

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

**Government's Responses to the Follow-up Actions
Arising from the Discussion at the Meeting on 13 April 2015**

This paper sets out the Government's responses to the issues raised by Members in relation to the Clearing and Settlement Systems (Amendment) Bill 2015 ("the Bill") at the meeting of 13 April 2015.

I. Transfer of personal data to places outside Hong Kong

2. The Bill seeks to ensure that licensed stored value facilities ("SVF") and designated retail payment systems ("RPS") are operated in a safe and efficient manner. In respect of SVF, the proposed section 5 of Part 2 of Schedule 3 (Clause 53 of the Bill) requires SVF licensees to have in place appropriate risk management policies and procedures for managing risks arising from the operation of SVF schemes that are commensurate with the scale and complexity of the schemes, including adequate security and internal control to ensure the safety and integrity of data (in particular, personal data) and records. The proposed section 10 of Part 2 of Schedule 3 requires SVF schemes to be prudent and sound, having regard to the purpose, business model and operational arrangement of the scheme; and to be operated with competence in a manner that will not adversely affect the stability of any payment system in Hong Kong or the interests of the relevant facility users or potential users.

3. For designated RPS, section 7(1) of the Clearing and Settlement Systems Ordinance ("the Ordinance") provides that system operators and settlement institutions of designated systems should ensure, among others, that their operations are conducted in a safe and efficient manner calculated to minimise the likelihood of any disruptions to the functioning of the systems, and that there are in place adequate arrangements to monitor and enforce compliance with the operating rules of the systems. The proposed amendments to section 8(1) (Clause 15 of the Bill) provide that reference to the safety of a designated system includes in particular any matter relating to, among others, the reliability and robustness of operation of the system; access control over the system; the integrity of, and access control over, the information held within the system; and the risk management and control procedures relating to the operation of the system.

4. Paragraphs 2 and 3 above apply to the transfer of any personal data of clients of SVF and RPS to places outside Hong Kong. In addition to the requirements contained in the Bill, SVF licensees, and system operators and settlement institutions of designated RPS, are required to comply with the relevant provisions of the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”), including the data protection principles prescribed in Schedule 1 to the PDPO, to ensure adequate protection of users’ data. We believe that these will provide adequate protection for users in relation to the handling or transfer of any personal data. Separately, we have relayed a Member’s view about the operation of section 33 of the PDPO to the Constitutional and Mainland Affairs Bureau.

II. Amendments to sections 2 and 6 of the Ordinance (under clauses 5 and 12)

5. In light of the Legal Adviser’s comment on the proposed definition of “retail payment system” in section 2 of the Ordinance, we will give further thought to the suggestion to clarify that “retail activities” include retail activities taking place in and outside Hong Kong, and may propose a committee stage amendment to enhance the definition if necessary.

6. Regarding the question on whether penalties on summary conviction should be provided under the proposed section 6(3) and (4) (in relation to relevant offences regarding the obligation of a system operator and a settlement institution to inform the Monetary Authority (“MA”) of the name and address or any changes thereof), we may add the proposed penalties on summary conviction through a committee stage amendment with reference to other comparable provisions in the Bill.

III. Liabilities on internet service providers

7. The proposed section 8C (Clause 17 of the Bill) provides that a person must not **knowingly** promote or otherwise assist another person in issuing, or facilitating the issue of, an unlicensed SVF, including by means of providing network or internet portal access or any other technological means. It will be a criminal offence for the person who contravenes this requirement **without a reasonable excuse**. The provision does not impose a duty on the part of any person (including internet service providers or website operators) to verify the contents and accuracy of the promotional or advertisement materials provided by an SVF issuer.

8. When an alleged contravention under the proposed section 8C occurs, the MA may inform the relevant internet service provider to ask it to stop providing network or internet portal services which may promote or otherwise assist the relevant party in issuing, or facilitating the issue of, an unlicensed SVF. The MA will alert the public of the unlicensed SVF and its website, as necessary, to safeguard the public's interest.

9. We note that internet service providers may be subject to other obligations under certain circumstances in different legislation. However, we do not consider it necessary to have additional safe harbour provisions or exemptions in the proposed section 8C of this Bill, as a defence of "reasonable excuse" is already available and wide enough for persons charged with offences under that section. We need to take into account the specific circumstances or context in comparing the proposed provisions in the Bill with those in the current laws and other Bills. The MA may issue guidelines to facilitate compliance with the proposed section 8C after the passage of the Bill.

**Financial Services and the Treasury Bureau
Hong Kong Monetary Authority
April 2015**