

## LEGISLATIVE COUNCIL BRIEF

### Clearing and Settlement Systems Ordinance (Chapter 584)

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

## INTRODUCTION

At the meeting of the Executive Council on 20 January 2015, the Council **ADVISED** and the Chief Executive **ORDERED** that the Clearing and Settlement Systems (Amendment) Bill 2015 (“the Bill”), at **Annex**, should be introduced into the Legislative Council (“LegCo”) to establish a regulatory regime for stored value facilities<sup>1</sup> (“SVF”) and retail payment systems<sup>2</sup> (“RPS”) in Hong Kong.

## JUSTIFICATIONS

### Development in the retail payment market

2. The global retail payment market has been developing rapidly. Technological advancements and increasing acceptance of new technologies by the public have led to the emergence of new forms of retail payment products and services, such as stored value payment cards, online stored value payment facilities, and Internet or mobile payment services. In Hong Kong, there has been a growth in such products and services being offered to the public in recent years.

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<sup>1</sup> SVF can be classified into two broad categories according to the scope of their usage, viz. multi-purpose and single-purpose SVF. Multi-purpose SVF can be used as a means of payment for goods or services provided by the issuer or third-party participating merchants at designated locations and points, or for person-to-person payments. Examples include the Octopus Cards and the increasingly popular online stored value payment facilities. Single-purpose SVF is used as a means of payment for goods or services provided by the issuer of the SVF only (e.g. prepaid coupons issued by cake shops or coffee shops).

<sup>2</sup> RPS means a system or an arrangement for the transfer, clearing or settlement of payment obligations relating to retail activities, principally by individuals, that involves purchases or payments, and includes the related instruments and procedures. RPS generally covers credit card schemes, debit card schemes, large merchant acquirers, and payment gateways, etc., in which the payment systems do not hold accounts for maintaining funds for users.

3. The current regulatory regime for stored value cards under the Banking Ordinance (Chapter 155) (“BO”) only applies to device-based multi-purpose stored value products. In addition, the Clearing and Settlement Systems Ordinance (“CSSO”) provides a statutory framework for the Hong Kong Monetary Authority (“HKMA”) to designate and oversee large-value clearing and settlement systems<sup>3</sup> (“CSS”). Nonetheless, the current regulatory regime in the BO or CSSO does not cover a range of non-device-based payment facilities (which are normally issued outside the banking sector, and store value on network-based accounts, mobile network accounts or computer servers), as well as payment systems related to retail activities. To ensure the safety and soundness of these payment facilities and systems insofar as they relate to financial stability, we propose bringing them into the regulatory net of the HKMA under the CSSO. Given the enlarged ambit of the CSSO as proposed in the Bill, we propose that the Ordinance be renamed the “Payment Systems and Stored Value Facilities Ordinance”.

## **Proposed Regulatory Regime**

### ***(A) Regulatory regime for SVF***

4. The primary regulatory concern of SVF stems from the need to protect users’ float<sup>4</sup> maintained by SVF issuers. To ensure the ability and competence of SVF issuers and the proper protection and management of the float, we propose introducing a mandatory licensing regime for SVF, so that no person may issue, or facilitate the issue of, SVF in Hong Kong without a licence granted by the HKMA. It will be a criminal offence to issue, or facilitate the issue of, SVF without being authorized by a licence.

### **Coverage**

5. The proposed licensing regime will cover both device-based and non-device-based multi-purpose SVF. Single-purpose SVF will remain not subject to regulation – an arrangement in line with the existing “multi-purpose cards” regime under the BO<sup>5</sup>, as well as the practices adopted by major overseas

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<sup>3</sup> Large-value CSS refer to the systems established for the clearing and settlement of transfer of funds or securities among financial institutions. Examples of designated CSS are the Hong Kong Dollar Real Time Gross Settlement (“RTGS”) System, US Dollar RTGS System, Euro RTGS System, and Renminbi RTGS System, Central Moneymarkets Unit, and Continuous Linked Settlement System.

<sup>4</sup> “Float” refers to the total sum of money paid by a user to an issuer, including any other sums of money received on the amount of the users, for storage on SVF. That said, the “float” of a SVF will be outside the definition of “deposit” under the BO and the Deposit Protection Scheme Ordinance (Chapter 581).

<sup>5</sup> Section 14A of the BO provides that only Authorized Institutions (“AIs”) are permitted to issue or facilitate the issue of a multi-purpose card, which is a stored value card other than a single-purpose card. The existing provisions under the BO do not cover multi-purpose cards issued in a form other than a device-based facility (i.e. not taking a “card” form) and operated by a non-AI issuer mostly via the Internet.

jurisdictions. Indeed, single-purpose SVF are in essence bilateral contractual arrangements between service vendors and their respective users for advance payment for specific goods or services. Given its bilateral nature and magnitude, the degree of “moneyness” entailed by single-purpose SVF is minimal, posing insignificant risks to the payment and financial systems of Hong Kong<sup>6</sup>. In addition, if the proposed licensing regime is to be imposed on single-purpose SVF, most of the existing single-purpose SVF may be driven out of business due to regulatory obligations and costs.

6. In addition, to ring-fence the proposed regulatory regime to relevant payment facilities essential to financial stability, we propose that SVF which do not involve payment of money by users or have limited usage be excluded from the regulatory regime. The exclusion will apply to loyalty and bonus point schemes with cash reward or involving limited users’ cash elements, single online store platform, as well as SVF with limited usage (say, those used within limited group of goods or service providers, or within certain premises) and a float size of not more than HK\$1 million.

7. Notwithstanding the exclusion referred to in paragraphs 5 and 6 above, similar to the existing “multi-purpose cards” regime under the BO, the HKMA will retain the power to exempt an SVF from the regulatory regime, having regard to the materiality of the risk posed by the relevant facility to the users or potential users, and the payment or financial systems in Hong Kong<sup>7</sup>. The HKMA may attach conditions to the exemption.

#### Licensing criteria

8. The proposed licensing criteria for multi-purpose SVF will include the following major elements –

- (a) **Physical presence in Hong Kong:** A licensee must be a body corporate under Hong Kong law and have a registered office in Hong Kong. This requirement will allow the HKMA to exercise effective supervision over the licensee even though some of its systems and operations are located outside Hong Kong, or services are provided through the Internet;

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<sup>6</sup> Nevertheless, there are laws in place to protect consumers in the course of general trade transactions that may involve single-purpose SVF. The relevant consumer protection legislation includes the Sale of Goods Ordinance (Chapter 26), the Trade Descriptions Ordinance (Chapter 362), the Control of Exemption Clauses Ordinance (Chapter 71), the Supply of Services (Implied Terms) Ordinance (Chapter 457), and the Unconscionable Contracts Ordinance (Chapter 458).

<sup>7</sup> We envisage that facilities which can only be used within, or in close proximity to, the issuer’s premises, or for the purchase of a limited range of goods or services by a limited group of people, might be eligible for exemption. Examples may include petrol cards for refuelling or purchasing goods provided by a few other providers at a specified chain of petrol stations, and membership cards which can only be used to pay for goods or services offered by a few shops, clubs or organisations.

- (b) **Principal business:** The principal business of a licensee must be the issuance of SVF to ensure that the principal resources will only be used on its SVF business. Some SVF schemes may involve the provision of remittance or money changing service as an ancillary or incidental service to the SVF business, potentially falling into the existing licensing regime for “money services operators” (“MSO”) administered by the Customs and Excise Department (“C&ED”) under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Chapter 615) (“AMLO”). To avoid any regulatory overlap, the licensee whose operation involves a MSO business which is ancillary or incidental to its SVF business will only need to obtain an SVF licence from the HKMA and will not be required to obtain a MSO licence from the C&ED;
- (c) **Financial strength:** The licensee must meet a minimum on-going capital requirement, so that the aggregate amount of its paid-up capital should not be less than HK\$25 million. This is in line with the current regulatory regime for “multi-purpose cards” under the BO in which case a non-bank multi-purpose card issuer must be authorized as a deposit-taking company and be subject to, among other things, a minimum level of share capital of HK\$25 million;
- (d) **Management of float:** A licensee will be required to have in place safeguarding measures that adequately protect the float, and to keep the float separate from other funds of the issuer<sup>8</sup>. The licensee must also have adequate risk management policies and procedures for float management to ensure that there will be sufficient funds for the redemption of outstanding stored value; and
- (e) **“Fit and proper” ownership and management, as well as prudential risk management requirements:** Controllers, directors, and chief executives of SVF licensees must be fit and proper persons, and persons responsible for the management of the SVF business must possess appropriate knowledge and experiences. The licensee must have in place appropriate risk management policies and procedures for its operation commensurate with the scale, risk profile and complexity of the scheme.

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<sup>8</sup> We propose in the Bill that the HKMA may approve, as licensing conditions for an SVF issuer, the float protection arrangements, on a case-by-case basis, taking into account factors including financial strength, scale of business, risk management, and internal control environment, etc. of each scheme. The HKMA will need to be satisfied that the types of investment in which the licensee proposes to invest are appropriate, having regard to the nature of the investments, and also, the financial strength, overall corporate governance, and risk management controls of the SVF issuer.

9. In line with the existing “multi-purpose cards” regime under the BO, licensed banks will be deemed to be licensed to issue SVF as a line of business. This, together with other lines of banking business in a licensed bank, will be subject to regulatory requirements and on-going supervision by the HKMA on a consolidated basis. Nevertheless, licensed banks will still be required to comply with relevant requirements under the proposed regulatory regime, including float safeguarding and management, should they decide to continue, or embark on, SVF business.

### ***(B) Regulatory Regime for RPS***

10. Safe and efficient functioning of widely-used RPS is essential to the smooth running of day-to-day economic activities in Hong Kong. Having regard to the existing regulatory regime for large-value CSS under the CSSO, we propose extending that regime to cover RPS as appropriate<sup>9</sup>. An RPS which operates in Hong Kong or processes retail payment transactions denominated in Hong Kong dollar or other currencies or a declared medium of exchange may be designated under the proposed regime if certain designation criteria (set out in paragraphs 11 and 12 below) are met by such a system.

#### Designation criteria

11. Like large-value CSS, we propose that the HKMA’s oversight for RPS will be conducted through a “designation system”. This will mean that the HKMA may designate certain RPS available in the market for the sake of imposing a set of prudential requirements over them. We propose that the HKMA may designate an RPS<sup>10</sup> if any disruptions to the RPS are likely to result in any or more of the following –

- (a) monetary or financial stability, or the functioning of Hong Kong as an international financial centre, being adversely affected;
- (b) the public’s confidence in payment systems or the financial system of Hong Kong being adversely affected; or
- (c) day-to-day commercial activities being adversely and materially affected.

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<sup>9</sup> While the CSSO provides, at present, statutory backing to the finality of settlement for transactions made through the designated CSS by protecting the settlement finality from insolvency laws or any other laws, the finality of settlement will not apply to RPS in future.

<sup>10</sup> We are aware that an SVF normally requires a CSS to support its operation. Such a system may fall within the definition of RPS. To avoid regulatory overlap, we do not intend to designate CSS run by a SVF licensee to support its own SVF scheme. However, if the RPS operated by a SVF issuer supports SVF scheme run by other issuers, the HKMA may designate such RPS if it meets the designation criteria.

12. In applying the above proposed designation criteria, the HKMA may take into account factors, including (a) the estimated aggregate value of orders transferred, cleared or settled through the system; (b) the estimated average value of orders transferred, cleared or settled through the system; (c) the estimated number of orders transferred, cleared or settled through the system; (d) the estimated number of participants of the system; and (e) any direct or indirect interfaces to the large-value payment systems.

#### Prudential requirements on designated RPS

13. We propose that designated RPS will be subject to the HKMA's oversight. To ensure their safety and robustness, they will be required to have in place operating rules to provide for the system to be operated in accordance with the requirements, including default arrangements which are appropriate for the system. Designated RPS will also be subject to safety requirements, which include, among other things, risk management and control procedures relating to the operation of the system; safety and integrity of information held within the system; soundness of the system including financial soundness; and efficiency requirements including costs of participation and reasonableness of criteria for admission as a participant in the system.

#### ***Supervisory and enforcement powers of the HKMA***

14. To enable the HKMA to perform various day-to-day supervisory functions over SVF and designated systems, we propose incorporating in the CSSO provisions enabling the HKMA to conduct effective on-going supervision over the relevant licensees and operators (including on-site examinations and off-site reviews), gather information, give directions, impose operating rules, make regulations, and issue guidelines, etc.

15. We also propose that the HKMA be empowered to conduct investigation into SVF licensees and designated systems when the HKMA has a reasonable cause to believe that an offence has been committed in connection with the proposed regulatory regime<sup>11</sup>.

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<sup>11</sup> We propose that the HKMA be given the power to direct an investigator to conduct investigation, the power to compel provision of evidence from all persons 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 warrants and seizures when necessary.

16. We propose modelling on the existing criminal sanctions under the BO and the CSSO for devising sanctions under the proposed regulatory regime. In addition, we propose empowering the HKMA to impose a range of civil sanctions<sup>12</sup>, which will be proportionate to the nature and severity of the misconduct, under the proposed regulatory regime.

17. To ensure that the exercise of the HKMA's powers is subject to checks and balances, we propose expanding the ambit of the existing Clearing and Settlement Systems Appeals Tribunal to cover appeals against relevant HKMA's decisions in relation to SVF and RPS. The existing Process Review Committee will continue to review the processes and procedures adopted by the HKMA in applying supervisory standards<sup>13</sup>.

### ***Phased implementation arrangement***

18. We propose implementing the provisions contained in the Bill in two phases after the passage of the Bill by LegCo. Phase one (which mainly concerns the provisions relating to the application and processing of SVF licences, as well as the designation regime of RPS) will come into operation upon gazettal of the Amendment Ordinance. Phase two (which mainly concerns the provisions relating to offences in relation to the proposed licensing regime for SVF) will come into operation one year after the commencement of Phase one. This is intended to cater for the time required for potential and existing SVF issuers to apply for a licence, as well as for the HKMA to process the SVF licence applications. Pre-existing SVF operators at the time of the commencement of phase one may continue their SVF business during the one-year transitional period before the commencement of phase two. However, unless they will exit the industry during the transitional period, these pre-existing SVF operators must complete their licence application process during the transitional period and obtain a SVF licence to take effect upon the commencement of phase two.

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<sup>12</sup> The proposed civil and supervisory sanctions include –

- (a) minor sanctions (such as caution, warning, reprimand, and order to take specified actions(s), etc.) and supervisory sanctions (such as temporary suspension, suspension or revocation of licence, or a combination of the above);
- (b) pecuniary penalty of not exceeding HK\$10 million or three times the amount profit gained or loss avoided, whichever is higher, or
- (c) any combination of the above.

<sup>13</sup> The Process Review Committee reviews and advises the HKMA on the adequacy of the HKMA's internal operational procedures and guidelines for applying the standards set under the CSSO to those designated systems in which the HKMA has a legal or beneficial interest. It seeks to ensure that the same set of standards is applied to all designated systems, whether or not the HKMA has an interest in them.

## THE BILL

19. The main provisions of the Bill are as follows –

- (a) **Clauses 3 and 4** change the long and short titles of the CSSO;
- (b) **Clauses 10 to 15** provide for the designation and oversight by the HKMA of RPS, including the designation criteria, and the regulatory requirements on the designated systems (paragraphs 10 to 13 above);
- (c) **Clauses 17 and 53** introduce a new Part 2A and new Schedules 3 to 8 respectively to the CSSO to provide for the licensing and supervision of SVF (paragraphs 4 to 9 above), including the following –
  - (i) the licensing criteria for SVF issuers and facilitators are set out in the new Schedule 3 (paragraph 8 above);
  - (ii) the licence fee is specified in the new Schedule 4;
  - (iii) the grounds for revoking a licence are specified in the new Schedule 5;
  - (iv) the affairs or businesses that the manager of a licensee is responsible for are specified in the new Schedule 6;
  - (v) the powers of the Manager are specified in the new Schedule 7; and
  - (vi) the SVF that are exempt as mentioned in paragraph 6 above are specified in the new Schedule 8.
- (d) **Clauses 18 to 23** renumber existing Division 3 of Part 2 of the CSSO as Part 2B and amend that Part 2B to provide for matters pertaining to HKMA's day-to-day supervisory functions (paragraph 14 above);
- (e) **Clause 29** introduces –
  - (i) a new Part 3A to provide for the HKMA's power to investigate an alleged contravention of provisions of the CSSO and matter pertaining to such investigations (paragraph 15 above); and
  - (ii) a new Part 3B to provide for civil sanctions for contraventions under the CSSO. The new sections 33K to 33R provide for the imposition of civil sanctions on regulated persons for contraventions of any provisions of the CSSO (paragraph 16 above);



- (f) **Clause 53** introduces a new Schedule 9 to set out the savings and transitional arrangements for the existing Clearing and Settlement Systems Appeals Tribunal and Gazette notices published under existing provisions of the CSSO; and
- (g) **Part 3** deals with certain related and consequential amendments to the BO, the Electronic Transactions Ordinance (Chapter 553) and the AMLO.

## LEGISLATIVE TIMETABLE

20. The legislative timetable will be –

Publication in the Gazette	23 January 2015
First Reading and commencement of Second Reading debate	4 February 2015
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## IMPLICATIONS OF THE PROPOSAL

21. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It has insignificant sustainability implications, and no productivity, environmental, civil service, financial, or family implications. The amendments proposed in the Bill will not affect the current binding effect of the CSSO.

### *Economic implications*

22. The proposed regulatory framework will help enhance the safety and soundness of stored value facilities and retail payment systems, thereby strengthening the public's confidence in these products and services and fostering their further development and innovation. By upgrading the retail payment legislation in line with the same developments in other major financial centres, the proposal will also help maintain Hong Kong's status as an international financial centre.

## **PUBLIC CONSULTATION**

23. The Administration launched a three-month public consultation on the proposed regulatory regime in May 2013. Altogether 41 responses were received from a broad range of interested parties, including market players, public bodies, business and professional organisations, and several information technology industry associations. Comments received indicated overall support for the policy objectives and the key proposals. Most respondents generally consider that a well-regulated environment will help further develop retail payment products and services in Hong Kong, and enhance users' acceptance of and confidence in such products and services. We have taken on board many useful suggestions and comments, after balancing relevant perspectives (in terms of market development, evolving market needs, protection for users, and level-playing field considerations), in contemplating the Bill, particularly in respect of the coverage of the regulatory regime, the licensing criteria and conditions, as well as the relevant transitional arrangements. We issued a Consultation Conclusion to address these suggestions and comments on 31 October 2014.

24. We briefed the LegCo Panel on Financial Affairs on the major elements of the proposed regulatory regime at its meeting on 7 April 2014. The Panel supported the Administration's plan to establish a regulatory framework for SVF and RPS in Hong Kong. Questions were raised in relation to the supervision over the SVF issuers soliciting Hong Kong users without maintaining a local presence, the regulatory treatment for single-purposed SVF, and the protection of personal data collected by relevant operators. The Bill has specified provisions to address the above aspects. After the passage of the Bill, the HKMA will issue relevant supervisory guidelines where appropriate in due course to facilitate compliance and enforcement.

## **PUBLICITY**

25. We will issue a LegCo brief and a press release upon gazettal of the Bill, and arrange a spokesperson to answer media enquiries.

## **ENQUIRIES**

26. Enquiries relating to the brief can be directed to Mr Jackie Liu, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2067.

Financial Services and the Treasury Bureau  
21 January 2015

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# A BILL

## To

Amend the Clearing and Settlement Systems Ordinance to empower the Monetary Authority to designate and oversee certain retail payment systems; to regulate matters relating to the issue of stored value facilities (including the setting up of a licensing regime); to provide for an investigatory regime and the power to impose sanctions regarding contraventions of that Ordinance; and to make related amendments.

Enacted by the Legislative Council.

## Part 1

### Preliminary

#### 1. Short title and commencement

- (1) This Ordinance may be cited as the Clearing and Settlement Systems (Amendment) Ordinance 2015.
- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) The following provisions come into operation on the expiry of 1 year beginning on the day on which this Ordinance is published in the Gazette—
  - (a) section 17, in so far as it relates to the new sections 8B, 8C, 8D, 8G, 8U, 8Y and 8ZZZI;
  - (b) Division 1 of Part 3 and section 64.

**2. Enactments amended**

- (1) The Clearing and Settlement Systems Ordinance (Cap. 584) is amended as set out in Part 2.
- (2) The enactments specified in Part 3 are amended as set out in that Part.

\_\_\_\_\_

**Part 2**

**Amendments to Clearing and Settlement Systems Ordinance**

**3. Long title amended**

- (1) The long title—

**Repeal**

“clearing and settlement systems for”

**Substitute**

“payment systems for”.

- (2) The long title, after “Authority;”—

**Add**

“for the supervision of stored value facilities by the Monetary Authority;”.

- (3) The long title—

**Repeal**

“such”

**Substitute**

“certain”.

**4. Section 1 amended (short title)**

Section 1(1)—

**Repeal**

“Clearing and Settlement Systems Ordinance”

**Substitute**

“Payment Systems and Stored Value Facilities Ordinance”.

**5. Section 2 amended (interpretation)**

- (1) Section 2, definition of
- default arrangements*
- 

**Repeal**

“clearing and settlement”

**Substitute**

“payment”.

- (2) Section 2—

**Repeal the definition of *designated system*****Substitute**“*designated system* (指定系統) means—

- (a) a designated clearing and settlement system; or
- (b) a designated retail payment system;”.

- (3) Section 2—

**Repeal the definition of *officer*****Substitute**“*officer* (高級人員)—

- (a) in relation to a licensee, means—
  - (i) a chief executive, or manager, of the licensee as defined by section 8A; or
  - (ii) a director of the licensee;
- (b) in relation to a corporation that is a system operator or settlement institution of a designated system, means—
  - (i) a chief executive, director, manager or secretary of the corporation; or
  - (ii) any other person involved in the management of the corporation; or

- (c) in relation to any other corporation, means—

- (i) a director, manager or secretary of the corporation; or
- (ii) any other person involved in the management of the corporation;”.

- (4) Section 2, definition of
- operating rules*
- 

**Repeal**

everything after “to a”

**Substitute**

“payment system or a stored value facility, means the rules or terms that govern the operation, use or functioning of the system or facility;”.

- (5) Section 2, definition of
- participant*
- 

**Repeal**

“clearing and settlement”

**Substitute**

“payment”.

- (6) Section 2—

**Repeal the definition of *settlement institution*****Substitute**“*settlement institution* (交收機構)—

- (a) in relation to a clearing and settlement system, means a person providing settlement accounts to the participants and to any central counterparty in the system—

- (i) for the settlement of transfer orders within the system; and
- (ii) if applicable, for extending credit to the participants and the central counterparty for settlement purposes; or
- (b) in relation to a retail payment system, means a person providing services for the settlement of any payment obligation relating to retail activities for the purposes of the operating rules of the system;”.

## (7) Section 2—

**Repeal the definition of *system operator*****Substitute****“*system operator* (系統營運者)—**

- (a) in relation to a clearing and settlement system, means a person who, for the purposes of the operating rules of the system, is responsible for the operation of the clearing or settlement functions of the system; or
- (b) in relation to a retail payment system, means a person who, for the purposes of the operating rules of the system, is responsible for the operation of—
  - (i) the transfer, clearing or settlement functions of the system; or
  - (ii) any other related functions;”.

## (8) Section 2—

**Repeal the definition of *transfer order*****Substitute****“*transfer order* (轉撥指令)—**

- (a) in relation to a clearing and settlement system, means—
  - (i) an instruction by a participant to place at the disposal of another participant an amount of money by means of a book-entry on the accounts of a settlement institution for the system;
  - (ii) an instruction that results in the assumption or discharge of a payment obligation for the purposes of the operating rules of the system; or
  - (iii) an instruction by a participant either to settle an obligation for the transfer of book-entry securities, or for the transfer of such securities; or
- (b) in relation to a retail payment system, means an instruction that results in the assumption or discharge of a payment obligation relating to retail activities for the purposes of the operating rules of the system;”.

(9) Section 2, English text, definition of *Tribunal*—**Repeal the full stop****Substitute a semicolon.**

## (10) Section 2—

**Repeal the definition of *applicant*.**

## (11) Section 2—

**Add in alphabetical order**

“*accounts* (帳目) means any accounts, whether kept in writing or print or by a machine or device;

**Advisor** (顧問), in relation to a licensee, means the person appointed to be an Advisor of the licensee under section 8ZG(1)(b) or 8ZX(2)(a);

**bank** (銀行) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

**banking licence** (銀行牌照) means a licence granted under section 16 of the Banking Ordinance (Cap. 155);

**declared medium of exchange** (經宣布兌換媒介) means a thing that is declared to be a medium of exchange under section 2C;

**designated clearing and settlement system** (指定結算及交收系統) means a clearing and settlement system designated under section 4(1);

**designated retail payment system** (指定零售支付系統) means a retail payment system designated under section 4(1);

**director** (董事) includes a person occupying the position of director (by whatever name called);

**efficiency** (效率)—

- (a) in relation to a payment system—see section 8(2);
- (b) in relation to a stored value facility—see section 8P(2);

**facilitate** (促進)—see section 2B;

**facilitator** (促進人) means a person who facilitates the issue of a stored value facility in the manner as mentioned in section 2B;

**float** (儲值金額), in relation to a stored value facility issued, or the issue of which is facilitated, under a licence—

- (a) means the stored value remaining on the facility; but

- (b) does not include any SVF deposit;

**investigator** (調查員) means a person directed under section 33B(2)(a), or appointed under section 33B(2)(b), to carry out an investigation under Part 3A;

**issue** (發行), in relation to a stored value facility, includes the operation of the facility by the issuer for use by the user of the facility after its issue;

**issuer** (發行人), in relation to a stored value facility, means the person who—

- (a) issues the facility; and
- (b) gives, in respect of the facility, an undertaking as specified in section 2A(2) or (3);

**licence** (牌照) means a licence granted under section 8F, or regarded as granted under section 8G;

**licensee** (持牌人) means—

- (a) the person to whom a licence is granted under section 8F; or
- (b) a bank that is regarded as being granted a licence under section 8G;

**Manager** (管理人), in relation to a licensee, means the person appointed to be a Manager of the licensee under section 8ZH(1)(b) or 8ZX(2)(a);

**minimum criteria** (最低準則) means the criteria set out in Part 2 of Schedule 3;

**payment system** (支付系統) means—

- (a) a clearing and settlement system; or
- (b) a retail payment system;

**prescribed** (訂明) means prescribed by regulation made under section 49;

**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, principally by individuals, that involve purchases or payments; and
- (b) includes related instruments and procedures;

**safety** (安全)—

- (a) in relation to a payment system—see section 8(1);
- (b) in relation to a stored value facility—see section 8P(1);

**specified form** (指明格式) means a form specified under section 54A;

**stored value** (儲值) has the meaning given by section 2A(5);

**stored value facility** (儲值支付工具)—see section 2A;

**SVF deposit** (工具按金), in relation to a stored value facility issued, or the issue of which is facilitated, under a licence, means a deposit placed with the licensee, or another person on behalf of the licensee, for enabling the facility to be used;

**user** (使用者), in relation to a stored value facility, means a person who uses the facility for the purposes mentioned in section 2A(1)(a) or (b).”.

6. **Sections 2A, 2B and 2C added**

After section 2—

**Add**

**“2A. Interpretation: stored value facility**

- (1) For the purposes of this Ordinance, a facility is a stored value facility if—
  - (a) the facility may be used for storing the value of an amount of money that—
    - (i) is paid into the facility from time to time; and
    - (ii) may be stored on the facility under the rules of the facility; and
  - (b) the facility may be used for either or both of the following purposes—
    - (i) as a means of making payments for goods or services under an undertaking (whether express or implied) given by the issuer as specified in subsection (2);
    - (ii) as a means of making payments to another person (other than payments mentioned in subparagraph (i)) under an undertaking (whether express or implied) given by the issuer as specified in subsection (3).
- (2) The undertaking for subsection (1)(b)(i) is an undertaking that, if the facility is used as a means of making payments for goods or services, the issuer, or a person procured by the issuer to accept such payments, will accept the payments up to the amount of the stored value that is available for use under the rules of the facility.
- (3) The undertaking for subsection (1)(b)(ii) is an undertaking that, if the facility is used as a means of making payments to another person (**recipient**) (other than payments mentioned in subsection (1)(b)(i)), the issuer, or a person procured by the issuer to make such



payments, will make the payments to the recipient up to the amount of the stored value that is available for use under the rules of the facility.

- (4) A facility is not a stored value facility for the purposes of this Ordinance if it is a single-purpose stored value facility.

- (5) In this section—

**issuer** (發行人), in relation to a facility, means the person who issues the facility;

**rules** (規則), in relation to a facility, means the rules or terms that govern the operation, use or functioning of the facility;

**single-purpose stored value facility** (單用途儲值支付工具) means a facility—

- (a) that may be used for the purpose mentioned in subsection (1)(a); and
- (b) in respect of which the issuer—
  - (i) gives an undertaking that, if the facility is used as a means of making payments for goods or services (not being money or money's worth) provided by the issuer, the issuer will provide the goods or services under the rules of the facility; and
  - (ii) does not give any other undertaking that falls within the description of subsection (2) or (3);

**stored value** (儲值), in relation to a facility, means the value stored on the facility as mentioned in subsection (1)(a).

- (6) For the purposes of this section—

- (a) a facility may be in physical or electronic form, but does not include cash;
- (b) a reference to money is a reference to—
  - (i) money in any currency; or
  - (ii) any declared medium of exchange; and
- (c) except in subsection (5), a reference to goods or services includes money or money's worth.

## 2B. Interpretation: facilitator

- (1) For the purposes of this Ordinance, a person facilitates the issue of a stored value facility if the person—
  - (a) is not the issuer of the facility; and
  - (b) provides the issuer with valuable consideration the value of which determines, in whole or in part, the extent to which the issuer may give an undertaking that falls within the description of section 2A(2) or (3) in respect of the facility.
- (2) For the purposes of subsection (1)(b), the person may provide valuable consideration—
  - (a) directly or indirectly; or
  - (b) by electronic means or otherwise.

## 2C. Monetary Authority may declare medium of exchange

The Monetary Authority may, by notice published in the Gazette, declare a thing to be a medium of exchange for the purposes of this Ordinance.”

## 7. Section 3 heading amended (application)

Section 3, heading, after “Application”—

Add

“in relation to designated systems, etc. outside Hong Kong”.

**8. Part 2 heading amended (designation and oversight)**

Part 2, heading, after “OVERSIGHT”—

**Add**

“OF PAYMENT SYSTEMS”.

**9. Part 2, Division 1 heading amended (designation)**

Part 2, Division 1, heading, after “Designation”—

**Add**

“of Payment Systems”.

**10. Section 4 amended (Monetary Authority may designate clearing and settlement systems)**

(1) Section 4, heading—

**Repeal**

“clearing and settlement”

**Substitute**

“payment”.

(2) Section 4(1)—

**Repeal**

everything after “this Ordinance”

**Substitute**

“a clearing and settlement system or retail payment system described in subsection (2) as a designated clearing and settlement system or designated retail payment system (as the case may be) if—

(a) the Monetary Authority is of the opinion that the system is, or is likely to become, a clearing and settlement system or retail payment system (as the case may be) whose proper functioning is—

(i) material to the monetary or financial stability of Hong Kong; or

(ii) material to the functioning of Hong Kong as an international financial centre; or

(b) having regard to matters of significant public interest, the Monetary Authority is of the opinion that the system should be so designated.”.

(3) Section 4(2), after “settlement system”—

**Add**

“or retail payment system”.

(4) Section 4(2)—

**Repeal paragraph (b)**

**Substitute**

“(b) it meets either of the following descriptions—

(i) for a clearing and settlement system, it accepts for clearing or settlement transfer orders denominated in Hong Kong dollars;

(ii) for a retail payment system, it accepts for transfer, clearing or settlement transfer orders denominated in any currency or declared medium of exchange.”.

(5) Section 4—

**Repeal subsection (3)**

**Substitute**

“(3) For the purposes of subsection (1)(a), a system is regarded as a system whose proper functioning is

material to the monetary or financial stability of Hong Kong, or to the functioning of Hong Kong as an international financial centre, if—

- (a) the occurrence of any significant disruption to, or the presence of any significant inefficiency in, the functioning of the system is likely to adversely affect—
  - (i) the monetary or financial stability of Hong Kong; or
  - (ii) the functioning of Hong Kong as an international financial centre; or
- (b) the occurrence of any significant disruption to the functioning of the system is likely to cause—
  - (i) further disruption to the activities of the participants of the system or to other payment systems; or
  - (ii) systemic disruption to the financial system of Hong Kong.”.

(6) After section 4(3)—

**Add**

“(3A) For the purposes of subsection (1)(b), the following matters are regarded as matters of significant public interest—

- (a) whether the occurrence of any significant disruption to, or the presence of any significant inefficiency in, the functioning of the system is likely to adversely affect the public’s confidence in payment systems;
- (b) whether the occurrence of any significant disruption to, or the presence of any significant

inefficiency in, the functioning of the system is likely to adversely affect the public’s confidence in the financial system of Hong Kong;

- (c) whether the occurrence of any significant disruption to, or the presence of any significant inefficiency in, the functioning of the system is likely to adversely affect day-to-day commercial activities.”.

(7) Section 4—

**Repeal subsection (4)**

**Substitute**

“(4) Without limiting subsection (1), (3) or (3A), the Monetary Authority may have regard to one or more of the factors specified in subsection (4A), as the factors then apply or appear to be likely to apply, for determining—

- (a) whether a system is, or is likely to become, a system whose proper functioning is—
  - (i) material to the monetary or financial stability of Hong Kong; or
  - (ii) material to the functioning of Hong Kong as an international financial centre; or
- (b) whether a matter is of significant public interest.”.

(8) After section 4(4)—

**Add**

“(4A) The factors are—

- (a) the estimated aggregate value of transfer orders transferred, cleared or settled through the system in a normal business day;

- (b) the estimated average value of transfer orders transferred, cleared or settled through the system in a normal business day;
  - (c) the estimated number of transfer orders transferred, cleared or settled through the system in a normal business day;
  - (d) the estimated number of participants of the system;
  - (e) whether the system is linked to any designated system or any clearing and settlement system that is, or is operated by, a company recognized as a clearing house under section 37(1) of the Securities and Futures Ordinance (Cap. 571).
- (4B) In designating a retail payment system under subsection (1), the Monetary Authority may, in the notice published in the Gazette under that subsection, declare the activities that are allowed to be carried out through the system, having regard to—
- (a) the activities that are carried out through the system before the designation; and
  - (b) the operating rules of the system.”.
- (9) Section 4—
- Repeal subsection (5)**
- Substitute**
- “(5) If the Monetary Authority intends to designate a system under subsection (1), or make a declaration under subsection (4B), the Monetary Authority must—
- (a) publish in the Gazette notice of the intention, stating the grounds on which the designation or declaration is to be made; and

- (b) specify in the notice a period of not less than 14 days within which any system operator or settlement institution of the system may make oral or written representations to the Monetary Authority as to why the designation or declaration should not be made.”.
- (10) After section 4(5)—
- Add**
- “(6) The Monetary Authority must, before making the designation or declaration, take into consideration any representation made in the manner mentioned in subsection (5)(b).”.
- 11. Section 5 amended (revocation of designation)**
- (1) Section 5(1)—
- Repeal paragraphs (a) and (b)**
- Substitute**
- “(a) the Monetary Authority is satisfied that the system is not a system as is described in section 4(2); or
- (b) the system—
- (i) was designated under section 4(1)(a) and, in the opinion of the Monetary Authority, has ceased to be, or to be likely to become, a system mentioned in that section; or
  - (ii) was designated under section 4(1)(b) and, in the opinion of the Monetary Authority, the matters based on which the system was designated have ceased to exist.”.
- (2) Section 5—
- Repeal subsection (2)**

**Substitute**

“(2) If the Monetary Authority intends to revoke the designation of a designated system, the Monetary Authority must—

- (a) publish in the Gazette notice of the intention, stating the grounds under subsection (1) on which the revocation is to be made; and
- (b) specify in the notice a period of not less than 14 days within which any system operator or settlement institution of the system may make oral or written representations to the Monetary Authority as to why the grounds for revocation stated in the notice have not been made out.”.

(3) After section 5(2)—

**Add**

“(2A) The Monetary Authority must, before revoking the designation, take into consideration any representation made in the manner mentioned in subsection (2)(b).”.

**12. Section 6 amended (obligation to inform Monetary Authority of name and address, etc.)**

(1) Section 6(1)—

**Repeal**

“clearing and settlement system under this Ordinance, is a system operator or settlement institution of the system shall”

**Substitute**

“payment system under this Ordinance, is a system operator or settlement institution of the system must”.

(2) Section 6(2)—

**Repeal**

“clearing and settlement system, there is any change to the particulars given or required to be given to the Monetary Authority under subsection (1) in respect of the system, every person to whom such change relates shall within 6 days of the change taking effect”

**Substitute**

“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,”.

(3) After section 6(2)—

**Add**

“(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.

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

**13. Sections 6A and 6B added**

After section 6—

**Add****“6A. Restriction on activities carried out through designated retail payment systems**

- (1) If a declaration of activities is made in respect of a designated retail payment system under section 4(4B), then except with the Monetary Authority’s written consent, a system operator or settlement institution of the system must not carry out through the system an activity that is not declared under that section.
- (2) A system operator or settlement institution who contravenes 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.

**6B. Monetary Authority may give consent for designated retail payment system to carry out activities not declared under section 4(4B)**

- (1) The Monetary Authority may, on the written request of a system operator or settlement institution of a designated

retail payment system, give a written consent mentioned in section 6A to allow the activities specified in the consent to be carried out through the system by the operator or institution.

- (2) The Monetary Authority may—
  - (a) attach to the consent conditions that the Monetary Authority considers appropriate;
  - (b) attach to the consent any new conditions that the Monetary Authority considers appropriate, including by amending the conditions already attached; or
  - (c) cancel a condition so attached.
- (3) If the Monetary Authority intends to attach conditions to the consent, the Monetary Authority must—
  - (a) give a written notice to the system operator or settlement institution stating—
    - (i) the intention;
    - (ii) the conditions to be attached; and
    - (iii) the grounds for attaching the conditions; and
  - (b) specify in the notice a period of not less than 14 days within which the system operator or settlement institution may make oral or written representations to the Monetary Authority as to why the grounds for attaching the conditions have not been made out.
- (4) The Monetary Authority must, before attaching the conditions, take into consideration any representation made in the manner mentioned in subsection (3)(b).
- (5) The Monetary Authority must, as soon as practicable after making a decision under this section, give a written

notice of the decision to the system operator or settlement institution.

- (6) A written notice given under subsection (5) must state—
- (a) for a decision to give the consent, the decision;
  - (b) for a decision to refuse to give the consent, the decision and the grounds for the decision;
  - (c) for a decision to attach conditions—
    - (i) the conditions;
    - (ii) the grounds for attaching the conditions; and
    - (iii) the date on which the conditions are to take effect or, if they are to take effect on the occurrence of an event, this fact and the event; or
  - (d) for a decision to cancel a condition, the decision.
- (7) A system operator or settlement institution who contravenes a condition attached under subsection (2) to a consent given to the operator or institution 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.”.

**14. Section 7 amended (requirements applying to designated systems)**

- (1) Section 7(2), English text—

**Repeal**

“shall”

**Substitute**

“must”.

- (2) Section 7(2)(b)—

**Repeal**

“and”.

- (3) Section 7(2)(c)—

**Repeal the full stop**

**Substitute**

“; and”.

- (4) After section 7(2)(c)—

**Add**

“(d) provide for appropriate and adequate arrangements to deal with the situation where a system operator or settlement institution of the system is likely to become unable to meet its obligations under the system.”.

- (5) After section 7(3)—

**Add**

“(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.

- (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.
- (6) It is a defence for a person charged with an offence under subsection (4) to prove that—
- (a) the requirement to which the charge relates concerns an aspect of the management or operation of the designated system that is not an aspect for which the person is responsible; or
  - (b) the person took all reasonable steps to ensure that the requirement to which the charge relates was complied with.”.

**15. Section 8 amended (safety and efficiency)**

- (1) Section 8(1), heading, after “**efficiency**”—

**Add**

“**of payment systems**”.

- (2) Section 8(1)—

**Repeal**

“clearing and settlement system includes in particular reference to”

**Substitute**

“payment system includes in particular any matter relating to”.

- (3) Section 8(1)—

**Repeal paragraphs (c) and (d)**

**Substitute**

- “(c) access control over the system;
- (d) the integrity of, and access control over, the information held within the system;”.

- (4) After section 8(1)(d)—

**Add**

- “(e) the risk management and control procedures relating to the operation of the system;
- (f) the soundness of the system, including financial soundness;
- (g) the services provided to the system by the infrastructure associated with the system; and
- (h) the criteria regarding the safety of the system prescribed for the purposes of this section.”.

- (5) Section 8(2)—

**Repeal**

“clearing and settlement system includes in particular reference to”

**Substitute**

“payment system includes in particular any matter relating to”.

- (6) Section 8(2)(d), before “generally”—

**Add**

“for a clearing and settlement system,”.

**16. Part 2, Division 3 heading repealed (matters pertaining to functions and powers of Monetary Authority)**

Part 2, Division 3, heading—



**Repeal the heading.**

**17. Part 2A added**

After section 8—

**Add**

**“Part 2A**

**Licensing and Supervision of Stored Value  
Facilities**

**Division 1—Preliminary**

**8A. Interpretation of Part 2A**

(1) In this Part—

*chief executive* (行政總裁), in relation to a licensee, means—

- (a) the person appointed as the chief executive of the licensee under section 8ZZU;
- (b) the person appointed as an alternate chief executive of the licensee under section 8ZZU; or
- (c) the person appointed as a chief executive of the licensee under section 8ZO(3)(a);

*company* (公司) means—

- (a) a company formed and registered under the Companies Ordinance (Cap. 622);
- (b) a company formed and registered under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap. 622); or
- (c) a body corporate incorporated by an Ordinance;

*licence number* (牌照編號), in relation to a licence, means the number assigned to the licence under section 8F(5)(a);

*manager* (經理), in relation to a licensee—

- (a) means an individual appointed—
  - (i) by the licensee; or
  - (ii) by a person acting for or on behalf of, or by an arrangement with, the licensee, to be principally responsible (either alone or jointly with others) for the conduct of one or more of the licensee’s affairs or business specified in Schedule 6; but
- (b) does not include—
  - (i) a person declared, under subsection (2), not to be a manager;
  - (ii) a person belonging to a class of persons declared, under subsection (2), not to be managers; or
  - (iii) a chief executive or director of the licensee;

*subsidiary* (附屬公司) has the meaning given by section 15 of the Companies Ordinance (Cap. 622).

(2) For the purposes of the definition of *manager* in subsection (1), the Monetary Authority may, by notice published in the Gazette and subject to any conditions specified in the notice, declare—

- (a) a person not to be a manager; or
- (b) a class of persons not to be managers.

## **Division 2—Restriction Relating to Issue of Stored Value Facilities, etc.**

### **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.
- (4) 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.

### **8D. Prohibition on entering into contracts, etc. for avoiding section 8B or 8C**

- (1) A person must not enter into a contract or an arrangement, or use any device or scheme, that has the effect of, or is designed to have the effect of, avoiding section 8B(1) or (2) or 8C(1) or (2).
- (2) A person who contravenes subsection (1) 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.

## **Division 3—Licensing**

### **Subdivision 1—Grant of Licence**

#### **8E. Application for licence**

- (1) A person may apply to the Monetary Authority for a licence.
- (2) The application may only be made by a company.
- (3) The application must—
  - (a) be made in the specified form; and
  - (b) contain the address of the applicant's principal place of business in Hong Kong, a postal address and an electronic mail address.

- (4) The Monetary Authority may, by notice in writing to the applicant, require the applicant to provide any information or document specified in the notice that the Monetary Authority considers necessary for determining the application.
- (5) If the information or document is not provided, the Monetary Authority may—
  - (a) refuse to process the application further; or
  - (b) reject the application.

**8F. Determination of application**

- (1) The Monetary Authority may determine an application for a licence made by a person (*the applicant*) under section 8E by—
  - (a) granting the licence to the applicant to authorize—
    - (i) the issue of any stored value facility; or
    - (ii) the facilitation of the issue of any stored value facility; or
  - (b) refusing to grant the licence.
- (2) The Monetary Authority may grant the licence without conditions or subject to any conditions attached under section 8I.
- (3) The Monetary Authority may grant the licence to the applicant only if the Monetary Authority is satisfied that—
  - (a) all the minimum criteria applicable in relation to the applicant are fulfilled; and
  - (b) if the licence is granted, the minimum criteria will continue to be fulfilled in relation to the applicant as a licensee.

- (4) If the Monetary Authority refuses to grant the licence, the Monetary Authority must give a written notice to the applicant stating—
  - (a) the decision; and
  - (b) the grounds for the decision.
- (5) If the Monetary Authority grants a licence, the Monetary Authority must—
  - (a) assign a unique number, which may be an alphanumeric number, to the licence; and
  - (b) specify in the licence the date on which the licence is to take effect.

**8G. Bank regarded as licensee**

A bank is regarded as being granted a licence under section 8F—

- (a) at the time when it is granted a banking licence; or
- (b) for a bank holding a banking licence on the commencement date of this section, on that date.

**8H. Validity of licence**

A licence granted under section 8F or regarded as granted under section 8G remains in force until it is revoked under Subdivision 1 of Division 5.

**Subdivision 2—Conditions of Licence****8I. Monetary Authority may attach conditions to licence**

- (1) The Monetary Authority may—
  - (a) attach to a licence conditions that the Monetary Authority considers appropriate, whether the

- licence is granted under section 8F or regarded as granted under section 8G; or
- (b) attach to the licence any new conditions that the Monetary Authority considers appropriate, including by amending the conditions already attached.
- (2) Without limiting subsection (1), conditions attached under that subsection may—
- (a) impose restrictions, either generally or in a particular case, on the business of issuing, or facilitating the issue of, stored value facilities that may be carried on by the licensee;
- (b) impose requirements for the administration, maintenance, management, use and regulation of—
- (i) the float of any stored value facility issued, or the issue of which is facilitated, under the licence, including requirements relating to measures for protecting the float; or
- (ii) the SVF deposit of any stored value facility issued, or the issue of which is facilitated, under the licence, including requirements relating to measures for protecting the deposit;
- (c) require the licensee to cease to, on and after the date or occurrence of the event specified by the Monetary Authority—
- (i) issue any stored value facility;
- (ii) facilitate the issue of any stored value facility;
- (iii) receive, as the issuer of any stored value facility issued under the licence, any amount of money in any currency, or of any declared

- medium of exchange, for storage as stored value on the facility; or
- (iv) receive, as the facilitator of any stored value facility the issue of which is facilitated under the licence, any amount of money in any currency, or of any declared medium of exchange, for facilitating the issue of the facility;
- (d) impose requirements as to the accounts of the licensee, including a requirement to disclose to the Monetary Authority or the public—
- (i) all or part of those accounts; or
- (ii) any information relating to the business of the licensee; or
- (e) impose restrictions, either generally or in a particular case, as to the maximum amount of stored value that may be stored on a stored value facility issued, or the issue of which is facilitated, under the licence.
- (3) A licensee who contravenes a condition attached to its licence under subsection (1) commits an offence and is liable—
- (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.

**8J. Procedural requirement for attaching conditions to new licence**

- (1) This section applies to the attachment of conditions under section 8I(1) on the grant of a licence under section 8F.
- (2) If the Monetary Authority intends to attach conditions to the licence, the Monetary Authority must—
  - (a) give a written notice to the person applying for the licence under section 8E (*applicant*) stating—
    - (i) the intention;
    - (ii) the conditions to be attached; and
    - (iii) the grounds for attaching the conditions; and
  - (b) specify in the notice a period of not less than 14 days within which the applicant may make oral or written representations to the Monetary Authority as to why the grounds for attaching the conditions have not been made out.
- (3) The Monetary Authority must, before attaching the conditions, take into consideration any representation made in the manner mentioned in subsection (2)(b).
- (4) If the Monetary Authority decides to attach conditions to the licence, the Monetary Authority must, when the licence is granted, give a written notice to the applicant stating—
  - (a) the conditions;
  - (b) the grounds for attaching the conditions; and

- (c) the date on which the conditions are to take effect or, if they are to take effect on the occurrence of an event, this fact and the event.

**8K. Procedural requirement for attaching conditions to existing licence**

- (1) This section applies to the attachment of conditions to a licence under section 8I(1) other than on the grant of a licence under section 8F.
- (2) If the Monetary Authority intends to attach conditions to the licence, the Monetary Authority must—
  - (a) give a written notice to the licensee stating—
    - (i) the intention;
    - (ii) the conditions to be attached; and
    - (iii) the grounds for attaching the conditions; and
  - (b) specify in the notice a period of not less than 14 days within which the licensee may make oral or written representations to the Monetary Authority as to why the grounds for attaching the conditions have not been made out.
- (3) The Monetary Authority must, before attaching the conditions, take into consideration any representation made in the manner mentioned in subsection (2)(b).
- (4) Subsection (2) does not apply in respect of a condition if—
  - (a) the condition falls within the description of section 8I(2)(c); and
  - (b) the Monetary Authority considers that it is necessary in the interests of the user or potential user of the stored value facility concerned to make the licence subject to the condition immediately.

- (5) If the Monetary Authority decides to attach conditions to the licence, the Monetary Authority must give a written notice to the licensee stating—
- (a) the conditions;
  - (b) the grounds for attaching the conditions; and
  - (c) the date on which the conditions are to take effect or, if they are to take effect on the occurrence of an event, this fact and the event.

**8L. Cancellation of conditions attached to licence**

The Monetary Authority may at any time cancel a condition attached to a licence under section 8I by giving written notice of the cancellation to the licensee.

**Division 4—Obligation of Licensee****8M. Licence fee payable by licensee that is not bank**

- (1) This section does not apply to a licensee that is a bank.
- (2) A licensee must pay to the Monetary Authority the appropriate licence fee specified in column 3 of Schedule 4—
  - (a) within 14 days after the date specified under section 8F(5)(b) as the date on which its licence is to take effect; and
  - (b) annually on or before each anniversary of that date.
- (3) The Monetary Authority must pay the licence fee into the Exchange Fund established under section 3 of the Exchange Fund Ordinance (Cap. 66).

**8N. Licence fee payable by licensee that is bank**

- (1) A bank regarded as being granted a licence because of section 8G must pay to the Monetary Authority the appropriate licence fee specified in column 3 of Schedule 4—
  - (a) within 14 days after whichever is the earlier of the following dates—
    - (i) the date on which the bank starts to issue a stored value facility under the licence;
    - (ii) the date on which the bank starts to facilitate the issue of a stored value facility under the licence; and
  - (b) annually on or before each anniversary of that date.
- (2) For the purposes of subsection (1)(a)(i), the date on which a bank starts to issue a stored value facility is the date on which the facility is available for issue.
- (3) The Monetary Authority must pay the licence fee into the Exchange Fund established under section 3 of the Exchange Fund Ordinance (Cap. 66).

**8O. Obligation to ensure safety and efficiency of stored value facilities**

- (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.

**8P. Further provisions on safety and efficiency of stored value facilities**

- (1) In this Ordinance, a reference to the safety of a stored value facility includes in particular any matter relating to—
  - (a) the reliability and robustness of the operation of the facility;
  - (b) access control over the facility;
  - (c) the integrity of, and access control over, the information held within the facility;
  - (d) the risk management and control procedures relating to the operation of the facility;
  - (e) the soundness of the facility, including financial soundness;
  - (f) the integrity of the facility;
  - (g) the services provided to the facility by any infrastructure associated with the facility; and
  - (h) the criteria regarding the safety of the facility prescribed for the purposes of this section.
- (2) In this Ordinance, a reference to the efficiency of a stored value facility includes in particular any matter relating to the speed and efficiency with which operations relating to the facility are carried out.

**8Q. Obligation to ensure fulfilment of minimum criteria**

A licensee must ensure that all the minimum criteria applicable in relation to the licensee are fulfilled.

**8R. Obligation to report inability to meet obligations**

- (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.

**8S. Obligation to notify Monetary Authority of change of particulars**

- (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.

**8T. Obligation to notify Monetary Authority of change in circumstances**

- (1) This section applies if it appears to a licensee that there is, or is likely to be, a material change in the circumstances that is relevant to—
- (a) the licensee's ongoing fulfilment of any of the minimum criteria applicable in relation to the licensee;
  - (b) the licensee's ongoing compliance with any of the conditions attached to its licence under section 8I;
  - (c) the licensee's ongoing compliance with section 8O; and
  - (d) the ongoing issue, or facilitation of the issue of, stored value facilities by the licensee.
- (2) The licensee must—
- (a) for a material change that has taken place, provide the Monetary Authority with details of the change without undue delay; or
  - (b) for a material change that is likely to take place, provide the Monetary Authority with details of the

likely change within a reasonable period before the change is reasonably expected to take place.

- (3) Information required to be provided under this section must be provided in a form, or verified in a manner, required by the Monetary Authority.
- (4) A licensee who, without reasonable excuse, fails to comply with subsection (2) 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 \$25,000 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.

**Division 5—Revocation and Suspension of Licence**

**Subdivision 1—Revocation of Licence**

**8U. Revocation of licence regarded as granted under section 8G**

A licence regarded as granted to a bank under section 8G is revoked on the revocation of the banking licence held by the bank under section 22 of the Banking Ordinance (Cap. 155).



**8V. Revocation of licence on grounds specified in Schedule 5**

- (1) If the Monetary Authority is satisfied that a ground for revoking a licence specified in Part 2 or 3 of Schedule 5 exists, the Monetary Authority may—
  - (a) give a written notice to the licensee stating—
    - (i) the Monetary Authority's intention to propose to revoke the licence; and
    - (ii) the ground for doing so; and
  - (b) specify in the notice a period of not less than 14 days within which the licensee may make oral or written representations to the Monetary Authority as to why the ground for the revocation stated in the notice has not been made out.
- (2) The Monetary Authority must, before proposing to revoke the licence, take into consideration any representation made in the manner mentioned in subsection (1)(b).
- (3) If the Monetary Authority proposes to revoke the licence, the Monetary Authority must give a written notice (*notice of proposal to revoke*) to the licensee stating—
  - (a) that the Monetary Authority proposes to revoke the licence; and
  - (b) the ground for the revocation.
- (4) After giving a notice of proposal to revoke, the Monetary Authority must give a notice (*notice of revocation*) to the licensee as soon as practicable after—
  - (a) the licensee has given a written notice to the Monetary Authority stating that it does not intend to refer the decision to propose to revoke the

licence to the Tribunal for review under section 35(1);

- (b) the date on which the period within which, under section 35(2)(b), the licensee may refer the decision to the Tribunal for review has expired without such a reference having been made; or
  - (c) if the licensee referred the decision to the Tribunal for review under section 35(1), the Monetary Authority is aware that—
    - (i) the review was unsuccessful; or
    - (ii) the reference was abandoned or withdrawn.
- (5) The notice of revocation must state that the licence is or is to be revoked on the date, or the occurrence of the event, specified in the notice.
  - (6) The licence is revoked on the date, or the occurrence of the event, mentioned in subsection (5).
  - (7) The Monetary Authority must, as soon as practicable after giving a notice of revocation, publish a notice in Chinese in 1 Chinese language newspaper circulating in Hong Kong, and a notice in English in 1 English language newspaper circulating in Hong Kong, each stating—
    - (a) the name of the licensee;
    - (b) the fact that the licence has been revoked; and
    - (c) that the revocation is to take effect on the date, or the occurrence of the event, specified in the notice.

**8W. Effect of revocation of licence**

- (1) On the revocation of a licence under section 8U or 8V, the person who held the licence immediately before the

- revocation (*former licensee*) must not, and must cease to—
- (a) issue or facilitate the issue of any stored value facility;
  - (b) receive as the issuer of any stored value facility any amount of money in any currency, or of any declared medium of exchange, for storage as stored value on the facility;
  - (c) receive as the facilitator of any stored value facility any amount of money in any currency, or of any declared medium of exchange, for facilitating the issue of the facility; and
  - (d) unless with the written consent given under section 8X, hold the float and SVF deposit of any stored value facility issued, or the issue of which is facilitated, under the licence.
- (2) Subsection (1) does not prejudice the enforcement or other maintenance of any right or interest—
    - (a) by any other person against the former licensee; or
    - (b) by the former licensee against any other person.
  - (3) A former licensee who contravenes subsection (1)(d) 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.

**8X. Monetary Authority may give consent to hold float and SVF deposit after revocation of licence**

- (1) The Monetary Authority may give a written consent mentioned in section 8W(1)(d) to allow a person to hold

- the whole or part of the float or SVF deposit of a stored value facility.
- (2) The Monetary Authority may—
    - (a) attach to the consent conditions that the Monetary Authority considers appropriate;
    - (b) attach to the consent any new conditions that the Monetary Authority considers appropriate, including by amending the conditions already attached; or
    - (c) cancel a condition so attached.
  - (3) Without limiting subsection (2), conditions attached under that subsection may—
    - (a) specify the period for which the float or SVF deposit may be held by the person; and
    - (b) specify the manner in which the float or deposit may be held by the person.
  - (4) The Monetary Authority may, by notice in writing to the person, require the person—
    - (a) to provide any information or document specified in the notice that the Monetary Authority considers necessary for ascertaining whether the person complies, or will comply, with a condition attached under subsection (2); and
    - (b) to provide the information or document within the period, and in the manner, specified in the notice.
  - (5) This section does not prejudice the enforcement or other maintenance of any right or interest—
    - (a) by any other person against the person; or
    - (b) by the person against any other person.

- (6) A person who contravenes a condition attached under subsection (2) to a consent given to the person commits an offence and is liable—
- (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) A person who, without reasonable excuse, fails to comply with a requirement under subsection (4) 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 \$25,000 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.

### Subdivision 2—Suspension of Licence

#### 8Y. Suspension of licence regarded as granted under section 8G

A licence regarded as granted to a bank under section 8G is suspended while the banking licence held by the bank is suspended under section 24 or 25 of the Banking Ordinance (Cap. 155).

#### 8Z. Temporary suspension of licence

- (1) The Monetary Authority may, by notice in writing to a licensee, suspend its licence for a period not exceeding 14 days if—
  - (a) the Monetary Authority is satisfied that a ground for revoking a licence specified in Part 2 of Schedule 5 exists; and
  - (b) the Monetary Authority considers that it is necessary in the interests of the user or potential user of any stored value facility issued, or the issue of which is facilitated, under the licence that urgent actions be taken.
- (2) The notice must state—
  - (a) that the licence is or is to be suspended under this section on the date specified in the notice; and
  - (b) the ground for the suspension.
- (3) The licence is suspended under this section on the date mentioned in subsection (2)(a).
- (4) The notice may be accompanied by another notice (*accompanying notice*) stating that the Monetary Authority is considering whether—

- (a) to propose the revocation of the licence under section 8V; or
- (b) to suspend the licence under section 8ZA.
- (5) The accompanying notice must—
  - (a) for subsection (4)(a), inform the licensee of the requirement of section 8V(1); or
  - (b) for subsection (4)(b), inform the licensee of the requirement of section 8ZA(2).
- (6) A suspension under this section ceases to have effect on the earlier of the following—
  - (a) the expiry of a period of 14 days beginning on the date mentioned in subsection (2)(a);
  - (b) the date, or the occurrence of the event, as may be specified in a written notice given by the Monetary Authority to the licensee for the purposes of this paragraph.

**8ZA. Suspension of licence**

- (1) The Monetary Authority may, by notice in writing (*suspension notice*) to a licensee, suspend its licence for a period not exceeding 6 months if the Monetary Authority is satisfied that a ground for revoking a licence specified in Part 2 of Schedule 5 exists.
- (2) If the Monetary Authority intends to suspend a licence under subsection (1), the Monetary Authority must—
  - (a) give a written notice to the licensee stating—
    - (i) the intention; and
    - (ii) the ground for doing so; and
  - (b) specify in the notice a period of not less than 14 days within which the licensee may make oral or

- written representations to the Monetary Authority as to why the ground for the suspension stated in the notice has not been made out.
- (3) The Monetary Authority must, before suspending the licence, take into consideration any representation made in the manner mentioned in subsection (2)(b).
- (4) The suspension notice must state—
  - (a) that the licence is or is to be suspended under this section on the date specified in the notice; and
  - (b) the ground for the suspension.
- (5) The licence is suspended under this section on the date mentioned in subsection (4)(a).
- (6) A suspension under this section ceases to have effect on the earlier of the following—
  - (a) the expiry of 6 months beginning on the date mentioned in subsection (4)(a);
  - (b) the date, or the occurrence of the event, as may be specified in a written notice given by the Monetary Authority to the licensee for the purposes of this paragraph.
- (7) Before a suspension under this section ceases to have effect, the Monetary Authority may, by notice in writing to the licensee, renew the suspension for a period not exceeding 6 months beginning immediately after the suspension ceases to have effect.

**8ZB. Effect of suspension under section 8Y, 8Z or 8ZA**

- (1) During the period when a licence is suspended under section 8Y, 8Z or 8ZA, the licensee must not, and must cease to—

- (a) issue or facilitate the issue of any stored value facility;
  - (b) receive as the issuer of any stored value facility any amount of money in any currency, or of any declared medium of exchange, for storage as stored value on the facility;
  - (c) receive as the facilitator of any stored value facility any amount of money in any currency, or of any declared medium of exchange, for facilitating the issue of the facility; and
  - (d) unless with the written consent given under section 8ZC, hold the float and SVF deposit of any stored value facility issued, or the issue of which is facilitated, under the licence.
- (2) Unless otherwise stated in the notice under section 8Z(1) or 8ZA(1), the licensee must continue to comply with the following provisions as if the licence were not suspended—
- (a) section 8M or 8N, as may be applicable;
  - (b) Division 6; and
  - (c) any other provisions of this Ordinance under which duties and obligations are imposed on a licensee.
- (3) Subsection (1) does not prejudice the enforcement or other maintenance of any right or interest—
- (a) by any other person against the licensee; or
  - (b) by the licensee against any other person.
- (4) A person who contravenes subsection (1)(d) 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.

**8ZC. Monetary Authority may give consent to hold float and SVF deposit while licence is suspended**

- (1) The Monetary Authority may give a written consent mentioned in section 8ZB(1)(d) to allow the licensee to hold the whole or part of the float or SVF deposit of a stored value facility.
- (2) The Monetary Authority may—
  - (a) attach to the consent conditions that the Monetary Authority considers appropriate;
  - (b) attach to the consent any new conditions that the Monetary Authority considers appropriate, including by amending the conditions already attached; or
  - (c) cancel a condition so attached.
- (3) Without limiting subsection (2), conditions attached under that subsection may—
  - (a) specify the period for which the float or SVF deposit may be held by the licensee; and
  - (b) specify the manner in which the float or deposit may be held by the licensee.
- (4) The Monetary Authority may, by notice in writing to the licensee, require the licensee—
  - (a) to provide any information or document specified in the notice that the Monetary Authority considers necessary for ascertaining whether the licensee complies, or will comply, with a condition attached under subsection (2); and

- (b) to provide the information or document within the period, and in the manner, specified in the notice.
- (5) This section does not prejudice the enforcement or other maintenance of any right or interest—
  - (a) by any other person against the licensee; or
  - (b) by the licensee against any other person.
- (6) A licensee who contravenes a condition attached under subsection (2) to a consent given to the licensee commits an offence and is liable—
  - (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) A licensee who, without reasonable excuse, fails to comply with a requirement under subsection (4) 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 \$25,000 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.

## **Division 6—Power of Control over Licensee**

### **Subdivision 1—Preliminary**

#### **8ZD. Application of Division 6**

This Division does not apply to a licensee that is a bank.

### **Subdivision 2—Powers of Monetary Authority over Management of Licensee**

#### **8ZE. Circumstances under which powers under this Division may be exercised**

- (1) The Monetary Authority may, after consulting the Financial Secretary, exercise one or more of the powers under sections 8ZF, 8ZG and 8ZH that appear to the Monetary Authority to be necessary in respect of a licensee if—
  - (a) the licensee informs the Monetary Authority—
    - (i) that it is likely to become unable to meet its obligations; or
    - (ii) that it is insolvent or is about to suspend payment;
  - (b) the licensee is unable to meet its obligations or suspends payment; or
  - (c) the Monetary Authority is of the opinion that—

- (i) the licensee is carrying on its business in a manner detrimental to the interests of the user or potential user of any stored value facility issued, or the issue of which is facilitated, under its licence;
  - (ii) the licensee is carrying on its business in a manner detrimental to the interests of its creditors;
  - (iii) the licensee is likely to become unable to meet its obligation or, is insolvent or is about to suspend payment;
  - (iv) the licensee has contravened a provision of this Ordinance or a condition attached to its licence under section 8I; or
  - (v) a ground for revoking a licence specified in Part 2 or 3 of Schedule 5 exists.
- (2) Without limiting any other meaning which insolvent may have, a licensee is regarded to be insolvent if—
- (a) it has ceased to pay its debt in the ordinary course of business; or
  - (b) it cannot pay its debt when it becomes due.

**8ZF. Power to require licensee to take immediate action relating to its affairs, etc.**

- (1) The Monetary Authority may, by notice in writing to a licensee, require the licensee to take an immediate action relating to the licensee's affairs, business or property that the Monetary Authority considers necessary.
- (2) Without limiting subsection (1), the requirement may impose restrictions on the licensee's business of issuing,

- or facilitating the issue of, stored value facilities under the licence.
- (3) A licensee who fails to comply with a requirement under subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$2,000,000 and to imprisonment for 5 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$100,000 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.

**8ZG. Power to give direction for licensee to seek advice on management of its affairs, etc.**

- (1) The Monetary Authority may—
  - (a) by notice in writing to a licensee, direct the licensee to seek advice on the management of the licensee's affairs, business or property specified in the terms of the direction from an Advisor appointed by the Monetary Authority while the direction is in force; and
  - (b) appoint a person to be an Advisor for paragraph (a).
- (2) The notice must—
  - (a) state the terms of the direction;

- (b) be given to the licensee at its principal place of business in Hong Kong; and
- (c) state the name and address of the Advisor.
- (3) The Monetary Authority must specify in the terms of the direction the affairs, business or property to which the direction relates.
- (4) The direction takes effect on the giving of the notice to the licensee by the Monetary Authority.
- (5) The Monetary Authority must not give a direction to a licensee under this section if an order for the winding up of the licensee made by the Court of First Instance is in force.

**8ZH. Power to give direction for licensee's affairs, etc. to be managed by Manager**

- (1) The Monetary Authority may—
  - (a) by notice in writing to a licensee, direct that the licensee's affairs, business or property specified in the terms of the direction is to be managed by a Manager appointed by the Monetary Authority while the direction is in force; and
  - (b) appoint a person to be a Manager for paragraph (a).
- (2) The notice must—
  - (a) state the terms of the direction;
  - (b) be given to the licensee at its principal place of business in Hong Kong; and
  - (c) state the name and address of the Manager.
- (3) The Monetary Authority must specify in the terms of the direction—

- (a) the affairs, business or property to which the direction relates; and
- (b) one or more primary objectives, that are not inconsistent with this Ordinance, with which the Manager must comply.
- (4) The direction takes effect on the giving of the notice to the licensee by the Monetary Authority.
- (5) The Monetary Authority must not give a direction to a licensee under this section if an order for the winding up of the licensee made by the Court of First Instance is in force.

**8ZI. Supplementary provisions relating to appointment of Advisor or Manager under section 8ZG or 8ZH**

- (1) The Monetary Authority may, in exercising the power under section 8ZG(1)(b) or 8ZH(1)(b) in respect of a licensee, appoint 2 or more persons to be the Advisor or Manager of the licensee.
- (2) The Advisor or Manager may be—
  - (a) a corporation;
  - (b) a partnership; or
  - (c) a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority.
- (3) If 2 or more persons are appointed as the Manager of a licensee under section 8ZH(1)(b), the Monetary Authority must—
  - (a) by notice in writing (*appointment notice*), specify which of the duties and powers imposed or conferred under this Ordinance on a Manager may



- be discharged, or exercised, in respect of the licensee by—
- (i) any such person alone;
  - (ii) any such persons jointly; or
  - (iii) each such person; and
- (b) attach the appointment notice to the notice giving the direction under section 8ZH.
- (4) If an appointment notice is given under subsection (3), the provisions of this Ordinance that relate to the duties and powers imposed or conferred under this Ordinance on a Manager are to be construed with all necessary modifications to take into account the notice.

### Subdivision 3—Further Provisions Regarding Direction under Section 8ZH

#### 8ZJ. Interpretation of Subdivision 3

In this Subdivision—

*direction* (指示) means a direction given under section 8ZH.

#### 8ZK. Publication of direction

- (1) The Monetary Authority must publish a notice given under section 8ZH(1)(a) (*direction notice*)—
- (a) in the Gazette; and
  - (b) in any other way that appears to the Monetary Authority to be expedient for notifying the public of the direction.
- (2) If the Monetary Authority gives a notice under section 8ZI(3)(a) (*appointment notice*), the Monetary Authority must publish the appointment notice together with the direction notice to which the appointment notice relates.

#### 8ZL. References to affairs, business or property of licensee, and objective of Manager

- (1) While a direction is in force in respect of a licensee—
- (a) a reference in this Ordinance to the affairs, business or property, or any combination of them, of the licensee is to be construed as the affairs, business or property, or any combination of them, of the licensee as specified in the terms of the direction under section 8ZH(3)(a); and
  - (b) a reference in this Ordinance to the primary objective with which the Manager of the licensee must comply is to be construed as the primary objective as specified in the terms of the direction under section 8ZH(3)(b).
- (2) If the terms of the direction are varied under section 8ZT, a reference to the terms in subsection (1) is to be construed as the terms as varied under that section.

#### 8ZM. Effect of direction: chief executive and director of licensee

- (1) On a direction taking effect in respect of a licensee—
- (a) an appointment of a person as a chief executive or director of the licensee that was in force immediately before the direction takes effect is regarded as revoked; and
  - (b) accordingly the person must not act as such a chief executive or director while the direction is in force.
- (2) Subsection (1)(a) does not apply to an appointment if the terms of the direction expressly state that the appointment is not to be regarded as revoked under that subsection.

- (3) A person who acts as a chief executive or director of a licensee in contravention of subsection (1)(b) 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.

**8ZN. Effect of direction: meeting and resolution**

- (1) While a direction is in force in respect of a licensee—
  - (a) no general meeting of the members of the licensee nor any meeting of the directors of the licensee may be held, except with the consent and in the presence of the Manager of the licensee; and
  - (b) if any such meeting is held with the consent and in the presence of the Manager, no resolution may be passed at the meeting, except with the consent of the Manager.
- (2) If a member or director of the licensee requests the Manager of the licensee to give a consent for the purposes of subsection (1)(a), the Manager—
  - (a) must not unreasonably refuse the request; and

- (b) if such a consent is given, must attend the meeting held with the consent.
- (3) Subject to section 8ZQ, if a resolution is passed in contravention of subsection (1)(b), the purported resolution, and any thing done in reliance on the purported resolution, is invalid because of the contravention.

**8ZO. Power of Manager**

- (1) Subject to the primary objective with which the Manager of a licensee must comply, the Manager may—
  - (a) do any thing necessary for the management of the licensee's affairs, business or property; and
  - (b) without limiting paragraph (a), exercise one or more of the powers specified in Schedule 7.
- (2) The Manager—
  - (a) may call any meeting of the members, directors or creditors of the licensee; and
  - (b) may require any person whose appointment as a chief executive or director of the licensee is regarded as revoked under section 8ZM(1) or is not so revoked because of section 8ZM(2)—
    - (i) to provide the Manager with any information or document relating to the licensee's affairs, business or property that the Manager requires for discharging or exercising the Manager's duties or powers under this Ordinance in respect of the licensee; and
    - (ii) to provide the information or document within the period, and in the manner, required by the Manager.

- (3) The Manager may exercise one or more of the following powers with the approval of the Monetary Authority—
- (a) appoint any person (including a person whose appointment as a chief executive or director of the licensee is regarded as revoked under section 8ZM(1)) as a chief executive or director of the licensee, whether or not to fill a vacancy that arises as a result of the operation of that section;
  - (b) at a meeting of the members of the licensee, move any resolution that is—
    - (i) seconded by a member of the licensee; or
    - (ii) approved by the Monetary Authority;
  - (c) at a meeting of the directors of the licensee, move any resolution that is—
    - (i) seconded by a director of the licensee; or
    - (ii) approved by the Monetary Authority;
  - (d) revoke an appointment to which section 8ZM(2) relates or made under paragraph (a).
- (4) If, while a direction is in force in respect of a licensee, a conferred power may be exercised in such a way as to interfere with the exercise of the powers of the Manager of the licensee, the conferred power is not exercisable except with the consent of the Manager given either generally or in a particular case.
- (5) For the purposes of subsection (4), a conferred power is a power conferred on the licensee, or an officer or a member of the licensee, under—
- (a) this Ordinance, the Companies Ordinance (Cap. 622) or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

- (b) the articles of association of the licensee; or
  - (c) any other instrument constituting the licensee.
- (6) Subject to the primary objective with which the Manager of a licensee must comply—
- (a) the Manager exercising the powers conferred on the Manager under this Ordinance is regarded as acting as an agent of the licensee; and
  - (b) section 9 (other than subsections (4) and (5) of that section) of the Prevention of Bribery Ordinance (Cap. 201) applies to—
    - (i) the Manager acting as such an agent; and
    - (ii) a person who offers an advantage (within the meaning of that Ordinance) to the Manager acting as such an agent.
- (7) A person dealing with a Manager of a licensee in good faith and for good consideration is not required to inquire whether the Manager—
- (a) is acting within the Manager's powers; or
  - (b) is complying with the primary objective with which the Manager must comply.
- (8) A person who, without reasonable excuse, fails to comply with a requirement under subsection (2)(b) 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 \$100,000 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.

**8ZP. Manager may delegate duty and power**

- (1) With the written approval of the Monetary Authority, a Manager may, subject to the terms and conditions that the Manager thinks fit to impose, delegate in writing to a person any or all of the duties and powers imposed or conferred under this Ordinance on the Manager.
- (2) Subsection (1) does not apply to any duties or powers that are not to be, or may not be, discharged or exercised by the Manager because of a notice given under section 8ZI(3).
- (3) A delegate of a Manager—
  - (a) must discharge the delegated duties as if the delegate were the Manager;
  - (b) may exercise the delegated powers as if the delegate were the Manager; and
  - (c) is presumed to be acting in accordance with the terms and conditions of the delegation in the absence of evidence to the contrary.

**8ZQ. Court of First Instance may approve certain resolutions**

- (1) The Court of First Instance may, while a direction is in force in respect of a licensee, approve or refuse to approve a resolution specified in subsection (2) on the application of—
  - (a) the Manager of the licensee;

- (b) not less than 100 members of the licensee; or
- (c) the members of the licensee holding not less than one-tenth of the issued shares in the licensee.
- (2) The resolution is—
  - (a) if the application is made under subsection (1)(a)—
    - (i) a resolution proposed to be moved at a general meeting of the members of the licensee but not so moved because a quorum is not present at the meeting; or
    - (ii) a resolution properly moved at a general meeting of the members of the licensee but not passed for whatever reason; or
  - (b) if the application is made under subsection (1)(b) or (c), a resolution properly moved at a general meeting of the members of the licensee but not passed for whatever reason.
- (3) In the hearing of the application, the Manager, the Monetary Authority or any member of the licensee is entitled to be heard, and may—
  - (a) call, examine and cross-examine witnesses; and
  - (b) support or oppose the application.
- (4) If the Court of First Instance approves a resolution under subsection (1), the resolution is regarded as passed and taking effect on that approval or at a later time the Court thinks fit to specify.
- (5) If a resolution mentioned in subsection (2)(a)(ii) or (b) is approved by the Court of First Instance under subsection (1), section 8ZN(3) does not apply to the resolution on and after the resolution is regarded as taking effect.

**8ZR. Court of First Instance may make certain orders**

- (1) The Court of First Instance may, on the application of the Manager of a licensee made while a direction is in force in respect of the licensee, make one or more of the orders specified in subsection (2) if it appears to the Court that—
  - (a) a person is about to do an act that may adversely affect or conflict with the discharge or exercise of the Manager's duties or powers in respect of any of the affairs, business or property of the licensee; or
  - (b) a person is doing, or has done, an act that adversely affects or conflicts with the discharge or exercise of the Manager's duties or powers in respect of any of the affairs, business or property of the licensee.
- (2) The orders are—
  - (a) for subsection (1)(a), an order to restrain the person from doing the act mentioned in that subsection;
  - (b) for subsection (1)(b)—
    - (i) an order to declare that, with effect on and after the date of the order, the act mentioned in that subsection is invalid; and
    - (ii) an order to declare that, with effect on and after the date of the order, any thing done in reliance on the act mentioned in that subsection is invalid;
  - (c) an order to direct a person to do or refrain from doing an act, for securing compliance with any other order made under this section;
  - (d) an ancillary order that the Court of First Instance considers necessary in consequence of the making of any other order under this section.

- (3) To avoid doubt, an order mentioned in subsection (2)(b) does not affect the validity of an act, or any thing done in reliance on the act, before the date of the order.
- (4) Subsection (1) does not prejudice—
  - (a) the operation of any other provisions of this Division; and
  - (b) any order that the Court of First Instance may make otherwise than under this section.
- (5) Before making an order under subsection (1), the Court of First Instance—
  - (a) may direct that a notice of the application under that subsection be given to those persons the Court thinks fit; and
  - (b) may direct that a notice of the application be published in the manner the Court thinks fit.
- (6) The Court of First Instance may, on its own initiative or on an application made to it for that purpose, by order suspend, reverse, vary or discharge an order made under this section.
- (7) Before making an order under subsection (1) or (6), the Court of First Instance must satisfy itself, in so far as it can reasonably do so, that the order would not unfairly prejudice any person.

**8ZS. Obstructing Manager in discharging duties, etc.**

- (1) A person must not wilfully obstruct, resist or delay a Manager of a licensee in the lawful discharge of the Manager's duties, or the lawful exercise of the Manager's powers, in respect of the licensee.
- (2) A person must not wilfully obstruct, resist or delay a person lawfully assisting the Manager in the lawful

discharge of the Manager's duties, or the lawful exercise of the Manager's powers, in respect of the licensee.

- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$2,000,000 and to imprisonment for 5 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 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.

#### **8ZT. Variations of directions**

- (1) The Monetary Authority may, by notice in writing, from time to time vary a direction in respect of—
  - (a) the affairs, business or property of a licensee that is to be managed by the Manager of the licensee; and
  - (b) the primary objective with which the Manager must comply.
- (2) The notice must—
  - (a) state the variation;
  - (b) be given to the licensee at its principal place of business in Hong Kong; and
  - (c) be given to the Manager.

- (3) Unless otherwise specified in the notice, the variation takes effect when the notice is given to the licensee and the Manager under subsection (2).
- (4) An act or thing done in reliance on a direction before a variation is made is not invalid only because of the variation.

#### **Subdivision 4—Revocation of Direction under Section 8ZG or 8ZH**

##### **8ZU. Revocation of direction under section 8ZG or 8ZH**

- (1) If it appears to the Monetary Authority that it is no longer necessary for a direction under section 8ZG or 8ZH to remain in force in respect of a licensee, the Monetary Authority must, after consulting the Financial Secretary, by notice in writing revoke the direction.
- (2) The notice must—
  - (a) state that the direction is revoked;
  - (b) be given to the licensee at its principal place of business in Hong Kong; and
  - (c) be given to—
    - (i) for a direction under section 8ZG, the Advisor of the licensee; or
    - (ii) for a direction under section 8ZH, the Manager of the licensee.
- (3) If the notice is given for revoking a direction under section 8ZH, the Monetary Authority must publish the notice—
  - (a) in the Gazette; and

- (b) in any other way that appears to the Monetary Authority to be expedient for notifying the public of the revocation.
- (4) Unless otherwise specified in the notice, a revocation takes effect when the notice is given to the licensee, and the Advisor or Manager, under subsection (2).
- (5) To avoid doubt, the revocation of a direction under section 8ZH does not revive any appointment that is regarded as having been revoked under section 8ZM(1).

#### **Subdivision 5—Advisor and Manager of Licensee**

##### **8ZV. Revocation of appointment of Advisor or Manager**

- (1) The Monetary Authority may at any time revoke the appointment of an Advisor or a Manager made under section 8ZG(1)(b) or 8ZH(1)(b).
- (2) If an Advisor or a Manager is appointed for the purposes of a direction under section 8ZG or 8ZH and the direction is subsequently revoked under section 8ZU, the appointment of the Advisor or Manager is regarded as revoked at the time when the revocation takes effect.

##### **8ZW. Resignation of Advisor or Manager**

- (1) An Advisor or a Manager may, at any time by notice in writing to the Monetary Authority, resign from office.
- (2) A resignation under subsection (1) takes effect when it is accepted by the Monetary Authority.

##### **8ZX. Appointment to fill vacancy in office of Advisor or Manager**

- (1) This section applies if a vacancy arises in the office of an Advisor or a Manager because of—

- (a) the operation of section 8ZV or 8ZW; or
- (b) the death of the holder of the office.
- (2) The Monetary Authority must, as soon as practicable after a vacancy arises—
  - (a) appoint a person to fill the vacancy; and
  - (b) give a written notice to the licensee at its principal place of business in Hong Kong specifying the name and address of the person so appointed.

##### **8ZY. Advisor or Manager may engage technical or professional person**

- (1) An Advisor or a Manager may engage a technical or professional person as they think fit to assist in the discharge or exercise of their duties or powers, in respect of the affairs, business or property of the licensee.
- (2) The person that the Advisor or Manager may engage includes a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority.
- (3) The power under subsection (1) may only be exercised—
  - (a) with the written approval of the Monetary Authority; and
  - (b) in accordance with the conditions as may be specified by the Monetary Authority in that approval.

##### **8ZZ. Remuneration and expenses of Advisor or Manager**

- (1) The Monetary Authority may, after consulting the Financial Secretary, at any time determine the remuneration or expenses to be paid by a licensee to—

- (a) the Advisor of the licensee or a person engaged by the Advisor under section 8ZY; or
  - (b) the Manager of the licensee or a person engaged by the Manager under section 8ZY.
- (2) The power under subsection (1) may be exercised whether or not—
  - (a) the appointment of the Advisor or Manager, or the person engaged under section 8ZY, has been revoked or has otherwise been terminated; or
  - (b) the direction under section 8ZG or 8ZH for the purposes of which the Advisor or Manager was appointed has been revoked.
- (3) The Monetary Authority must, as soon as practicable after making a determination under subsection (1)(a), give a copy of the determination to the licensee at its principal place of business in Hong Kong.
- (4) The Monetary Authority must—
  - (a) as soon as practicable after making a determination under subsection (1)(b), publish in the Gazette a notice stating the name of the licensee and the fact that the determination has been made; and
  - (b) if requested by a member of the licensee, give a copy of the determination to the member.
- (5) The Monetary Authority may, after consulting the Financial Secretary, use the Exchange Fund established under section 3 of the Exchange Fund Ordinance (Cap. 66) to pay the whole or part of the remuneration or expenses payable under a determination under subsection (1).

## Division 7—Ownership and Management of Licensee

### Subdivision 1—Preliminary

#### 8ZZA. Interpretation of Division 7

In this Division—

*associate* (相聯者), in relation to a person (*relevant person*) entitled to exercise, or control the exercise of, the voting rights in relation to, or holding shares in, a corporation, means any other person in respect of whom—

- (a) the relevant person has an agreement or arrangement (whether oral or in writing, express or implied) with respect to the acquisition, holding or disposal of shares or other interests in that corporation; or
- (b) the relevant person has an agreement or arrangement (whether oral or in writing, express or implied) under which the relevant person and that other person act together in exercising their voting rights in relation to the corporation;

*indirect controller* (間接控權人), in relation to a corporation—

- (a) means a person in accordance with whose directions or instructions (excluding advice given in a professional capacity) the directors or a majority of the directors of the corporation, or any other corporation of which the corporation is a subsidiary, are accustomed to act; but
- (b) does not include an Advisor or a Manager of the corporation;



**majority shareholder controller** (大股東控權人), in relation to a corporation, means a person who, either alone or jointly with an associate, is entitled to exercise, or control the exercise of, more than 50% of the voting rights at a general meeting of—

- (a) the corporation; or
- (b) any other corporation of which the corporation is a subsidiary;

**minority shareholder controller** (小股東控權人), in relation to a corporation, means a person who, either alone or jointly with an associate, is entitled to exercise, or control the exercise of, at least 10% but not more than 50% of the voting rights at a general meeting of—

- (a) the corporation; or
- (b) any other corporation of which the corporation is a subsidiary.

#### **8ZZB. Application of Division 7**

This Division does not apply to a licensee that is a bank.

#### **Subdivision 2—Sale and Disposal of Business etc. of Licensee**

#### **8ZZC. Sale and disposal of business require approval**

- (1) Except with the prior written approval of the Monetary Authority, a licensee must not make an arrangement, or enter into an agreement, for the sale or disposal of the whole or part of its business.
- (2) A licensee who makes or enters into an arrangement or agreement mentioned in subsection (1) must, as soon as practicable after doing so—

- (a) notify the Monetary Authority of the arrangement or agreement by written notice signed by a director of the licensee; and
  - (b) provide the Monetary Authority with any information on the arrangement or agreement that the Monetary Authority may require.
- (3) Subsection (2) applies irrespective of whether the arrangement or agreement is made or entered into with the approval mentioned in subsection (1).
  - (4) A licensee who 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; or
    - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.
  - (5) A licensee who fails to comply with subsection (2) commits an offence and is liable—
    - (a) on conviction on indictment or on summary conviction, 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.

#### **8ZZD. Reconstruction of capital**

- (1) A licensee who makes a reconstruction of its capital must, as soon as practicable after doing so—
  - (a) notify the Monetary Authority of the reconstruction by written notice signed by a director of the licensee; and

- (b) provide the Monetary Authority with any information on the reconstruction that the Monetary Authority may require.
- (2) A licensee who fails to comply with subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment or on summary conviction, 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.

**Subdivision 3—Majority Shareholder Controller,  
Minority Shareholder Controller and Indirect Controller  
of Licensee**

**8ZZE. Interpretation of Subdivision 3**

- (1) In this Subdivision—

*consent notice* (同意通知) means a consent notice given under section 8ZZF(2)(a) or 8ZZG(3)(a);

*controller* (控權人) means—

- (a) a majority shareholder controller;
- (b) a minority shareholder controller; or
- (c) an indirect controller;

*objection notice* (反對通知) means an objection notice given under section 8ZZF(2)(b), 8ZZG(3)(b) or 8ZZJ(2).

- (2) Subject to subsection (3), a reference in this Subdivision to a specified notice period for the giving of a consent notice or an objection notice to a person is the aggregate of the following—
  - (a) a period of 3 months; and

- (b) if the person is required under section 8ZZF(3) or 8ZZG(4) to provide any information, the period beginning on the date on which the requirement is made and ending on the date on which the Monetary Authority receives the information.
- (3) If the person is given a preliminary notice under section 8ZZH(3) or 8ZZI(3), the specified notice period does not expire, if it would otherwise do so, until 14 days after the expiry of the period within which the person may make representations under that section.

**8ZZF. Becoming controller of licensee**

- (1) A person who is to become a controller of a licensee must give a written notice to the Monetary Authority stating that the person proposes to become such a controller.
- (2) After receiving from a person a notice under subsection (1), the Monetary Authority may, within the specified notice period beginning from the receipt of the notice (*notice period*)—
  - (a) consent to the person becoming such a controller by giving the person a consent notice, whether or not subject to conditions attached under section 8ZZH; or
  - (b) object to the person becoming such a controller by giving the person an objection notice.
- (3) The Monetary Authority may require the person—
  - (a) to provide the Monetary Authority with any information that the Monetary Authority requires for deciding whether to consent, or object, to the person becoming such a controller; and

- (b) to provide the information within the period, and in the manner, required by the Monetary Authority.
- (4) The person may become such a controller only in the circumstances described below—
  - (a) if a consent notice is given to the person within the notice period, the person becomes such a controller within 12 months from the receipt of the consent notice;
  - (b) if an objection notice is given to the person within the notice period—
    - (i) the decision to give the objection notice is referred to the Tribunal for review under section 35(1) and the review is successful; and
    - (ii) the person becomes such a controller within 12 months from the date on which the Tribunal's determination on the decision is made; or
  - (c) if neither a consent notice nor an objection notice is given within the notice period, the person becomes such a controller within 12 months from the expiry of the notice period.
- (5) A person who contravenes subsection (4) 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.
- (6) It is a defence for a person charged with an offence under subsection (5) to prove that the person did not know that the acts or circumstances because of which the

person became such a controller were such as to have that effect.

**8ZZG. Person who has become controller in circumstances other than those described in section 8ZZF(4)**

- (1) This section applies to a person who—
  - (a) becomes a controller in circumstances other than those described in section 8ZZF(4);
  - (b) did not know that the acts or circumstances because of which the person became such a controller were such as to have that effect; and
  - (c) subsequently becomes aware of the fact that the person has become such a controller.
- (2) The person must, within 14 days after the date on which the person becomes aware of that fact, give a written notice to the Monetary Authority stating that the person has become such a controller.
- (3) After receiving from a person a notice under subsection (2), the Monetary Authority may, within the specified notice period beginning from the day on which the Monetary Authority becomes aware of the fact that the person has become such a controller—
  - (a) consent to the person being such a controller by giving the person a consent notice, whether or not subject to conditions attached under section 8ZZH; or
  - (b) object to the person being such a controller by giving the person an objection notice.
- (4) The Monetary Authority may require the person—
  - (a) to provide the Monetary Authority with any information that the Monetary Authority requires

- for deciding whether to consent, or object, to the person being such a controller; and
- (b) to provide the information within the period, and in the manner, required by the Monetary Authority.
- (5) A person who fails to comply with subsection (2) 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.

**8ZZH. Supplementary provisions relating to consent notice**

- (1) The Monetary Authority may—
- (a) attach to a consent notice conditions that the Monetary Authority considers appropriate;
- (b) attach to the notice any new conditions that the Monetary Authority considers appropriate, including by amending the conditions already attached; or
- (c) cancel a condition so attached.
- (2) Without limiting subsection (1), the Monetary Authority may attach to a consent notice conditions that the

- Monetary Authority considers appropriate to safeguard the interests of the user or potential user of any stored value facility issued, or the issue of which is facilitated, under the licence of the licensee.
- (3) If the Monetary Authority intends to attach conditions to a consent notice, the Monetary Authority must—
- (a) give a written notice (*preliminary notice*) to the person to whom the consent notice is or is to be given stating—
- (i) the intention;
- (ii) the conditions to be attached; and
- (iii) the grounds for attaching the conditions; and
- (b) state in the preliminary notice that the person may, within 1 month from the receipt of the preliminary notice, make oral or written representations to the Monetary Authority as to why the grounds for attaching the conditions have not been made out.
- (4) The Monetary Authority must, before attaching the conditions, take into consideration any representation made in the manner mentioned in subsection (3)(b).
- (5) The Monetary Authority may attach a condition to a consent notice to a person only if—
- (a) the condition is stated in a preliminary notice to the person under subsection (3); or
- (b) the person consents to the condition to be so attached.
- (6) The Monetary Authority must, as soon as practicable after making a decision under this section, give a written notice of the decision to the person.
- (7) A written notice given under subsection (6) must state—

- (a) for a decision to attach conditions—
    - (i) the conditions;
    - (ii) the grounds for attaching the conditions; and
    - (iii) the date on which the conditions are to take effect or, if they are to take effect on the occurrence of an event, this fact and the event; or
  - (b) for a decision to cancel a condition, the decision.
- (8) A person who contravenes a condition attached under this section to a consent notice given to the person commits an offence and is liable—
- (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 3 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.

**8ZZI. Supplementary provisions relating to objection notice under section 8ZZF(2)(b) or 8ZZG(3)(b)**

- (1) This section applies to an objection notice to be given to a person under section 8ZZF(2)(b) or 8ZZG(3)(b).
- (2) The Monetary Authority may give an objection notice to the person only if the Monetary Authority considers that

any of the following conditions (*specified conditions*) is not satisfied—

- (a) that the person is a fit and proper person to become or to be a controller of the licensee concerned;
- (b) that the interests of the user or potential user of any stored value facility issued, or the issue of which is facilitated, under the licence of the licensee would not be, or are not, in any manner threatened by the person becoming or being such a controller;
- (c) if the person is not presently such a controller, having regard to the person's likely influence on the licensee if the person were to become such a controller—
  - (i) (if the Monetary Authority is of the opinion that the licensee is currently carrying on its business prudently) that the licensee is likely to continue so carrying on its business; or
  - (ii) (if the Monetary Authority is of any other opinion) that the person is likely to take adequate remedial action to ensure that the licensee will carry on its business prudently;
- (d) if the person is presently such a controller, having regard to the person's influence on the licensee as such a controller—
  - (i) (if the Monetary Authority is of the opinion that the licensee was carrying on its business prudently before the person became such a controller) that the licensee is, and is likely to continue, so carrying on its business; or
  - (ii) (if the Monetary Authority is of any other opinion) that the person is taking, or is likely

- to take, adequate remedial action to ensure that the licensee will carry on its business prudently.
- (3) If the Monetary Authority intends to give an objection notice to a person, the Monetary Authority must—
    - (a) give a written notice (*preliminary notice*) to the person stating—
      - (i) the intention; and
      - (ii) the specified condition that the Monetary Authority considers is not satisfied; and
    - (b) state in the preliminary notice that the person may, within 1 month from the receipt of the preliminary notice, make oral or written representations to the Monetary Authority as to why an objection notice should not be given.
  - (4) The Monetary Authority must, before giving an objection notice, take into consideration any representation made in the manner mentioned in subsection (3)(b).
  - (5) On giving an objection notice, the Monetary Authority must state in the notice the specified condition that the Monetary Authority considers is not satisfied.
  - (6) For the purposes of subsection (5), the Monetary Authority may only state a specified condition that is stated in a preliminary notice under subsection (3)(a).
  - (7) The Monetary Authority is not obliged to disclose to any person the particulars of a matter that the Monetary Authority has considered in giving an objection notice.

**8ZZJ. Objection to existing controller**

- (1) This section applies to a person who—

- (a) has become a controller of a licensee in the circumstances described in section 8ZZF(4); or
  - (b) has become a controller of a licensee in circumstances other than those described in that section but the Monetary Authority—
    - (i) has given the person a consent notice under section 8ZZG(3)(a); or
    - (ii) has not given the person an objection notice under section 8ZZG(3)(b).
- (2) The Monetary Authority may object to the person being such a controller by giving the person an objection notice if the Monetary Authority considers that any of the following conditions (*specified conditions*) is satisfied—
  - (a) that the person is not or is no longer a fit and proper person to be such a controller;
  - (b) that the interests of the user or potential user of any stored value facility issued, or the issue of which is facilitated, under the licence of the licensee may be in any manner threatened by the person being such a controller;
  - (c) if applicable, that the person has contravened a condition attached to a consent notice under section 8ZZH.
- (3) If the Monetary Authority intends to give an objection notice to a person, the Monetary Authority must—
  - (a) give a written notice (*preliminary notice*) to the person stating—
    - (i) the intention; and

- (ii) the specified condition that the Monetary Authority considers is satisfied; and
- (b) state in the preliminary notice that the person may, within 1 month from the receipt of the preliminary notice, make oral or written representations to the Monetary Authority as to why an objection notice should not be given.
- (4) The Monetary Authority must, before giving an objection notice, take into consideration any representation made in the manner mentioned in subsection (3)(b).
- (5) On giving an objection notice to the person, the Monetary Authority must state in the notice the specified condition that the Monetary Authority considers is satisfied.
- (6) For the purposes of subsection (5), the Monetary Authority may only state a specified condition that is stated in a preliminary notice under subsection (3)(a).
- (7) The Monetary Authority is not obliged to disclose to any person the particulars of a matter that the Monetary Authority has considered in giving an objection notice.

**8ZZK. Prohibition regarding indirect controller**

- (1) A person is a *prohibited person* (受禁人) in respect of a licensee for the purposes of this section if the person has been given an objection notice objecting to the person's becoming or being an indirect controller of the licensee, and either—
  - (a) the period within which, under section 35(2)(b), the person may refer the Monetary Authority's decision of giving the objection notice to the

- Tribunal for review has expired without such a reference having been made; or
- (b) the person referred the decision to the Tribunal for review under section 35(1) but—
  - (i) the review was unsuccessful; or
  - (ii) the reference was abandoned or withdrawn.
- (2) A person who is a prohibited person in respect of a licensee—
  - (a) must not act or continue to act as an indirect controller of the licensee; and
  - (b) must not give, or must cease to give, as such a controller any directions or instructions to the directors of—
    - (i) the licensee; or
    - (ii) another corporation of which the licensee is a subsidiary.
- (3) Subsection (4) applies if—
  - (a) a prohibited person in respect of a licensee gives (whether directly or indirectly) a director of the licensee any directions or instructions that are, or might reasonably be construed as being, prohibited from being so given under subsection (2)(b); and
  - (b) the director knows, or ought reasonably to know, that the person is a prohibited person in respect of the licensee.
- (4) The director must, on being given the directions or instructions, notify the Monetary Authority of—
  - (a) the directions or instructions; and
  - (b) the circumstances in which the directions or instructions are given to the director.

- (5) A person who contravenes subsection (2) commits an offence and is liable—
- (a) on conviction on indictment—
    - (i) to a fine of \$1,000,000 and to imprisonment for 5 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) A director who, without reasonable excuse, fails to comply with subsection (4) 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.

**8ZZL. Monetary Authority may require information from controller**

- (1) The Monetary Authority may require a controller of a licensee—
  - (a) to provide the Monetary Authority with any information that the Monetary Authority requires for performing the Monetary Authority's functions under this Ordinance; and
  - (b) to provide the information within the period, and in the manner, required by the Monetary Authority.
- (2) If a licensee becomes aware that a person has become, or has ceased to be, a controller of the licensee, the licensee must, within 14 days after the date on which the licensee becomes aware of that fact, notify the Monetary Authority of that fact in writing.
- (3) A controller who, without reasonable excuse, fails to comply with a requirement under 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 \$25,000 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 licensee who fails to comply with subsection (2) 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.

#### Subdivision 4—Restrictions Regarding Shares in Licensee

##### 8ZZM. Interpretation of Subdivision 4

In this Subdivision—

*controller* (控權人) means—

- (a) a majority shareholder controller; or
- (b) a minority shareholder controller;

*specified shares* (指明股份), in relation to a person who is a controller of a licensee—

- (a) if the person became such a controller by acquiring shares in the licensee, means the shares so acquired—
  - (i) that are held by the person or any of the person's associates; and

- (ii) that were not so held immediately before the person became such a controller; or
- (b) if the person became such a controller by the acquisition by the person or any of the person's associates of shares in another corporation, means the shares so acquired—
  - (i) that are held by the person or any of the person's associates; and
  - (ii) that were not so held immediately before the person became such a controller.

##### 8ZZN. Monetary Authority may impose restrictions regarding specified shares in licensee, etc.

- (1) This section applies to a controller of a licensee who—
  - (a) has become such a controller in circumstances other than those described in section 8ZZF(4);
  - (b) is a person to whom section 8ZZG applies but has not given a written notice to the Monetary Authority under section 8ZZG(2);
  - (c) has been given an objection notice under section 8ZZG(3)(b) and—
    - (i) the period within which, under section 35(2)(b), the person may refer the Monetary Authority's decision of giving the objection notice to the Tribunal for review has expired without such a reference having been made; or
    - (ii) the person referred the decision to the Tribunal for review under section 35(1) but the review was unsuccessful, or the reference was abandoned or withdrawn;

- (d) has been convicted of an offence under section 8ZZF(5); or
- (e) has been given an objection notice under section 8ZZJ(2) and continues to be a controller of the licensee after—
  - (i) the period within which, under section 35(2)(b), the person may refer the Monetary Authority's decision to the Tribunal for review has expired without such a reference having been made; or
  - (ii) the person referred the decision to the Tribunal for review under section 35(1) but the review was unsuccessful, or the reference was abandoned or withdrawn.
- (2) The Monetary Authority may, by notice in writing to the person mentioned in subsection (3), direct that the specified shares of the controller be subject to one or more of the following restrictions until further notice—
  - (a) any transfer of those shares or, if those shares are unissued shares, any transfer of the right to be issued with those shares, and any issue of those shares, are void;
  - (b) no voting rights carried by those shares are exercisable;
  - (c) no further shares are to be issued in right of those shares or pursuant to any offer made to the holder of those shares;
  - (d) except in a liquidation, no payment is to be made of any sums due from the licensee, or other corporation to which the shares relate, on the shares, whether in respect of capital or otherwise.

- (3) For the purposes of subsection (2), the notice is to be given to—
  - (a) the licensee or the other corporation to which the specified shares concerned relate; and
  - (b) if the notice relates to specified shares held by an associate of the controller, that associate.

**8ZZO. Monetary Authority may revoke notice given to certain controller under section 8ZZN(2)**

- (1) This section applies if a notice (*restriction notice*) has been given under section 8ZZN(2) in respect of the specified shares of a controller of a licensee mentioned in section 8ZZN(1)(b).
- (2) The controller may, within 14 days after the restriction notice is given, give a written notice mentioned in section 8ZZG(2) (*section 8ZZG(2) notice*) to the Monetary Authority as if it were a notice required to be given under that section.
- (3) If a section 8ZZG(2) notice is given, this Division applies to the notice as if it were a notice given under section 8ZZG(2).
- (4) The restriction notice is revoked if, after the controller gives a section 8ZZG(2) notice—
  - (a) the Monetary Authority does not give the person an objection notice under section 8ZZG(3)(b) within the permitted notice period; or
  - (b) the Monetary Authority gives the person such an objection notice within the permitted notice period but the person refers the decision to the Tribunal for review under section 35(1) and the review is successful.

- (5) If a restriction notice is revoked under subsection (4), the Monetary Authority must immediately give a written notice of the revocation to—
- (a) the licensee or the other corporation to which the specified shares concerned relate; and
  - (b) if the restriction notice relates to specified shares held by an associate of the controller, that associate.
- (6) In this section—
- permitted notice period* (准發通知期), in relation to the giving of an objection notice, means the period within which the Monetary Authority may give an objection notice under section 8ZZG(3)(b).

**8ZZP. Effect of restriction under section 8ZZN**

- (1) If any specified shares are subject to a restriction mentioned in section 8ZZN(2)(a), the following agreements are void—
- (a) an agreement to transfer those shares;
  - (b) if those shares are unissued shares, an agreement to transfer the right to be issued with those shares.
- (2) If any specified shares are subject to a restriction mentioned in section 8ZZN(2)(c) or (d), the following agreements are void—
- (a) an agreement to transfer any right to be issued with other shares in right of those shares;
  - (b) an agreement to receive any payment on those shares (except in a liquidation).
- (3) The operation of section 8ZZN(2)(b) does not of itself cause any person to contravene section 8ZZF or 8ZZG.

**8ZZQ. Offences regarding restriction under section 8ZZN(2)**

- (1) A person must not—
- (a) exercise or propose to exercise a right to dispose of any shares, or of any right to be issued with any shares, knowing that to do so contravenes a restriction mentioned in section 8ZZN(2);
  - (b) vote in respect of any shares as holder or proxy knowing that to do so contravenes the restriction;
  - (c) appoint a proxy in respect of any shares knowing that to vote in respect of those shares would contravene the restriction;
  - (d) being the holder of any shares, fail to give notice that those shares are subject to the restriction, to any other person whom the person—
    - (i) does not know to be aware of the fact; but
    - (ii) does know to be entitled (apart from the restriction) to vote in respect of those shares whether as holder or proxy; or
  - (e) being the holder of any shares, or being entitled to any right to be issued with other shares in right of them, or any right to receive any payment on them (except in a liquidation), enter into any agreement that is void under section 8ZZP.
- (2) A person who 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; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.
- (3) Subsection (4) applies if—

- (a) shares in a licensee or any other corporation are issued in contravention of the restriction under section 8ZZN(2)(c); or
  - (b) payments are made by a licensee or any other corporation in contravention of the restriction under section 8ZZN(2)(d).
- (4) A chief executive, director or manager of the licensee or the corporation (as the case may be) who knowingly and wilfully permits the issue of the shares or the making of such a payment commits an offence and 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.

**8ZZR. Monetary Authority may apply to Court of First Instance for order regarding sale of specified shares**

- (1) Subject to subsection (2), the Monetary Authority may, on the Monetary Authority's own initiative or on the request of a person under section 8ZZS(1), apply to the Court of First Instance for either or both of the following orders—
- (a) an order for the sale of the specified shares of a controller to whom section 8ZZN applies;
  - (b) if the shares are subject to any restriction under section 8ZZN(2), an order that those shares cease to be subject to that restriction.
- (2) If the controller is a controller mentioned in section 8ZZN(1)(b), the Monetary Authority must not make an application under subsection (1) unless—

- (a) the application relates to shares that are subject to a restriction under section 8ZZN(2); and
  - (b) the person to whom the notice under section 8ZZN(2) is given has not, within 14 days after the notice is given, given a written notice mentioned in section 8ZZO(2) to the Monetary Authority.
- (3) If the controller mentioned in subsection (2) becomes one that is mentioned in section 8ZZN(1)(c), that subsection does not prevent the Monetary Authority from making an application in respect of the specified shares of the controller by the operation of that section.
- (4) If the Court of First Instance makes an order mentioned in subsection (1), it may, on the application of the Monetary Authority, at any time make a further order relating to the sale or transfer of the shares as it thinks fit.
- (5) Without limiting subsection (4), a further order may be an order that the holder of the shares must—
- (a) cause those shares to be transferred to a nominee of the Monetary Authority specified in the order; and
  - (b) cause those shares to be so transferred within the period specified in the order.
- (6) If any specified shares are sold under an order made under this section, then unless the Court of First Instance otherwise specifies, the proceeds of the sale, less the costs of the sale, are to be paid into court for the benefit of the persons beneficially interested in them.
- (7) A person mentioned in subsection (6) may apply to the Court of First Instance for an order that the whole or part of the amount paid into court under that subsection be paid to the person.

**8ZZS. Requesting Monetary Authority to apply to Court of First Instance for order regarding sale of specified shares**

- (1) If any specified shares are subject to a restriction under section 8ZZN(2), a person affected by the restriction may request the Monetary Authority to make an application to the Court of First Instance under section 8ZZR(1).
- (2) If a request is made under subsection (1), the Monetary Authority must, within 1 month after receiving the request—
  - (a) comply with the request; or
  - (b) give a written notice to the person making the request stating that—
    - (i) the Monetary Authority is prevented by section 8ZZR(2) from making the application; or
    - (ii) the Monetary Authority does not propose to make the application.

**8ZZT. Person affected by restriction under section 8ZZN(2) may apply to Court of First Instance for order**

- (1) This section applies if—
  - (a) a person has made a request to the Monetary Authority under section 8ZZS(1) in respect of specified shares that are subject to a restriction under section 8ZZN(2); and
  - (b) either—
    - (i) the person has received a notice under section 8ZZS(2)(b)(ii) in respect of the request; or
    - (ii) the period mentioned in section 8ZZS(2) has expired but the Monetary Authority has

- neither complied with the request nor given the person a notice under section 8ZZS(2)(b) in respect of the request.
- (2) The person may apply to the Court of First Instance for either or both of the following orders—
  - (a) an order for the sale of the specified shares to which the request relates;
  - (b) an order for the shares to be ceased to be subject to any restriction under section 8ZZN(2).
- (3) If the Court of First Instance makes an order mentioned in subsection (2), it may, on the application of the Monetary Authority, at any time make a further order relating to the sale or transfer of the shares as it thinks fit.
- (4) Without limiting subsection (3), a further order may be an order that the holder of the shares must—
  - (a) cause those shares to be transferred to a nominee of the Monetary Authority specified in the order; and
  - (b) cause those shares to be so transferred within the period specified in the order.
- (5) If any specified shares are sold under an order made under this section, then unless the Court of First Instance otherwise specifies, the proceeds of the sale, less the costs of the sale, are to be paid into court for the benefit of the persons beneficially interested in them.
- (6) A person mentioned in subsection (5) may apply to the Court of First Instance for an order that the whole or part of the amount paid into court under that subsection be paid to the person.

**Subdivision 5—Officers and Employees of Licensee****8ZZU. Appointment of chief executive of licensee**

- (1) Subject to sections 8ZM(1) and 8ZO(3), a licensee must appoint a person as the chief executive, and at least one person as an alternate chief executive, of the licensee.
- (2) Only an individual who is ordinarily resident in Hong Kong may be appointed under subsection (1).
- (3) If the person appointed as the chief executive of a licensee is precluded by illness, absence from Hong Kong or any other cause from performing the functions as the chief executive, an alternate chief executive of the licensee is to act as the chief executive of the licensee.
- (4) A licensee who contravenes subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment or on summary conviction, 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.

**8ZZV. Consent required for becoming chief executive or director**

- (1) A person must not become a chief executive or director of a licensee except with the Monetary Authority's consent.
- (2) If a person has become a chief executive or director of a licensee without the Monetary Authority's consent, the person must not act, or continue to act as such a chief executive or director.
- (3) Despite subsections (1) and (2), if a person has been given the Monetary Authority's consent to become a

chief executive of a licensee and is such a chief executive, the person may—

- (a) become a director of the licensee; and
  - (b) act as such a director without the Monetary Authority's consent.
- (4) Subsections (1) and (2) do not apply if—
- (a) the person is appointed as a chief executive or director of a licensee under section 8ZO(3)(a); or
  - (b) the person is appointed to serve as such a chief executive or director immediately on the expiry of a previous term by the person as such a chief executive or director.
- (5) A person who contravenes subsection (1) or (2) 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 this section—

**consent** (同意) means a written consent given by the Monetary Authority under section 8ZZW.

**8ZZW. Monetary Authority may give consent to become chief executive or director of licensee**

- (1) The Monetary Authority must refuse to give a consent to a person for the purposes of section 8ZZV unless the Monetary Authority is satisfied that the person is a fit and proper person to be a chief executive or director of the licensee concerned.
- (2) The Monetary Authority may require the person—
  - (a) to provide the Monetary Authority with any information that the Monetary Authority requires for deciding whether to give the consent; and
  - (b) to provide the information within the period, and in the manner, required by the Monetary Authority.
- (3) The Monetary Authority may—
  - (a) attach to the consent conditions, or any new conditions (including by amending the conditions already attached), that the Monetary Authority considers appropriate for securing, or further securing, that the person will continue to be a fit and proper person to be a chief executive or director of the licensee; or
  - (b) cancel a condition so attached.
- (4) The Monetary Authority may withdraw the consent if the Monetary Authority ceases to be satisfied that the person is a fit and proper person to be a chief executive or director of the licensee.
- (5) If the Monetary Authority intends to attach conditions to the consent or withdraw the consent, the Monetary Authority must—
  - (a) give a written notice to the person and the licensee stating—

- (i) the intention;
  - (ii) if applicable, the conditions to be attached; and
  - (iii) the grounds for doing so;
- (b) state in the notice that the person may, within 7 days after the giving of the notice, make oral or written representations to the Monetary Authority as to why the grounds for attaching the conditions or withdrawing the consent have not been made out; and
- (c) attach to the notice a copy of this section and section 8ZZV.
- (6) The Monetary Authority must, before making the decision, take into consideration any representation made in the manner mentioned in subsection (5)(b).
- (7) The Monetary Authority must, as soon as practicable after making a decision under this section, give a written notice of the decision to the person and the licensee.
- (8) A written notice given under subsection (7) must state—
  - (a) for a decision to give the consent, the decision;
  - (b) for a decision to refuse to give the consent, the decision and the grounds for the decision;
  - (c) for a decision to withdraw the consent, the decision and the grounds for the decision;
  - (d) for a decision to attach conditions—
    - (i) the conditions;
    - (ii) the grounds for attaching the conditions; and
    - (iii) the date on which the conditions are to take effect or, if they are to take effect on the

- occurrence of an event, this fact and the event; or
- (e) for a decision to cancel a condition, the decision.
- (9) A person who contravenes a condition attached under subsection (3) to a consent given to the person 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.

**8ZZX. Monetary Authority may require information from chief executive or director of licensee**

- (1) The Monetary Authority may require a chief executive or director of a licensee—
- (a) to provide the Monetary Authority with any information that the Monetary Authority requires for performing the Monetary Authority's functions under this Ordinance; and
- (b) to provide the information within the period, and in the manner, required by the Monetary Authority.

- (2) If a licensee becomes aware that a person has become, or has ceased to be, a chief executive or director of the licensee, the licensee must, within 14 days after the date on which the licensee becomes aware of that fact, notify the Monetary Authority of that fact in writing.
- (3) A licensee is not required under subsection (2) to give a notification in respect of a person if—
- (a) the person is appointed as a chief executive or director of the licensee under section 8ZO(3)(a);
- (b) the person's appointment as a chief executive or director of the licensee is regarded as revoked under section 8ZM(1)(a); or
- (c) the person's appointment as a chief executive or director of the licensee is revoked under section 8ZO(3)(d).
- (4) A person who, without reasonable excuse, fails to comply with a requirement under 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 \$25,000 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.



- (5) A licensee who fails to comply with subsection (2) 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.

**8ZZY. Appointment of manager**

- (1) This section applies if any of the following events occurs—
- (a) a person becomes a manager of a licensee;
  - (b) a person ceases to be a manager of a licensee;
  - (c) a person, in the capacity as a manager of a licensee, becomes principally responsible (either alone or jointly with others) for the conduct of any of the licensee's affairs or business specified in Schedule 6 in addition to, or in place of, any other responsibility the person has or had in that capacity.
- (2) The licensee must, within 14 days after the date on which any of the events occurs, give a written notice to the Monetary Authority and the person mentioned in subsection (1)(a), (b) or (c) stating—

- (a) the date on which the event occurs;
  - (b) the particulars of the licensee's affairs or business for which the person becomes or ceases to be responsible as a manager; and
  - (c) (for a written notice to the Monetary Authority) any other particulars that the Monetary Authority requires for performing the Monetary Authority's functions under this Ordinance.
- (3) Subsection (2) does not apply if the manager is appointed on a temporary basis.
- (4) However, if the appointment of the manager subsequently ceases to be on a temporary basis, subsection (2) applies in respect of the manager on and after the date of the cessation as if it were the date on which the event under that subsection occurs.
- (5) A licensee who fails to comply with subsection (2) 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.

**8ZZZ. Consent required for certain persons to become employee of licensee**

- (1) Except with the Monetary Authority's written consent, a person must not become an employee of a licensee if the person—
  - (a) is bankrupt;
  - (b) has entered into a composition or scheme of arrangement with the person's creditors;
  - (c) has entered into a voluntary arrangement as defined by section 2 of the Bankruptcy Ordinance (Cap. 6) with the person's creditors; or
  - (d) has been convicted in any place of an offence involving fraud or dishonesty.
- (2) Except with the Monetary Authority's written consent, a person who is or was a chief executive, director or manager of a licensee (*first licensee*) must not become an employee of another licensee if the person knows, or ought reasonably to know, that—
  - (a) the first licensee is being, or has been, wound up or otherwise dissolved; or
  - (b) the licence of the first licensee has been revoked.
- (3) A person who has become an employee of a licensee in contravention of subsection (1) or (2) must cease to act as such an employee.
- (4) If the Monetary Authority refuses to give a written consent to a person seeking it for the purposes of subsection (1) or (2), the Monetary Authority must, as soon as practicable, give a written notice to the person stating—
  - (a) the decision; and

(b) the grounds for the decision.

- (5) If the Monetary Authority has given a written consent to a person seeking it for the purposes of subsection (2), that subsection is not again applicable to the person in respect of the first licensee concerned.
- (6) A person who contravenes subsection (1), (2) or (3) commits an offence and is liable—
  - (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.

**8ZZZA. Consent required for certain persons to continue to act as employee of licensee**

- (1) Except with the Monetary Authority's written consent, a person who is an employee of a licensee must cease to act as such if the person—
  - (a) becomes bankrupt;
  - (b) enters into a composition or scheme of arrangement with the person's creditors;
  - (c) enters into a voluntary arrangement as defined by section 2 of the Bankruptcy Ordinance (Cap. 6) with the person's creditors; or
  - (d) has been convicted in any place of an offence involving fraud or dishonesty.
- (2) Subsection (3) applies to a person who—
  - (a) is a chief executive, director or manager of a licensee (*first licensee*); and
  - (b) knows, or ought reasonably to know, that—

- (i) the first licensee is being, or has been, wound up or otherwise dissolved; or
  - (ii) the licence of the first licensee has been revoked.
- (3) The person must not continue to act as an employee of another licensee unless—
  - (a) the person has notified the Monetary Authority of the employment together with a request to the Monetary Authority for a written consent to act as such an employee; and
  - (b) the Monetary Authority has not refused to give the written consent.
- (4) If the Monetary Authority refuses to give a written consent to a person seeking it for the purposes of subsection (1) or (3), the Monetary Authority must, as soon as practicable, give a written notice to the person stating—
  - (a) the decision; and
  - (b) the grounds for the decision.
- (5) If the Monetary Authority has given a written consent to a person seeking it for the purposes of subsection (3), that subsection is not again applicable to the person in respect of the first licensee concerned.
- (6) A person who contravenes subsection (1) or (3) commits an offence and is liable—
  - (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.

### Division 8—Exemption

#### **8ZZZB. Stored value facilities exempt from Divisions 2, 3, 4, 5, 6, 7 and 9 of this Part**

- (1) Subject to section 8ZZZC, a stored value facility specified in Schedule 8 for the purposes of this section is exempt from Divisions 2, 3, 4, 5, 6, 7 and 9 of this Part.
- (2) The Monetary Authority may require the issuer or facilitator of a stored value facility specified in Schedule 8 to provide the Monetary Authority with any information that the Monetary Authority considers necessary for satisfying that—
  - (a) the risks posed by the facility to the user or potential user of the facility are immaterial; or
  - (b) the risks posed by the facility to the payment or financial system of Hong Kong are immaterial.
- (3) The issuer or facilitator must provide the information within the period, and in the manner, required by the Monetary Authority.
- (4) A person who, without reasonable excuse, fails to comply with subsection (3) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 year; and
    - (ii) in the case of a continuing offence, to a further fine of \$25,000 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.

**8ZZZC. Monetary Authority may declare stored value facilities not to be exempt under section 8ZZZB**

- (1) The Monetary Authority may, after consulting the Financial Secretary, by notice published in the Gazette, declare that a stored value facility specified in Schedule 8 for the purposes of section 8ZZZB is not exempt from Divisions 2, 3, 4, 5, 6, 7 and 9 of this Part if—
  - (a) the Monetary Authority considers that it is necessary in the public interest or in the interests of the user or potential user of the facility to do so; or
  - (b) the Monetary Authority is not satisfied that—
    - (i) the risks posed by the facility to the user or potential user of the facility are immaterial; or
    - (ii) the risks posed by the facility to the payment or financial system of Hong Kong are immaterial.
- (2) The Monetary Authority must specify in the notice the date on which the declaration is to take effect or, if it is to take effect on the occurrence of an event, this fact and the event.
- (3) If the Monetary Authority intends to make a declaration in respect of a stored value facility under subsection (1), the Monetary Authority must—
  - (a) give a written notice to the issuer and (if any) facilitator of the facility stating—

- (i) the intention; and
  - (ii) the grounds for doing so; and
- (b) specify in the notice a period of not less than 14 days within which the issuer or facilitator may make oral or written representations to the Monetary Authority as to why the grounds for making the declaration have not been made out.
- (4) The Monetary Authority must, before making the declaration, take into consideration any representation made in the manner mentioned in subsection (3)(b).
- (5) On a declaration taking effect in respect of a stored value facility, section 8W applies to the issuer and (if any) facilitator of the facility as if—
  - (a) the facility were a facility issued under a licence granted under section 8F;
  - (b) if applicable, the issue of the facility were facilitated under a licence granted under section 8F; and
  - (c) the issuer and facilitator each were a licensee whose licence had been revoked under section 8V.

**8ZZZD. Power of Monetary Authority to exempt facility from Divisions 2, 3, 4, 5, 6, 7 and 9 of this Part**

- (1) The Monetary Authority may, by notice published in the Gazette, exempt a stored value facility from Divisions 2, 3, 4, 5, 6, 7 and 9 of this Part.
- (2) The Monetary Authority may only exempt a stored value facility under subsection (1) if—
  - (a) the issuer of the facility is a company (*issuing company*);

- (b) if there is a facilitator for the issue of the facility, the facilitator is a company (*facilitating company*); and
- (c) the Monetary Authority is satisfied that the risks posed by the facility to both of the following are immaterial—
  - (i) the user or potential user of the facility;
  - (ii) the payment or financial system of Hong Kong.
- (3) Without limiting subsection (2)(c), in deciding whether the risks posed by a stored value facility are immaterial, the Monetary Authority may take into consideration any matters that the Monetary Authority considers to be relevant, including—
  - (a) whether the facility is or is to be used by its user only in, or in close proximity to, the premises occupied by the issuing company;
  - (b) the range of goods or services for which the facility may be used by its user as a means of making payments;
  - (c) the group of people to whom payments may be made by using the facility;
  - (d) whether the scheme proposed by the issuing company for the issue of the facility is sound, in particular having regard to the matters relating to the security and risk management of the scheme;
  - (e) whether the scheme proposed by the facilitating company to facilitate the issue of the facility is sound, in particular having regard to the matters relating to the security and risk management of the scheme; and

- (f) whether the issuing company and the facilitating company are financially sound to perform their respective functions under the schemes mentioned in paragraphs (d) and (e), in particular having regard to the corporate status, amount of paid-up share capital, net assets or profit performance of the companies.
- (4) The exemption may be subject to any conditions the Monetary Authority considers appropriate.
- (5) Without limiting subsection (4), the Monetary Authority may attach the following conditions—
  - (a) a condition that the issuing company or facilitating company of the facility concerned must, within the period required by the Monetary Authority, notify the Monetary Authority of the matters relating to the facility as may be required by the Monetary Authority; and
  - (b) a condition regarding the maximum value of the sums of money or money's worth that the issuing company may permit the user of the facility to store on the facility.

#### **8ZZZE. Revocation of exemption under section 8ZZZD**

- (1) The Monetary Authority may, by notice published in the Gazette, revoke an exemption given in respect of a stored value facility under section 8ZZZD on being satisfied that any condition attached under section 8ZZZD(4) in respect of the exemption has been contravened.
- (2) The Monetary Authority must specify in the notice the date on which the revocation is to take effect or, if it is to

take effect on the occurrence of an event, this fact and the event.

- (3) If the Monetary Authority intends to revoke an exemption under subsection (1), the Monetary Authority must—
  - (a) give a written notice to the issuer and (if any) facilitator of the stored value facility stating—
    - (i) the intention; and
    - (ii) the grounds for doing so; and
  - (b) specify in the notice a period of not less than 14 days within which the issuer or facilitator may make oral or written representations to the Monetary Authority as to why the grounds for revoking the exemption have not been made out.
- (4) The Monetary Authority must, before revoking the exemption, take into consideration any representation made in the manner mentioned in subsection (3)(b).
- (5) On a revocation taking effect in respect of a stored value facility, section 8W applies to the issuer and (if any) facilitator of the facility as if—
  - (a) the facility were a facility issued under a licence granted under section 8F;
  - (b) if applicable, the issue of the facility were facilitated under a licence granted under section 8F; and
  - (c) the issuer and facilitator each were a licensee whose licence had been revoked under section 8V.

## Division 9—Miscellaneous

### 8ZZZF. Monetary Authority to keep register of licensees

- (1) The Monetary Authority must establish and keep a register of licensees in the form the Monetary Authority thinks fit.
- (2) The register must contain in respect of each licensee—
  - (a) the name of the licensee;
  - (b) the address of the principal place of business in Hong Kong of the licensee; and
  - (c) the licence number of the licence held by the licensee.
- (3) The register may also contain any other particulars of a licensee that the Monetary Authority considers appropriate to be contained in the register.
- (4) If a licence is revoked under section 8U or 8V, the Monetary Authority must, as soon as practicable after the revocation takes effect, remove from the register the entry relating to the licensee concerned.
- (5) If a licence is suspended under section 8Y, 8Z or 8ZA, the Monetary Authority must—
  - (a) as soon as practicable after the suspension, make a notation that the licence has been so suspended in the register against the name of the licensee concerned; and
  - (b) ensure that the notation remains on the register until the suspension ceases to have effect.
- (6) The register is to be kept at—
  - (a) the office of the Monetary Authority; or

- (b) any other place notified by the Monetary Authority in the Gazette.
- (7) The Monetary Authority must make the register available for inspection by the public in the form of an online record.

**8ZZZG. Use of copy, etc. of register of licensees as evidence**

- (1) This section applies to a document purporting to have been signed and certified by the Monetary Authority as a true copy of an entry in, or an extract from, a register kept under section 8ZZZF.
- (2) A document to which this section applies is to be admitted as evidence in criminal or civil proceedings before a court on its production without further proof, and—
  - (a) is prima facie evidence of all matters contained in the document; and
  - (b) in the absence of evidence to the contrary, is to be presumed by the court—
    - (i) to have been signed and certified by the Monetary Authority; and
    - (ii) to be a true copy of an entry in, or an extract from, the register of licensees.

**8ZZZH. Winding up of licensee and protection of float**

- (1) This section does not apply to a licensee that is a bank.
- (2) The provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) regarding a creditors' voluntary winding up do not apply to a licensee.

- (3) Subsection (4) applies if there is a presentation of a petition for the winding up of a licensee by the Court of First Instance, and—
  - (a) before the presentation of the petition, there has in respect of the licensee been a direction given under section 8ZH which has continued in force until the presentation of the petition; and
  - (b) a winding-up order is made on the petition.
- (4) Despite section 184(2) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the winding up of the licensee is regarded to have commenced at the time the direction was given for the purposes of sections 170, 179, 182, 183, 266, 267, 269, 271(1)(d), (e), (h), (i), (j), (k), (l) and (o) and 274 of that Ordinance.
- (5) Section 182 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) does not invalidate any disposition of the business or property of a licensee made—
  - (a) by the Manager of the licensee, acting in good faith in the course of managing the affairs, business and property of the licensee; or
  - (b) by the licensee under the direction of the Manager, acting in good faith in the course of managing the affairs, business and property of the licensee.

**8ZZZI. Display of licence number on stored value facility**

- (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).

**8ZZZJ. Publication of advertisement 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.
- (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.



- (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.
- (5) In the section—
- publish*** (發布) includes issue, circulate, display, distribute and broadcast.

**8ZZZK. False claims to be stored value facility issuer or facilitator**

- (1) A person who is not a licensee must not—
- (a) describe themselves, in whatever terms, as a licensee; or
  - (b) behave, or otherwise hold themselves out, in a manner which indicates, or which is reasonably likely to be understood as indicating, that they are such a person.
- (2) A person who contravenes 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.”.

**18. Part 2B heading added**

Before section 9—

**Add**

**“Part 2B****Matters Pertaining to Functions and Powers of Monetary Authority”.****19. Section 9 amended (functions of Monetary Authority)****(1) Section 9—****Repeal subsection (1)****Substitute**

“(1) It is the function of the Monetary Authority under this Ordinance—

- (a) to monitor compliance with the obligations imposed under this Ordinance in relation to—
  - (i) designated systems; and
  - (ii) stored value facilities; and
- (b) to promote the general safety and efficiency of—
  - (i) designated systems; and
  - (ii) stored value facilities.”.

**(2) Section 9(2)—****Repeal**

“the generality of subsection (1), it shall be”

**Substitute**

“subsection (1), it is”.

**(3) Section 9(2)(a), after “system”—****Add**

“and stored value facility”.

**(4) Section 9(2)(b), after “systems”—****Add**

“and stored value facilities”.

**(5) Section 9(2)(c), after “systems”—****Add**

“and stored value facilities”.

**(6) Section 9(2)(d)—****Repeal**

“relating to clearing and settlement systems and the operations of designated systems.”

**Substitute**

“relating to—

- (i) payment systems and stored value facilities; and
- (ii) the operation of designated systems and stored value facilities.”.

**20. Section 11 amended (power of Monetary Authority to exempt)****(1) Section 11, heading, after “exempt”—****Add**

“**designated system established outside Hong Kong**”.

**(2) Section 11(2)—****Repeal**

everything after “objectives of”

**Substitute**

“this Part and Part 2 in relation to the system, the Monetary Authority may exempt a person from—

- (a) any or all of the obligations imposed on the person under the provisions in this Part and Division 2 of Part 2 in relation to the system; or

- (b) any obligation arising from the exercise of any power conferred under those provisions in relation to the system.”.

**21. Section 12 amended (Monetary Authority may request information or documents)**

- (1) Section 12, heading, after “documents”—

**Add**

“from system operator, settlement institution, participant or licensee”.

- (2) Section 12—

**Repeal subsection (1)**

**Substitute**

- “(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.”.

- (3) Section 12—

**Repeal subsection (3)**

**Substitute**

- “(3) To avoid doubt—

- (a) the power conferred by subsection (1) to request information or documents relating to a designated system or stored value facility includes the power to request any information or documents that the Monetary Authority considers necessary to determine whether there is or has been compliance with the provisions of this Ordinance in relation to the system or facility; and
- (b) a request made under subsection (1) may specify the giving of information or documents on a periodic basis or at any time and regardless of whether the Monetary Authority has reason to suspect that there is, has been or may be a failure to comply with a provision of this Ordinance in relation to the system or facility.”.

- (4) After section 12(3)—

**Add**

- “(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.

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

- (a) the request to which the charge relates concerns an aspect of the management or operation of the designated system or stored value facility that is

not an aspect for which the person is responsible;  
or

- (b) the person took all reasonable steps to ensure that the request to which the charge relates was complied with.”.

## 22. Sections 12A, 12B and 12C added

After section 12—

**Add**

### “12A. Monetary Authority may examine books, accounts and transactions

- (1) The Monetary Authority may at any time, with or without prior notice to a specified person, examine any books, accounts or transactions of the person.

- (2) In this section—

*specified person* (指明人士) means—

- (a) a system operator of a designated system;
- (b) a settlement institution of a designated system;
- (c) a participant in a designated retail payment system;  
or
- (d) a licensee, or a subsidiary of a licensee, that is not a bank.

### 12B. Monetary Authority may require report to be prepared by auditor

- (1) The Monetary Authority may, after consulting a specified person, by notice in writing require the person to submit to the Monetary Authority a report—

- (a) subject to subsection (4), prepared by one or more auditors appointed by the person; and
- (b) prepared on the matters that the Monetary Authority may require for discharging or exercising the Monetary Authority’s duties and powers under this Ordinance.

- (2) The Monetary Authority may specify—

- (a) the period within which the report is to be submitted; and
- (b) the manner in which the report is to be prepared.

- (3) Without limiting subsection (1)(b), the report may be prepared on the following matters—

- (a) the state of affairs, or profit or loss, of the specified person based on an audit of the person’s accounts carried out in respect of the period specified in the notice mentioned in subsection (1);
- (b) whether or not the specified person has in place adequate systems of control to enable, as far as reasonably practicable—
  - (i) the person’s affairs, business and property to be prudently managed; and
  - (ii) the person to discharge the person’s duties imposed under this Ordinance.

- (4) A specified person may only appoint the following person to be an auditor for preparing a report required under subsection (1)—

- (a) a person approved by the Monetary Authority for preparing the report; or
- (b) a person amongst the persons nominated by the Monetary Authority for preparing the report.

(5) A person who fails to comply with a requirement under 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 \$25,000 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 this section—

*adequate* (健全), in relation to any systems of control, includes operating the systems effectively;

*specified person* (指明人士) means—

- (a) a system operator of a designated system;
- (b) a settlement institution of a designated system;
- (c) a participant in a designated system; or
- (d) a licensee, or a subsidiary of a licensee, that is not a bank;

*systems of control* (管控制度) includes procedures of control.

#### 12C. Licensee and subsidiary to produce books, etc. for examination

(1) Subject to subsection (2), for the purpose of an examination by the Monetary Authority under section

12A in respect of a specified person that is a licensee or a subsidiary of a licensee—

(a) the person must permit the Monetary Authority to have access to—

- (i) the person's books and accounts;
- (ii) the documents of title to the person's assets and other documents;
- (iii) the securities held by the person in respect of the transactions of the person's customers and the person's cash; and
- (iv) any facilities (including photocopying facilities) and information as may be required for the purpose of the examination; and

(b) the person must produce to the Monetary Authority its books, accounts, documents, securities, cash, facilities or information that the Monetary Authority may require for the examination.

(2) In so far as is consistent with the carrying out of an examination, a person is not required under subsection (1) to provide for inspection any thing at a time or place that would interfere with the proper conduct of the normal daily business of the person.

(3) A person who fails to comply with subsection (1) commits an offence and is liable—

(a) on conviction on indictment—

- (i) to a fine of \$200,000 and to imprisonment for 1 year; 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.”.

**23. Section 13 amended (Monetary Authority may give directions)**

(1) Section 13—

**Repeal subsection (1)**

**Substitute**

“(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 8O(1).”.

(2) Section 13(2)—

**Repeal paragraphs (a) and (b)**

**Substitute**

“(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);”.

(3) After section 13(2)(b)—

**Add**

“(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 8O(1); and”.

(4) After section 13(2)—

**Add**

“(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.

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

- (a) the direction to which the charge relates concerns an aspect of the management or operation of the designated system or stored value facility that is not an aspect for which the person is responsible; or
- (b) the person took all reasonable steps to ensure that the direction to which the charge relates was complied with.”.

**24. Part 3, Division 1 heading amended (interpretation)**Part 3, Division 1, heading, after “**Interpretation**”—**Add**

“of Part 3”.

**25. Section 15 heading amended (interpretation)**Section 15, heading, after “**Interpretation**”—**Add**

“of Part 3”.

**26. Section 16 amended (Monetary Authority may issue certificate of finality)**

(1) Section 16(3)—

**Repeal**

“system, he shall”

**Substitute**

“clearing and settlement system, the Monetary Authority must”.

(2) Section 16(4)—

**Repeal**

“system, he shall”

**Substitute**

“clearing and settlement system, the Monetary Authority must”.

(3) Section 16(5), after “designated”—

**Add**

“clearing and settlement”.

(4) Section 16(6), after “any designated”—

**Add**

“clearing and settlement”.

(5) Section 16(6), after “such a designated”—

**Add**

“clearing and settlement”.

**27. Section 30 amended (duty to report on completion of default proceedings)**

After section 30(5)—

**Add**

“(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.”.

**28. Section 31 amended (obligation of participant to notify of bankruptcy or winding up)**

After section 31(2)—

**Add**

“(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.”.

**29. Parts 3A and 3B added**

After Part 3—

**Add**

**“Part 3A****Investigation****33A. Interpretation of Part 3A**

In this Part—

*investigation* (調査) means an investigation under section 33B.

**33B. Investigation by Monetary Authority**

- (1) This section applies if the Monetary Authority has reasonable cause to believe that—
  - (a) an offence under this Ordinance may have been committed;
  - (b) a requirement imposed under this Ordinance may have been contravened; or
  - (c) a condition attached to a licence, consent or any other instrument granted or given by the Monetary Authority under this Ordinance may have been contravened.
- (2) The Monetary Authority may—
  - (a) direct in writing one or more of the persons appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to investigate a matter mentioned in subsection (1)(a), (b) or (c); or
  - (b) with the consent of the Financial Secretary, appoint in writing one or more other persons to investigate a matter mentioned in subsection (1)(a), (b) or (c).
- (3) The Monetary Authority must give an investigator a copy of—

- (a) the direction if the investigator is directed under subsection (2)(a); or
  - (b) the appointment if the investigator is appointed under subsection (2)(b).
- (4) The costs and expenses incurred by an investigator may be paid out of the Exchange Fund established under section 3 of the Exchange Fund Ordinance (Cap. 66).

**33C. Power of investigator to require production of record or document, etc.**

- (1) This section applies to—
  - (a) a person in relation to whom an investigator is directed or appointed to investigate a matter under section 33B;
  - (b) a person whom an investigator has reasonable cause to believe—
    - (i) to be in possession of a record or document that contains, or is likely to contain, information relevant to an investigation; or
    - (ii) to be otherwise in possession of information relevant to an investigation.
- (2) An investigator may, by notice in writing, require a person to whom this section applies to—
  - (a) produce to the investigator, within the time and at the place specified in the notice, a record or document specified in the notice that—
    - (i) is or may be relevant to the investigation; and
    - (ii) is in the person's possession; and
  - (b) attend before the investigator at the time and place specified in the notice, and answer any question



relating to a matter under investigation that may be asked by the investigator.

- (3) An investigator may require a person to whom this section applies to give the investigator all assistance in connection with the investigation that the person is reasonably able to give, including responding to a written question that may be raised by the investigator.
- (4) If a person produces a record or document in compliance with a requirement imposed under subsection (2)(a), the investigator may require the person to give the investigator an explanation or further particulars in respect of the record or document.
- (5) Before imposing a requirement on a person under subsection (2), (3) or (4), an investigator must produce a copy of the direction or appointment given by the Monetary Authority under section 33B(3) for inspection by the person.

**33D. Power of investigator to require answer, etc. be verified by statutory declaration**

- (1) An investigator may, by notice in writing, require a person who gives an answer, statement, explanation or particulars to the investigator under section 33C(2), (3) or (4)—
  - (a) to verify by statutory declaration the answer, statement, explanation or particulars; and
  - (b) to do so within a reasonable period specified in the notice.
- (2) If a person does not produce a record or document, or give an answer, statement, explanation or particulars, to an investigator in accordance with a requirement imposed under section 33C(2), (3) or (4) for the reason

that the record or document, or the information concerned, is not within the person's knowledge or in the person's possession, the investigator may, by notice in writing to the person, require the person—

- (a) to verify by statutory declaration that fact and reason; and
  - (b) to do so within a reasonable period specified in the notice.
- (3) A statutory declaration under subsection (1) or (2) may be taken by the investigator.
  - (4) Before imposing a requirement on a person under subsection (1) or (2), an investigator must produce a copy of the direction or appointment given by the Monetary Authority under section 33B(3) for inspection by the person.

**33E. Report by investigator**

- (1) An investigator—
  - (a) may give interim reports to the Monetary Authority on the investigation for which the investigator is directed or appointed; and
  - (b) must give the interim reports to the Monetary Authority as soon as practicable after being directed by the Monetary Authority to do so.
- (2) An investigator must, as soon as practicable after completing the investigation for which the investigator is directed or appointed, give a final report to the Monetary Authority on the investigation.
- (3) The Monetary Authority may, with the consent of the Secretary for Justice, publish a report given under this section.

**33F. Offence for contravention of section 33C or 33D**

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement imposed on the person under section 33C(2), (3) or (4) or 33D(1) or (2).
- (2) A person commits an offence if the person—
  - (a) in purported compliance with a requirement imposed on the person under section 33C(2), (3) or (4)—
    - (i) produces a record or document that is false or misleading in a material particular; or
    - (ii) gives an answer, statement, explanation or particulars that are false or misleading in a material particular; and
  - (b) knows that, or is reckless as to whether, the record or document, or the answer, statement, explanation or particulars, are false or misleading in a material particular.
- (3) A person commits an offence if the person with intent to defraud—
  - (a) fails to comply with a requirement imposed on the person under section 33C(2), (3) or (4) or 33D(1) or (2); or
  - (b) in purported compliance with a requirement imposed on the person under section 33C(2), (3) or (4)—
    - (i) produces a record or document that is false or misleading in a material particular; or

- (ii) gives an answer, statement, explanation or particulars that are false or misleading in a material particular.
- (4) An officer or employee of a corporation commits an offence if the officer or employee with intent to defraud—
  - (a) causes or allows the corporation to fail to comply with a requirement imposed on the corporation under section 33C(2), (3) or (4) or 33D(1) or (2); or
  - (b) causes or allows the corporation to, in purported compliance with a requirement imposed on the corporation under section 33C(2), (3) or (4)—
    - (i) produce a record or document that is false or misleading in a material particular; or
    - (ii) give an answer, statement, explanation or particulars that are false or misleading in a material particular.
- (5) A person who commits an offence under subsection (1) is liable—
  - (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 5 and to imprisonment for 6 months.
- (6) A person who commits an offence under subsection (2) is liable—
  - (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.

- (7) A person who commits an offence under subsection (3) or (4) is liable—
  - (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 7 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.
- (8) A person is not excused from complying with a requirement imposed on the person under section 33C(2), (3) or (4) or 33D(1) or (2) only on the ground that to do so might tend to incriminate the person.
- (9) Despite anything in this Ordinance, no criminal proceedings may be instituted against a person under subsection (1), (2), (3) or (4) for a conduct if—
  - (a) proceedings have previously been instituted against the person for the purposes of section 33G(2)(b) for the same conduct; and
  - (b) either—
    - (i) those proceedings are pending; or
    - (ii) because of the previous institution of those proceedings, no proceedings may again be lawfully instituted against the person for the purposes of that section for the same conduct.
- (10) If a person is convicted by a court on a prosecution instituted as a result of an investigation, the court may order the person to pay to the Monetary Authority the whole or part of the costs and expenses of the investigation.

**33G. Investigator may apply to Court of First Instance to inquire into failure to comply with requirement**

- (1) If a person fails to comply with a requirement imposed on the person by an investigator under section 33C(2), (3) or (4) or 33D(1) or (2), the investigator may apply to the Court of First Instance for an inquiry into the failure.
- (2) On an application under subsection (1), the Court of First Instance may—
  - (a) on being satisfied that there is no reasonable excuse for the person not to comply with the requirement, order the person to comply with the requirement within the period specified by the Court; and
  - (b) on being satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and that other person had been guilty of contempt of court.
- (3) An application under subsection (1) must be made by an originating summons in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).
- (4) Despite anything in this Ordinance, no proceedings may be instituted against a person for the purposes of subsection (2)(b) for a conduct if—
  - (a) criminal proceedings have previously been instituted against the person under section 33F(1), (2), (3) or (4) for the same conduct; and
  - (b) either—
    - (i) those criminal proceedings are pending; or
    - (ii) because of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted

against the person under that section for the same conduct.

### **33H. Use of incriminating evidence in proceedings**

- (1) If an investigator requires a person to answer or respond to a question, or to give an explanation or further particulars, under section 33C(2), (3) or (4), the investigator must ensure that the person has first been informed or reminded of the limitations imposed by the application of subsection (2).
- (2) Despite anything in this Ordinance, and subject to subsection (3), if an investigator requires a person to answer or respond to a question, or to give an explanation or further particulars, under section 33C(2), (3) or (4), the requirement and the following are not admissible in evidence against the person in criminal proceedings in a court of law—
  - (a) the question and the answer or response;
  - (b) the explanation or particulars.
- (3) Subsection (2) applies only if—
  - (a) the answer, response, explanation or particulars might tend to incriminate the person;
  - (b) the person so claims before giving the answer, statement, explanation or particulars; and
  - (c) the criminal proceedings are not those in which the person is charged with an offence in respect of the answer, statement, explanation or particulars—
    - (i) under this Part;
    - (ii) under section 36(5) for a contravention of section 36(3)(a);

- (iii) under Part V of the Crimes Ordinance (Cap. 200); or
- (iv) for perjury.

### **33I. Lien claimed on record or document**

If a person claims a lien on a record or document in the person's possession that is required to be produced under this Part—

- (a) the lien does not affect the requirement to produce the record or document;
- (b) no fees are payable in relation to the production; and
- (c) the production does not affect the lien.

### **33J. Issue of magistrate's warrant**

- (1) On information on oath laid by a person specified in subsection (2), the 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, 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 a record or document that may be required to be produced under this Part.

**33K. Powers of person authorized by warrant, and related offences**

- (1) If an authorized person has reasonable cause to believe that a person on the premises is employed in connection with a business that is or has been carried on on the premises, the authorized person may require that person to produce for examination a record or document that—
  - (a) is in the possession of that person; and
  - (b) the authorized person has reasonable cause to believe may be required to be produced under this Part.
- (2) An authorized person may, in relation to a record or document required to be produced under subsection (1)—
  - (a) prohibit a person found on the premises from—
    - (i) removing the record or document from the premises;
    - (ii) erasing anything from, adding anything to or otherwise altering anything in, the record or document; or
    - (iii) otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document; or

- (b) take any other step that appears to the authorized person to be necessary for—
  - (i) preserving the record or document; or
  - (ii) preventing interference with the record or document.
- (3) A person commits an offence if the person—
  - (a) without reasonable excuse, fails to comply with a requirement or prohibition under subsection (1) or (2); or
  - (b) obstructs an authorized person in the exercise of a power conferred by subsection (1) or (2) on the authorized person.
- (4) A person who commits an offence under subsection (3) is liable—
  - (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.
- (5) In this section—
 

**authorized person** (獲授權人) means a person authorized by a warrant issued under section 33J(1) to carry out the acts set out in paragraphs (a) and (b) of that section.

**33L. Record or document removed by person authorized by warrant**

- (1) A record or document removed under section 33J may be retained—
  - (a) for a period not exceeding 6 months beginning on the day of its removal; or

- (b) if the record or document is or may be required for any criminal proceedings or any proceedings under this Ordinance, for any longer period that may be necessary for those proceedings.
- (2) If an authorized person removes a record or document under section 33J, the authorized person—
  - (a) must, as soon as practicable after the removal, give a receipt for the record or document; and
  - (b) may permit a person who would be entitled to inspect the record or document but for the removal, at all reasonable times—
    - (i) to inspect it; and
    - (ii) to make copies or otherwise record details of it.
- (3) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property that has because of this section come into the possession of the Monetary Authority, as it applies to property that has come into the possession of the police.
- (4) In this section—  
**authorized person** (獲授權人) means a person authorized by a warrant issued under section 33J(1) to carry out the acts set out in paragraphs (a) and (b) of that section.

**33M. Production of information in information system, etc.**

- (1) This section applies if any information contained in a record or document required to be produced under this Part is not recorded in a legible form.
- (2) The power to require the production of the record or document includes—

- (a) if the information can be reproduced in a legible form, a power to require the production of the information in a legible form; or
- (b) if the information is recorded in an information system, a power to require the production of that recording in a form that enables the information to be reproduced in a legible form.
- (3) In this section—  
**information system** (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553).
- (4) In this section, a reference to a recording of any information includes the relevant part of the recording.

**33N. Inspection of record or document seized, etc.**

- (1) This section applies if an investigator has taken possession of a record or document under this Part.
- (2) The investigator must permit a person who would be entitled to inspect the record or document had the investigator not taken possession of it under this Part, at all reasonable times—
  - (a) to inspect it; and
  - (b) to make copies or otherwise record details of it.
- (3) The investigator may in giving the permission impose any reasonable conditions as to security or otherwise that the investigator thinks fit.

**33O. Prohibition on destruction, etc. of record or document**

- (1) This section applies to a person who is required to produce a record or document by another person (*requesting person*) under this Part.

- (2) The person must not destroy, falsify, conceal or otherwise dispose of, or cause or permit the destruction, falsification, concealment or disposal of, the record or document with intent to conceal, from the requesting person, facts or matters capable of being disclosed by the record or document.
- (3) A person who contravenes subsection (2) commits an offence and is liable—
  - (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.

## Part 3B

### Sanctions

#### 33P. Interpretation of Part 3B

In this Part—

**regulated person** (受規管者) means—

- (a) a system operator of a designated system;
- (b) a settlement institution of a designated system;
- (c) a participant in a designated system;
- (d) a licensee or an officer of a licensee; or
- (e) if the system operator or settlement institution is a corporation, an officer of a corporation.

#### 33Q. Monetary Authority may impose sanction on regulated person

- (1) The Monetary Authority may, by notice in writing, impose one or more of the sanctions specified in subsection (2) against a regulated person after having regard to the matters specified in subsection (3), if the Monetary Authority is satisfied that the person—
  - (a) has contravened a provision of this Ordinance;
  - (b) has contravened a requirement imposed under this Ordinance; or
  - (c) has contravened a condition attached to a licence, consent or any other instrument granted or given by the Monetary Authority under this Ordinance.
- (2) The sanctions specified for subsection (1) are—
  - (a) to order the regulated person to pay a pecuniary penalty not exceeding the amount that is the greater of—
    - (i) \$10,000,000; or
    - (ii) 3 times the amount of profit gained or loss avoided by the person as a result of the contravention;
  - (b) to give the regulated person one or more of the following—
    - (i) a caution;
    - (ii) a warning;
    - (iii) a reprimand;
    - (iv) an order to take, by a date specified in the order, the action specified in the order for remedying the contravention;

- (c) to prohibit the regulated person from doing all or any of the following for the period, or until the occurrence of the event, specified in the notice—
  - (i) making an application under section 8E;
  - (ii) giving a written notice under section 8ZZG(2);
  - (iii) seeking a consent mentioned in section 8ZZW(1);
  - (iv) seeking a consent mentioned in section 8ZZZ(1) or (2).
- (3) The matters specified for subsection (1) are—
  - (a) the circumstances in which the contravention occurred, including the factors occasioning it;
  - (b) the seriousness of the contravention;
  - (c) if applicable, the extent of the failure by the regulated person to co-operate in an investigation under section 33B relating to the contravention;
  - (d) if applicable, the excuse or explanation given by the regulated person for the contravention or failure to co-operate in an investigation mentioned in paragraph (c);
  - (e) the gain, whether financial or otherwise, made by the regulated person or by any other person in which the regulated person has a financial interest as a result of the contravention;
  - (f) the amount of any loss suffered or costs incurred by a person other than the regulated person, or loss or costs avoided by the regulated person, as a result of the contravention;
  - (g) the duration of the contravention;

- (h) if applicable, the continuation of the contravention after the regulated person was notified of an investigation mentioned in paragraph (c);
  - (i) the extent to which the regulated person knew, or ought to have known, that the contravention had occurred or was occurring;
  - (j) the extent and timeliness of any steps taken to cease the contravention and any steps taken for remedying the consequences of the contravention;
  - (k) whether a sanction in respect of any similar contravention has already been imposed on the regulated person by a court, the Monetary Authority or another person;
  - (l) whether imposing a sanction is appropriate and proportionate to the seriousness of the contravention and will have sufficient deterrent effect to ensure that any similar contravention will not occur in the future;
  - (m) the repeated occurrence of contraventions of this Ordinance by the regulated person; and
  - (n) if applicable, the absence, ineffectiveness or repeated failure of internal mechanisms or procedures of the regulated person intended to prevent contraventions of this Ordinance from occurring.
- (4) In reaching a decision to impose a sanction mentioned in subsection (2)(a) or (b), the Monetary Authority may have regard to any information or material in the Monetary Authority's possession that is relevant to the decision, regardless of how the information or material has come into the Monetary Authority's possession.



**33R. Procedural requirement for imposing sanction under section 33Q**

- (1) If the Monetary Authority intends to impose a sanction on a regulated person in respect of a contravention under section 33Q(1), the Monetary Authority must—
  - (a) give a written notice to the person stating—
    - (i) the intention; and
    - (ii) the grounds for doing so; and
  - (b) specify in the notice a period of not less than 14 days within which the person may make oral or written representations to the Monetary Authority as to why the grounds for imposing the sanction have not been made out.
- (2) The Monetary Authority must, before imposing the sanction, take into consideration any representation made in the manner mentioned in subsection (1)(b).
- (3) If the Monetary Authority decides to impose a sanction on a regulated person by notice in writing under section 33Q(1), the Monetary Authority must in the notice—
  - (a) set out the particulars of why the Monetary Authority is satisfied that the person has committed the contravention;
  - (b) state the sanction imposed; and
  - (c) for a sanction mentioned in section 33Q(2)(a), state the amount of the pecuniary penalty to be paid.

**33S. Payment of pecuniary penalty mentioned in section 33Q(2)(a)**

- (1) A regulated person who is ordered to pay a pecuniary penalty mentioned in section 33Q(2)(a) must pay the penalty to the Monetary Authority—

- (a) within 30 days; or
  - (b) within a longer period that the Monetary Authority may specify in the notice mentioned in section 33R(3) to the person.
- (2) The Court of First Instance may, on the application of the Monetary Authority made in the manner prescribed for the purposes of this section, register an order made under section 33Q(2)(a) in the Court of First Instance.
- (3) The order is, on registration under subsection (2), to be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.
- (4) A pecuniary penalty paid or recovered under an order made under section 33Q(2)(a) must be paid into the general revenue.

**33T. Monetary Authority's power to take further action**

- (1) This section applies if the Monetary Authority is considering exercising a power against a regulated person under this Part.
- (2) The Monetary Authority may, by agreement with the regulated person, take any further action in respect of the person that the Monetary Authority considers appropriate in the circumstance, whether in place of or in addition to the exercise of the power.
- (3) The Monetary Authority may take further action under subsection (2) only if the Monetary Authority considers it appropriate to do so having regard to—
  - (a) the public interest; or
  - (b) if the regulated person is a licensee, the interests of the user or potential user of any stored value

facility issued, or the issue of which is facilitated, by the licensee under its licence.

- (4) If the Monetary Authority exercises the power under subsection (2) in respect of a regulated person, the Monetary Authority is not, subject to the agreement with the regulated person, obliged to comply with section 33R.

**33U. Monetary Authority may give public notice of imposition of sanction**

If a sanction has been imposed on a regulated person under section 33Q(1), the Monetary Authority may disclose to the public—

- (a) the details of the sanction imposed;
- (b) the reasons for imposing the sanction; and
- (c) any material facts relating to the case.

**33V. Application of sanction in relation to former regulated person**

- (1) This section applies to a power that is exercisable by the Monetary Authority under section 33Q or 33T in relation to a regulated person in connection with a contravention committed by the person.
- (2) The power is also exercisable by the Monetary Authority in relation to a person who was a regulated person at the time of the contravention, regardless of whether the person is a regulated person at the time when the power is being exercised.
- (3) This Part is to be construed accordingly.

**33W. Application of sanction in relation to officer of corporation**

- (1) This section applies if—

- (a) the Monetary Authority exercises a power under section 33Q or 33T in relation to a regulated person that is a corporation in connection with a contravention committed by the person; and
- (b) either—
  - (i) in committing the contravention, the corporation is aided, abetted, counselled, procured or induced by an officer of the corporation or a person purporting to act as an officer of the corporation; or
  - (ii) the contravention is committed with the consent or connivance of, or is attributable to the recklessness on the part of, an officer of the corporation or a person purporting to act as an officer of the corporation.

- (2) The power is also exercisable by the Monetary Authority in relation to the officer or the person purporting to act as such as if the officer or the person were a regulated person.

- (3) This Part is to be construed accordingly.”.

**30. Section 33X added**

Part 4, before section 34—

**Add**

**“33X. Interpretation of Part 4**

In this Part—

*applicant* (申請人), in relation to any proceedings under this Part, means the person who refers a decision to the Tribunal for review under section 35(1);

*reviewable decision* (可覆核決定) means a decision or determination specified in Part 2 of Schedule 1.”.

**31. Section 34 amended (establishment of Clearing and Settlement Systems Appeals Tribunal)**

- (1) Section 34, heading—

**Repeal**

“Clearing and Settlement Systems”

**Substitute**

“Payment Systems and Stored Value Facilities”.

- (2) Section 34(1)—

**Repeal**

everything after “known as”

**Substitute**

“the “Payment Systems and Stored Value Facilities Appeals Tribunal” in English and “支付系統及儲值支付工具上訴審裁處” in Chinese.”.

- (3) Section 34(6), before “Schedule”—

**Add**

“Part 1 of”.

- (4) Section 34(7), before “Schedule”—

**Add**

“Part 1 of”.

**32. Section 35 amended (review of decisions by Tribunal)**

- (1) Section 35(1)—

**Repeal**

“decision of the Monetary Authority under section 4(1), 5(1), 16(1) or 17(1)”

**Substitute**

“reviewable decision”.

- (2) Section 35(2)(b)(i)—

**Repeal**

“or 5(1)”

**Substitute**

“or (4B), 5(1), 8ZZZC(1), 8ZZZD(1) or 8ZZZE(1)”.

- (3) Section 35(2)(b)(ii)—

**Repeal**

“a decision of the Monetary Authority under section 16(1) or 17(1)”

**Substitute**

“any other decision of the Monetary Authority”.

**33. Section 36 amended (powers of Tribunal)**

After section 36(4)—

**Add**

“(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.”.

**34. Section 40 amended (power of Chief Justice to make rules)**

(1) Section 40(a), before “Schedule”—

**Add**

“Part 1 of”.

(2) Section 40(b), before “Schedule”—

**Add**

“Part 1 of”.

(3) Section 40(c), before “Schedule”—

**Add**

“Part 1 of”.

**35. Sections repealed**

Sections 41, 42, 43 and 44—

**Repeal the sections.****36. Section 45 amended (giving false information to Monetary Authority)**

Section 45—

**Repeal**

“Part 2 or section 31”

**Substitute**

“Part 2, 2A or 2B or section 31 or 52”.

**37. Section 46 amended (misrepresentation in respect of designated system)**

Section 46(1)—

**Repeal**

“clearing and settlement”

**Substitute**

“payment”.

**38. Section 47 amended (false entry in document)**

(1) Section 47(2)(a), after “system”—

**Add**

“or stored value facility”.

(2) Section 47(2)(b), after “system”—

**Add**

“or stored value facility”.

(3) Section 47(2)(c), after “system”—

**Add**

“or stored value facility”.

(4) Section 47(4)—

**Repeal**

everything after “section”

**Substitute**

“—

*relevant document* (有關文件), in relation to a designated system or stored value facility, means a report, slip, document or statement of the business, affairs, transactions, condition, assets or accounts of the system or facility.”.

**39. Section 48 amended (liability of company officers)**

Section 48—

**Repeal**

“section 41(1), (3), (4), (5) or (6), 42(1) or (2), 44(4) or 45 of”.

**40. Section 49 amended (power of Monetary Authority to make regulations)**

(1) Section 49—

**Repeal subsection (1)**

**Substitute**

“(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.”.

(2) Section 49(2)(a)—

**Repeal**

“within a designated system”

**Substitute**

“for a designated system or stored value facility”.

(3) Section 49(2)(a), after “of the system”—

**Add**

“or facility”.

(4) Section 49(2)(b), after “system”—

**Add**

“or stored value facility”.

(5) Section 49(2)(c)—

**Repeal**

“, including matters conducive to the better safety and efficiency of the system”

**Substitute**

“or stored value facility, including matters conducive to the better safety and efficiency of the system or facility”.

(6) Section 49(2)(d), after “systems”—

**Add**

“or stored value facilities”.

**41. Section 50 amended (confidentiality)**

(1) Section 50(2)(a)—

**Repeal**

everything after “appointed”

**Substitute**

“under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority;”.

(2) Section 50(2)—

**Repeal paragraph (b)**

**Substitute**

“(b) a person performing a function under this Ordinance or carrying into effect a provision of this Ordinance; and”.

(3) After section 50(2)(b)—

**Add**

“(c) a person who assists a person mentioned in paragraph (b) (*assisted person*) in performing the assisted person’s

function under this Ordinance, or in carrying into effect a provision of this Ordinance.”.

- (4) Section 50(3)(g)—

**Repeal**

everything after “relate to”

**Substitute**

“or affect—

- (i) the designated systems specified in Schedule 2;
- (ii) the designated systems in which the Monetary Authority has a legal or beneficial interest; or
- (iii) stored value facilities;”.

- (5) After section 50(3)(g)—

**Add**

“(ga) if the condition specified in subsection (6) is satisfied, to the disclosure of information to a public officer authorized by the Financial Secretary under subsection (8);”.

- (6) Section 50(3)(h)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (7) Section 50(3)(i)—

**Repeal the full stop**

**Substitute**

“; or”.

- (8) After section 50(3)(i)—

**Add**

“(j) to the disclosure of information to the Commissioner as defined by section 1 of Part 2 of Schedule 1 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615).”.

- (9) Section 50(4)(b)(ii), after “systems”—

**Add**

“or stored value facilities”.

- (10) After section 50(4)—

**Add**

“(4A) If information is disclosed under subsection (1), or in any of the circumstances mentioned in subsection (3) (other than subsection (3)(a), (h) or (i)) or (4)(a), the person to whom the information is so disclosed, or any other person obtaining or receiving the information, whether directly or indirectly, from the person to whom the information is so disclosed, must not disclose the information or any part of it to any other persons unless—

- (a) the Monetary Authority consents to the disclosure;
- (b) the information or the part of it has already been made available to the public;
- (c) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance; or
- (d) the disclosure is in accordance with an order of a court, or in accordance with a law or requirement made under a law.”.

- (11) Section 50—

**Repeal subsection (5)****Substitute**

“(5) The Monetary Authority may attach any conditions that the Monetary Authority considers appropriate in disclosing any information in the circumstances mentioned in subsection (3) or in giving a consent under subsection (4A)(a).”.

(12) After section 50(5)—

**Add**

“(6) The condition referred to in subsection (3)(ga) is that—

- (a) it is desirable or expedient that the information should be disclosed in the public interest; or
- (b) the disclosure will enable or assist the recipients of the information to perform their functions and the disclosure is not contrary to the public interest.

(7) Subsection (3)(h) does not require the Monetary Authority to disclose in, or in relation to, any civil proceedings any information that the Monetary Authority may disclose, or has disclosed, under that subsection.

(8) The Financial Secretary may authorize a public officer as a person to whom information may be disclosed under subsection (3)(ga).

(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.

(10) A person who contravenes subsection (4A) commits an offence and is liable—

- (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.”.

**42. Section 51 amended (immunity)**

(1) Section 51(1)(b)—

**Repeal**

“or”.

(2) Section 51(1)(c)—

**Repeal the full stop****Substitute**

“; or”.

(3) After section 51(1)(c)—

**Add**

“(d) an investigator.”.

(4) Section 51(2)(a)—

**Repeal**

“and”.

- (5) After section 51(2)(a)—

**Add**

“(ab) a licensee, or an officer or employee of a licensee; and”.

**43. Section 52 amended (power of Monetary Authority to require information to be given)**

- (1) Section 52(1)—

**Repeal**

“clearing and settlement”

**Substitute**

“payment”.

- (2) Section 52(3)—

**Repeal**

“clearing and settlement” (wherever appearing)

**Substitute**

“payment”.

- (3) After section 52(3)—

**Add**

“(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.”.

**44. Section 53 amended (requirement to give information relating to default)**

After section 53(4)—

**Add**

“(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.”.

**45. Section 54 amended (guidelines)**

- (1) Section 54(1)—

**Repeal**

everything after “relevant”

**Substitute**

“information—

- (a) after consulting the system operators and settlement institutions of designated systems, issue guidelines setting out the manner in which the Monetary Authority proposes to—
  - (i) discharge any duty imposed or exercise any power conferred on the Monetary Authority under this Ordinance, in so far as the duty or power relates to designated systems; or
  - (ii) perform any function assigned to the Monetary Authority under this Ordinance, in so far as the function relates to designated systems; or
- (b) issue guidelines setting out the manner in which the Monetary Authority proposes to—
  - (i) discharge any duty imposed or exercise any power conferred on the Monetary Authority under this Ordinance, in so far as the duty or power relates to stored value facilities; or
  - (ii) perform any function assigned to the Monetary Authority under this Ordinance, in



so far as the function relates to stored value facilities.”.

(2) After section 54(1)—

**Add**

“(1A) The Monetary Authority may issue guidelines to—

- (a) assist system operators or settlement institutions of designated systems to comply with the provisions of this Ordinance relating to designated systems; or
- (b) assist issuers or facilitators of stored value facilities to comply with the provisions of this Ordinance relating to stored value facilities.

(1B) Without limiting subsection (1A)(b), the guidelines may provide that if a licensee engages in a business practice specified in the guidelines for the purposes of this subsection—

- (a) the Monetary Authority may consider the soundness of the financial position of the licensee to be dependent on the soundness of the financial position of a single party; and
- (b) the Monetary Authority may, where the Monetary Authority is of the opinion that the case is of sufficient importance to justify the Monetary Authority to do so, consider exercising the power under Division 6 of Part 2A.

(1C) Guidelines issued under subsection (1B)—

- (a) may be expressed to apply to all licensees or to any class of licensees; and
- (b) may specify what constitutes a single party for the purposes of any of those guidelines.

(1D) Without limiting subsection (1C)(b), a class or description of persons or businesses may constitute a single party for the purposes of that subsection.

(1E) The Monetary Authority must, before exercising the power to impose a sanction mentioned in section 33Q(2)(a), issue guidelines setting out the manner in which the power is to be exercised.”.

**46. Section 54A added**

After section 54—

**Add**

**“54A. Monetary Authority may specify form**

- (1) The Monetary Authority may specify the form of any document required for the purposes of this Ordinance.
- (2) Without limiting subsection (1), in specifying the form of any document, the Monetary Authority may—
  - (a) include in the form a statutory declaration to be made by the person completing the form declaring that the particulars contained in the form are true and correct to the best of the person’s knowledge and belief; and
  - (b) specify more than one form of the document, whether as alternatives or to provide for different circumstances.
- (3) The form of a document specified under this section must be—
  - (a) completed in accordance with the directions and instructions specified in the document;
  - (b) accompanied by any other documents specified in the document; and

- (c) provided to the recipient in the manner (if any) specified in the document.”.

**47. Section 56 amended (service of notices)**

- (1) Section 56(1)(b), after “6(1)(a)” —

**Add**

“or 8E(3)(b)”.

- (2) Section 56(1)(c), after “6(1)(a)” —

**Add**

“or 8E(3)(b)”.

- (3) Section 56(1)(d), after “6(1)(a)” —

**Add**

“or 8E(3)(b)”.

- (4) Section 56(2)(a), after “6(1)(a)” —

**Add**

“or 8E(3)(b)”.

- (5) Section 56(2)(b), after “6(1)(a)” —

**Add**

“or 8E(3)(b)”.

- (6) Section 56(2)(c), after “6(1)(a)” —

**Add**

“or 8E(3)(b)”.

**48. Section 56A added**

After section 56 —

**Add**

**“56A. Recovery of fees and expenses**

- (1) The following is recoverable from a licensee as a civil debt due to the Monetary Authority—
  - (a) a fee due and payable by the licensee under section 8M or 8N;
  - (b) an amount paid by the Monetary Authority under section 8ZZ(5) for any remuneration or expenses payable by the licensee under a determination under section 8ZZ(1).
- (2) Any cost or expenses ordered to be paid by a person under section 33F(10) are recoverable from the person as a civil debt due to the Monetary Authority.
- (3) Subject to subsection (4), an amount recoverable under this section is a debt due to the Monetary Authority within the meaning of—
  - (a) section 265(1)(d) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and
  - (b) section 38(1)(d) of the Bankruptcy Ordinance (Cap. 6).
- (4) In a winding up by the Court of First Instance of a licensee, any remuneration or expenses mentioned in subsection (1)(b) payable by the licensee has the same priority as is given under rule 179(1) of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) to any costs, charges and expenses incurred by the Official Receiver appointed under section 75 of the Bankruptcy Ordinance (Cap. 6).
- (5) An amount recovered under this section must be paid into the Exchange Fund established under section 3 of the Exchange Fund Ordinance (Cap. 66).”.

**49. Section 57 amended (amendment of Schedules)**

(1) Section 57—

**Renumber the section as section 57(1).**

(2) After section 57(1)—

**Add**

“(2) The Financial Secretary may, by notice published in the Gazette, amend Schedule 3, 4, 5, 6, 7 or 8.”.

**50. Section 58 amended (notices, etc. as subsidiary legislation)**

Section 58(1)—

**Repeal**

“or 57”

**Substitute**

“, 2C, 8A(2) or 57”.

**51. Section 60 added**

Before Schedule 1—

**Add****“60. Savings and transitional provisions relating to Clearing and Settlement Systems (Amendment) Ordinance 2015**

Schedule 9 provides for the savings and transitional arrangements relating to the Clearing and Settlement Systems (Amendment) Ordinance 2015 ( of 2015).”.

**52. Schedule 1 amended (provisions relating to Clearing and Settlement Systems Appeals Tribunal)**

(1) Schedule 1, heading—

**Repeal**

“CLEARING AND SETTLEMENT SYSTEMS APPEALS TRIBUNAL”

**Substitute**

“REVIEW UNDER PART 4”.

(2) Schedule 1—

**Repeal**

“[ss. 34”

**Substitute**

“[ss. 33X, 34”.

(3) Schedule 1, before section 1—

**Add****“Part 1****Provisions Relating to Payment Systems and Stored Value Facilities Appeals Tribunal”.**(4) Schedule 1, Part 1, section 1, definition of *panel member*—**Repeal**

“of this Ordinance”.

(5) Schedule 1, Part 1, section 1—

**Repeal the definition of *parties*****Substitute**

“*parties* (各方), in relation to a review of a reviewable decision, means—

(a) the applicant as defined by section 33X; and

(b) the Monetary Authority;”.

(6) Schedule 1, Part 1, section 1, definition of *Tribunal member*—

**Repeal**

“of this Ordinance”.

- (7) Schedule 1, after Part 1—

**Add****“Part 2****Reviewable Decisions**

1. A decision of the Monetary Authority to designate a payment system under section 4(1).
2. A decision of the Monetary Authority to declare activities under section 4(4B).
3. A decision of the Monetary Authority to revoke the designation of a designated system under section 5(1).
4. A decision of the Monetary Authority to refuse to give a consent mentioned in section 6B(1), 8ZZW(1), 8ZZZ(1) or (2) or 8ZZZA(1) or (3).
5. A decision of the Monetary Authority to attach conditions to a consent under section 6B(2), 8X(2), 8ZC(2) or 8ZZW(3).
6. A decision of the Monetary Authority to refuse to grant a licence under section 8F(1)(b).
7. A decision of the Monetary Authority to attach conditions to a licence under section 8I(1).
8. A decision of the Monetary Authority to propose to revoke a licence under section 8V(3).

9. A decision of the Monetary Authority to suspend a licence under section 8Z(1) or 8ZA(1), or renew the suspension under section 8ZA(7).
10. A decision of the Monetary Authority to exercise the power under section 8ZF(1), 8ZG(1) or 8ZH(1).
11. A decision of the Monetary Authority to vary a direction under section 8ZT(1).
12. A determination of the Monetary Authority under section 8ZZ(1) or 16(1).
13. A decision of the Monetary Authority to give a notice under section 8ZZF(2)(b), 8ZZG(3)(b) or 8ZZJ(2).
14. A decision of the Monetary Authority to attach conditions to a notice under section 8ZZH(1).
15. A decision of the Monetary Authority to withdraw a consent under section 8ZZW(4).
16. A decision of the Monetary Authority to make a declaration under section 8ZZZC(1).
17. A decision of the Monetary Authority to attach condition to an exemption under section 8ZZZD(4).
18. A decision of the Monetary Authority to revoke an exemption under section 8ZZZE(1).
19. A decision of the Monetary Authority to suspend or revoke a certificate of finality under section 17(1).

20. A decision of the Monetary Authority to impose a sanction under section 33Q.”.

**53. Schedules 3 to 9 added**

After Schedule 2—

**Add**

**“Schedule 3** [ss. 2 & 57]

**Minimum Criteria**

**Part 1**

**Preliminary**

**1. Interpretation**

(1) In this Schedule—

*adequate* (健全), in relation to any systems of control, includes operating the systems effectively;

*applicable company* (適用公司), in relation to the application of the minimum criteria to a person under a provision of this Ordinance, means the person;

*chief executive* (行政總裁) has the meaning given by section 8A;

*controller* (控權人) has the meaning given by section 8ZZE;

*manager* (經理) has the meaning given by section 8A;

*net debit balance* (借方淨差額), in relation to an applicable company, means the aggregate of—

- (a) the excess of the accumulated losses over the accumulated profits disclosed in the profit and loss

account of the most recent audited accounts of the applicable company; and

- (b) other reserves separately disclosed in the balance sheet of the most recent audited accounts of the applicable company;

*SVF scheme* (儲值支付工具計劃)—

- (a) in relation to an applicable company that is a person applying for a licence under section 8E, means the scheme that the person proposes, if the licence is granted under section 8F—

(i) for the issue of stored value facilities under the licence; or

(ii) for facilitating the issue of stored value facilities under the licence; or

- (b) in relation to any other applicable company, means the scheme operated by the licensee—

(i) for the issue of stored value facilities under its licence; or

(ii) for facilitating the issue of stored value facilities under its licence;

*systems of control* (管控制度) includes procedures.

- (2) In calculating the value of the paid-up share capital of an applicable company under this Schedule, the net debit balance of the applicable company is to be deducted from such share capital.

- (3) In applying the criteria set out in Part 2 of this Schedule in relation to a person applying for a licence under section 8E—

- (a) a reference in this Schedule to a licence is a reference to the licence that may be granted to the person on an application under section 8F;
- (b) a reference to a licence in a provision that defines a term or an expression used in this Schedule is a reference to the licence that may be granted to the person on an application under section 8F;
- (c) a reference to a licensee in a provision that defines a term or an expression used in this Schedule is a reference to the person; and
- (d) the criteria set out in Part 2 of this Schedule are to be construed with necessary modifications to take into account the status of the person as an applicant for a licence.

## 2. Application of criteria

Unless otherwise provided in Part 2 of this Schedule, the criteria set out in that Part apply in relation to all applicable companies.

## Part 2

### Criteria

#### 1. Principal business

- (1) The principal business of the applicable company must be—
  - (a) the issue of stored value facilities under a licence; or
  - (b) the facilitation of the issue of stored value facilities under a licence.

- (2) This section does not apply in relation to an applicable company that is a bank.

#### 2. Financial resources

- (1) The applicable company must have adequate financial resources (whether actual or contingent) for operating its SVF scheme.
- (2) The applicable company must satisfy either of the following—
  - (a) the applicable company's paid-up share capital is not less than—
    - (i) \$25,000,000; or
    - (ii) an equivalent amount in any other currency that is freely convertible into Hong Kong dollars or is approved by the Monetary Authority for the purposes of this section;
  - (b) the applicable company's other financial resources are equivalent to or exceed those mentioned in paragraph (a).
- (3) This section does not apply in relation to an applicable company that is a bank.

#### 3. Fit and proper person

- (1) The applicable company must have in place adequate systems of control to ensure that the Monetary Authority is kept informed of the identity of each controller of the applicable company.
- (2) Each chief executive, director or controller of the applicable company must be a fit and proper person to hold the position concerned.

- (3) The applicable company must have in place adequate systems of control to ensure that each manager of the applicable company is a fit and proper person to hold the position concerned.
- (4) This section does not apply in relation to an applicable company that is a bank.

#### 4. Knowledge and experience

- (1) The officers of the applicable company who are responsible for implementing the company's SVF scheme or the day-to-day management of the scheme must have the appropriate knowledge and experience to effectively discharge that responsibility.
- (2) The applicable company must have in place adequate systems of control to ensure that each of its officers responsible for implementing the company's SVF scheme or the day-to-day management of the scheme has the appropriate knowledge and experience to effectively discharge that responsibility.

#### 5. Prudential and risk management

- (1) The applicable company must have in place appropriate risk management policies and procedures for managing the risks arising from the operation of its SVF scheme that are commensurate with the scale and complexity of the scheme, including—
  - (a) adequate security and internal control to ensure the safety and integrity of data (in particular, personal data) and records;
  - (b) effective means to detect fraud and attempted fraud;

- (c) robust and proven contingency arrangements to address any operational disruptions; and
- (d) other operational and security safeguards appropriate for the scheme.
- (2) The applicable company—
  - (a) must implement the policies and procedures mentioned in subsection (1); and
  - (b) must not deviate from those policies and procedures except with the prior written consent of the Monetary Authority.

#### 6. Anti-money laundering and counter-terrorist financing measures

- (1) There must be in place in the SVF scheme of the applicable company adequate and appropriate systems of control for preventing or combating possible money laundering or terrorist financing.
- (2) The applicable company must have in place adequate and appropriate systems of control to ensure that it complies with—
  - (a) the provisions of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) that are applicable to the applicable company; and
  - (b) the measures (if any) promulgated by the Monetary Authority, whether in the form of rules, regulations, guidelines or otherwise, to prevent, combat or detect money laundering or terrorist financing.

**7. Management of float and SVF deposit**

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) have in place adequate risk management policies and procedures for managing the float or deposit to ensure that there will always be sufficient funds for the redemption of the stored value that remains on the facility;
- (b) implement those policies and procedures; and
- (c) ensure that at all times the float or deposit—
  - (i) is kept separate from any other funds paid to or maintained or received by the applicable company; and
  - (ii) is adequately protected by the measures adopted by the applicable company for protecting the float or deposit.

**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.

**9. Operating rules**

The operating rules of the SVF scheme of the applicable company must be prudent and sound, having regard to the purposes of the scheme and how the scheme is to be operated and governed.

**10. Purpose and soundness of relevant scheme**

- (1) The SVF scheme of the applicable company must be prudent and sound, having regard to the purpose, business model and operational arrangement of the scheme.
- (2) The SVF scheme of the applicable company must be operated prudently and with competence in a manner that will not adversely affect—
  - (a) the stability of any payment system in Hong Kong; or
  - (b) the interests of the user or potential user of the stored value facility to which the SVF scheme relates.



**Schedule 4** [ss. 8M, 8N & 57]**Licence Fee**

Column 1 Item	Column 2 Matter	Column 3 Fee \$
1.	Licence fee payable by a licensee that is not a bank under section 8M	113,020
2.	Licence fee payable by a licensee that is a bank under section 8N	113,020

**Schedule 5** [ss. 8V, 8Z, 8ZA, 8ZE & 57]**Grounds for Revocation of Licence****Part 1**

- In this Schedule—  
*chief executive* (行政總裁) has the meaning given by section 8A;  
*controller* (控權人) has the meaning given by section 8ZZE.

- In this Schedule, a licensee is regarded as insolvent if the licensee—
  - has ceased to pay its debts in the ordinary course of business; or
  - cannot pay its debts as they become due.

**Part 2**

- The Monetary Authority is satisfied that the licensee does not fulfil any of the minimum criteria applicable in relation to the licensee.
- The Monetary Authority is satisfied that—
  - the licensee—
    - proposes to enter into, or has entered into, a composition or scheme of arrangement with its creditors; or
    - proposes to enter into, or has entered into, a voluntary arrangement as defined by section 2 of the Bankruptcy Ordinance (Cap. 6) with its creditors;
  - the licensee is insolvent; or
  - the licensee is being, or has been, wound up or is otherwise dissolved.
- The licensee has informed the Monetary Authority that—
  - it is likely to become unable to meet its obligations; or
  - it is about to suspend payment.

6. The Monetary Authority is satisfied that the licensee is unable to meet its obligations or has suspended payment.
7. The Monetary Authority is satisfied that the licensee has not provided the Monetary Authority (whether before, on or after the grant of the licence) with any information required to be provided under this Ordinance that is of a material nature relating to—
  - (a) the licensee; or
  - (b) any circumstances likely to affect the licensee's method of business.
8. The Monetary Authority is satisfied that the licensee has provided the Monetary Authority (whether before, on or after the grant of the licence) with any information (whether or not provided under this Ordinance) that is false, misleading or inaccurate in a material particular.
9. The Monetary Authority is satisfied that the licensee has contravened a condition of the licence attached under section 8I.
10. The Monetary Authority is satisfied that the licensee has ceased to carry on the business of issuing or facilitating the issue of stored value facilities.
11. The licensee has failed to pay the fee required by section 8M or 8N after being advised in writing by the Monetary Authority that the licensee has failed to pay the fee.
12. A person has become a controller of the licensee despite there being in effect a notice given to the person under section 8ZZF(2)(b) objecting to the person becoming such a controller.

13. A person continues to be a controller of the licensee despite there being in effect a notice given to the person under section 8ZZG(3)(b) or 8ZZJ(2) objecting to the person being such a controller.
14. The licensee is in contravention of section 8ZZU.
15. A person has become or continues to be a chief executive or director of the licensee in contravention of section 8ZZV.
16. The licensee engages in a business practice specified in the guidelines issued under section 54(1B).
17. The Monetary Authority is satisfied that the interests of the user or potential user of any stored value facility issued, or the issue of which is facilitated, by the licensee under its licence are in any manner threatened by the licensee continuing to be licensed.
18. The Monetary Authority is satisfied that the licensee engages in business practices which would be likely to prejudice the interests of Hong Kong as an international financial centre.
19. The licensee has failed to pay any pecuniary penalty required to be paid by it under section 33Q after being advised in writing by the Monetary Authority that the period within which the penalty was required to be paid has expired without the penalty being paid.

### Part 3

20. The licensee requests in writing the Monetary Authority to revoke the licence, and the Monetary Authority is satisfied that the interests of the user of any stored value facility issued,

or the issue of which is facilitated, by the licensee under its licence will be adequately safeguarded even if the request is acceded to.

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### Schedule 6

[ss. 8A, 8ZZY  
& 57]

#### Affairs or Business of Licensee Specified for Definition of *manager* in Section 8A

1. The maintenance of the accounts or the accounting systems of the licensee concerned.
2. The maintenance of systems of control of the licensee concerned, including systems intended to manage the risks of the licensee.
3. The maintenance of systems of control of the licensee concerned to protect the licensee from being involved in money laundering or terrorist financing.
4. The development, operation and maintenance of computer systems for the licensee concerned.
5. The conduct of internal audits or inspections of the affairs or business of the licensee concerned.

6. The function of ensuring that the licensee concerned complies with the rules, regulations and guidelines applicable to the licensee.

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### Schedule 7

[ss. 8ZO & 57]

#### Powers of Manager of Licensee

1. Power to take possession of, collect and get in the property of the licensee concerned and, for that purpose, to take proceedings that the Manager thinks expedient.
2. Power to purchase property for the licensee concerned.
3. Power to sell or otherwise dispose of the business or property of the licensee concerned by public auction or private contract.
4. Power to raise or borrow money and, for that purpose, to grant security over the business or property of the licensee concerned.
5. Power to appoint a solicitor or accountant or other professionally qualified person to act for the licensee concerned.
6. Power to exercise any voting rights in respect of any shares owned by the licensee concerned.

7. Power to bring or defend any action or other legal proceedings in the name of, or on behalf of, the licensee concerned.
8. Power to give guarantees in the name of, or on behalf of, the licensee concerned.
9. Power to refer to arbitration any question affecting the licensee concerned.
10. Power to take out and maintain any insurance in respect of the business or property of the licensee concerned.
11. Power to use the seal (if any) of the licensee concerned.
12. Power to do all acts for executing in the name of, or on behalf of, the licensee concerned any deed, receipt or other document, including power to enter into, carry out, assign or accept the assignment of, vary or rescind, any contract, agreement or other obligation.
13. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name of, or on behalf of, the licensee concerned.
14. Power to appoint an agent to do any business which the Manager is unable to do personally or which can more conveniently be done by an agent, and power to employ, direct and dismiss employees.
15. Power to do all acts that may be necessary for the realization of any property of the licensee concerned, including power to carry out works.

16. Power to make payment that is necessary or incidental to the discharge of the Manager's duties or the exercise of the Manager's powers.
  17. Power to carry on any business of the licensee concerned.
  18. Power to grant or accept a surrender of a lease or tenancy of any property of the licensee concerned, and to take a lease or tenancy of any property required or convenient for the business of the licensee.
  19. Power to make any arrangement or compromise on behalf of the licensee concerned.
  20. Power to call up any uncalled capital of the licensee concerned.
  21. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of a person indebted to the licensee concerned, and to receive dividends, and to accede to trust deeds for the creditors of any such person.
  22. Power to change the location of any business office of the licensee concerned.
  23. Power to do all other acts that are incidental to the exercise of the powers set out in this Schedule.
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**Schedule 8**[ss. 8ZZZB,  
8ZZZC & 57]**Stored Value Facilities Exempt from Divisions 2,  
3, 4, 5, 6, 7 and 9 of Part 2A****1. Stored value facilities used for certain cash reward schemes**

A stored value facility is one specified for the purposes of section 8ZZZB if—

- (a) it may be used for storing only a sum of money paid by—
  - (i) the issuer; or
  - (ii) a person who agrees to pay a sum of money for storage in the facility under an agreement with the issuer; and
- (b) the sum of money stored may only be used for making payments for goods or services provided by the issuer or person under the terms and conditions of the facility.

**2. Stored value facilities used for purchasing certain digital products**

A stored value facility is one specified for the purposes of section 8ZZZB if—

- (a) it may be used as a means of making payments only for goods or services that are delivered to, and are to be used through, a telecommunication, digital or information technology (*IT*) device;

- (b) the payments are executed through such a device; and
- (c) the telecommunication, digital or IT operator does not act only as an intermediary between the user of the facility and the provider of the goods or services.

**3. Stored value facilities used for certain bonus point schemes**

A stored value facility is one specified for the purposes of section 8ZZZB if—

- (a) subject to paragraph (b)(ii), it may be used for storing only points or units (by whatever name called) that are money's worth provided by—
  - (i) the issuer; or
  - (ii) a person who agrees to provide goods or services to the user of the facility under an agreement with the issuer;
- (b) the user may use the points or units for making payments for the goods or services provided by the issuer or person either by—
  - (i) using only the points or units; or
  - (ii) using the points or units together with a sum of money (in any currency) that is stored on the facility temporarily for the sole purpose of executing the payments; and
- (c) the sum of money so stored is not redeemable for cash.

**4. Stored value facilities used within limited group of goods or services providers**

- (1) Subject to subsection (2), a stored value facility is one specified for the purposes of section 8ZZZB if—
- (a) it may be used as a means of making payments only for goods or services provided by—
    - (i) the issuer; or
    - (ii) a person who provides the goods or services under an agreement with the issuer; and
  - (b) it may be so used within only any of the premises occupied by the issuer.
- (2) The stored value facility is not one so specified if—
- (a) the amount of the float of the facility exceeds \$1,000,000 or its equivalent; or
  - (b) the issuer issues more than one such facility, the aggregate amount of the float of those facilities exceeds \$1,000,000 or its equivalent.

**5. Stored value facilities used within certain premises**

- (1) Subject to subsection (2), a stored value facility is one specified for the purposes of section 8ZZZB if—
- (a) it is issued under an agreement between the issuer and another person; and
  - (b) it may be used as a means of making payments only for goods or services within any of the premises occupied by that other person.
- (2) The stored value facility is not one so specified if—
- (a) the amount of the float of the facility exceeds \$1,000,000 or its equivalent; or

- (b) the issuer issues more than one such facility, the aggregate amount of the float of those facilities exceeds \$1,000,000 or its equivalent.

**Schedule 9**

[s. 60]

**Savings and Transitional Provisions Relating to  
Clearing and Settlement Systems (Amendment)  
Ordinance 2015**

**1. Interpretation**

In this Schedule—

**amending Ordinance** (《修訂條例》) means the Clearing and Settlement Systems (Amendment) Ordinance 2015 ( of 2015);

**appointed date** (指定日期) means the date on which the amending Ordinance is published in the Gazette;

**new Tribunal** (新審裁處) means the Payment Systems and Stored Value Facilities Appeals Tribunal established under section 34(1) of this Ordinance;

**old Tribunal** (舊審裁處) means the Clearing and Settlement Systems Appeals Tribunal established under section 34(1) of the pre-amended Ordinance;

**pre-amended Ordinance** (《原有條例》) means the Clearing and Settlement Systems Ordinance (Cap. 584) as in force immediately before the appointed day.

**2. Chairman of old Tribunal**

- (1) This section applies to a person who—
  - (a) was appointed to be the Chairman of the old Tribunal under section 34(3) of the pre-amended Ordinance; and
  - (b) holds the office immediately before the appointed date.
- (2) On the appointed date, the person continues to hold the office of the Chairman of the new Tribunal under section 34(3) of this Ordinance on the same terms and conditions that were applicable to the appointment had the amending Ordinance not been enacted.

**3. Panel members**

- (1) This section applies to a person who—
  - (a) was appointed to be a member of the panel mentioned in section 34(4) of the pre-amended Ordinance; and
  - (b) holds the office immediately before the appointed date.
- (2) On the appointed date, the person continues to hold the office of the member of the panel mentioned in section 34(4) of this Ordinance on the same terms and conditions that were applicable to the appointment had the amending Ordinance not been enacted.

**4. Gazette notices and related matters under pre-amended Ordinance**

- (1) On and after the appointed day, a notice published in the Gazette under section 4(1) of the pre-amended Ordinance continues to have effect and is regarded to

have been published under section 4(1)(a) of this Ordinance.

- (2) On and after the appointed day—
  - (a) an exemption granted under section 11(2) or (3) of the pre-amended Ordinance continues to have effect and is regarded as an exemption granted under section 11(2) or (3) of this Ordinance; and
  - (b) a notice published in the Gazette under section 11(4) of the pre-amended Ordinance in relation to the exemption continues to have effect and is regarded to have been published under section 11(4) of this Ordinance.
- (3) On and after the appointed day—
  - (a) a certificate issued under section 16(3) of the pre-amended Ordinance continues to have effect and is regarded to have been issued under section 16(3) of this Ordinance; and
  - (b) a notice published in the Gazette under section 16(7) of the pre-amended Ordinance in relation to the certificate continues to have effect and is regarded to have been published under section 16(7) of this Ordinance.
- (4) On and after the appointed day, a notice published in the Gazette under section 28(4) of the pre-amended Ordinance continues to have effect and is regarded to have been published under section 28(4) of this Ordinance.
- (5) On and after the appointed day, a notice published in the Gazette under section 29(4) of the pre-amended Ordinance continues to have effect and is regarded to

have been published under section 29(4) of this Ordinance.

- (6) In the notice mentioned in subsection (1), (2)(b), (3)(b), (4) or (5)—
- (a) a reference to Division 3 of Part 2 of the pre-amended Ordinance is to be construed as a reference to Part 2B of this Ordinance; and
  - (b) a reference in any other provision of the pre-amended Ordinance is to be construed as a reference to the corresponding provision of this Ordinance.”.
- 

## Part 3

### Related Amendments

#### Division 1—Amendments to Banking Ordinance (Cap. 155)

##### 54. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *deposit*—

##### **Repeal paragraph (b)**

##### **Substitute**

“(b) does not include—

- (i) a loan of money on terms involving the issue, by a company, of debentures or other securities in respect of which a prospectus has been registered under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);
- (ii) a loan of money on terms referable to the provision of property or services;
- (iii) a loan of money by one company to another (neither company being an authorized institution) at a time when one is a subsidiary of the other or both are subsidiaries of another company; or
- (iv) any float or SVF deposit, as defined by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584),”.

- (2) Section 2(1)—

- (a) definition of *multi-purpose card*;
- (b) definition of *single-purpose card*;
- (c) definition of *stored value card*—



**Repeal the definitions.**

- (3) Section 2(1)—

**Add in alphabetical order**

“*SVF licence* (工具牌照), in relation to a bank, means a licence regarded as being granted to the bank under section 8G of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584);”.

- (4) Section 2—

**Repeal subsection (11).**

- (5) Section 2(12)—

**Repeal**

everything after “institution)”

**Substitute**

“include, in the case of a bank, any affairs, business and property of the bank arising from, or attributable to, whether directly or indirectly, the issue, or the facilitation of the issue, of stored value facilities under its SVF licence.”.

- (6) Section 2—

**Repeal subsection (13).**

- (7) Section 2(14)(cb)—

**Repeal the semicolon****Substitute a full stop.**

- (8) Section 2(14)—

**Repeal paragraph (d).**

- (9) Section 2(15)—

**Repeal paragraphs (a) and (b).**

- (10) After section 2(19)—

**Add**

“(20) A reference in this Ordinance to the issue, or the facilitation of the issue, of a stored value facility is a reference to the issue, or facilitation of the issue, of a stored value facility within the meaning of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584).”.

55. **Section 14A repealed (only authorized institutions may issue, etc. multi-purpose cards)**

Section 14A—

**Repeal the section.**

56. **Section 15 amended (application for authorization, etc.)**

Section 15—

**Repeal subsection (3).**

57. **Section 16 amended (grant or refusal of authorization, etc.)**

- (1) Section 16—

**Repeal subsections (3A) and (3B).**

- (2) Section 16(4)—

**Repeal**

“or to approve a company under subsection (3A)(b)”.

- (3) Section 16(5)—

**Repeal**

“or (3A)(a)”.

- (4) Section 16(6)—

**Repeal**

“or (3A)(b) to refuse to authorize or approve”

**Substitute**

“to refuse to authorize”.

- (5) Section 16(8)—

**Repeal**

“, (3A)(a)”.

- (6) Section 16(9)—

**Repeal**

“, (3A)(a)”.

- (7) Section 16(9)(a)—

**Repeal**

“or business of issuing or facilitating the issue of multi-purpose cards,”.

- (8) Section 16(9)—

**Repeal paragraphs (aa), (ab) and (ac).**

**58. Section 23 amended (procedure on and effect of revocation of authorization)**

Section 23(2)—

**Repeal**

everything after “cease”

**Substitute**

“to carry on the business the subject of its revoked authorization.”.

**59. Section 27 amended (effect of suspension)**

Section 27(1)—

**Repeal**

everything after “, cease” and before “and until”

**Substitute**

“to carry on the business the subject of its authorization unless”.

**60. Section 52 amended (powers of Monetary Authority)**

- (1) Section 52(1)(c)(i)—

**Repeal sub-subparagraph (C)**

**Substitute**

“(C) for a bank, the user or potential user of any stored value facility issued, or the issue of which is facilitated, by the bank under its SVF licence;”.

- (2) Section 52(1)(A)—

**Repeal**

“multi-purpose cards”

**Substitute**

“stored value facilities under an SVF licence”.

**61. Section 132A amended (appeals)**

- (1) Section 132A(1)(a)—

**Repeal**

“or (3A)(b)”.

- (2) Section 132A(1)(b)—

**Repeal**

“, (3A)(a)”.

**62. Section 153 amended (transitional provisions in relation to Banking (Amendment) Ordinance 1997)**

- (1) Section 153—

**Repeal subsections (2) and (3).**

(2) Section 153(6)—

**Repeal**

“(3) or”.

(3) Section 153(7)(b)—

**Repeal**

“(2) or”.

**Division 2—Amendment to Electronic Transactions  
Ordinance (Cap. 553)**

63. Schedule 2 amended (proceedings in relation to which sections 5, 5A, 6, 7 and 8 of this Ordinance do not apply under section 13(1) of this Ordinance)

Schedule 2—

**Repeal paragraph (zp)**

**Substitute**

“(zp) the Payment Systems and Stored Value Facilities Appeals Tribunal established under the Payment Systems and Stored Value Facilities Ordinance (Cap. 584);”.

**Division 3—Amendments to Anti-Money Laundering and  
Counter-Terrorist Financing (Financial Institutions)  
Ordinance (Cap. 615)**

64. 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 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.”.

65. Section 9 amended (power to enter business premises etc. for routine inspection)

(1) Section 9(15), definition of *business premises*, paragraph (f)—

**Repeal**

“and”.

(2) Section 9(15), definition of *business premises*, paragraph (g)(ii), after the semicolon—

**Add**

“and”.

(3) Section 9(15), definition of *business premises*, after paragraph (g)—

**Add**

“(h) in relation to an SVF licensee, means any premises of the licensee that is used by the licensee in connection with its business;”.

66. Section 25 amended (persons to whom this Part does not apply)

(1) Section 25(d)—

**Repeal**

“or”.

- (2) Section 25(e)—

**Repeal the full stop**

**Substitute a semicolon.**

- (3) After section 25(e)—

**Add**

- “(f) an SVF licensee that operates a money service that is ancillary to the licensee’s principal business; or
- (g) a system operator or settlement institution of a designated retail payment system that operates a money service that is ancillary to its business as a system operator or settlement institution.”.

**67. Schedule 1 amended (interpretation)**

- (1) Schedule 1, Part 1, section 1—

**Add in alphabetical order**

“*designated retail payment system* (指定零售支付系統) has the meaning given by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584);

*stored value facility* (儲值支付工具) has the meaning given by section 2A of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584);”.

- (2) Schedule 1, Part 2, section 1, definition of *financial institution*, paragraph (f)—

**Repeal**

“or”.

- (3) Schedule 1, Part 2, section 1, definition of *financial institution*, paragraph (g), after the semicolon—

**Add**

“or”.

- (4) Schedule 1, Part 2, section 1, definition of *financial institution*, after paragraph (g)—

**Add**

“(h) an SVF licensee;”.

- (5) Schedule 1, Part 2, section 1, definition of *relevant authority*, paragraph (a), after “authorized institution”—

**Add**

“or SVF licensee”.

- (6) Schedule 1, English text, Part 2, section 1, definition of *Securities and Futures Commission*—

**Repeal**

“(Cap. 571).”

**Substitute**

“(Cap. 571);”.

- (7) Schedule 1, Part 2, section 1—

**Add in alphabetical order**

“*settlement institution* (交收機構) has the meaning given by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584);

*SVF licensee* (工具持牌人) means a person who is granted a licence under section 8F of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584);

*system operator* (系統營運者) has the meaning given by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584).”.

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### Explanatory Memorandum

The main object of this Bill is to amend the Clearing and Settlement Systems Ordinance (Cap. 584) (*the Ordinance*) to implement measures for promoting the general safety and efficiency of certain payment systems and stored value facilities.

2. The Bill is divided into 3 Parts.

#### Part 1—Preliminary

3. Part 1 contains preliminary provisions. In particular, clause 1 sets out the short title and provides for commencement.

#### Part 2—Amendments to Clearing and Settlement Systems Ordinance

4. Part 2 sets out the amendments made to the Ordinance.
5. Clauses 3 and 4 amend the long title and short title respectively of the Ordinance to reflect the new scope of the Ordinance after the amendments.
6. Clauses 5 and 6 deal with the definitions of terms and expressions used in the Ordinance. In particular, a new definition of *retail payment system* is added to section 2 of the Ordinance by clause 5(11) and a new section 2A added by clause 6 provides for the meaning of stored value facility.
7. Clause 10 amends section 4 of the Ordinance. The main purpose of the amendments is to empower the Monetary Authority to designate a retail payment system for the purposes of the Ordinance. Under existing section 4 of the Ordinance, the Monetary Authority may designate a clearing and settlement system if the Monetary Authority is of the opinion that the system is, or is likely to become, a system whose proper functioning is material to the monetary or financial stability of Hong Kong or is material to the functioning of Hong Kong as an international financial centre. These designation

criteria will also apply to retail payment system. Further, a new designation criterion is added so that the Monetary Authority may designate a clearing and settlement system or retail payment system if, having regard to matters of significant public interest, the Monetary Authority is of the opinion that the system should be so designated.

8. Clause 13 adds new sections 6A and 6B to the Ordinance to deal with the activities that may be carried out through a designated retail payment system. In designating a retail payment system, the Monetary Authority may declare the activities that are allowed to be carried out through the system (see new section 4(4B) added by clause 10(8)). A system operator or settlement institution of such a system must not carry out through the system an activity that is not so declared without the consent of the Monetary Authority.
9. Clauses 14 and 15 amend section 7 and 8 respectively of the Ordinance. The purpose is to strengthen the oversight of designated systems by placing more emphasis on the risk management and control procedures relating to the operation and soundness of the system, including financial soundness.
10. Clauses 17 and 53 add a new Part 2A and new Schedules 3 to 8 respectively to the Ordinance to provide for the licensing and supervision of stored value facilities. The new Part 2A is divided into 9 Divisions.
11. Division 1 of the new Part 2A contains preliminary provisions.
12. Division 2 of the new Part 2A provides for offences relating to the issue, or facilitation of the issue, of stored value facilities. In particular, it is provided that a person who issues, or facilitates the issue, of a stored value facility without being authorized by a licence held by the person commits an offence (see new section 8B).

13. Division 3 of the new Part 2A provides for licensing matters. The licensing criteria are set out in the new Schedule 3. A bank holding a banking licence granted under section 16 of the Banking Ordinance (Cap. 155) is regarded as being granted a licence under the Ordinance (see new section 8G).
14. Division 4 of the new Part 2A provides for the obligation of a licensee, including the obligation to pay the licence fee specified in the new Schedule 4.
15. Division 5 of the new Part 2A provides for the revocation and suspension of a licence. In particular, the new sections 8W and 8ZB provide that a former licensee or a licensee must not hold the float or deposit of the stored value facilities issued, or the issue of which is facilitated, under the licence revoked or suspended without the consent of the Monetary Authority. The grounds for the revocation and suspension are set out in the new Schedule 5.
16. Division 6 of the new Part 2A provides for the powers of the Monetary Authority to supervise a licensee including the power to appoint a Manager to manage the affairs, business or property of the licensee. The powers of the Manager are set out in the new Schedule 7.
17. Division 7 of the new Part 2A deals with the ownership and management of a licensee. Of which, a person must inform the Monetary Authority that the person is to become or has become a controller of a licensee (see Subdivision 3 of that Division 7). If there is any contravention relating to this requirement, the shares held by the controller may be subject to the restriction under Subdivision 4 of that Division 7. Subdivision 5 of that Division 7 sets out the requirement relating to the appointment of chief executive, director and manager and restricts certain persons from becoming the employees of a licensee.
18. Division 8 of the new Part 2A provides that certain stored value facilities are exempt from the operation of certain Divisions of that

Part. Under that Division 8, a stored value facility is exempt if it is specified in the new Schedule 8 (see new section 8ZZZB) or if it is exempt by the Monetary Authority by notice published in the Gazette (see new section 8ZZZD).

19. Division 9 of the new Part 2A provides for miscellaneous matters including offences relating to the display of licence number on a stored value facility (see new section 8ZZZI), publication of advertisement relating to a stored value facility (see new section 8ZZZJ) and false claim to be an issuer or a facilitator of a stored value facility (see new section 8ZZZK).
20. Clauses 18 to 23 renumber existing Division 3 of Part 2 of the Ordinance as Part 2B and amend that Part 2B to provide for matters pertaining to the Monetary Authority's day-to-day supervisory functions. The amendments are mainly caused by the new functions of the Monetary Authority concerning retail payment systems and stored value facilities.
21. Clauses 24 to 28 contain textual amendments to Part 3 of the Ordinance. The amendments are purely of a consequential nature.
22. Clause 29 adds—
  - (a) a new Part 3A to the Ordinance to provide for the power of the Monetary Authority to investigate an alleged contravention of a provision under the Ordinance, a requirement imposed under the Ordinance or a condition attached to an instrument granted or given under the Ordinance (*relevant contravention*); and
  - (b) a new Part 3B to the Ordinance to provide for civil sanctions for a relevant contravention which sanctions include imposing a pecuniary penalty under the new section 33Q.
23. Clauses 30 to 34 contain amendments to Part 4 of the Ordinance. That Part 4 deals with matters relating to the review of a decision

under the Ordinance. The review mechanism will remain the same except that—

- (a) the list of decisions that are subject to review will be revised due to the new scope of the Ordinance (see new Part 2 of Schedule 1 added by clause 52(7)); and
  - (b) the name of the tribunal established under the Ordinance for conducting the review will be changed to reflect the change in the type of decisions that may be referred to the tribunal.
24. Clause 35 repeals sections 41, 42, 43 and 44 of the Ordinance. Those sections create offences for various existing provisions of the Ordinance. To improve the readability of the Ordinance, the offence provisions in those sections are moved to the provisions to which the offence provisions relate. There is no change in the penalty imposed under any of those sections.
25. Clauses 36 to 43 amend sections 45 to 52 of the Ordinance mainly to extend the scope of the provisions to cover retail payment systems and stored value facilities.
26. Clause 45 amends section 54 of the Ordinance to empower the Monetary Authority to issue guidelines relating to stored value facilities. Clause 46 adds a new section 54A to the Ordinance to empower the Monetary Authority to specify forms for the purposes of the Ordinance. Clause 48 adds a new section 56A to the Ordinance to provide for the handling of funds payable to the Monetary Authority under the Ordinance.
27. Clauses 51 and 53 add a new section 60 and a new Schedule 9 to the Ordinance to set out the savings and transitional arrangements for the existing Clearing and Settlement Systems Appeals Tribunal and certain Gazette notices published under the existing provisions of the Ordinance.

**Part 3—Related amendments**

28. Part 3 contains related amendments to the Banking Ordinance (Cap. 155), the Electronic Transactions Ordinance (Cap. 553) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615).