

Clearing and Settlement Systems (Amendment) Bill 2015

2 March 2015



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Background

- Rapid growth in new forms of retail payment products and services in Hong Kong
 - e.g. Internet or mobile payment services
- Currently, the Banking Ordinance (BO) and the Clearing and Settlement Systems Ordinance (CSSO) only regulate—
 - device-based multi-purpose stored value cards, e.g. Octopus
 - large value clearing and settlement systems, e.g. RTGS
- To ensure stability and effectiveness of our monetary and financial systems, we propose that HKMA should regulate—
 - non-device-based stored value facilities (SVF), e.g. Internet payment products
 - retail payment systems (RPS), e.g. credit card schemes



SVF Licensing Regime

- Objective: to ensure safety and soundness of SVF issuers and proper protection of users' float
- Scope:
 - Device-based multi-purpose SVF
 - Non-device-based multi-purpose SVF
- Exemption:
 - Single-purpose SVF
 - SVF which do not accept payment of money of users, e.g. loyalty, bonus point and cash reward schemes
 - SVF which use the same device to purchase and operate digital products
 - SVF with limited usage and float size of not more than HK\$1 million
- Unless exempt, issuers must be licensed to issue SVF. Licensed banks are deemed to be licensed.

SVF Licensing Criteria

- Physical presence in Hong Kong
 - licensee must be a body corporate under Hong Kong law
- Principal business
 - issue or facilitate the issue of SVF
- Financial resources
 - paid-up share capital should not be less than HK\$25 million
- Management of float and SVF deposit
 - segregation of float and SVF deposit from other funds
 - adequate float safeguarding measures in place
- Fit and proper ownership and prudential risk management
 - controllers and officers of licensees must be fit and proper persons
 - adequate risk management controls and systems



RPS Designation Regime

- RPS generally cover credit card/debit card schemes, large merchant acquirers, payment gateways, etc.
- Designation criteria:

If any disruptions to the RPS are likely to result in one or more of the following –

- monetary or financial stability, or the functioning of Hong Kong as an international financial centre, being adversely affected;
- the public's confidence in payment systems or the financial system of Hong Kong being adversely affected; or
- day-to-day commercial activities being adversely and materially affected



RPS Prudential Requirements

- To ensure safety and robustness
 - operating rules
 - risk management and control procedures
 - safety and efficiency requirements



Supervisory and Enforcement Powers

- On-going supervision
- Investigation
- Sanctions
 - Criminal sanctions
 - e.g. Unlicensed SVF issuer is liable to a fine of HK\$1 million and to imprisonment for 5 years
 - Civil sanctions
 - Minor sanctions and supervisory sanctions
 - Pecuniary penalty
- Checks and Balances
 - Review of HKMA's decisions by the Payment Systems and Stored Value Facilities Appeals Tribunal



Main Provisions of the Bill

- Clause 3 – amends the long title of the CSSO to reflect the scope of the Ordinance
- Clause 4 – amends the short title of the CSSO to “Payment Systems and Stored Value Facilities Ordinance”
- Clauses 10 to 11 - provide for the designation regime for RPS
- Clauses 12 to 15 – provide for the regulatory requirements on designated systems
- Clause 17 – adds a new Part 2A to provide for a licensing regime for SVF

Main Provisions of the Bill (con't)

- Highlights of the new Part 2A :
 - Division 2 – Restrictions on SVF, i.e. no person may issue SVF or knowingly promote the issue of SVF without a licence issued by MA
 - Division 3 – Procedural requirements on SVF licence application and processing, incl. MA's power to attach conditions to a licence
 - Division 4 – Obligations of licensees, incl. fulfillment of licensing criteria in Schedule 3; payment of licence fees in Schedule 4; and safety and efficiency requirements, etc.
 - Division 5 – Procedural requirements on the revocation and suspension of SVF licence based on grounds specified in Schedule 5
 - Division 6 – MA may exercise powers over management of licensee, incl. appointment of Manager to take control of licensee's business, under certain specified circumstances
 - Division 7 - Requirements on ownership and management of licensee, incl. requirements for controllers to obtain MA's consent
 - Division 8 – MA's power to exempt certain SVF from the licensing regime in light of immaterial risks



Main Provisions of the Bill (con't)

- Clauses 18 to 28 – Provide for the MA's supervisory functions over SVF and designated systems
- Clause 29 – Adds the following-
 - a new Part 3A to provide for the MA's power to investigate; and
 - a new Part 3B to provide for civil sanctions for contraventions
- Clauses 30 to 34 – Revise the ambit and name of the Clearing and Settlement Systems Appeals Tribunal



Main Provisions of the Bill (con't)

- Clause 53 – Adds the following Schedules to cater for the new regulatory regime for SVF and RPS:
 - Schedule 3 – Minimum SVF licensing criteria
 - Schedule 4 – SVF licence fee
 - Schedule 5 – Grounds for revocation of licence
 - Schedule 6 – Affairs or business of licensee specified for the definition of “manager”
 - Schedule 7 – Powers of Manager of licensee
 - Schedule 8 – SVF exempt from the licensing and regulatory regime
 - Schedule 9 - Savings and transitional provisions



Main Provisions of the Bill (con't)

- Part 3 – Related amendments to -
 - Division 1 – Banking Ordinance;
 - Division 2 - Electronic Transactions Ordinance; and
 - Division 3 – Anti-money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance



Public Consultation

- May 2013 - public consultation
- April 2014 - briefed LegCo Panel on Financial Affairs
- Positive responses from the public
- Overall support indicated by the payment services industry



Phased Implementation Arrangement

- Commence after gazettal of the Amendment Ordinance
 - SVF licence application
 - RPS designation regime
- Transitional period: 12 months
- Remaining provisions (relating to offences in relation to the proposed licensing regime for SVF) come into effect after the transitional period