Bill) on the redemption of outstanding values remained on an SVF, an applicable company holding the float or deposit of the SVF must state clearly and prominently the conditions relating to the redemption, including the fee to be charged for the redemption and the deadline for using or redeeming the stored values, if any. The Administration was requested to respond to concerns/suggestions raised by members and the Legal Adviser to the Bills Committee as follows:

- (a) the potential conflict between section 8(a) and (b) where subsection (a) required the SVF issuer must redeem in full the total stored value upon request by users but subsection (b) allowed the issuer to set deadline for the redemption which was equivalent to setting a condition for the redemption with an effect that after expiry of the deadline set by the issuer, the unredeemed or unused value would be forfeited;
- (b) SVF issuers should not be allowed to set deadline for users in redeeming the stored value in the facility unless under specified circumstances and subject to prior approval of the Monetary Authority ("MA"); and
- (c) MA should ensure that the fees to be charged by SVF licensees for redeeming the stored value were reasonable.

*Obligation to notify Monetary Authority of change in circumstances of SVF licensees*

5. The proposed section 8T(2) of CSSO (clause 17 of the Bill) required an SVF licensee to provide MA with details of a material change, which was relevant to the licensee's ongoing fulfilment of or compliance with the minimum criteria or requirement under certain provisions, without undue delay if the material change had taken place (under section 8T(2)(a)), or within a reasonable period if the material change was likely to take place (under section 8T(2)(b)).

The Administration was requested to respond to a member's concerns/views about:

- (a) the provision might give MA substantial discretion in determining whether a change was a "material change" and whether the relevant notification to MA was "without undue delay" or "within a reasonable period"; and
- (b) the Administration should review the relevant provision with reference to: (i) other provisions of CSSO requiring notifications from SVF licensees (e.g. the proposed section 8S of CSSO requiring an SVF licensee to notify MA within 6 days of a change of its particulars), and (ii) similar requirements under the Banking Ordinance (Cap. 155) ("BO") relating to notifications by licensed banks.

#### *Supervisory and enforcement powers of MA*

6. Part 2 of the proposed Schedule 5 to CSSO (clause 53 of the Bill) set out the circumstances under which MA might revoke the licence of an SVF licensee, including situations where the licensee was likely to become unable to meet its obligations or was about to suspend payment. The Administration was requested to provide supplementary information on MA's supervisory measures in detecting, at an early stage, possible problems of an SVF licensee in fulfilling its obligations and signs of possible default by the licensee, to enable MA to take timely action to revoke the licence concerned.

#### *Suspension and revocation of SVF licences*

7. Under the proposed section 8G of CSSO (clause 17 of the Bill), a licensed bank was regarded as being granted a licence to issue SVF as a line of business. The proposed section 8Y provided that "[A] licence regarded as granted to a bank under section 8G is suspended while the banking licence held by the bank is suspended under section 24 or 25 of BO". The Administration was requested to explain the purpose of section 8Y, and to respond to a member's enquiry as how MA could suspend "the SVF licence" of a bank if the bank was not engaging in an SVF business, and hence there was no "physical SVF licence" per se.

#### *Remuneration and expenses of "Advisor" or "Manager" appointed by MA under CSSO*

8. The proposed sections 8ZG, 8ZH, and 8ZX empowered MA to appoint an "Advisor", a "Manager" and persons to fill such vacancies when arose, for giving advice and managing the licensee's affairs, business or property of the

licensee when it was unable to meet its obligations, etc. The Administration was requested to provide supplementary information on how MA would ensure the remuneration and fees to be paid by an SVF licensee to such "Advisor" or "Manager", who could include staff members of MA, would be reasonable.

*Ownership and management of SVF licensee*

9. Provisions in Division 7 of the proposed Part 2A of CSSO regulated ownership and management of SVF licensee. The SVF licensee was required to inform MA when a person was to become or had become a "controller" (i.e. a majority shareholder controller (who was entitled to exercise more than 50% of the voting rights at a general meeting of the corporation), and a minority shareholder controller (who was entitled to exercise at least 10% but not more than 50% of the voting rights)). The Administration was requested to: (a) explain the purpose of Division 7; and (b) provide supplementary information on the regulation of ownership and management of an SVF licensee if it was a company listed in Hong Kong or overseas, but none of the shareholders could meet the relevant thresholds to become a controller, and the chief executive, director and senior management of the licensee were not shareholders but employees of the licensee.

*(Post-meeting note: The Administration's written response was issued to members vide LC Paper No. CB(1)871/14-15(02) on 26 May 2015.)*

## **II Any other business**

### Date of next meeting

10. The Chairman reminded members that the next meeting would be held on 26 May 2015, at 4:30 pm.

11. There being no other business, the meeting ended at 12:44 pm.

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

**Fifth meeting on Tuesday, 12 May 2015, at 10:45 am  
in Conference Room 2A of the Legislative Council Complex**

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000045 – 000217	Chairman	Introductory remarks	
000218 – 000636	Administration	Briefing by the Administration on its written response to the submissions from Octopus Cards Limited and Edenred Hong Kong Ltd. (LC Paper No. CB(1)836/14-15(01))	
000637 – 001318	Administration	Briefing by the Administration on its response to the issues arising from the meeting held on 28 April 2015 (LC Paper No. CB(1)836/14-15(03))	
001319 – 002510	Chairman Administration Mr SIN Chung-kai Mr CHAN Chi-chuen Assistant Legal Adviser ("ALA")	<p><u>Minimum licensing criteria for stored value facility ("SVF") issuers and facilitators</u> (proposed section 8 of Part 2 of Schedule 3 to the Clearing and Settlement System Ordinance (Cap. 584)("CSSO")) (clause 53)</p> <p>Mr SIN and Mr CHAN expressed the following views –</p> <p>(a) stored value on an SVF was essentially an electronic form of currency, it was unreasonable to allow SVF issuers to impose deadline for users to use/redeem the stored value in the proposed section 8 of Part 2 of Schedule 3 to CSSO;</p> <p>(b) SVF issuers should not be allowed to impose deadline for users in using/redeeming the stored value in the facility unless under specified circumstances and subject to prior approval of the Monetary Authority ("MA"); and</p> <p>(c) MA should ensure that the fees to be charged by SVF licensees for redeeming the stored value were reasonable.</p> <p>ALA was of the view that allowing SVF issuers to impose deadline for the redemption of the stored value under the proposed section 8(b) of Part 2 of Schedule 3 might be in conflict with the proposed section 8(a) of the Schedule which</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>specified that "the SVF issuers must redeem in full the total value that remains on the facility as soon as practicable after being requested by the user to do so" because if users did not redeem/use the stored value in the facility after the deadline, all the remaining stored value would be forfeited by the issuers.</p> <p>The Administration advised that –</p> <p>(a) section 8 of Part 2 of Schedule 3 did not require or disallow an SVF issuer to charge any fee or impose any deadline for the redemption of any outstanding stored value. The provision only provided that if conditions, such as fee and/or deadline, were to be set for using or redeeming the stored value, the issuer must state clearly and prominently in the contract between the applicable company and the user. This would ensure users' awareness of the conditions and protect their interests;</p> <p>(b) while SVF issuers in the market usually did not impose any deadline for using or redeeming the stored value in the facilities, consideration needed to be given for situations where some SVFs might be issued for a commemorative purpose which would be valid within a specified period; and</p> <p>(c) the Administration would review the proposed section 8 of Part 2 of Schedule 3 in the light of members' suggestions.</p> <p><u>Licence fees payable by SVF licensees</u></p> <p>The Chairman enquired how users' interests could be protected when an SVF licensee had failed to pay licence fee as required by the proposed section 8M or 8N of CSSO and when the licence concerned was revoked, temporarily suspended, or suspended.</p> <p>The Administration replied that MA would issued written notice to SVF licensee on revocation, temporarily suspension, or suspension of the licence, and would attach conditions setting out the arrangements for the SVF issuer to return the float to existing users and stop accepting new users during the specified period.</p>	<p>The Administration to take action as paragraph 4 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
<b>Clause-by-clause examination of the Bill</b>			
002511 – 003324	Chairman Administration Mr SIN Chung-kai Mr NG Leung-sing	<p><u>Clause 17 – Part 2A added</u></p> <p><b>Part 2A</b></p> <p><b>Licensing and Supervision of Stored Value Facilities</b></p> <p><b>Division 4 — Obligation of Licensee</b></p> <p><i>8Q. Obligation to ensure fulfilment of minimum criteria</i></p> <p><i>8R. Obligation to report inability to meet obligations</i></p> <p><i>8S. Obligation to notify Monetary Authority of change of particulars</i></p> <p>In reply to Mr SIN's enquiry, the Administration advised that the word "day(s)" in CSSO referred to calendar day(s) unless specified otherwise.</p> <p><i>8T. Obligation to notify Monetary Authority of change in circumstances</i></p> <p>Mr NG expressed concern that the proposed section 8T(2) of CSSO might give MA substantial discretion in determining whether a change was a "material change" and whether the relevant notification to MA was "without undue delay" or "within a reasonable period". He was of the view that a specified period could facilitate compliance by the licensees and enable MA to take enforcement action timely.</p> <p>The Chairman suggested that the Administration should review the relevant requirement with reference to other provisions of CSSO requiring notifications from SVF licensees and similar requirements under the Banking Ordinance (Cap. 155) ("BO") relating to notifications by licensed banks.</p> <p>The Administration responded that unlike the specified events (i.e. change of principal address, postal address and email address) of which licensees were required to notify MA under the proposed section 8S, it would require some</p>	

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		<p>degree of judgement to determine whether and when the "material change" mentioned in the proposed section 8T would take place. The words "without undue delay" and "within reasonable period" would provide SVF licensees with flexibility without undermining the regulatory role of MA.</p> <p>The Administration would review section 8T making reference to similar provisions under CSSO and BO, and consider the need for MA to issue guidelines in this respect to facilitate compliance by licensees.</p>	<p>The Administration to take action as paragraph 5 of the minutes</p>
<p>003325 – 004306</p>	<p>Chairman Administration Mr NG Leung-sing Mr CHAN Kin-por Mr SIN Chung-kai ALA</p>	<p><b>Division 5 – Revocation and Suspension of Licence</b></p> <p><b>Subdivision 1 – Revocation of Licence</b></p> <p><i>8U. Revocation of licence regarded as granted under section 8G</i></p> <p><i>8V. Revocation of licence on grounds specified in Schedule 5</i></p> <p>In relation to the proposed section 8V, Mr NG enquired if MA would announce through its website details regarding the revocation of a licence in addition to publishing a notice in one Chinese language newspaper and one English language newspaper.</p> <p>Mr CHAN questioned if newspaper was still an effective communication with the public given the advancement in information technology, and asked if MA would issue press release to inform the media including the internet media, about the revocation.</p> <p>Mr SIN asked whether MA could require the SVF licensee to notify its users about the revocation of the licence through its website or mobile application.</p> <p>The Administration advised that –</p> <p>(a) MA would issue press release on revocation or suspension of an SVF licence;</p> <p>(b) the press release would be made available in MA's website and be issued to the media</p>	

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		<p>through the established channel; and</p> <p>(c) when giving consent to an SVF licensee to hold float and SVF deposit after the revocation of licence under the proposed section 8X, MA might attach conditions as appropriate, including requiring the SVF licensee to issue notice about the revocation of licence in its website or mobile application.</p> <p>ALA enquired whether the SVF licensee could give both oral and written representations to MA under the proposed section 8V as to why the ground for the revocation stated in the notice given had not been made out. He also sought information as to whether the oral representations would be heard by MA, a designated person, or a designated committee.</p> <p>The Administration advised that under CSSO, MA was empowered to delegate some of its functions including hearing oral representations, to its representatives. The oral representations would remain valid irrespective whether the representations were heard by MA or the delegated representatives.</p>	
<p>004306 – 005342</p>	<p>Chairman Administration Mr SIN Chung-kai</p>	<p><u>Clause 53 – Schedules 3 to 9 added</u></p> <p><b>Schedule 5 – Grounds for Revocation of Licence</b></p> <p><i>Part 1</i></p> <p><i>Part 2</i></p> <p>Mr SIN expressed concern as how MA could detect at an early stage that an SVF licensee might have problems in fulfilling its obligations, including redeeming the stored value on the SVF, and identify early signs of default by the licensee.</p> <p>The Administration explained that MA would supervise the business of SVF licensees on an on-going basis including on-site and off-site inspection and examination of documents and investigation into complaints and suspected non-compliance. MA's supervision would cover both financial aspects and controls of the licensees and their daily business operations in ensuring the SVF's business would be conducted</p>	<p>The Administration to take action as paragraph 6 of the minutes</p>

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		<p>in a prudent and sound manner. To ensure protection of the float, there were provisions in the Bill requiring SVF licensees to keep the float separate from other funds and put in place policies and measures to safeguard the float. MA would review the adequacy of such measures during its on-going supervision.</p> <p>In reply to the Chairman's enquiry, the Administration confirmed that the issuance of debit cards was part of the business of a licensed bank. Since debits cards were not SVF, they would not be covered in the scope of business of an SVF licence.</p>	
005343 – 010546	Chairman Administration Mr SIN Chung-kai ALA	<p><u>Clause 17 – Part 2A added</u></p> <p><b>Division 5 – Revocation and Suspension of Licence</b></p> <p><b>Subdivision 1 – Revocation of Licence</b></p> <p><i>8W. Effect of revocation of licence</i></p> <p>ALA enquired about the reasons for only imposing penalties on the contravention of the proposed section 8W(1)(d) but not 8W(1)(a) to (c).</p> <p>The Administration explained that a former licensee who had contravened the proposed section 8W(1)(a) to (c) was indeed running an SVF business without a licence and that there was already a specific offence provided for such contravention.</p> <p><i>8X. Monetary Authority may give consent to hold float and SVF deposit after revocation of licence</i></p> <p>The Administration advised that the proposed section 8X empowered MA to give consent to an SVF licensee to hold whole or part of the float and SVF deposit after revocation of licence within a specified period and in the manner specified by MA so as to allow the users to redeem the unused value and the SVF licensee to fulfill its obligations during the specified period.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><b>Subdivision 2 – Suspension of Licence</b></p> <p><i>8Y. Suspension of licence regarded as granted under section 8G</i></p> <p><i>8Z. Temporary suspension of licence</i></p> <p><i>8ZA. Suspension of licence</i></p> <p>Noting that a licensed bank was regarded as being granted a licence to issue SVF as a line of business under the proposed section 8G of CSSO, Mr SIN sought information on how MA could suspend "the SVF licence" of a licensed bank under the proposed section 8Y if the licensed bank was not operating the SVF business.</p> <p>The Administration explained that a licensed bank who wished to engage in the SVF business would be required to pay the licence fees and operate the SVF business. Nevertheless, the licensed bank was not required to go over the licence application procedure but needed to comply with the relevant requirements for SVF under the proposed regulatory regime which were not covered under BO. MA could, according to the proposed sections 8Z and 8ZA of CSSO, suspend the SVF licence regarded as being granted to a licensed bank from operating the SVF business if the licensed bank could not fulfill the minimum SVF licensing criteria.</p> <p><i>8ZB. Effect of suspension under section 8Y, 8Z or 8ZA</i></p> <p><i>8ZC. Monetary Authority may give consent to hold float and SVF deposit while licence is suspended</i></p>	<p>The Administration to take action as paragraph 7 of the minutes</p>
<p>010547 – 011502</p>	<p>Chairman Administration Mr CHAN Kin-por Mr SIN Chung-kai</p>	<p><b>Division 6 – Power of Control over Licence</b></p> <p><b>Subdivision 1 – Preliminary</b></p> <p><i>8ZD. Application of Division 6</i></p> <p><b>Subdivision 2 – Powers of Monetary Authority over Management of Licensee</b></p> <p><i>8ZE. Circumstances under which powers under this Division may be exercised</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>8ZF. Power to require licensee to take immediate action relating to its affairs, etc.</i></p> <p><i>8ZG. Power to give direction for licensee to seek advice on management of its affairs, etc.</i></p> <p><i>8ZH. Power to give direction for licensee's affairs, etc. to be managed by Manager</i></p> <p><i>8ZI. Supplementary provisions relating to appointment of Advisor or Manager under section 8ZG or 8ZH</i></p> <p>Noting that the proposed sections 8ZF, 8ZG and 8ZH empowered MA to appoint an "Advisor" or a "Manager" for giving advice and managing the licensee's affairs, business or property of the licensee when it was unable to meet its obligations, etc., Mr CHAN enquired how MA would ensure the remuneration and fees to be paid by an SVF licensee to such "Advisor" or "Manager", who could include staff members of MA, would be reasonable.</p> <p>The Administration advised that under the proposed section 8ZZ, MA might, after consulting the Financial Secretary ("FS"), determine the remuneration or expenses to be paid by an SVF licensee to the "Advisor" or "Manager". In addition, MA might, after consulting FS, use the Exchange Fund to pay the whole or part of those remuneration or expenses.</p> <p>In reply to Mr SIN, the Administration confirmed that as provided in the proposed section 8ZZU, the chief executive of an SVF licensee must be an individual who was ordinarily resident in Hong Kong. This would enable MA to require the SVF licensee to take immediate action when it was likely that it became unable to meet its obligations.</p> <p><b>Subdivision 3 – Further Provisions Regarding Direction under Section 8ZH</b></p> <p><i>8ZJ. Interpretation of Subdivision 3</i></p> <p><i>8ZK. Publication of direction</i></p> <p><i>8ZL. References to affairs, business or property of licensee, and objective of Manager</i></p>	<p>The Administration to take action as paragraph 8 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>8ZM. Effect of direction: chief executive and director of licensee</i></p> <p><i>8ZN. Effect of direction: meeting and resolution</i></p>	
<p>011503 – 011832</p>	<p>Chairman Administration Mr SIN Chung-kai</p>	<p><u>Clause 53 – Schedules 3 to 9 added</u></p> <p><b>Schedule 7 – Power of Manager of Licensee</b></p> <p>Mr SIN pointed out that the term "Manager" ("管理人") in the heading of Schedule 7 to be appointed by MA might be interpreted as the "manager employed by an SVF licensee". He opined that "接管人" might better reflect the role of the "Manager" appointed by MA.</p> <p>The Administration advised that the term "<u>manager</u>" ("管理人"), instead of "接管人", was adopted because "Manager" had wider meaning than "接管人" as he/she was required not only to take over but also to manage the business and property of the SVF licensee. The term "manager" ("管理人") was adopted in BO and shared the same meaning.</p>	
<p>011833 – 013020</p>	<p>Chairman Administration Mr SIN Chung-kai Mr CHAN Kin-por ALA</p>	<p><u>Clause 17 – Part 2A added</u></p> <p><b>Division 5 – Revocation and Suspension of Licence</b></p> <p><b>Subdivision 3 – Further Provisions Regarding Direction under Section 8ZH</b></p> <p><i>8ZO. Power of Manager</i></p> <p><i>8ZP. Manager may delegate duty and power</i></p> <p><i>8ZQ. Court of First Instance may approve certain resolutions</i></p> <p><i>8ZR. Court of First Instance may make certain orders</i></p> <p>Mr SIN asked whether the word "members" referred to the shareholders of an SVF licensee or the users of the SVF.</p> <p>The Administration confirmed that "members", as defined in the Companies Ordinance (Cap. 622), referred to the shareholders of a company (i.e. the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>SVF licensee in the context of the Bill).</p> <p><i>8ZS. Obstructing Manager in discharging duties, etc.</i></p> <p><i>8ZT. Variations of directions</i></p> <p><b>Subdivision 4 – Revocation of Direction under Section 8ZG or 8ZH</b></p> <p><i>8ZU. Revocation of direction under section 8ZG or 8ZH</i></p> <p><b>Subdivision 5 – Advisor and manager of Licensee</b></p> <p><i>8ZV. Revocation of appointment of Advisor or Manager</i></p> <p><i>8ZW. Resignation of Advisor or Manager</i></p> <p><i>8ZX. Appointment to fill vacancy in office of Advisor or Manager</i></p> <p><i>8ZY. Advisor or Manager may engage technical or professional person</i></p> <p><i>8ZZ. Remuneration and expenses of Advisor or Manager</i></p> <p>Mr CHAN asked whether there was a mechanism (e.g. through a tender process) to ensure that the remuneration and fees charged by the "Advisor" or "Manager" were reasonable.</p> <p>The Administration explained that when an SVF licensee was unable or likely to become unable to meet its obligations, MA would need to appoint an "Advisor" or a "Manager" within a short period of time, thus it might not be feasible to conduct a tender exercise for the appointment. According to past experiences, MA would invite quotations from a number of service providers and assess whether the remuneration and fees charged by the "Advisor" or "Manager" were at a reasonable level. MA might also appoint its staff as the "Advisor" or "Manager".</p> <p>As the incumbent chief executive or directors of an SVF licensee would be regarded as revoked when a "Manager" was appointed by MA for</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>managing the licensee's affairs, business or property, ALA enquired whether the "Manager" so appointed to fulfill the licensee's obligations would take charge of matters relating to the employment contracts of the licensee with its chief executive and directors, and settlement of disputes arising from the automatic dismissal of the incumbent chief executive or directors of the licensee including making compensations.</p> <p>The Administration advised that, according to the proposed Schedule 7 to CSSO, the "Manager" could act on behalf of, or in the name of the licensee on matters including to carry on any business of the licensee, to defend any action or legal proceedings, to execute any contract (including dissolution of employment contracts) and to make payment that was necessary or incidental to the discharge of the Manager's duties or the exercise of the Manager's powers, etc.</p>	
<p>013021 – 015952</p>	<p>Chairman Administration Mr SIN Chung-kai ALA</p>	<p><b>Division 7 – Ownership and Management of Licensee</b></p> <p><b>Subdivision 1 – Preliminary</b></p> <p><i>8ZZA. Interpretation of Division 7</i></p> <p><i>8ZZB. Application of Division 7</i></p> <p><b>Subdivision 2 – Sale and Disposal of Business etc. of Licensee</b></p> <p><i>8ZZC. Sale and disposal of business require approval</i></p> <p><i>8ZZD. Reconstruction of capital</i></p> <p><b>Subdivision 3 – Majority Shareholder Controller, Minority Shareholder Controller and Indirect Controller of Licensee</b></p> <p><i>8ZZE. Interpretation of Subdivision 3</i></p> <p><i>8ZZF. Becoming controller of licensee</i></p> <p><i>8ZZG. Person who has become controller in circumstances other than those described in section 8ZZF(4)</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>8ZZH. Supplementary provisions relating to consent notice</i></p> <p>Mr SIN noted that under the proposed sections 8ZZF and 8ZZG, a person was to become or had become a controller (i.e. a majority shareholder controller, a minority shareholder controller or an indirect controller) of the SVF licensees was required to inform MA and seek the latter's consent. Anticipating that most SVF licensees would be listed companies (in or outside Hong Kong) and hence none of its shareholders could meet the relevant thresholds of controller, Mr SIN sought information on how MA could regulate the ownership and management of an SVF licensee, in particular, the chief executive, directors and senior management of the licensee were not shareholders but employees of the licensee.</p> <p>The Administration advised that if none of the shareholders of an SVF licensee could meet the relevant thresholds of controller, MA could still exercise supervision on the licensee, as it would ensure the chief executive and directors of the SVF licensee were fit and proper persons, and persons responsible for the management of the SVF business possessed appropriate knowledge and experience. In addition, the SVF licensee was required to meet the minimum criteria in Schedule 3 on an on-going basis.</p> <p>In response to the Chairman's enquiry, the Administration confirmed that MA would only regulate the senior management of the SVF licensee but not its parent company if it was a corporation listed in overseas markets with none of the shareholders meeting the relevant thresholds of controller. MA would only approve an application for SVF licence if it was satisfied that the chief executive, alternate chief executive and directors of the applicant (which must be a Hong Kong incorporated company) were fit and proper.</p> <p><i>8ZZI. Supplementary provisions relating to objection notice under section 8ZZF(2)(b) or 8ZZG(3)(b)</i></p> <p><i>8ZZJ. Objection to existing controller</i></p>	<p>The Administration to take action as paragraph 9 of the minutes</p>

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		<p><i>8ZZK. Prohibition regarding indirect controller</i></p> <p><i>8ZZL. Monetary Authority may require information from controller</i></p> <p><b>Subdivision 4 – Restrictions Regarding Shares in Licensee</b></p> <p><i>8ZZM. Interpretation of Subdivision 4</i></p> <p><i>8ZZN. Monetary Authority may impose restrictions regarding specified shares in licensee, etc.</i></p> <p><i>8ZZO. Monetary Authority may revoke notice given to certain controller under section 8ZZN(2)</i></p> <p><i>8ZZP. Effect of restriction under section 8ZZN</i></p> <p>Mr SIN sought information on how MA could regulate the sale or transfer of shares if the SVF licensee was a listed company and hence its shares were traded in the securities markets.</p> <p>The Administration advised that the purposes of the relevant provisions were to restrict the transfer of shares rather than prohibit the trading of shares. In addition, MA might apply to Court of First Instance for order relating to the sale or transfer of the shares. The relevant provisions were modeled on similar provisions in BO. Under BO, the sale or transfer of shares of a licensed bank of a certain threshold was subject to approval of MA.</p> <p><i>8ZZQ. Offences regarding restriction under section 8ZZN(2)</i></p> <p><i>8ZZR. Monetary Authority may apply to Court of First Instance for order regarding sale of specified shares</i></p> <p><i>8ZZS. Requesting Monetary Authority to apply to Court of First Instance for order regarding sale of specified shares</i></p> <p><b>Subdivision 5 – Officers and Employees of Licensee</b></p>	

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		<p><i>8ZZT. Person affected by restriction under section 8ZZN(2) may apply to Court of First Instance for order</i></p> <p><i>8ZZU. Appointment of chief executive of licensee</i></p> <p><i>8ZZV. Consent required for becoming chief executive or director</i></p> <p><i>8ZZW. Monetary Authority may give consent to become chief executive or director of licensee</i></p> <p><i>8ZZX. Monetary Authority may require information from chief executive or director of licensee</i></p> <p><i>8ZZY. Appointment of manager</i></p> <p><u>Clause 53 – Schedules 3 to 9 added</u></p> <p><b>Schedule 6 – Affairs or Business of Licensee Specified for Definition of <i>manager</i> in Section 8A</b></p> <p>Mr SIN enquired if MA would require SVF licensees to designate a person or set up a department responsible for information security as SVF business would rely heavily on information technology.</p> <p>The Administration advised that SVF licensees must inform MA by serving a written notice to MA within 14 days after the appointment of a "manager" and provided MA details regarding such appointment (the proposed section 8ZZY). The term "manager" referred to persons principally responsible for the conduct of any of the licensee's affairs or business specified in the proposed Schedule 6 to CSSO, such as the maintenance of the licensee's accounting system, risk management system and internal audit system, the development, operation and maintenance of the licensee's computer systems, as well as the system for safeguarding the licensee from being involved in money laundering activities. Information security should be covered under the scope of the development, operation and maintenance of computer and risk management systems. The provisions in Schedule 6 were modeled on the relevant provisions in BO.</p>	

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		<p>The Chairman remarked that provisions in BO had required banks to put in place adequate systems and measures to safeguard information security in view of the large amount of personal data and money involved in the banking business.</p> <p>In response to ALA's enquiry on the appointment of "manager" on a temporary basis (the proposed section 8ZZY(3) and (4)), the Administration advised that the provision was intended to cover situations in relation to changes in senior management of the SVF licensee which might require the appointment of a manager on a temporary basis.</p> <p><i>8ZZZ. Consent required for certain persons to become employee of licensee</i></p> <p><i>8ZZZA. Consent required for certain persons to continue to act as employee of licensee</i></p>	
015953 – 020000	Chairman Administration	Date of next meeting	