

**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 26 May 2015 and the  
Submission from the Communications Association of Hong Kong**

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 26 May 2015 and the submission from the Communications Association of Hong Kong.

**I. Stored value facilities under exemption**

2. To enable the Monetary Authority ("MA") to monitor the application of the proposed exemptions under Schedule 8, the proposed section 8ZZZB(2) (Clause 17 of the Bill) provides that the MA may require the issuer or facilitator of a stored value facility ("SVF") specified in Schedule 8 to provide the MA with any information that the MA considers necessary for satisfying that the risks posed by the facility to the user or potential user of the facility, or to the payment or financial system of Hong Kong, are immaterial.

**II. False claims to be SVF issuer or facilitator**

3. While the Bill does not impose specifically any liability on a person who makes a false claim of a third party to be an SVF licensee, the proposed section 8ZZZJ provides that a person must not publish an advertisement relating to the issue or the facilitation of the issue of an SVF unless the advertisement relates to the issue or the facilitation of the issue of an SVF by a licensee and the licence number is clearly stated in that advertisement. It will be an offence for the person who contravenes this requirement.

4. In addition, the MA must establish and keep a register of licensees for inspection by the public in the form of an online record (see the proposed section 8ZZZF). Also, an SVF issuer must ensure that the licence number is clearly stated on the physical device, the packaging containing the device, or the communication network concerned (see the

proposed section 8ZZZI). These measures will enable the public to verify whether an SVF has been issued under a licence granted by the MA.

### **III. Legal professional privilege**

5. Legal professional privilege is protected by Article 35 of the Basic Law. Nothing in the Bill affects any claims, rights or entitlements that would, apart from this Ordinance, arise on the ground of legal professional privilege. To put this beyond doubt, we will consider proposing a committee stage amendment to state this position, with reference to section 81 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (“AMLO”, Cap. 615).

6. In line with the existing section 36(4), the proposed section 33F(8) (Clause 29 of the Bill) provides that a person is not excused from complying with a requirement imposed under section 33C or 33D only on the ground that to do so might tend to incriminate the person. Yet like the existing section 37, whilst any incriminating information compulsorily obtained by an investigator under the new Part 3A may be used in the investigation, the proposed section 33H (Clause 29 of the Bill) provides that, if the person has claimed in advance that the information he is going to provide might tend to incriminate him, such incriminating information shall not be admissible in evidence against the person in criminal proceedings except the proceedings in which the person is charged with an offence relating to perjury or the investigation. The proposed section 33H is in line with the protection currently afforded under the relevant provisions in relation to investigations under the Securities and Futures Ordinance (“SFO”, Cap. 571) and the AMLO. We do not consider it necessary to propose any amendments.

### **IV. Time limit for taking civil sanction**

7. The proposed section 33V(2) (Clause 29 of the Bill) provides that the MA may exercise power under section 33Q or 33T to impose sanction or take further action in relation to a person who was a regulated person at the time of the contravention, regardless of whether the same person is a regulated person at the time when the power is being exercised. We do not see the need to prescribe a time limit for the MA to exercise the sanctioning power under section 33Q or 33T in relation to

a former regulated person, in light of the need to deter any such contravention by a regulated person or a former regulated person for the sake of public interest and the monetary or financial stability of Hong Kong. There is a similar provision in section 34ZZA of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) in relation to the application of disciplinary powers to former regulated persons. Likewise, Part IX of the SFO empowers the Securities and Futures Commission to discipline a “regulated person”, and the power is wide enough to cover a person who was a licensed person at the relevant time when the person was guilty of misconduct.

## **V. Review of MA’s decisions**

8. Section 35(1) provides that any person who is aggrieved by a relevant decision of the MA may refer the decision to the Payment Systems and Stored Value Facilities Appeals Tribunal (“the Tribunal”) for review. The proposed Part 2 of Schedule 1 (Clause 52 of the Bill) sets out a list of reviewable decisions which may be referred to the Tribunal under section 35(1). All decisions of the MA which may adversely affect a regulatee have been included in the list.

9. Regarding the proposed section 8A(2) (Clause 17 of the Bill), it is unlikely that a person or a class of persons whom the MA declares not to be a “manager” or “managers” would be aggrieved. It is because a person or persons declared not to be a “manager” or “managers” will not be subject to specific provisions regarding the supervision of “managers” principally responsible for the conduct of any of the licensee’s affairs or business specified in Schedule 6, and will not fall in the scope of “officers” subject to sanctions under the proposed Part 3B or liability by virtue of section 49.

10. Regarding the proposed section 8ZV (Clause 17 of the Bill), we also do not see how the MA’s power to revoke the appointment of an Advisor or a Manager, if their appointment is no longer necessary, will likely cause any person to be aggrieved. We therefore do not intend to include the two aforesaid decisions<sup>1</sup> in the list of reviewable decisions in Part 2 of Schedule 1.

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<sup>1</sup> Similar decisions in the Banking Ordinance (Cap. 155) (viz. sections 2(14)(cb) and 53G(2)) are not subject to review or appeal in that Ordinance.

## **VI. Drafting issues**

11. In light of the comments raised by a Member and the Assistant Legal Adviser, we will consider proposing committee stage amendments to—

- (a) delete the word “現” in the term “變現” in the Chinese text of section 3(c) of the proposed Schedule 8;
- (b) replace the words “電子” with “數碼” in the heading of section 2 of the proposed Schedule 8; and
- (c) include a definition of “communication network” for the purposes of the proposed section 8ZZZI such that “communication network” includes a “website of a licensee”.

## **VII. Submission from the Communications Association of Hong Kong**

12. As we have explained previously to the Bills Committee (vide LC Papers no. CB(1)656/14-15(10), CB(1)784/14-15(03), CB(1)714/14-15(04)), 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. The provision does not impose a duty on 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. Hence, we do not consider it necessary to delete section 8C(3) of the Bill, as a defence of “reasonable excuse” is already available for persons charged with offences under that section. After the passage of the Bill, the MA may issue guidelines under section 54 as amended (Clause 45 of the Bill) to facilitate the compliance with the Ordinance.

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