

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

**Clause-by-clause Examination
Draft Committee Stage Amendments**

Members are invited to examine the Government's proposed draft Committee Stage Amendments ("CSAs") marked in the relevant parts of the Clearing and Settlement Systems (Amendment) Bill 2015 or the existing Ordinance as appropriate (**Annex**). The reasons for proposing these amendments are set out in the footnotes. The proposed CSAs may be subject to revision.

**Financial Services and the Treasury Bureau
Hong Kong Monetary Authority
June 2015**

Clearing and Settlement Systems (Amendment) Bill 2015

Clause 5(11)

In the proposed section 2¹:

“*retail payment system* (零售支付系統)—

- (a) means a system or arrangement for the transfer, clearing or settlement of payment obligations relating to retail activities [\(whether the activities take place in Hong Kong or elsewhere\)](#), principally by individuals, that involve purchases or payments; and
- (b) includes related instruments and procedures;”

To add in the proposed section 2²:

“[public \(公眾\)](#) means the public of Hong Kong, and includes any class of that [public;](#)”

¹ In response to Assistant Legal Adviser (“ALA”)’s comment, this amendment is proposed to enhance the definition such that “retail activities” include activities taking place in Hong Kong or elsewhere.

² This amendment is proposed to clarify that any reference to “public” in the Ordinance means the public of Hong Kong and includes any class of that public.

Clause 12(3)

In section 6(3) and 6(4)³:

- “(1) Every person who, at the time of designation of a payment system under this Ordinance, is a system operator or settlement institution of the system must, within 6 days of the designation, inform the Monetary Authority in writing of—
- (a) his name, his place of business, a postal address and an electronic mail address;
 - (b) the aspects of the management or operations of the system for which he is responsible; and
 - (c) in addition, where the person is a corporation, the names and particulars of the directors and shareholders of the corporation and the name and particulars of the chief executive (if any) of the corporation.
- (2) Where, subsequent to the designation of a payment system, there is any change to the information given or required to be given to the Monetary Authority under subsection (1) in respect of the system, every person to whom the change relates must, within 6 days of the change taking effect, inform the Monetary Authority in writing of the change.
- (3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—
- ~~(a) on conviction on indictment, to a fine of \$400,000 and to imprisonment for 2 years; and~~
 - ~~(b) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.~~
 - (a) on conviction on indictment—
 - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
 - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues;
 - or
 - (b) on summary conviction—
 - (i) to a fine at level 6 and to imprisonment for 6 months; and
 - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.”
- (4) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable—
- ~~(a) on conviction on indictment, to a fine of \$400,000 and to imprisonment for 2 years; and~~
 - ~~(b) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.~~
 - (a) on conviction on indictment—

³ In response to ALA’s comment, this amendment is proposed to include a penalty level for summary conviction, so as to ensure consistency with comparable provisions in the Bill.

- (i) to a fine of \$400,000 and to imprisonment for 2 years;
and
 - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues;
or
- (b) on summary conviction—
- (i) to a fine at level 6 and to imprisonment for 6 months; and
 - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.”

Clause 14(5)

In section 7⁴:

- “(1) Every system operator and settlement institution of a designated system shall ensure that the following requirements are complied with in relation to the system, namely—
- (a) that the operations of the system are conducted in a safe and efficient manner calculated to minimize the likelihood of any disruption to the functioning of the system;
 - (b) that there are in place operating rules that—
 - (i) comply with the requirements specified in subsection (2) and with any prescribed requirements relating to the operating rules of a designated system; and
 - (ii) provide for the system to be operated in accordance with this Ordinance as it applies in relation to that system;
 - (c) that there are in place adequate arrangements to monitor and enforce compliance with the operating rules of the system, including arrangements regarding the resources available to the system operator;
 - (d) that there are available to the system financial resources appropriate for the proper performance of the system’s particular functions.
- .
. .
.
- (3) No change shall be made to the operating rules of a designated system without the prior approval in writing of the Monetary Authority.
- (4) If a requirement set out in subsection (1)(a), (b), (c) or (d) is contravened as regards a designated system, every system operator and settlement institution of the system commits an offence and is liable ~~on conviction on indictment to a fine of \$400,000.~~
-
- (a) on conviction on indictment—
- (i) to a fine of \$400,000; and
 - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
- (b) on summary conviction—
- (i) to a fine at level 6; and
 - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues;”
- (5) If subsection (3) is contravened as regards a designated system, every system operator and settlement institution of the system commits an offence and is liable ~~on conviction on indictment to a fine of \$400,000.—~~

⁴ See Footnote 3.

(a) on conviction on indictment, to a fine of \$400,000; or
(b) on summary conviction, to a fine at level 6.”

Clause 17

In the proposed section 8O⁵:

- “(1) A licensee must ensure that the operation of any stored value facility issued, or the issue of which is facilitated, under its licence is conducted in a safe and efficient manner calculated to minimize the likelihood of any disruption to the functioning of the facility.
- (2) A licensee who fails to comply with subsection (1) commits an offence and is liable—
- ~~(a) on conviction on indictment, to a fine of \$400,000; and~~
- ~~(b) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.~~
- (a) on conviction on indictment—
- (i) to a fine of \$400,000; and
- (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
- (b) on summary conviction—
- (i) to a fine at level 6; and
- (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.”

⁵ See Footnote 3.

To add before the proposed section 8R(1)⁶:

“(1A) This section does not apply to a licensee that is a bank.

- (1) If a licensee is likely to become unable to meet its obligations, or if it is about to suspend payment, it must immediately—
 - (a) report the matter to the Monetary Authority; and
 - (b) provide the Monetary Authority with all relevant facts, circumstances and information.
- (2) A licensee who, without reasonable excuse, fails to comply with subsection (1) commits an offence and is liable—
 - (a) on conviction on indictment—
 - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
 - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
 - (b) on summary conviction—
 - (i) to a fine at level 6 and to imprisonment for 6 months; and
 - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.”

⁶ In response to a submission from the Hong Kong Association of Banks, this amendment is proposed to avoid duplication with an existing requirement under section 67 of the Banking Ordinance (“BO”, Cap. 155), which requires a bank to notify the Monetary Authority (“MA”) of its inability to meet obligations or suspend payments.

In the proposed section 8S⁷:

- “(1) This section does not apply to a licensee that is a bank.
 - (2) If, after a licence has been granted under section 8F, there is a change to any particulars given by the licensee under section 8E(3)(b), the licensee must notify the Monetary Authority in writing of the change within 6 days after the date on which the change takes place.
 - (3) A licensee who, without reasonable excuse, fails to comply with subsection (2) commits an offence and is liable—
 - ~~(a) on conviction on indictment, to a fine of \$400,000; and~~
 - ~~(b) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.~~
-
- (a) on conviction on indictment—
 - (i) to a fine of \$400,000; and
 - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
 - (b) on summary conviction—
 - (i) to a fine at level 6; and
 - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.”

⁷ See Footnote 3.

To add in the proposed section 8ZZZI⁸:

- “(1) A licensee who is an issuer of a stored value facility issued under its licence must ensure that the licence number of the licence is clearly stated—
 - (a) subject to paragraph (b), if the stored value facility is device-based, on each physical device concerned;
 - (b) if the stored value facility is device-based but it is not reasonably practicable for it to comply with paragraph (a), on the packaging containing each physical device concerned; and
 - (c) if the stored value facility is network-based, on each communication network concerned.
- (2) A licensee who is a facilitator of a stored value facility the issue of which is facilitated under its licence must ensure that the licence number of the licence is clearly stated—
 - (a) subject to paragraph (b), if the stored value facility is device-based, on each physical device concerned;
 - (b) if the stored value facility is device-based but it is not reasonably practicable for it to comply with paragraph (a), on the packaging containing each physical device concerned; and
 - (c) if the stored value facility is network-based, on each communication network concerned.
- (3) A licensee who fails to comply with subsection (1) or (2) commits an offence and is liable on summary conviction—
 - (a) to a fine at level 6; and
 - (b) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (4) For the purposes of this section—
 - (a) a stored value facility is device-based if it is in the form of a physical device provided by the issuer to the user and the stored value is stored on the device; and
 - (b) a stored value facility is network-based if—
 - (i) the stored value is stored on the facility by using a communication network or system (whether the Internet or any other network or system); and
 - (ii) it is not a facility mentioned in paragraph (a).
- (5) In this section—
communication network (通訊網絡) includes a website of a licensee.”
- (6) This section does not apply to a stored value facility that is a multi-purpose card issued under the Banking Ordinance (Cap.155) before the commencement date of this section.”

⁸ In response to ALA’s comment, the amendment to subsection (5) is proposed to clarify that “communication network” includes a website of a licensee. The amendment to subsection (6) is proposed to avoid creating undue burden on any licensee to re-issue stored value facilities (“SVF”), which are multi-purpose cards issued under the BO, after the passage of the Bill, as the section requires a licence number to be specified on the SVF device.

In the proposed section 8ZZZJ⁹:

“8ZZZJ. Publication of advertisement, etc. relating to stored value facility

- ~~(1) A person must not publish an advertisement relating (whether in whole or in part) to the issue of a stored value facility that, under this Ordinance, may only be issued under a licence unless—~~
- ~~(a) the advertisement relates (whether in whole or in part) to the issue of the facility by a licensee; and~~
- ~~(b) the licence number of the licence held by the licensee is clearly stated in the advertisement.~~
- (1) A person must not publish in Hong Kong or elsewhere an advertisement, invitation or document mentioned in subsection (2A) relating (whether in whole or in part) to the issue of a stored value facility that, under this Ordinance, may only be issued under a licence unless—
- (a) the advertisement, invitation or document relates (whether in whole or in part) to the issue of the facility by a licensee; and
- (b) the licence number of the licence held by the licensee is clearly stated in the advertisement, invitation or document.
- ~~(2) A person must not publish an advertisement relating (whether in whole or in part) to the facilitation of the issue of a stored value facility that, under this Ordinance, may only be facilitated under a licence unless—~~
- ~~(a) the advertisement relates (whether in whole or in part) to the facilitation of the issue of the facility by a licensee; and~~
- ~~(b) the licence number of the licence held by the licensee is clearly stated in the advertisement.~~
- (2) A person must not publish in Hong Kong or elsewhere an advertisement, invitation or document mentioned in subsection (2A) relating (whether in whole or in part) to the facilitation of the issue of a stored value facility that, under this Ordinance, may only be facilitated under a licence unless—
- (a) the advertisement, invitation or document relates (whether in whole or in part) to the facilitation of the issue of the facility by a licensee; and

⁹ In response to Members’ comments, this amendment is proposed to provide that a person must not publish an advertisement, invitation or document in Hong Kong or elsewhere relating to the issue or facilitation of the issue of a stored value facility that may only be issued or facilitated under a licence, unless such advertisement, invitation or document relates to the issue or facilitation of the issue of the facility by a licensee, and that the licence number is clearly stated in such advertisement, invitation or document. Definitions of “advertisement”, “invitation” and “publish” are also provided for clarity purpose.

(b) the licence number of the licence held by the licensee is clearly stated in the advertisement, invitation or document.

(2A) For the purposes of subsections (1) and (2), the advertisement, invitation or document is an advertisement, invitation or document which to the knowledge of the person is or, contains, an invitation to the public.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction—

(a) to a fine at level 6; and

(b) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

(4) It is a defence for a person charged with an offence under subsection (3) to prove that—

~~(a) the person carries on the business of publishing or arranging for the publication of advertisements;~~

~~(b) the person received the advertisement for publication in the ordinary course of business; and~~

~~(c) at the time the person published or arranged for the publication of the advertisement, the person believed on reasonable grounds that—~~

~~(i) for a contravention of subsection (1), the advertisement related to the issue of a stored value facility by a licensee;~~

~~(ii) for a contravention of subsection (2), the advertisement related to the facilitation of the issue of a stored value facility by a licensee; or~~

~~(iii) for a contravention of either subsection (1) or (2), the stored value facility concerned was exempt under section 8ZZZB or 8ZZZD.~~

—

(a) the person carries on the business of publishing or arranging for the publication of advertisement, invitation or document;

(b) the person received the advertisement, invitation or document in the ordinary course of business; and

(c) at the time the person published or arranged for the publication of the advertisement, invitation or document, the person believed on reasonable grounds that—

(i) for a contravention of subsection (1), the advertisement, invitation or document related to the issue of a stored value facility by a licensee;

(ii) for a contravention of subsection (2), the advertisement, invitation or document related to the facilitation of the issue of a

stored value facility by a licensee; or
(iii) for a contravention of either subsection (1) or (2), the stored value facility concerned was exempt under section 8ZZZB or 8ZZZD.

~~(5) In the section—~~

~~***publish*** (發布) includes issue, circulate, display, distribute and broadcast.~~

(5) In this section—

advertisement (廣告) includes every form of advertising, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means;

invitation (邀請) includes an offer and an invitation, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means;

publish (發布), in relation to any advertisement, invitation or document, includes issuing, circulating, distributing or otherwise disseminating the advertisement, invitation or document, whether—

(a) by any visit in person;

(b) in a newspaper, magazine, journal or other periodical publication;

(c) by the display of posters or notices;

(d) by means of circulars, brochures, pamphlets or handbills;

(e) by an exhibition of photographs or cinematography films;

(f) by way of sound broadcasting or television;

(g) by computer or other electronic device; or

(h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the advertisement, invitation or document to be published.”

Clause 21(4)

In the proposed section 12¹⁰:

- “(1) For the better performance of the Monetary Authority’s functions under this Ordinance, the Monetary Authority may—
- (a) by notice in writing given to a system operator or settlement institution of, or participant in, a designated system, request the system operator, settlement institution or participant to give the Monetary Authority information or documents relating to the system as may be specified in the notice; or
 - (b) by notice in writing given to the licensee who issues, or facilitates the issue of, a stored value facility under its licence, request the licensee to give the Monetary Authority information or documents relating to the facility as may be specified in the notice.

.
. .
.

- (4) A person who fails to comply with a request made under subsection (1) commits an offence and is liable—
- ~~(a) on conviction on indictment, to a fine of \$400,000 and to imprisonment for 2 years; and~~
 - ~~(b) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.~~

-
- (a) on conviction on indictment—
 - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
 - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues;
 - or
 - (b) on summary conviction—
 - (i) to a fine at level 6 and to imprisonment for 6 months; and
 - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.”

¹⁰ See Footnote 3.

Clause 23

In the proposed section 13(2)(a)¹¹ and 13(3)¹²:

- “(1) The Monetary Authority may, by notice in writing—
- (a) direct a system operator or settlement institution of a designated system to take the action that the Monetary Authority considers necessary for bringing the designated system into compliance with the requirements set out in section 7(1)(a), (b), (c) or (d);
or
 - (b) direct a licensee to take the action that the Monetary Authority considers necessary for bringing any stored value facility issued, or the issue of which is facilitated, under its licence into compliance with the requirements set out in section 80(1).
- (2) A direction given under subsection (1)—
- (a) must specify the action to be taken ~~or the act or thing to be done;~~
 - (b) for subsection (1)(a), must include a statement of the respect in which the Monetary Authority considers the designated system not to be in compliance with a requirement set out in section 7(1)(a), (b), (c) or (d);
 - (ba) for subsection (1)(b), must include a statement of the respect in which the Monetary Authority considers the stored value facilities not to be in compliance with a requirement set out in section 80(1); and
 - (c) may specify a period, being a period that is reasonable in the circumstances, within which the direction shall be complied with.
- (3) A person who fails to comply with a direction given under subsection (1) commits an offence and is liable—
- ~~(a) on conviction on indictment, to a fine of \$400,000 and to imprisonment for 2 years; and~~
 - ~~(b) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.~~
-
- (a) on conviction on indictment—
 - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
 - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues;
 - or
 - (b) on summary conviction—
 - (i) to a fine at level 6 and to imprisonment for 6 months; and
 - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.”

¹¹ This is a technical amendment to align the wording used in subsection (1)(a) and (b).

¹² See Footnote 3.

Clause 27

In the proposed section 30¹³:

“(1) The system operator and settlement institution of a designated system shall, not later than 6 days after the completion of any action taken under the default arrangements of the system in respect of a defaulting participant, together prepare in writing and give to the persons specified in subsection (3) a report (default proceedings report) on such action taken.

.
. .

(6) A person who contravenes subsection (1) commits an offence and is liable ~~on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year.~~

—

(a) on conviction on indictment, to a fine of \$200,000 and to imprisonment for 1 year; or

(b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.”

¹³ See Footnote 3.

Clause 28

In the proposed section 31¹⁴:

- “(1) A participant in a designated system shall notify the system operator of the system and the Monetary Authority forthwith if there comes to his knowledge any of the following circumstances occurring in Hong Kong, or any analogous circumstances occurring outside Hong Kong, namely—
- (a) the presentation of a petition for the bankruptcy or winding up of the participant;
 - (b) the making of an order for bankruptcy or winding up of the participant;
 - (c) the passing of a resolution for voluntary winding up of the participant; or
 - (d) the making of a directors’ voluntary winding up statement in respect of the participant.
- (2) A failure by a participant to notify a system operator or the Monetary Authority of a relevant event referred to in subsection (1) within the time required under that subsection is not a contravention of that subsection if the system operator or Monetary Authority (as the case may be) was already aware of the relevant event by that time.
- (3) A person who contravenes this section commits an offence and is liable ~~on conviction on indictment to a fine of \$400,000 and to imprisonment for 2 years.~~
-
- (a) on conviction on indictment, to a fine of \$400,000 and to imprisonment for 2 years; or
 - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.”

¹⁴ See Footnote 3.

Clause 29

In the proposed section 33J, in the English text¹⁵,

- “(1) On information on oath laid by a person specified in subsection (2), ~~the magistrate~~ a magistrate may, if satisfied that the condition in subsection (3) is met, issue a warrant authorizing a person specified in the warrant, a police officer, and any other person as may be necessary to assist in executing the warrant—
- (a) to enter the premises specified in the information, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and
 - (b) to search for, seize and remove a record or document that the person specified in the warrant or the police officer has reasonable cause to believe may be required to be produced under this Part.
- (2) Each of the following persons is specified for the purposes of subsection (1)—
- (a) an investigator;
 - (b) a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66).
- (3) For the purposes of subsection (1), the condition is that there are reasonable grounds to suspect that there is, or is likely to be, on ~~premises specified in the information~~ the premises a record or document that may be required to be produced under this Part.”

¹⁵ The proposed amendments are technical to improve drafting of the Bill.

Clause 33

In the proposed section 36¹⁶:

- “(3) No person shall—
- (a) fail to comply with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1);
 - (b) disrupt any sitting of the Tribunal or otherwise misbehaves during any such sitting;
 - (c) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leave the place where his attendance is so required without the permission of the Tribunal;
 - (d) hinder or deter any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purpose of a review;
 - (e) threaten, insult or cause any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance; or
 - (f) threaten, insult or cause any loss to be suffered by the Chairman, or any member, of the Tribunal at any time on account of the performance of his functions in that capacity.
- .
. .
.
- (5) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable ~~on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years~~
-
- (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.”

¹⁶ See Footnote 3.

Clause 36

In section 45¹⁷:

- “(1) A person who, in giving information to the Monetary Authority in pursuance of an obligation under ~~Part 2 or section 31~~ Part 2, 2A or 2B or section 31 or 52—
- (a) gives information that is false or misleading in a material particular; and
 - (b) knows or ought to know that the information being given is false or misleading,
- commits an offence ~~and is liable on conviction upon indictment to a fine of \$400000 and to imprisonment for 2 years.~~
- (2) A person who commits an offence under subsection (1) is liable—
- (a) on conviction on indictment, to a fine of \$400,000 and to imprisonment for 2 years; or
 - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.”

¹⁷ See Footnote 3.

Clause 37

In section 46¹⁸:

- “(1) A person shall not describe or otherwise make any representation in respect of a payment system that is not a designated system in terms that indicate, or that could reasonably be construed as indicating, that the system is a designated system.
- (2) It is a defence for a person charged with an offence under subsection (1) to prove that he reasonably believed that the system was a designated system.
- (3) A person shall not describe or otherwise make any representation in respect of a clearing and settlement system in respect of which a certificate of finality is not in effect in terms that indicate, or that could reasonably be construed as indicating, that a certificate of finality is in effect in respect of the system.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that he reasonably believed that a certificate of finality was in effect in respect of the system.
- (5) Subsections (1) and (3) do not apply in relation to any description or representation contained in information submitted to the Monetary Authority under this Ordinance.
- (6) Any person who contravenes subsection (1) or (3) commits an offence and is liable ~~on conviction upon indictment to a fine of \$400000 and to imprisonment for 2 years.~~
 - (a) on conviction on indictment, to a fine of \$400,000 and to imprisonment for 2 years; or
 - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.”

¹⁸ See Footnote 3.

Clause 38

In section 47¹⁹:

- “(1) A person commits an offence if, wilfully and with intent to deceive, he does any act mentioned in subsection (2) and that act results in any information contained in the book of record or relevant document in question being incorrect or misleading in a material respect.
- (2) A person does an act referred to in subsection (1) if he—
- (a) makes, or causes to be made, an entry that he knows or ought reasonably to know to be false in any book of record or in any relevant document relating to a designated system or stored value facility;
 - (b) omits to make an entry in any book of record or in any relevant document relating to a designated system or stored value facility; or
 - (c) alters, abstracts, conceals or destroys an entry in any book of record or in any relevant document relating to a designated system or stored value facility, or causes any such entry to be altered, abstracted, concealed or destroyed.
- (3) A person who commits an offence under subsection (1) is liable ~~on conviction—~~
-
- (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 5 years; or
 - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.”

¹⁹ See Footnote 3.

Clause 40(1)

In the proposed section 49²⁰:

- “(1) The Monetary Authority may make regulations for the better carrying out of the purposes of this Ordinance after consulting—
- (a) in so far as the regulations relate to designated systems—
 - (i) the Financial Secretary; and
 - (ii) the system operators and settlement institutions of designated systems;
 - ~~(b) in so far as the regulations relate to stored value facilities, the Financial Secretary.~~
 - (b) in so far as the regulations relate to stored value facilities—
 - (i) the Financial Secretary; and
 - (ii) the licensees of stored value facilities.”

²⁰ In response to a Member’s comment, this amendment is proposed to provide that the MA should consult the SVF licensees, in addition to the Financial Secretary, before making regulations.

Clause 41

In the proposed section 50(9)²¹ and 50(12)²²:

- “(1) Except in so far as is necessary for the performance of any function under this Ordinance or for carrying into effect any provision of this Ordinance, every person to whom this subsection applies—
- (a) shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that come to his knowledge in the performance of any function under this Ordinance;
 - (b) shall not communicate any such matter to any person other than the person to whom such matter relates; and
 - (c) shall not suffer or permit any person to have access to any records in his possession, custody or control.
- .
.
.
- (9) A person who contravenes subsection (1) commits an offence and is liable ~~on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years.~~
- (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 2 years; or
(b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.”
- .
.
.
- (11) A person commits an offence if the person—
- (a) knows that a condition referred to in subsection (5) has been attached to—
 - (i) a disclosure of information made under subsection (3); or
 - (ii) a consent given under subsection (4A)(a); and
 - (b) contravenes, or aids, abets, counsels or procures any person to contravene, that condition.
- (12) A person who commits an offence under subsection (11) is liable ~~on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years.~~
- (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 2 years; or
(b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.”

²¹ See Footnote 3.

²² See Footnote 3.

Clause 43(3)

In the proposed section 52(4)²³:

“(1) Where there are reasonable grounds for believing that a payment system exists, but the Monetary Authority is unable on the basis of the information before him to determine whether the system is eligible to be designated or, if eligible to be, should be designated under this Ordinance, the Monetary Authority may by notice in writing request any person who is or whom he reasonably believes to be a system operator or settlement institution of the system or a participant in the system, to give the Monetary Authority such information or documents regarding the system as the Monetary Authority considers may assist him in making that determination.

.
. .
.

(4) A person who, without reasonable excuse, fails to comply with a request made under subsection (1) commits an offence and is liable ~~on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year.~~

—
(a) on conviction on indictment, to a fine of \$200,000 and to imprisonment for 1 year; or

(b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.”

²³ See Footnote 3.

New Clause 43A

To add after section 52²⁴:

“52A. Legal professional privilege

- (1) Subject to subsection (2), this Ordinance does not affect any claims, rights or entitlements that would, apart from this Ordinance, arise on the ground of legal professional privilege.
- (2) Subsection (1) does not affect any requirement made under this Ordinance to disclose the name and address of a client of a legal practitioner (whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor).”

²⁴ In response to ALA’s comment, this amendment is proposed to put it beyond doubt that nothing in the Bill affects any claims, rights or entitlements that would, apart from this Ordinance, arise on the ground of legal professional privilege.

Clause 44

In the proposed section 53²⁵:

- “(4) A system operator or settlement institution to whom a request is made in accordance with subsection (3) shall comply with the request by giving the information to the nominated official within the period specified.
- (5) A person who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable ~~on conviction on indictment to a fine of \$400,000 and to imprisonment for 2 years.~~
 -
 - (a) on conviction on indictment, to a fine of \$400,000 and to imprisonment for 2 year; or
 - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.”

Clause 52(7)

In the proposed Schedule 1, Part 2, to add after item 20²⁶:

“21. A decision of the Monetary Authority to give a prior written permission under section 8 of Part 2 of Schedule 3.”

²⁵ See Footnote 3.

²⁶ This amendment is proposed to provide that the MA’s decision to give prior written permission to an applicable company for imposing an expiry date for the redemption of the outstanding stored value or deposit should be subject to review by the Payment Systems and Stored Value Facilities Appeals Tribunal.

Clause 53

In the proposed Schedule 3²⁷:

“Schedule 3 [ss. 2 & 57] & 57 & Sch. 1]
Minimum Criteria
Part 1
Preliminary

In the proposed Schedule 3, Part 2²⁸:

~~“8. **Redemption of outstanding stored value**~~

~~If the applicable company holds the float or SVF deposit of a stored value facility to which its SVF scheme relates, the applicable company must—~~

- ~~(a) redeem in full the total of the stored value that remains on the facility as soon as practicable after being requested by the user to do so; and~~
- ~~(b) in the contract between the applicable company and the user state clearly and prominently the conditions relating to redemption including—~~
 - ~~(i) any fee to be charged for the redemption; and~~
 - ~~(ii) any deadline for using or redeeming the stored value that remains on the facility.~~

8. Redemption of outstanding stored value

- (1) Subject to subsection (3), if the applicable company holds the stored value (including SVF deposit) of a stored value facility to which its SVF scheme relates, the applicable company must redeem in full the total of the stored value that remains on the facility as soon as practicable after being requested by its user to do so.
- (2) For the purposes of subsection (1), if a fee or charge is payable for a request for the redemption made at any time, the applicable company must, in the contract with the user, state clearly and prominently, the amount of the fee or charge.
- (3) The Monetary Authority may, on the application of the applicable company, give a prior written permission to the applicable company to the effect that its SVF scheme is not to be subject to subsection (1), if the Monetary Authority

²⁷ This is a technical amendment.

²⁸ In response to Members’ comments, this amendment is proposed to improve the clarity of the requirement 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 the MA has given a prior permission to the applicable company that this requirement does not apply; and the applicable company has stated clearly and prominently in its contract with a user the relevant terms and conditions.

- considers it appropriate to do so.
- (4) If a prior written permission is given under subsection (3), the applicable company must, in the contract with the user, state clearly and prominently—
- (a) that the stored value remaining on the stored value facility is not redeemable after an expiry date;
 - (b) the expiry date for redeeming the stored value remaining on the facility; and
 - (c) any other terms or conditions relating to the redemption.”

In the proposed Schedule 8, section 2 (heading), in the Chinese text²⁹:

“2. 用作購買某些電子數碼產品的儲值支付工具”

In the proposed Schedule 8, section 3, in the Chinese text³⁰:

“(c) 如此儲存的款項，不可變現為現金。”

²⁹ In response to a Member’s comment, this technical amendment is proposed to improve drafting of the Bill.

³⁰ See Footnote 29.

Clause 54

To add before subclause (1)³¹:

“(1A) Section 2(1), definition of *banking business*, paragraph (a), after “that period”—

Add

“, other than any float or SVF deposit as defined by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584)”.”.

New Clause 63A

To add after clause 63³²:

**“Division 2A—Amendments to Deposit Protection Scheme Ordinance
(Cap. 581)**

63A. Schedule 1 amended (deposits specified for purposes of definitions of *protected deposit* and *relevant deposit* in section 2(1) of this Ordinance)

(1) Schedule 1, section 1(h)—

Repeal the full stop

Substitute a semicolon.

(2) Schedule 1, after section 1(h)—

Add

“(i) any float or SVF deposit held by a depositor with a Scheme member.”.

(3) Schedule 1, section 3—

Add in alphabetical order

“*float* (儲值金額) has the meaning given by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584);

SVF deposit (工具按金) has the meaning given by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584);”.”.

³¹ This amendment is proposed to align the proposed amendment to the definition of “deposit” in the Bill that receiving float or SVF deposit would not be amounted to carrying on a “banking business” under the BO.

³² This amendment is proposed to provide clarity for the purposes of the Deposit Protection Scheme Ordinance (Cap. 581) that any float or SVF deposit held by a licensee as a depositor with a Scheme member will not be covered by the Deposit Protection Scheme because they are not “protected deposit”.

Clause 64

In the proposed clause 64³³:

“Section 5 amended (Schedule 2 has effect with respect to financial institutions)

Section 5(4)—

Repeal

everything after “Schedule 2”

Substitute

“applies in relation to the issue of a stored value facility within the meaning of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584) by an SVF licensee [or a bank](#) only if—

- (a) the maximum value that can be stored on the facility exceeds \$3,000; and
- (b) the facility is in form of a physical device provided by the issuer to the user and the value is stored on the device.”

³³ This amendment is proposed to clarify that Schedule 2 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) will apply to a licensed bank if the maximum value that can be stored on the device-based SVF issued by the bank exceeds \$3,000.