

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

**List of follow-up actions arising from the discussion
at the meeting on 12 May 2015**

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

1. In the proposed section 8 of Part 2 of the new Schedule 3 to the Clearing and Settlement Systems Ordinance (Cap. 584) ("CSSO") (clause 53 of the Bill) on the redemption of outstanding values remains 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 is 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) requires the SVF issuer must redeem in full the total stored value upon request by users but subsection (b) allows the issuer to set deadline for the redemption or usage which is equivalent to setting a condition for the redemption or usage, and after the set deadline the unredeemed or unused value would be forfeited;
- (b) SVF issuers should not be allowed to set deadline for users in using or redeeming the stored value in the facility unless under specified circumstances subject to prior approval of the Hong Kong Monetary Authority ("HKMA"); and
- (c) HKMA should ensure that the fees to be charged by SVF licensees for redeeming the stored value are reasonable.

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

2. The proposed new section 8T(2) of CSSO (clause 17 of the Bill) requires an SVF licensee to provide HKMA with details of a material change, which is 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 has taken place (under section 8T(2)(a)), or within a

reasonable period if the material change is likely to take place (under section 8T(2)(b)). The Administration is requested to respond to a member's concerns/views about:

- (a) the provision may give HKMA substantial discretion in determining whether a change is a "material change" and whether the relevant notification to HKMA is "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 new section 8S of CSSO requiring an SVF licensee to notify HKMA within 6 days of a change of its particulars), and (ii) similar provisions under the Banking Ordinance (Cap. 155) ("BO") relating to notifications by licensed banks.

Supervisory and enforcement powers of HKMA

3. Part 2 of the proposed new Schedule 5 to CSSO (clause 53 of the Bill) sets out the circumstances under which HKMA may revoke the licence of an SVF licensee, including situations where the licensee is likely to become unable to meet its obligations or is about to suspend payment. The Administration is requested to provide supplementary information on HKMA'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 HKMA to take timely action to revoke the licence concerned.

Suspension and revocation of SVF licences

4. Under the proposed new section 8G of CSSO (clause 17 of the Bill), a licensed bank is deemed to be licensed to issue SVF as a line of business. The proposed new section 8Y provides 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 is requested to explain the purpose of the new section 8Y, and to respond to a member's enquiry as how HKMA can suspend "the SVF licence" of a bank if the bank is not engaging in an SVF business, and hence there is no "physical SVF licence" *pe se*.

Remuneration and expenses of "Advisor" or "Manager" appointed by HKMA under CSSO

5. The proposed new sections 8ZG, 8ZH, and 8ZX empower HKMA to appoint an "Advisor", a "Manager" and persons to fill such vacancies when arise, for giving advice and managing the licensee's affairs, business or property of the licensee when it is unable to meet its obligations, etc. The Administration is requested to provide supplementary information on how HKMA would ensure the remuneration and fees to be paid by an SVF licensee to the "Advisor" or "Manager", who may include staff members of HKMA, would be reasonable and in the best interests of the licensee's creditors.

Ownership and management of SVF licensee

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