

立法會
Legislative Council

LC Paper No. CB(1)590/14-15(01)

Ref : CB1/BC/3/14

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

Background brief

Purpose

This paper provides background information on the Clearing and Settlement Systems (Amendment) Bill 2015 which aims to introduce a regulatory regime for stored value facilities ("SVF")¹ and retail payment systems ("RPS")² in Hong Kong. It also summarizes the views and concerns expressed by members of the Panel on Financial Affairs ("FA Panel") on the subject in the legislative session 2013-2014.

Background

2. The current regulatory regime for stored value cards under the Banking Ordinance ("BO") (Cap. 155) only applies to device-based multipurpose stored value products. The Clearing and Settlement Systems Ordinance ("CSSO") (Cap. 584) provides a legal framework for the Monetary Authority³ to designate and oversee large-value clearing and settlement systems ("CSS"), such as the Real Time Gross Settlement systems. Nonetheless, the current regulatory regime in BO or CSSO does not cover a range of non-device-based payment facilities (which are normally issued outside the banking sector, and store value on network-based accounts, mobile network accounts or computer servers), as well as payment systems related to retail activities.

¹ SVF can be classified into two broad categories according to the scope of their usage, viz. multi-purpose and single-purpose SVF. Multi-purpose SVF can be used as a means of payment for goods or services provided by the issuer or third-party participating merchants at designated locations and points, or for person-to-person payments. Examples include the Octopus Cards and the increasingly popular online stored value payment facilities. Single-purpose SVF is used as a means of payment for goods or services provided by the issuer of the SVF only (e.g. prepaid coupons issued by cake shops or coffee shops).

² RPS means a system or an arrangement for the transfer, clearing or settlement of payment obligations relating to retail activities, principally by individuals, that involves purchases or payments, and includes the related instruments and procedures. RPS generally covers credit card schemes, debit card schemes, large merchant acquirers, and payment gateways, etc., in which the payment systems do not hold accounts for maintaining funds for users.

³ In this paper, the term "Monetary Authority" has the same meaning as the Hong Kong Monetary Authority.

3. In the light of the growing acceptance of innovative retail payment products and services, the Government considers it necessary to expand the current regulatory regime to cover SVF which are non-device based and important RPS. In May 2013, the Financial Services and the Treasury Bureau and the Hong Kong Monetary Authority ("HKMA") jointly conducted a three-month public consultation on "The Proposed Regulatory Regime for Stored Value Facilities and Retail Payment Systems in Hong Kong"⁴. The Consultation Conclusions were issued on 31 October 2014. According to the Administration, comments received during consultation indicated overall support for the policy objectives and key proposals on the proposed regulatory regime.

The Clearing and Settlement Systems (Amendment) Bill 2015

4. The Clearing and Settlement Systems (Amendment) Bill 2015 ("the Bill") was published in the Gazette on 23 January 2015 and received its First Reading at the Legislative Council ("LegCo") meeting of 4 February 2015. The Bill seeks to amend CSSO to establish a regulatory regime for SVF and RPS in Hong Kong, and to make related amendments to other Ordinances. The main features of the proposed regulatory regime for SVF and RPS are highlighted as follows:

Regulatory regime for SVF

Mandatory licensing regime (clause 17)

- (a) A mandatory licensing regime will be introduced for SVF, under which no person shall issue, or facilitate the issue of, multi-purpose SVF in Hong Kong without a licence granted by HKMA. The licensing regime will cover both device-based and non-device-based multi-purpose SVF. Any person who contravenes such requirement commits an offence. The maximum penalty for the offence is a fine of \$1 million and imprisonment for five years on conviction on indictment, or a fine at level 6 (i.e. \$100,000) and imprisonment for six months on summary conviction.

⁴ The Consultation Paper and Consultation Conclusions are hyperlinked in **Appendix II**.

Exclusions and exemptions (clause 53, new Schedule 8 to CSSO)

- (b) Single-purpose SVF will remain not subject to regulation⁵. SVF which do not involve payment of money by users or have limited usage will also be excluded from the regulatory regime. The exclusion will apply to loyalty and bonus point schemes with cash reward or involving limited users' cash elements, single online store platform, as well as SVF with limited usage (say those used within limited group of goods or service providers, or within certain premises) and a float size⁶ of not more than \$1 million. HKMA may exempt an SVF from the regulatory regime, having regard to the materiality of the risk posed by the relevant facility to the users or potential users, and the payment or financial systems in Hong Kong⁷. Under the new section 8ZZZD of CSSO, HKMA may also exempt a SVF from the relevant provisions of the new Part 2A by notice published in the Gazette. Such notice would not be subsidiary legislation subject to amendment by LegCo.

Licensing criteria (clause 53, new Schedule 3 to CSSO)

- (c) The proposed licensing criteria for multi-purpose SVF will cover a number of elements including the licensee's physical presence in Hong Kong, principal business, financial strength, management of float, "fit and proper" ownership and management, as well as prudential risk management policies and procedures. The details of the proposed licensing criteria are set out in **Appendix I**.

⁵ This is in line with the existing regime under BO, i.e. section 14A of BO provides that only Authorized Institutions ("AI") are permitted to issue or facilitate the issue of a multi-purpose card, which is a stored value card other than a single-purpose card. The existing provisions under BO do not cover multi-purpose cards issued in a form other than a device-based facility (i.e. not taking a "card" form) and operated by a non-AI issuer mostly via the Internet.

⁶ "Float" refers to the total sum of money paid by a user to an issuer, including any other sums of money received on the amount of the users, for storage on SVF. That said, the "float" of a SVF will be outside the definition of "deposit" under BO and the Deposit Protection Scheme Ordinance (Cap. 581).

⁷ The Administration envisages that facilities which can only be used within, or in close proximity to, the issuer's premises, or for the purchase of a limited range of goods or services by a limited group of people, may be eligible for exemption. Examples may include petrol cards for refuelling or purchasing goods provided by a few other providers at a specified chain of petrol stations, and membership cards which can only be used to pay for goods or services offered by a few shops, clubs or organizations.

Regulatory regime for RPS

Designation system and criteria (clauses 10 to 13)

- (d) The existing regulatory regime for large-value CSS under CSSO will be extended to cover RPS as appropriate⁸. An RPS which operates in Hong Kong or processes retail payment transactions denominated in Hong Kong dollar or other currencies or a declared medium of exchange may be designated by HKMA under the proposed regime if certain designation criteria are met⁹.
- (e) HKMA may designate an RPS if any disruptions to the RPS are likely to result in any or more of the following¹⁰ -
 - (i) monetary or financial stability, or the functioning of Hong Kong as an international financial centre, being adversely affected;
 - (ii) the public's confidence in payment systems or the financial system of Hong Kong being adversely affected; or
 - (iii) day-to-day commercial activities being adversely and materially affected.

Prudential requirements on designated RPS (clauses 14, 15)

- (f) Designated RPS will be subject to HKMA's oversight, and will be required to have in place operating rules to provide for the system to be operated in accordance with the requirements, including default arrangements which are appropriate for the system. Designated RPS will also be subject to safety requirements¹¹;

⁸ While CSSO provides, at present, statutory backing to the finality of settlement for transactions made through the designated CSS by protecting the settlement finality from insolvency laws or any other laws, the finality of settlement will not apply to RPS in future.

⁹ As an SVF normally requires a CSS to support its operation and such a system may fall within the definition of RPS, to avoid regulatory overlap, the Administration does not intend to designate CSS run by a SVF licensee to support its own SVF scheme. However, if the RPS operated by a SVF issuer supports SVF scheme run by other issuers, HKMA may designate such RPS if it meets the designation criteria.

¹⁰ In applying the above proposed designation criteria, HKMA may take into account factors, including (a) the estimated aggregate value of orders transferred, cleared or settled through the system; (b) the estimated average value of orders transferred, cleared or settled through the system; (c) the estimated number of orders transferred, cleared or settled through the system; (d) the estimated number of participants of the system; and (e) any direct or indirect interfaces to the large-value payment systems.

¹¹ The safety requirements include, among other things, risk management and control procedures relating to the operation of the system; safety and integrity of information held within the system; soundness of the system including financial soundness; and efficiency requirements including costs of participation and reasonableness of criteria for admission as a participant in the system.

Supervisory and enforcement powers of HKMA (clauses 29, 45)

- (g) HKMA will be enabled to conduct effective on-going supervision over the relevant licensees and operators (including on-site examinations and off-site reviews), gather information, give directions, impose operating rules, make regulations, issue guidelines, and conduct investigation into SVF licensees and designated systems¹².
- (h) The proposed regulatory regime will provide for sanctions based on the existing criminal sanctions under BO and CSSO. In addition, HKMA will be empowered to impose a range of civil sanctions¹³, which will be proportionate to the nature and severity of the misconduct, under the proposed regulatory regime.

Renaming the Clearing and Settlement Systems Appeals Tribunal (clauses 30 to 34)

- (i) The ambit of the existing Clearing and Settlement Systems Appeals Tribunal will be expanded to cover appeals against relevant HKMA's decisions in relation to SVF and RPS. The existing Process Review Committee will continue to review the processes and procedures adopted by HKMA in applying supervisory standards¹⁴.

Members' views and concerns

5. The FA Panel was briefed on the proposed regulatory regime for SVF and RPS in Hong Kong at the meeting on 7 April 2014. Members generally welcomed the Administration's initiative to enhance the regulation of SVF and

¹² It is proposed that HKMA be given the power to direct an investigator to conduct investigation, the power to compel provision of evidence from all persons relevant to the suspected contravention, the power to inspect records or documents taken in possession for the purpose of an investigation, the power to require persons to render assistance in connection with the investigation, and the power to apply to a Magistrate for search warrants and seizures when necessary.

¹³ The proposed civil and supervisory sanctions include – (a) minor sanctions (such as caution, warning, reprimand, and order to take specified actions(s), etc.) and supervisory sanctions (such as temporary suspension, suspension or revocation of licence, or a combination of the above); (b) pecuniary penalty of not exceeding HK\$10 million or three times the amount profit gained or loss avoided, whichever is higher, or (c) any combination of the above.

¹⁴ The Process Review Committee reviews and advises HKMA on the adequacy of HKMA's internal operational procedures and guidelines for applying the standards set under CSSO to those designated systems in which HKMA has a legal or beneficial interest. It seeks to ensure that the same set of standards is applied to all designated systems, whether or not HKMA has an interest in them.

RPS. The ensuing paragraphs summarized the major views and concerns expressed by Panel members.

Licensing criteria for SVF issuers

6. While members supported adopting physical presence in Hong Kong as one of the licensing criteria for SVF issuers to facilitate HKMA's supervision over issuers, they noted that some online payment systems might operate internationally across a number of jurisdictions and might not have physical presence in Hong Kong as its market was relatively small. Members enquired if such payment systems would also be regulated under the proposed regulatory regime.

7. The Administration advised that the proposed regulatory regime required a SVF issuer operating an online payment system to be physically present in Hong Kong by establishing a locally incorporated company. Otherwise, it would not be granted a licence and would be prohibited from soliciting business in Hong Kong. If an unlicensed SVF issuer continued its online operations and targeted the members of the public in Hong Kong, the Administration would notify the relevant regulator of the home jurisdiction concerned of the unlicensed SVF issuer's unlawful activities in Hong Kong. In addition, the Administration would inform the members of the public in Hong Kong that the issuer was unlicensed and the float given to the issuer might not be adequately protected.

8. Some members raised concern about the difficulty to determine whether a SVF issuer was "soliciting business", in particular when the issuer might not proactively solicit business in Hong Kong. Besides, some online shops operating overseas and did not have physical presence in Hong Kong could only receive payment and arrange delivery of goods to Hong Kong. Members sought clarification as to whether the online shop or the entity responsible for delivering the goods or both would be regulated under the proposed regulatory regime.

9. The Administration advised that as long as the SVF issuer was operating business in Hong Kong, it would be subject to the proposed regulatory regime. Local companies offering technical and operational support to the SVF issuer should make sure that the issuer was licensed. Companies in Hong Kong providing such service to unlicensed SVF issuer might be subject to the proposed regulatory regime.

10. On the criterion that SVF issuer must meet a minimum on-going capital requirement, i.e. the aggregate amount of its paid-up capital should not be less than \$25 million, there was a concern about the adequacy of the proposed capital level and whether the SVF issuer would become insolvent if it failed to

meet the requirement.

11. The Administration explained that SVF was a means to facilitate customers' payment for goods and services and to individuals' accounts. Money received from users of a SVF was kept by the SVF issuer before it would be used for payments. The proposed regulatory regime would therefore focus on the protection of users' float maintained by SVF issuers. For instance, all licensed SVF issuers should have in place adequate protection arrangements for the float, and to keep the float separate from the issuer's other funds to prevent misuse of the float for other purposes by the issuer.

Exemption of single-purpose SVF from the mandatory licensing regime

12. According to the Administration, single-purpose SVF would be exempted from the mandatory licensing regime. As a corporation with a number of subsidiaries operating different kinds of business might issue SVF for customers purchasing goods or patronizing the services of its various subsidiaries, members enquired whether such corporation concerned would be regarded as a single-purpose SVF and be exempted from the licensing regime.

13. The Administration advised that it had carefully considered the issue of not regulating single-purpose SVF under the licensing regime. Single-purpose SVF was common in Hong Kong and took a variety of forms like prepaid coupons issued by cake shop and deposits paid to a tailor. Incorporation of single-purpose SVF into the licensing regime might cause inconvenience to the public. The example of a corporation with a number of subsidiaries operating different kinds of businesses, which might issue SVF for customers purchasing goods or patronizing the services of its various subsidiaries, would likely fall within the definition of multi-purpose SVF and be subject to the licensing regime. On the other hand, certain multi-purpose SVF (like multi-purpose value cards used in local universities) which could only be used within, or within close proximity to the issuer's premises, or for the purchase of a limited range of goods or services from a limited number of shops or services providers might be considered for exemption. HKMA stressed that it would take into account the prevailing market circumstances in granting exemption for SVF issuers from the licensing requirements.

Protection of personal data privacy

14. In the light of the Octopus Cards incident in 2010 (i.e. involving the sharing of Octopus cardholders' personal data by the Octopus Cards Limited with its business partners), some members expressed concern about measures to be included in the proposed regulatory regime to protect privacy of users' personal data, and suggested that the Bill should explicitly specify such measures. The Administration pointed out that licensed SVF issuers were

subject to safety and security requirements which included, among other things, to be in compliance with the personal data protection regulation in Hong Kong. A licensed SVF issuer would not be allowed to use the personal data of its customers for other purposes without customers' prior consent.

Latest development

15. At the House Committee meeting on 6 February 2015, Members agreed to form a Bills Committee to study the Bill.

Relevant papers

16. A list of relevant papers is in **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
27 February 2015

Proposed licensing criteria for multi-purpose stored value facilities

The proposed licensing criteria for multi-purpose stored value facilities ("SVF") will include the following major elements –

- (a) **Physical presence in Hong Kong:** A licensee must be a body corporate under Hong Kong law and have a registered office in Hong Kong. This requirement will allow the Hong Kong Monetary Authority ("HKMA") to exercise effective supervision over the licensee even though some of its systems and operations are located outside Hong Kong, or services are provided through the Internet;
- (b) **Principal business:** The principal business of a licensee must be the issuance of SVF to ensure that the principal resources will only be used on its SVF business. Some SVF schemes may involve the provision of remittance or money changing service as an ancillary or incidental service to the SVF business, potentially falling into the existing licensing regime for "money services operators" ("MSO") administered by the Customs and Excise Department ("C&ED") under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Chapter 615) ("AMLO"). To avoid any regulatory overlap, the licensee whose operation involves a MSO business which is ancillary or incidental to its SVF business will only need to obtain an SVF licence from the HKMA and will not be required to obtain a MSO licence from the C&ED;
- (c) **Financial strength:** The licensee must meet a minimum on-going capital requirement, so that the aggregate amount of its paid-up capital should not be less than HK\$25 million. This is in line with the current regulatory regime for "multi-purpose cards" under the Banking Ordinance (Cap. 155) ("BO") in which case a non-bank multi-purpose card issuer must be authorized as a deposit-taking company and be subject to, among other things, a minimum level of share capital of HK\$25 million;

- (d) **Management of float:** A licensee will be required to have in place safeguarding measures that adequately protect the float, and to keep the float separate from other funds of the issuer¹. The licensee must also have adequate risk management policies and procedures for float management to ensure that there will be sufficient funds for the redemption of outstanding stored value; and
- (e) **"Fit and proper" ownership and management, as well as prudential risk management requirements:** Controllers, directors, and chief executives of SVF licensees must be fit and proper persons, and persons responsible for the management of the SVF business must possess appropriate knowledge and experiences. The licensee must have in place appropriate risk management policies and procedures for its operation commensurate with the scale, risk profile and complexity of the scheme.

2. In line with the existing "multi-purpose cards" regime under BO, licensed banks will be deemed to be licensed to issue SVF as a line of business. This, together with other lines of banking business in a licensed bank, will be subject to regulatory requirements and on-going supervision by HKMA on a consolidated basis. Nevertheless, licensed banks will still be required to comply with relevant requirements under the proposed regulatory regime, including float safeguarding and management, should they decide to continue, or embark on, SVF business.

[*Source* : Adapted from paragraphs 8 and 9 of the Legislative Council Brief on Clearing and Settlement Systems (Amendment) Bill 2015 issued by the Financial Services and the Treasury Bureau on 21 January 2015 (File Ref: B&M/2/1/20C).]

¹ It is proposed in the Bill that HKMA may approve, as licensing conditions for an SVF issuer, the float protection arrangements, on a case-by-case basis, taking into account factors including financial strength, scale of business, risk management, and internal control environment, etc. of each scheme. HKMA will need to be satisfied that the types of investment in which the licensee proposes to invest are appropriate, having regard to the nature of the investments, and also, the financial strength, overall corporate governance, and risk management controls of the SVF issuer.

List of relevant papers

Date	Event	Paper/Minutes of meeting
27 February 2013	Second Reading of the Appropriation Bill 2013	Speech by the Financial Secretary (Paragraph 59)
8 April 2013	Special meeting of Finance Committee for examination of Estimates of Expenditure 2013-2014	Written questions raised by Members and Administration's replies (Reply serial number: FSTB(FS)067, 075 and 088)
May 2013	Joint consultation on the proposed regulatory regime for stored value facilities ("SVF") and retail payment systems ("RPS") in Hong Kong	Press release Consultation paper
26 February 2014	Second Reading of the Appropriation Bill 2014	Speech by the Financial Secretary (Paragraph 44)
31 March 2014	Special meeting of Finance Committee for examination of Estimates of Expenditure 2014-2015	Written questions raised by Members and Administration's replies (Reply serial number: FSTB(FS)041 and 057) Supplementary written question raised by Member and Administration's reply (Reply serial number: S-FSTB(FS)02)
7 April 2014	Meeting of the Panel on Financial Affairs ("FA Panel")	Administration's paper (LC Paper No. CB(1)1180/13-14(07)) Minutes (LC Paper No. CB(1)1996/13-14)

Date	Event	Paper/Minutes of meeting
31 October 2014	Joint consultation conclusions on the proposed regulatory regime for SVF and RPS in Hong Kong	Press release Consultation conclusions
21 January 2015	Introduction of the Clearing and Settlement Systems (Amendment) Bill 2015 into the Legislative Council	The Bill Legislative Council Brief (File Ref: B&M/2/1/20C) Legal Service Division report (LC Paper No. LS36/14-15)