

**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 12 May 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 held on 12 May 2015.

**I. Licensing criteria for stored value facility ("SVF") issuers and facilitators**

2. The proposed section 2A (Clause 6 of the Bill) provides that a facility is a SVF if it may be used for making payments for goods or services, or to another person, under an undertaking given by the issuer who will accept the payments up to the amount of the stored value that is available for use under the rules of the facility. We are committed to ensuring that the proposed regulatory regime would enable the payment industry to adopt reasonable business practices, as set out in the rules of the facility, that treat customers fairly. In light of the discussions at the aforesaid meeting, we will consider proposing a committee stage amendment to improve the clarity of the requirement under section 8 of Part 2 of Schedule 3 so that the applicable company must redeem in full the outstanding stored value on the facility as soon as practicable after being requested by the user to do so, unless—

- (a) the Monetary Authority ("MA") has given prior consent to the applicable company that this requirement does not apply; and
- (b) the applicable company has stated clearly and prominently in its contract with a user (i) the terms that the outstanding stored value is not redeemable after a prescribed deadline; (ii) that prescribed deadline; (iii) any fee to be charged for the redemption; and (iv) other related terms.

3. In addition, the MA will consider issuing guidelines to facilitate licensees to comply with the relevant requirements in the Bill concerning the redemption of outstanding stored value, including the setting of fees.

## **II. Obligation to notify the MA of change in circumstances of SVF licensees**

4. The proposed section 8T (Clause 17 of the Bill) states that a licensee must, in respect of a material change that has taken place or is likely to take place, provide the MA with details of the change without undue delay or details of the likely change within a reasonable period before the change is reasonably expected to take place. A material change in the circumstances should be relevant to the licensee's ongoing fulfilment of any minimum criteria, ongoing compliance with the licensing conditions and the obligation to ensure safety and efficiency of the SVF, or the ongoing issue of the SVF. It will be an offence for the person who contravenes this requirement without a reasonable excuse. The MA will take into account the specific circumstances of each case to determine whether a licensee has failed to comply with this section.

5. We have looked into the proposed section 8S (Clause 17 of the Bill) and the Banking Ordinance ("BO"). Unlike the change to licensees' address particulars (referred to in the proposed section 8S) which can be clearly defined and identified, there will be compliance or enforcement difficulty if the MA will require the reporting of a material change (particularly a material change that is likely to take place) in section 8T within a fixed timeframe. We consider that the current provision in section 8T should be sufficient to facilitate compliance and enforcement. We note that there is a similar arrangement in section 67 of the BO, in which case a time limit for reporting the fact that an authorized institution is likely to become unable to meet its obligations is not specified. The MA will consider issuing guidelines to facilitate the reporting as required under section 8T if necessary.

## **III. Supervision and enforcement powers of the MA**

6. The Bill contains amendments or new provisions to empower the MA to request information or documents (proposed amendments to section 12 under Clause 21 of the Bill); examine books, accounts and transactions (proposed section 12A under Clause 22 of the

Bill); give directions for immediate actions, or for appointment of Advisor or Manager (proposed sections 8ZF, 8ZG and 8ZH under Clause 17 of the Bill); and issue guidelines (proposed amendments to section 54 under Clause 45 of the Bill). These provisions will empower the MA to conduct on-site examinations and off-site reviews, or to exercise appropriate supervisory powers timely and properly on SVF licensees in future. The implementation of the above supervisory measures will help ensure that licensees have put in place adequate systems and controls, and that potential problems of SVF licensees (including financial issues) may be detected by the MA for necessary supervisory actions.

#### **IV. Suspension and revocation of SVF licences**

7. At present, under section 14A(1) of the BO, no person shall issue a multi-purpose card except an authorized institution which has approval to do so under section 16(3A)(a) of that Ordinance. Section 16(3B) of the BO provides that a bank shall be deemed to be approved under section 16(3A) to issue multi-purpose cards. To migrate the “multi-purpose card” regime under the BO to the proposed regulatory regime for SVFs under the Clearing and Settlement Systems Ordinance (“CSSO”), we propose adding new section 8G (Clause 17 of the Bill) to provide that a bank is regarded as being granted a licence to issue SVFs under new section 8F of the CSSO, as banks are subject to holistic supervision by the MA under the BO and are deemed to be approved to issue multi-purpose cards currently. In accordance with the proposed section 8N (Clause 17 of the Bill), a bank is only required to pay the licence fee set out in column 3 of the proposed Schedule 4 to the CSSO when it starts to issue a SVF. When a bank’s banking licence is suspended or revoked under the BO, the SVF licence which is regarded as being granted under section 8G will automatically be suspended or revoked under the proposed section 8U or 8Y. Besides, under section 8V, 8Z or 8ZA, the MA may suspend or revoke an SVF licence regarded as being held by a bank, if the conditions set out in those provisions are met, without affecting the banking licence of the same bank. There is no need to provide for the suspension or revocation of an SVF licence regarded as being held by a bank if the bank has not engaged in any SVF business and has not paid the licence fee under the CSSO.

## **V. Remuneration and expenses of “Advisor” or “Manager” appointed under CSSO**

8. The proposed section 8ZZ(1) (Clause 17 of the Bill) provides that the MA may, after consulting the Financial Secretary, determine the remuneration or expenses to be paid by a licensee to the Advisor or the Manager of the licensee. Taking into account the scope of work of the Advisor or Manager and the prevailing market prices, the MA may determine the remuneration and fees of the Advisor or Manager and will ensure that the remuneration and fees will be set at a reasonable level. As per paragraph 12 of Part 2 of Schedule 1 (Clause 52 of the Bill), the decision of the MA to determine the remuneration or expenses to be paid by a licensee under the proposed section 8ZZ(1) is subject to review by the Payment Systems and Stored Value Facilities Appeals Tribunal. In addition, section 8ZZ(5) provides that the MA may, after consulting the Financial Secretary, use the Exchange Fund to pay the whole or part of the remuneration or expenses payable to the Advisor or the Manager of the licensee.

## **VI. Ownership and management of SVF licensee**

9. The proposed Division 7 in Part 2A (Clause 17 of the Bill) provides for the regulation of the ownership and management of non-bank SVF licensees, with a view to ensuring the fitness and propriety of controllers, directors, chief executives, managers and employees of the licensees. Similar provisions are found in the BO (see Part XIII of the BO on the ownership and management of Authorized Institutions).

10. The proposed subdivision 2 of Division 7 requires SVF licensees to obtain the MA’s prior approval for any arrangement for the sale or disposal of its SVF business and to inform the MA of any reconstruction of capital. This seeks to ensure that any such moves will not affect the fitness and propriety of the management, and the safety and soundness of the SVF. The proposed subdivision 3 empowers the MA to object to any person becoming a controller<sup>1</sup> of a licensee if the MA is not satisfied that the person is a fit and proper person. The proposed subdivision 4 provides that the MA may impose restrictions on the specified shares of a controller of an SVF licensee to whose capacity as such a controller is objected by the MA. This seeks to prevent the

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<sup>1</sup> In accordance with the proposed section 8ZZE, “controller” means a majority shareholder controller, a minority shareholder controller, or an indirect controller, as defined in the proposed section 8ZZA.

relevant controller from exerting undue influence on the licensee by exercising the rights in the shares of the licensee.

11. Even if none of the shareholders are “controllers” of the licensee, the MA may still exercise the powers of control over the senior management or employees of the licensees. For instance, the proposed subdivision 5 of Division 7 provides for the requirements relating to the appointment of chief executives, directors and managers. Section 3 of Part 2 of the proposed Schedule 3 (Clause 53 of the Bill) provides that the MA must be satisfied that the chief executive and directors of a licensee are fit and proper persons to hold their positions. Section 4 of Part 2 of the same Schedule provides that an officer who is responsible for implementing the licensee’s SVF scheme or the day-to-day management of the scheme must have the appropriate knowledge and experience to effectively discharge that responsibility.

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