

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

**List of follow-up actions arising from the discussion
at the meeting on 26 May 2015**

Stored value facilities ("SVF") under exemption

1. The proposed sections 4 and 5 of the new Schedule 8 to the Clearing and Settlement Systems Ordinance (Cap. 584) ("CSSO") (clause 53 of the Bill) exempt an SVF used within limited group of good or service providers or used within certain premises from the relevant licensing and supervision requirements under the proposed new Part 2A on the conditions that the float amount of the facility or the aggregate float amount of all facilities of an SVF issuer is below \$1 million. The Administration is requested to provide supplementary information as to how the Administration would ensure SVF issuers' compliance with the requirements in sections 4 and 5 of the new Schedule 8 as issuers are not required to apply for licences and are exempted from the supervision requirements under CSSO.

False claims to be SVF issuer or facilitator

2. The proposed new section 8ZZZK of CSSO (clause 17 of the Bill) prohibits persons who are not SVF licensees to describe or hold themselves out as such licensees. It is an offence for a person who contravenes this provision. It is noted that section 8ZZZK does not cover the situation where a person makes a false claim of a third party as an SVF licensee. The Administration is requested to provide supplementary information on the actions the Hong Kong Monetary Authority ("HKMA") would take against :

- (a) the person who made the false claim on a third party ; and
- (b) the third party in question.

Legal professional privilege ("LPP")

3. The proposed new Parts 2B and 3A of CSSO (clauses 19 to 29 of the Bill) empowers HKMA or its investigator(s) to request information and explanations, etc. from SVF licensees, system operators of designated systems, and persons in order to facilitate investigation of suspected offences or non-compliance cases. To ensure the protection of privileged information and against provision of self-incrimination evidence, the Administration is requested to:

- (a) explain the rationale for not expressly provide in new Parts 2B and 3A the right for persons to claim privilege (including LPP and against self-incrimination evidence) in relation to provision of information and HKMA's investigation;
- (b) explain how HKMA would handle persons' claims mentioned in (a) above; and
- (c) re-consider the need to set out the right for persons to claim the privileges in new Parts 2B and 3A with reference to similar provisions under the Securities and Futures Ordinance (Cap. 571).

Time limit for civil actions

4. The proposed new section 33V of CSSO (clause 29 of the Bill) empowers HKMA to impose sanction on a former regulated person without specifying the time limit for taking the relevant actions. In the light of members' comment about the broad scope of the provision, the Administration is requested to provide supplementary information on the time limit for initiating civil actions under the judicial system in Hong Kong which is also applicable to section 33V.

Review of HKMA's decisions

5. Part 2 of the proposed new Schedule 1 to CSSO (clause 52 of the Bill) specifies a list of HKMA's decisions under CSSO that are subjected to review by the proposed Payment Systems and Stored Value Facilities Appeals Tribunal ("the list of reviewable decisions"). The Administration is requested to:

- (a) explain the principles adopted in formulating the list of reviewable decisions;
- (b) explain why the below decisions, which parties other than the SVF licensee concerned may feel aggrieved by, are not included in the list of reviewable decisions –
 - (i) the decision to declare a person not to be a manager of an SVF licensee or a class of persons not to be managers of an SVF licensee (i.e. the proposed new section 8A); and
 - (ii) the decision to revoke the appointment of an "Advisor" and a "Manager" appointed under the proposed new sections 8ZG and 8ZH for giving advice and managing the licensee's affairs, business or property of the licensee when it is unable to meet its obligations, etc. (i.e. the proposed new section 8ZU); and

- (c) re-consider the need to include the decisions in (b) above in the list of reviewable decisions making reference to the relevant provisions in the Banking Ordinance (Cap. 155).

Drafting issues

6. In the light of a member's comment, the Administration has agreed to consider deleting the word "現" in the phrase "變現" in the Chinese text of section 3(c) of the proposed new Schedule 8 to CSSO.

7. In the light of the legal adviser's comment, the Administration has agreed to consider replacing the words "電子" by "數碼" in the heading of section 2 of the proposed new Schedule 8 to CSSO.

8. In the light of the legal adviser's comment, the Administration has agreed to consider specifying clearly the scope of "communication network" in the proposed new section 8ZZZI(1)(c) to include the webpage of the SVF licensee.

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