

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

**Government's Responses to Written Submissions
from Octopus Card Ltd. and Edenred Hong Kong Ltd. to the Bills Committee**

Category	Views	Government's Responses
General	<ul style="list-style-type: none"> Fully support and understand the objectives of the Bill which aim to ensure the safety and soundness of device-based and non-device-based payment facilities and systems which are essential for the financial stability of Hong Kong. [Edenred] 	<ul style="list-style-type: none"> Noted.
Definition of stored value facility ("SVF")	<ul style="list-style-type: none"> Would like to clarify whether the definition of SVF under the proposed section 2A precludes negative balances. Currently, Octopus offers a negative provision of up to \$35 on the card. [Octopus] 	<ul style="list-style-type: none"> The proposed sections 2A (Clause 6 of the Bill) provides that the facility may be used for payments up to the amount of the stored value that is available for use under the rules of the facility. That section does not preclude the situation that the rules of the facility provide for a negative provision for users up to a certain amount of money.

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Designation of retail payment systems ("RPS")	<ul style="list-style-type: none"> Suggest the exclusion from the definition of "designated RPS" of a clearing and settlement system run by an SVF licensee to support its own SVF scheme. [Octopus] 	<ul style="list-style-type: none"> To avoid regulatory overlap, the Monetary Authority ("MA") does not intend to designate, under section 4, a payment system run by an SVF licensee to support its own SVF schemes, as the SVF licensee is already under supervision in accordance with the same Ordinance. However, there is a possibility that a payment system operated by an SVF issuer supports other SVF schemes run by other issuers. The MA may designate such a payment system if it meets the designation criteria. Hence, it may not be appropriate to confine the scope for the designation of a "payment system" as suggested.
Regulation of SVF	<ul style="list-style-type: none"> Suggest prohibiting in the new section 8B the issuance of SVF "in or into" Hong Kong unless authorised. The word "into" would cover an offshore SVF operator issuing into Hong Kong on a cross-border basis. [Octopus] 	<ul style="list-style-type: none"> The proposed section 8B requires a person to hold a licence to issue an SVF. By definition, "issue" includes "the operation of the facility by the issuer for use by the user of the facility after its issue". In determining whether an issuer is "issuing" or "operating" an SVF in Hong Kong (and one which has to be licensed), the MA may look into and

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	<ul style="list-style-type: none"> • Would like to clarify the regulatory treatment of e-coupon dedicated to employees' benefit scheme or employees' reward scheme. [Edenred] 	<p>consider the relevant circumstances in its totality. The MA may issue guidelines to illustrate such circumstances to facilitate compliance and enforcement of the relevant provisions. See our previous explanations set out in paragraphs 5 and 6 in CB(1)656/14-15(10).</p> <ul style="list-style-type: none"> • Single-purpose SVF, and those SVF with a limited business scale or used for certain bonus point schemes, are exempt from the licensing regime (see the proposed section 2A under Clause 6 of the Bill, and the proposed Schedule 8). This is in line with practices adopted by major jurisdictions and the existing "multi-purpose cards" regime under the Banking Ordinance ("BO"). In addition, the proposed section 8ZZZD (Clause 17 of the Bill) provides that the MA may exempt any SVF that qualify for exemption under that section, if the MA is satisfied that the risks posed by the facility in question to the user or potential user of the facility, and the payment or financial system of

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		Hong Kong, are immaterial.
Conditions of Licence	<ul style="list-style-type: none"> • The MA's power to attach conditions should be confined to specific grounds, say, when the licensee is unable to meet its obligations or suspend payments; or if the MA is of the opinion that the licensee is carrying on its business in a manner detrimental to users, etc. [Octopus] • The register of licensees should include any conditions that are currently attached to the licence and any additional criteria imposed by the MA. [Octopus] 	<ul style="list-style-type: none"> • The proposed section 8I(1) provides that the MA may attach conditions to a licence as he considers appropriate. Without limiting subsection (1), the scope of the proposed restrictions or requirements covered by the conditions are set out in subsection (2). The proposed section 8I is formulated with reference to sections 16(3A) and (9) of the BO which currently apply to any institution authorized to issue multi-purpose cards. The exercise of this power may not wait until when the licensee is carrying on its business in a manner detrimental to the interests of users or potential users, or when the licensee is unable to meet its obligations or suspends payments. • The purpose of establishing and keeping a register of licensees by the MA under the proposed section 8ZZZF is to allow the public to verify whether an SVF issuer is a licenced issuer. We do not

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		<p>consider it appropriate to include in the register the conditions imposed by the MA in respect of individual licensees, as some such conditions per se may have to be handled with care as they may relate to business plan and information, whether current or future, of the licensees. That said, section 8I(2)(d) provides that the MA may impose a condition to require a licensee to disclose to the public all or part of the accounts of the licensee, or any information relating to the business of the licensee.</p>
<p>Power to give direction</p>	<ul style="list-style-type: none"> • Suggest adding a definition of “property” under section 8ZH to include “any account and the funds or assets held therein set up according to section 7 in Part 2 of Schedule 3 for holding of the relevant funds”. [Octopus] 	<ul style="list-style-type: none"> • The proposed section 8ZH(3) provides that the MA must specify in the terms of the direction the affairs, business or property to be managed by a Manager. The relevant property may include any account, funds or assets held to protect the float or SVF deposit, or other property of the licensee.

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Functions of the MA	<ul style="list-style-type: none"> Suggest empowering the MA to issue guidance with respect to the operation of the Ordinance, any matters relating to the functions of the MA under the Ordinance, or issue directions to exempt a person from any criteria, conditions or regulations prescribed in the Ordinance. [Octopus] 	<ul style="list-style-type: none"> The proposed section 13(1)(b) (Clause 23 of the Bill) provides that the MA may direct an SVF licensee to take the action that the MA considers necessary for bringing any SVF issued under a licence into compliance with the requirements set out in the proposed section 8O(1). The proposed amendments to section 54 (Clause 45 of the Bill) provide that the MA may issue guidelines to assist issuers of SVFs to comply with the Ordinance, and to set out the manner in which the MA proposes to perform any function assigned to the MA under the Ordinance.
Review of decisions by the Tribunal	<ul style="list-style-type: none"> The Tribunal itself does not appear to be obliged to deal with the referral within any specific timescale. There is a risk that the appeal process could be drawn out, a period during which the applicant will still have to abide by whatever consents or directions the MA has determined. [Octopus] 	<ul style="list-style-type: none"> Section 35(5) of the existing Ordinance provides that the MA shall forward a copy of the decision together with all other relevant papers in his possession to the Tribunal, <i>as soon as practicable</i> after receipt of a copy of a reference delivered by the Tribunal. Section 35(8) provides that the Tribunal shall deliver its determination <i>as soon as practicable</i> after completing the review. We do

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		not consider it appropriate to specify a definitive timeframe for the above processes in the law as the complexity of the proceedings may vary in individual cases.
Power to make regulations	<ul style="list-style-type: none"> The operators of SVF should be consulted when the MA makes regulations under section 49. [Octopus] 	<ul style="list-style-type: none"> We will further review the proposed arrangement prescribed in section 49(1), including the consultation process before the MA exercises his power to make regulations in relation to SVFs.
Minimum criteria	<ul style="list-style-type: none"> Any bank which operates SVF should do so under the requirements which apply to non-bank SVF operators generally and to the exclusion of any requirements which would otherwise apply to it as a bank. [Octopus] 	<ul style="list-style-type: none"> Given that an SVF business is distinct from banking services and to ensure a level playing level between bank and non-bank licensees, banks that engage in the SVF business shall comply with the proposed regulatory regime contained in the Bill which is specifically tailored for the regulation of SVF. To avoid regulatory overlap, certain minimum criteria in relation to principal business and financial resources are not applicable to banks, as they are already subject to consolidated supervision by the MA under the BO.

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	<ul style="list-style-type: none"> • Any business activities other than the principal business or the provision of operational or closely related ancillary services carried on by the applicable company must be approved by the MA. [Octopus] • Safeguarding requirements to protect customers' funds should be reasonable. Measures to protect the funds should be simple and not too costly. This may include placing the float into a separate account with a licensed bank, ensuring that the float is not subject to any interest in or right over it by any third party, or pursuing certain prudent investments, etc. [Octopus] 	<ul style="list-style-type: none"> • The proposed section 1 of Part 2 of Schedule 3 (Clause 53 of the Bill) provides that the principal business of an SVF licensee (not being a bank) must be the issue or facilitation of the issue of SVF. In other words, a licensee should not carry out any other businesses unrelated to its principal business. • SVF issuers will need to demonstrate to the MA that they have put in place measures that will ensure on-going compliance with the following principles– <ul style="list-style-type: none"> (a) the float must be kept separate from the SVF licensee's other funds maintained or received by the company; and (b) the float must be adequately protected by safeguarding measures. <p>Operationally speaking, the MA will discuss with each SVF issuer its specific float safeguarding</p>

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		<p>approach to ensure that the proposed measures will provide adequate protection to users and that such approach will best suit the issuer's business operation and risks profile. The MA may issue guidelines to facilitate licensees to comply with the relevant requirements in the Bill concerning the protection of float and SVF deposit.</p>
<p>Redemption of outstanding stored value</p>	<ul style="list-style-type: none"> The SVF issuer should have the sole discretion to set the redemption period and time bar. The new regulatory regime aims to provide a level playing field to existing issuers as well as new entrants, hence, the level of fees and charges and the redemption conditions should be driven by market force and not subject to consultation with the MA. SVF is a payment product, which should not be issued at a discount and/or an interest bearing product. [Octopus] 	<ul style="list-style-type: none"> The proposed Paragraph 10 of Schedule 3 (Clause 53 of the Bill) provides that an SVF licensee must satisfy the MA that the SVF scheme is prudent and sound, having regard to the purpose, business model and operational arrangement of the scheme, and the scheme must be operated prudently and with competence in a manner that will not adversely affect, among others, the interests of the user or potential user of the SVF. In considering whether an SVF issuer meets the above licensing criteria, the MA will take into account the relevant consumer protection measures during the licensing and supervision work. If necessary, the

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		MA may issue guidelines to set out any regulatory expectations or operational requirements regarding the redemption of the stored value, the termination of the SVF, or the issue of any SVF at a discount or an interest.

Reference

Name of Organisation		LegCo Paper No.
Edenred	Submission from Edenred Hong Kong Ltd.	CB(1)791/14-15(01)
Octopus	Submission from Octopus Card Ltd.	CB(1)765/14-15(01)

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