

21 May 2015

Bills Committee  
Legislative Council Complex,  
1 Legislative Council Road,  
Central, Hong Kong

Dear Sirs,

**Clearing and Settlement Systems (Amendment) Bill 2015**

After consulting with our members, we have received the comments from HKT as below:

The provisions of section 8C of the CSS Bill are very broad and particularly unclear. The expression "otherwise assist" is particularly broad. In addition section 8C(3) which provides that "a reference to promoting or otherwise assisting includes promoting or otherwise assisting by means of providing network or internet portal access or any other technological means" is effectively a way of regulating ISPs by the back door. ISPs provide a critically important and valuable service to businesses and individuals. The role of ISPs is, among other things, to provide high quality, reliable and efficient networks and internet portal access. This is where ISPs expend their resources to provide the best service they can. ISPs, are not the police, nor are they a regulator nor are they any other law enforcement body. It is not their role to police/monitor content on their networks on ongoing basis. Any requirement or apparent requirement to do so would change the nature of the service and place significant additional burden on the ISPs. Although Section s.8C(4) allows the defence of "reasonable excuse" persons, this is similarly unclear and will simply have the effect of unfairly and abnormally shifting the burden of proof from the prosecutor to the ISP who will have to prove to the satisfaction of the regulatory bodies that they have not assisted in the commission of a criminal offence under ss. 8C(1) and (2).

Responsibility for monitoring and enforcement should lie with the regulatory authorities, in this case the HKMA. Should the HKMA have any concerns about any communication over the ISPs network or website hosted by the ISP, etc, they already have the power under the CSS Bill to investigate and compel the production of evidence from all persons (including ISPs) relevant to the suspected contravention, the power to inspect records or documents taken in possession for the purpose of an investigation, the power to require persons to render assistance in connection with the investigation and the power to apply to a Magistrate for search warrant and seizures when necessary. This should be sufficient to ensure that ISPs will provide all necessary information when required. Section 8C(3) should be deleted.

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Section 17 of the Clearing and Settlement Systems (Amendment) Bill 2015 should be amended as follows:

**"17. Part 2A added after section 8 – Add ...**

**8B. Restriction relating to issue, etc. of stored value facilities**

- (1) A person must not issue a stored value facility unless the issue of the facility is authorized by a licence held by the person.
- (2) A person must not facilitate the issue of a stored value facility unless the facilitation of the issue of the facility is authorized by a licence held by the person.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable—
  - (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.

**8C. Prohibition on promoting issue, etc. of stored value facilities in contravention of section 8B**

- (1) A person must not knowingly promote or ~~otherwise~~ assist another person in issuing a stored value facility in contravention of section 8B(1).
- (2) A person must not knowingly promote or ~~otherwise~~ assist another person in facilitating the issue of a stored value facility in contravention of section 8B(2).
- ~~(3) In this section, a reference to promoting or otherwise assisting includes promoting or otherwise assisting by means of providing network or internet portal access or any other technological means.~~
- (43) A person who, without reasonable excuse, contravenes subsection (1) or (2) commits an offence and is liable—
  - (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.

..."

Thank you for your kind attention.

Yours sincerely,  
For and on behalf of  
Communications Association of Hong Kong



Stephen Ho  
Chairman