

Clearing and Settlement Systems (Amendment) Bill 2015

Debate and voting arrangements

Main object of the Bill : 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.

First debate	: Clauses with no amendment – Clauses 1 to 4, 6 to 11, 13, 15, 16, 18, 19, 20, 22, 24, 25, 26, 30, 31, 32, 34, 35, 39, 42, 45 to 51, 55 to 63, 65, 66 and 67
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Voting	: To vote on the above clauses standing part of the Bill
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Second debate	: Clauses with amendments – Clauses 5, 12, 14, 17, 21, 23, 27, 28, proposed by the Secretary for Financial Services and the Treasury – Clauses 29, 33, 36, 37, 38, 40, 41, 43, 44, 52, 53, 54 and 64
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Joint debate on the original clauses and the above amendments.

Clause 5(11)

- To amend the proposed definition of **retail payment system** to clarify that the “retail activities” therein includes activities taking place in Hong Kong or elsewhere; and
- add the definition of **public** to clarify that any reference to **public** in the Ordinance means the public of Hong Kong.

Clauses 12(3), 14(5), 17, 21(4), 23(4), 27, 28, 33, 36, 37, 38, 41(12), 43(3) and 44

- To amend the proposed sections 6(3) and (4) in clause 12(3), the proposed sections 7(4) and (5) in clause 14(5), the proposed sections 8O(2) and 8S(3) in clause 17, the proposed section 12(4) in clause 21(4), the proposed section 13(3) in clause 23(4), the proposed section 30(6) in clause 27, the proposed section 31(3) in clause 28, the proposed section 36(5) in clause 33, the proposed sections 50(9) and (12) in clause 41(12), the proposed section 52(4) in clause 43(3), and the proposed section 53(5) in clause 44, and to amend section 45 of the Ordinance in clause 36, section 46 of the Ordinance in clause 37 as well as section 47 of the Ordinance in clause 38, to include the relevant penalties on summary conviction so as to ensure consistency with the comparable provisions in the Bill.

Clause 17

- To add subsection (1A) before the proposed section 8R(1) to stipulate that section 8R(1) does not apply to a licensee which is a bank, so as to avoid duplication with the existing requirement under section 67 of the Banking Ordinance (Cap. 155), which requires a bank to notify immediately the Monetary Authority (“MA”) of its inability to meet its obligations or being about to suspend payments;
- add subsection (5) to the proposed section 8ZZZI to clarify that **communication network** includes a licensee’s website, and to add subsection (6) to exempt any licensee from re-issuing stored value facilities (“SVF”), which are multi-purpose cards issued under the Banking Ordinance after the passage of the Bill; and
- amend the proposed section 8ZZZJ to provide:
 - (a) that a person must not publish an advertisement, invitation or document in Hong Kong or elsewhere relating to the issue or facilitation of the issue of SVF that may only be issued or facilitated under a licence, unless such an advertisement, invitation or document relates to the issue or facilitation of the issue of the facility by the relevant licensee, and clearly states the licence number; and
 - (b) the definitions of **publish, advertisement** and **invitation**.

Clauses 23(2) and 29

- To make textual amendments to the proposed section 13(2)(a) in clause 23(2) to align the relevant wordings used in subsections (1)(a) and(b) in that clause; and
- make textual amendments to the proposed section 33J in clause 29.

Clause 40(1)

- To amend the proposed section 49(1)(b) to stipulate that in addition to the Financial Secretary, MA should consult SVF licensees before making regulations.

Clauses 52(7) and 53

- To add item 21 to the proposed Part 2 of Schedule 1 in clause 52(7) to stipulate that MA’s decision to give prior written permission under section 8 of Part 2 of Schedule 3 of the Bill to an applicable company for imposing an expiry date for the redemption of the outstanding stored value or SVF deposit should be subject to review by the Payment Systems and Stored Value Facilities Appeals Tribunal;
- amend section 8 in the proposed Part 2 of Schedule 3 in clause 53 to stipulate that the applicable company must redeem in full the outstanding stored value or SVF deposit on the facility as soon as practicable after being requested by the SVF user, unless MA has given a prior written permission to the applicable company stating that such a requirement does not apply to it; and the applicable company has stated clearly and prominently the relevant terms in its contract with the user;
- consequential to the above amendment to clause 52(7), make a technical amendment to the reference to section and Schedule in the bracket next to the heading of the proposed Schedule 3 in clause 53; and
- make textual amendments to the Chinese texts of the heading of section 2 and section 3(c) in the proposed Schedule 8 in clause 53.

Clause 54

- To amend the definition of **banking business** under the Banking Ordinance to stipulate that receiving float or SVF deposit of a stored value facility would not be amounted to carrying on a “banking business” under the Banking Ordinance. This amendment is in line with the amendment to the definition of **deposit** under the Banking Ordinance in clause 54 of the Bill.

Clause 64

- To amend section 5 (Schedule 2 has effect with respect to financial institutions) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) to clarify that Schedule 2 to the Ordinance will apply to a licensed bank if the maximum value that can be stored on the device-based SVF issued by the bank exceeds \$3,000.

Voting : To vote on the above amendments and then the original clauses or the clauses as amended standing part of the Bill

Third debate : New clauses proposed by the Secretary for Financial Services and the Treasury – New clause 43A , new division heading before new clause 53A and new clause 53A, new clause 62A and new division heading before new clause 63A and new clause 63A

New clause 43A

- To stipulate that the Bill does not affect any claims, rights or entitlements that would, apart from the Ordinance, arise on the ground of legal professional privilege.

New division heading before new clause 53A and new clause 53A

- To add a new Division heading before new clause 53A before Division 1 of Part 3 of the Bill; and
- amend subsection (3B)(a) in section 53A of the Insurance Companies Ordinance (Cap. 41) to allow the Insurance Authority to disclose information to MA to facilitate MA to exercise its functions under the relevant ordinances, as the establishment of the regulatory regime for SVFs and retail payment systems, particularly the regulation of “multi-purpose cards”, will be transferred to the Payment Systems and Stored Value Facilities Ordinance (Cap. 584) which will substitute the Clearing and Settlement Systems Ordinance after the passage of the Bill.

New clause 62A

- To amend the definition of **banking or other financial services** under Schedule 14 to the Banking Ordinance by replacing “multi-purpose card” with “stored value facilities”.

New division heading before new clause 63A and new clause 63A

- To add a new Division heading before new clause 63A before Division 3 of Part 3 of the Bill; and
- amend Schedule 1 to the Deposit Protection Scheme Ordinance (Cap. 581) to:
 - (a) clarify that any float or SVF deposit of a stored value facility held by a licensee as a depositor with a Scheme member will not be covered by the Deposit Protection Scheme Ordinance as they are not “protected deposit”;
 - (b) add the definitions of **float** and **SVT deposit**; and
 - (c) make corresponding textual amendments.

Voting : To vote on the above added new clauses

The Secretary for Financial Services and the Treasury’s amendments

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