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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 4 November 2015

Clearing and Settlement Systems (Amendment) Bill 2015

Committee stage amendments

The Second Reading debate on the above Bill will be resumed at the Council meeting of 4 November 2015. Subject to the Bill receiving Second Reading, the President has given permission for the Secretary for Financial Services and the Treasury to move proposed amendments to the Bill at its Committee stage.

2. As directed by the President, the proposed amendments are attached for Members' consideration.

(Ms Angela LIN)
for Clerk to the Legislative Council

Encl.

Clearing and Settlement Systems (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
5(11)	<p>(a) In the proposed definition of <i>retail payment system</i>, in paragraph (a), by adding “(whether the activities take place in Hong Kong or elsewhere)” after “activities”.</p> <p>(b) By adding in alphabetical order to the proposed definitions— “<i>public</i> (公眾) means the public of Hong Kong, and includes any class of that public;”.</p>
12(3)	<p>In the proposed section 6(3) and (4), by deleting everything after “liable” and substituting—</p> <p>“—</p> <p>(a) on conviction on indictment—</p> <p>(i) to a fine of \$400,000 and to imprisonment for 2 years; and</p> <p>(ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or</p> <p>(b) on summary conviction—</p> <p>(i) to a fine at level 6 and to imprisonment for 6 months; and</p> <p>(ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.”.</p>

- 14(5) (a) In the proposed section 7(4), by deleting everything after “liable” and substituting—
 “—
 (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.”.
- (b) In the proposed section 7(5), by deleting everything after “liable” and substituting—
 “—
 (a) on conviction on indictment, to a fine of \$400,000; or
 (b) on summary conviction, to a fine at level 6.”.

- 17 In the proposed section 8O(2), by deleting everything after “liable” and substituting—
 “—
 (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.”.

17 By adding before the proposed section 8R(1)—

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

17 In the proposed section 8S(3), by deleting everything after “liable” and substituting—

“—

(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.”.

17 In the proposed section 8ZZZI, by adding—

“(5) In this section—

communication network (通訊網絡) includes a website of a licensee.

(6) This section does not apply to a stored value facility that is a multi-purpose card issued under the Banking Ordinance (Cap. 155) before the commencement date of this section.”.

17

- (a) In the proposed section 8ZZZJ, in the heading, by adding “, **etc.**” after “**advertisement**”.
- (b) By deleting the proposed section 8ZZZJ(1) and substituting—
 - “(1) A person must not publish in Hong Kong or elsewhere an advertisement, invitation or document mentioned in subsection (2A) relating (whether in whole or in part) to the issue of a stored value facility that, under this Ordinance, may only be issued under a licence unless—
 - (a) the advertisement, invitation or document relates (whether in whole or in part) to the issue of the facility by a licensee; and
 - (b) the licence number of the licence held by the licensee is clearly stated in the advertisement, invitation or document.”.
- (c) By deleting the proposed section 8ZZZJ(2) and substituting—
 - “(2) A person must not publish in Hong Kong or elsewhere an advertisement, invitation or document mentioned in subsection (2A) relating (whether in whole or in part) to the facilitation of the issue of a stored value facility that, under this Ordinance, may only be facilitated under a licence unless—
 - (a) the advertisement, invitation or document relates (whether in whole or in part) to the facilitation of the issue of the facility by a licensee; and
 - (b) the licence number of the licence held by the licensee is clearly stated in the advertisement, invitation or document.”.
- (d) In the proposed section 8ZZZJ, by adding—
 - “(2A) For the purposes of subsections (1) and (2), the advertisement, invitation or document is an advertisement, invitation or document which to the knowledge of the person is, or contains, an invitation to the public.”.
- (e) In the proposed section 8ZZZJ(4), by deleting everything after

“prove that” and substituting—

“—

- (a) the person carries on the business of publishing or arranging for the publication of advertisement, invitation or document;
- (b) the person received the advertisement, invitation or document in the ordinary course of business; and
- (c) at the time the person published or arranged for the publication of the advertisement, invitation or document, the person believed on reasonable grounds that—
 - (i) for a contravention of subsection (1), the advertisement, invitation or document related to the issue of a stored value facility by a licensee;
 - (ii) for a contravention of subsection (2), the advertisement, invitation or document related to the facilitation of the issue of a stored value facility by a licensee; or
 - (iii) for a contravention of either subsection (1) or (2), the stored value facility concerned was exempt under section 8ZZZB or 8ZZZD.”.
- (f) By deleting the proposed section 8ZZZJ(5) and substituting—

“(5) In this section—

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

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

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

document, whether—

- (a) by any visit in person;
- (b) in a newspaper, magazine, journal or other periodical publication;
- (c) by the display of posters or notices;
- (d) by means of circulars, brochures, pamphlets or handbills;
- (e) by an exhibition of photographs or cinematography films;
- (f) by way of sound broadcasting or television;
- (g) by computer or other electronic device; or
- (h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

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

21(4) In the proposed section 12(4), by deleting everything after “liable” and substituting—

“—

- (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.”.

23(2) In the proposed section 13(2)(a), by deleting “or the act or thing to be done”.

23(4) In the proposed section 13(3), by deleting everything after “liable” and substituting—

“—

(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.”.

27 In the proposed section 30(6), by deleting everything after “liable” and substituting—

“—

(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.”.

- 28 In the proposed section 31(3), by deleting everything after “liable” and substituting—
- “—
- (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.”.
- 29 (a) In the proposed section 33J(1), in the English text, by deleting “the magistrate” and substituting “a magistrate”.
- (b) In the proposed section 33J(1)(a), by adding “specified in the information” after “premises”.
- (c) In the proposed section 33J(3), by deleting “premises specified in the information” and substituting “the premises”.
- 33 In the proposed section 36(5), by deleting everything after “liable” and substituting—
- “—
- (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.”.
- 36 By deleting the clause and substituting—
- “36. Section 45 amended (giving false information to Monetary Authority)**
- (1) Section 45—

Renumber the section as section 45(1).

- (2) Section 45(1)—

Repeal

“Part 2 or section 31”

Substitute

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

- (3) Section 45(1)—

Repeal

everything after “an offence”

Substitute a full stop.

- (4) After section 45(1)—

Add

“(2) A person who commits an offence under subsection (1) is liable—

- (a) on conviction on indictment, to a fine of \$400,000 and to imprisonment for 2 years; or

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

37

- (a) By renumbering the clause as clause 37(1).

- (b) By adding—

“(2) Section 46(6)—

Repeal

everything after “liable”

Substitute

“—

- (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.”.”.

38

By adding—

“(3A) Section 47(3)—

Repeal

everything after “liable”

Substitute

“—

- (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.”.”.

40(1)

By deleting the proposed section 49(1)(b) and substituting—

- “(b) in so far as the regulations relate to stored value facilities—
- (i) the Financial Secretary; and
- (ii) the licensees of stored value facilities.”.

41(12)

(a) In the proposed section 50(9), by deleting everything after “liable” and substituting—

“—

- (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.”.

(b) In the proposed section 50(12), by deleting everything after “liable” and substituting—

“—

- (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.”.

43(3) In the proposed section 52(4), by deleting everything after “liable” and substituting—

“—

- (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.”.

New By adding—

“43A. Section 52A added

After section 52—

Add

“52A. Legal professional privilege

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

44 In the proposed section 53(5), by deleting everything after “liable” and substituting—

“—

- (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.”.

52(7) By adding—

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

53 In the proposed Schedule 3, by deleting “& 57]” and substituting “& 57 & Sch. 1]”.

53 In the proposed Schedule 3, in Part 2, by deleting section 8 and substituting—

“8. Redemption of outstanding stored value

- (1) Subject to subsection (3), if the applicable company holds the stored value (including SVF deposit) of a stored value facility to which its SVF scheme relates, the applicable company must redeem in full the total of the stored value that remains on the facility as soon as practicable after being requested by its user to do so.
- (2) For the purposes of subsection (1), if a fee or charge is payable for a request for the redemption made at any time, the applicable company must, in the contract with the user, state clearly and prominently the amount of the fee or charge.

- (3) The Monetary Authority may, on the application of the applicable company, give a prior written permission to the applicable company to the effect that its SVF scheme is not to be subject to subsection (1), if the Monetary Authority considers it appropriate to do so.
- (4) If a prior written permission is given under subsection (3), the applicable company must, in the contract with the user, state clearly and prominently—
- (a) that the stored value remaining on the stored value facility is not redeemable after an expiry date;
 - (b) the expiry date for redeeming the stored value remaining on the facility; and
 - (c) any other terms or conditions relating to the redemption.”.

53 In the proposed Schedule 8, in the Chinese text, in the heading of section 2, by deleting “電子” and substituting “數碼”.

53 In the proposed Schedule 8, in the Chinese text, in section 3(c), by deleting “變現” and substituting “變”.

New By adding—

**“Division 1A—Amendment to Insurance
Companies Ordinance (Cap. 41)**

53A. Section 53A amended (secrecy)

Section 53A(3B)(a), after “(Cap. 155)”—

Add

“or the Payment Systems and Stored Value Facilities Ordinance (Cap. 584)”.”.

54 By adding before subclause (1)—

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

Add

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

New By adding after clause 62—

“62A. Fourteenth Schedule amended (affairs or business of authorized institutions specified for purposes of definition of *manager*)

Fourteenth Schedule, section 1, definition of *banking or other financial services*—

Repeal

“, debit or multi-purpose cards”

Substitute

“cards, debit cards or stored value facilities”.”.

New By adding—

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

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

(1) Schedule 1, section 1(h)—

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

- (2) Schedule 1, after section 1(h)—

Add

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

- (3) Schedule 1, section 3—

Add in alphabetical order

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

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