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

Purpose

This paper reports on the deliberations of the Bills Committee on Clearing and Settlement Systems (Amendment) Bill 2015 ("the Bills Committee").

Background

2. The current regulatory regime for stored value cards under the Banking Ordinance ("BO") (Cap. 155) only applies to device-based multi-purpose stored value products. The Clearing and Settlement Systems Ordinance ("CSSO") (Cap. 584) provides a legal framework for the Monetary Authority ("MA")¹ to designate and oversee large-value clearing and settlement systems. Nonetheless, the current regulatory regime in BO or CSSO does not cover non-device-based payment facilities which store value on network-based accounts, mobile network accounts or computer servers, and payment systems related to retail activities.

3. In light of the growing acceptance of innovative retail payment products and services, the Government considers it necessary to expand the current regulatory regime to cover non-device-based stored value facilities

¹ In this report, the term "Monetary Authority" has the same meaning as the Hong Kong Monetary Authority.

("SVF")², and retail payment systems ("RPS")³ in Hong Kong to ensure their safety and soundness. The Financial Services and the Treasury Bureau and the Hong Kong Monetary Authority ("HKMA") jointly conducted a public consultation on the proposed regulatory regime for SVF and RPS in Hong Kong in May 2013 and issued the consultation conclusions in October 2014. According to the Government, comments received during the consultation indicated overall support for the policy objectives and key proposals on the proposed regulatory regime for SVF and RPS.

The Bill

4. The Government published the Clearing and Settlement Systems (Amendment) Bill 2015 ("the Bill") in the Gazette on 23 January 2015 which received its First Reading at the Legislative Council ("LegCo") meeting of 4 February 2015. The Bill seeks to amend CSSO to establish a regulatory regime for SVF and RPS in Hong Kong, and to make related amendments to other Ordinances.

5. The main provisions of the Bill are as follows:

- (a) Clauses 3 and 4 – to change the long and short titles of CSSO to reflect the new scope of the amended ordinance. The proposed new short title is "Payment Systems and Stored Value Facilities Ordinance";
- (b) Clauses 10 to 15 – to provide for the designation and oversight by the MA of RPS, including the designation criteria, and the regulatory requirements on the designated systems;

² 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).

³ 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.

- (c) Clauses 17 and 53 – to introduce a new Part 2A and new Schedules 3 to 8 to CSSO⁴ to provide for the licensing and supervision of SVF issuers⁵;
- (d) Clauses 18 to 23 – to renumber existing Division 3 of Part 2 of CSSO as Part 2B and amend that Part 2B to provide for matters pertaining to the MA's day-to-day supervisory functions over SVF and designated systems;
- (e) Clause 29 – to introduce a new Part 3A to provide for the MA's power to investigate an alleged contravention of provisions of CSSO and matter pertaining to such investigation, and a new Part 3B to provide for civil sanctions for contravention under CSSO;
- (f) Clause 31 – to expand the ambit of the existing Clearing and Settlement Systems Appeals Tribunal and change the name to Payment Systems and Stored Value Facilities Appeals Tribunal ("the Appeals Tribunal");
- (g) Clause 53 – to introduce 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 CSSO; and
- (h) Clauses 54 to 67 – to deal with certain related and consequential amendments to BO, the Electronic Transactions Ordinance (Cap. 553) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO").

The Bills Committee

6. At the House Committee meeting on 6 February 2015, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**. Under the chairmanship of Hon Andrew

⁴ The terms "Division", "Part", "section" and "Schedule" used in this report, unless specify otherwise, refer to Division, Part, section of and Schedule to CSSO or the proposed amended CSSO.

⁵ Schedule 3 provides for the licensing criteria for SVF issuers and facilitators. Schedules 4 and 5 set out the licence fee payable by SVF licensees and grounds for revoking licences. Schedule 6 prescribes the affairs or businesses that the manager of a licensee is responsible for. Schedule 7 set out the powers of the Manager appointed by the MA to supervise an SVF licensee. Schedule 8 provides for SVF exempt from the regulatory regime.

LEUNG Kwan-yuen, the Bills Committee has held seven meetings to discuss with the Government, including one meeting to meet with deputations. The Bills Committee has also received 11 written submissions. The list of organizations and individuals which/who have provided views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

7. The Bills Committee supports the Bill on account of the need to establish a regulatory regime for SVF and RPS in Hong Kong to ensure the safety and soundness of these payment facilities and systems as they relate to financial stability, which in turn will enhance Hong Kong's position as an international financial centre. Members of the Bills Committee note the broad support from deputations for the Bill as they agree that its enactment would bring about the benefits of enhancing efficiency of the payment industry, improving consumer protection and providing a level playing field for operators. The main subjects deliberated by the Bills Committee are set out below:

- (a) Liabilities on persons promoting the issue of unlicensed SVF (paragraphs 9 - 10);
- (b) Redemption of the outstanding value in an SVF (paragraphs 16 - 18);
- (c) bank and non-bank SVF licensees (paragraphs 19 - 22);
- (d) SVF exempt from licensing requirements (paragraphs 23 - 26);
- (e) Regulatory powers of the MA over SVF licensees (paragraphs 27 - 36);
- (f) Definition and designation of RPS (paragraphs 38 - 43);
- (g) Investigation powers of the MA over SVF and RPS (paragraphs 44 - 51);
- (h) Review of MA's decisions (paragraphs 55 - 56);
- (i) Market development in SVF and RPS (paragraphs 58 - 60);
- (j) Publicity on the regulatory regime (paragraphs 61 - 62); and

(k) Cross-boundary cooperation in regulation (paragraphs 63 - 64).

Regulatory regime for stored value facilities

8. Under Division 2 of the new Part 2A, a person must not issue or facilitate the issue of an SVF, unless the issue or the facilitation of the issue of the SVF is authorized by a licence issued by the MA (the proposed section 8B). Any person who contravenes such requirement commits an offence⁶. The definitions of SVF and facilitator are given in the proposed sections 2A and 2B respectively⁷. Section 2A(6) provides that an SVF may be in physical or electronic form. Hence, the proposed regulatory regime will cover both device-based and non-device-based SVF.

Liabilities on persons promoting the issue of unlicensed stored value facilities

9. The proposed section 8C provides that a person must not knowingly promote or otherwise assist another person in issuing, or facilitating the issue of, an unlicensed SVF, including by means of providing network or internet portal access or any other technological means. It will be a criminal offence for the person who contravenes this requirement without a reasonable excuse. Some members of the Bills Committee, including Mr Charles MOK, have expressed concern about the potential legal liabilities on internet service providers ("ISP") in providing web hosting or other internet services to unlicensed SVF under the proposed section 8C. In particular they opine that the proposed section 8C(3), which provides that "a reference to promoting or otherwise assisting" includes "providing network or internet portal access or any other technological means", seems to target ISP. There is also concern about whether the provisions would have the effect of imposing on ISP a duty to verify the licensing status of their clients who place SVF promotional materials or advertisements on their websites. The Bills Committee has requested the Government to consider the need of providing safe harbour provisions in the Bill with reference to comparable legislation in order to protect the interests of ISP and issuing regulatory/enforcement guidelines to clarify ISP's liabilities under section 8C.

⁶ The maximum penalty is a fine of HK\$1 million and imprisonment for five years on conviction on indictment, or a fine at level 6 (i.e. \$100,000) and imprisonment for six months on summary conviction.

⁷ Under the proposed section 2A(1), a facility is a stored value facility if (a) it may be used for storing the value of an amount that is paid into the facility from time to time and may be stored on the facility under the rules of that facility, and (b) the facility may be used for as a means of making payments for goods or services or as a means of making payments to another person under the relevant undertaking given by the issuer of the facility.

10. The Government has pointed out that the proposed section 8C(3) is meant to stipulate explicitly the parties who may be liable for the offence, and there will be no difference in the liabilities on ISP or other persons who contravene the requirement of the provision. The provision does not impose a duty on any person (including ISP or website operators) to verify the contents and accuracy of the promotional or advertisement materials provided by an SVF issuer, nor is the issuer required to inform its service providers about its licensing status. When an alleged contravention under the proposed section 8C occurs, the MA may inform the relevant internet service provider to ask it to stop providing network or internet portal services which may promote or otherwise assist the relevant party in issuing, or facilitating the issue of, an unlicensed SVF. The MA will also alert the public of the unlicensed SVF and its website, as necessary, to safeguard the public's interest. Whilst the Government notes that ISP may be subject to other obligations under certain circumstances in different legislation, it considers not necessary to include additional safe harbour provisions or exemptions in the proposed section 8C as a defence of "reasonable excuse" is already available and wide enough for persons charged with offences under that section. The MA may issue guidelines⁸ to facilitate compliance with the regulatory requirements after passage of the Bill.

Licensing criteria for stored value facilities issuers

11. Division 3 of the new Part 2A provides for the details in making applications for SVF licences. An SVF issuer must be a body corporate under Hong Kong law. The MA may grant an SVF licence to the applicant only if it is satisfied that all the applicable minimum criteria are fulfilled; and if the licence is granted, the licensee will continue to fulfill the criteria. The minimum criteria as set out in sections 1 to 10 of Part 2 of the new Schedule 3 include: the principal business of the licensee must be the issue (or the facilitation of the issue) of SVFs; the licensee must meet a minimum on-going capital requirement of which the aggregate amount of its paid-up capital is not less than HK\$25 million; the chief executives, directors or controllers⁹ of the licensee must be fit and proper persons; 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 managing the risks arising from its operation, adequate and appropriate systems of control for preventing or combating

⁸ Under the proposed amended section 54, the MA may issue guidelines to set out the manner in which it discharges duties under the Ordinance, and to assist system operators or SVF licensees to comply with the provisions of the Ordinance. These guidelines are not subsidiary legislation.

⁹ Under the proposed section 8ZZE, "controller" means (a) a majority shareholder controller; (b) a minority shareholder controller; or (c) an indirect controller.

possible money laundering or terrorist financing, adequate risk management policies and procedures for managing the float¹⁰ or deposit; the licensee must redeem in full the total stored value remains in an SVF if requested by relevant users; and the SVF scheme must have prudent and sound operating rules and be operated prudently.

12. Regarding the criterion on principal business, some deputations have enquired whether an SVF licensee would be allowed to engage other business unrelated to SVF. The Government has explained that the principal business of an SVF licensee (not being a bank) must be the issue or facilitation of the issue of SVF, and that the company should not carry out any other businesses unrelated to its principal business. However, the SVF licensee may engage in businesses incidental or complementary to the issue or facilitation of issue of SVF.

13. In respect of the criterion on protection of the float, the Bills Committee notes that while deputations in general agree that an SVF licensee must put in place adequate float protection and management measures to ensure that there will always be sufficient funds for the redemption of the outstanding stored value, some deputations consider that such requirements should be reasonable and simple to avoid increasing licensees' operating costs. The Government has explained that SVF licensees will need to demonstrate to the MA that they have put in place measures that will ensure on-going compliance with the principles that the float must be kept separate from other funds of the licensees, and must be adequately protected by safeguarding measures. The MA will discuss with each licensee its specific float safeguarding approach to ensure that the proposed measures will provide adequate protection to users and that such an approach will suit the licensees' business operation and risks profile. The MA may issue guidelines to facilitate licensees to comply with the relevant requirements.

14. On the service contract to be entered into between an SVF issuer and the users, the Bills Committee shares deputations' views that the Government should ensure that the contract is fair and affords sufficient protection to the users with adequate disclosure on the rights and obligations in a clear manner. The Government has explained that while the Bill will not empower the MA to approve the specific fees or contract terms, it remains the responsibility of a licensed SVF issuer to maintain a prudent and sound SVF scheme (including any new scheme or service), and to have in place adequate risk management

¹⁰ Under the amended section 2, "float", in relation to an SVF issued under a licence, means the stored value remaining on the facility, but does not include any deposit of the facility. The "float" of an SVF falls outside the scope of "deposit" under BO and the Deposit Protection Scheme Ordinance (Chapter 581).

policies and procedures for managing the SVF float or deposit to ensure that there will always be sufficient funds for the redemption of the outstanding stored value. The Government has assured the Bills Committee the MA will have to be satisfied that the above minimum licensing criteria, among others, are satisfied, before granting an SVF licence. While the MA may review the operating rules of an SVF scheme, including any contractual arrangements between a licensee and its users, in reviewing an application for licence and in on-going supervision, the terms and conditions of such contracts are not required to be approved by the MA. Nevertheless, the service contract between the SVF licensee and the potential users is subject to other laws and legislation, where applicable.

15. As to whether the MA would disclose to the public the reasons for refusing an application for SVF licence, the Government has pointed out that section 50 requires the MA to preserve secrecy with regard to all matters relating to the affairs of any person in the performance of the MA's functions under CSSO. Hence, the MA cannot disclose the grounds of refusing an application for SVF licence. This is in line with the MA's existing confidentiality obligation in respect of determination of application for bank licences under BO. Nonetheless, the confidentiality provisions will not bind SVF licence applicants and thus an applicant may disclose the MA's reasons for refusing its application to the public. The applicant can also appeal to the Appeals Tribunal against the MA's decision.

Redemption of the outstanding value in a stored value facility

16. On the criterion for redeeming the outstanding value remains on an SVF, section 8(a) of Part 2 of the new Schedule 3 requires that SVF issuers must redeem in full the total stored value upon request by users, whereas subsection (b) requires the issuers to state clearly and prominently the conditions relating to the redemption of the stored values, including the fee to be charged and the deadline for redemption, if any. Whilst the Bills Committee notes the views of some deputations that SVF issuers should be allowed to set the redemption deadline for the outstanding stored value, and that redemption fees and conditions should be driven by market force and not subject to the MA's approval, members have expressed concern about allowing SVF issuers to set the redemption deadline as this may be in conflict with the requirement that the issuers must redeem in full the total stored value if so requested by users. The Bills Committee considers that allowing issuers to set the redemption deadline is equivalent to setting a condition on the redemption, and this would result in forfeiture by issuers of the outstanding stored value in the SVF after the deadline. Given that one of the policy objectives of the Bill is to protect users' interests in relation to the float, some members of the Bills

Committee, including Mr SIN Chung-kai and Mr CHAN Chi-chuen, opine that SVF issuers should not be allowed to set the redemption deadline because the outstanding stored value in the SVF is users' money. They have asked the Government to consider stipulating in the provision that SVF issuers should not set any redemption deadline unless under specified circumstances and with the MA's prior approval. They further stress that the MA should ensure the redemption fees to be charged by SVF issuers would be reasonable.

17. The Government has clarified that section 8 of Part 2 of the new Schedule 3 does not require or disallow an SVF issuer to charge any fee or impose any deadline for the redemption of any outstanding stored value on a facility. Any such fee level or prescribed deadline is a commercial decision of an issuer, who will have regard to the business model, operating costs, and users' demand, etc., when offering the SVF to users or potential users. The intention of section 8(b) is to make it a statutory requirement for an SVF issuer to state such fee or deadline for redemption, if any, clearly and prominently in the contract with a view to ensuring users' awareness and enhancing their protection. The provision is needed to cater for situations where some SVF in the market may be issued for a commemorative purpose and usually valid within a specified period. This proposed arrangement is in line with the practices in major jurisdictions, including the United States, Singapore and Australia, as well as the existing practice for the "multi-purpose cards" regime set out in the Code of Banking Practice. Having considered members' views, the Government has agreed to move Committee stage amendments ("CSAs") to amend section 8 of Part 2 of the new Schedule 3 to clarify the requirement so that the SVF issuer must redeem in full the outstanding stored value on the facility as soon as practicable after being requested by the user to do so, unless the MA has given prior written permission to the issuer that this requirement does not apply; and the issuer has stated clearly and prominently in its contract with a user the relevant terms and conditions (including the outstanding stored value is not redeemable after a prescribed deadline, that prescribed deadline, any fee to be charged for the redemption, and other related terms). The Government has also agreed to move CSAs to the list of reviewable decisions under Part 2 of the new Schedule 1 so that the MA's decision in this regard will be subject to the review by the Appeals Tribunal.

18. The Bills Committee has enquired about the circumstances the MA will consider in approving SVF issuers to set a deadline for the redemption of the outstanding stored value. The Government has advised that the MA will take into account factors, such as the nature of the SVF, whether the users are provided with clear information on the deadline in the contract with the issuer, and whether there would be unreasonable treatment to users with the imposition of the deadline. The MA will consider issuing guidelines to facilitate licensees

to comply with the relevant requirements, including the setting of fees. The Bills Committee welcomes the Government's CSAs to section 8 of Part 2 of the new Schedule 3. Members have emphasized that it should be a general principle to discourage SVF issuers from setting deadline for redemption of the stored value in the facility, and that the MA's permission should only be granted in exceptional circumstances and under the situation that the permission would not give rise to unreasonable treatment to users concerned. They have requested the Government to give the above undertaking during the resumption of the Second Reading debate on the Bill.

Bank and non-bank stored value facility licensees

19. Under the proposed section 8G, a bank holding a valid banking licence under BO would be regarded as being granted a licence for issuing or facilitating the issue of an SVF (subject to payment of the licence fee specified in the new Schedule 4 and fulfillment of applicable criteria in the new Schedule 3). The Bills Committee has enquired about the rationale for deeming licensed banks to issue SVF and how to ensure a level playing field between bank and non-bank SVF licensees.

20. The Government has explained that the approach of deeming licensed banks to be licensed to issue SVF as a line of business is in line with the existing "multi-purpose cards" regime under BO¹¹. The SVF business of a licensed bank together with the bank's other lines of banking business will be subject to regulatory requirements and on-going supervision by the MA on a consolidated basis. To ensure a level playing field in the operation of SVF by bank and non-bank licensees and regulatory consistency, licensed banks will still be required to comply with relevant requirements under the proposed regulatory regime, including float safeguarding and management, which are specifically tailored for the regulation of SVF, should they decide to continue, or embark on, SVF business. To avoid regulatory overlap, certain regulatory provisions of the Bill (e.g. minimum criteria in relation to principal business and financial resources) are not applicable to bank licensees, as they are already subject to consolidated supervision by the MA under BO.

21. The Bills Committee notes the views of Hong Kong Association of Banks ("HKAB") that a wholly-owned subsidiary of a licensed bank should be deemed licensed to issue SVF and exempt from the proposed licensing regime given that the bank (including its subsidiaries) is within the MA's supervision. Moreover, given that the bank has already paid a licence fee under BO, it should not be required to pay any licence fee for carrying on an SVF business.

¹¹ Section 14A of BO provides that only Authorized Institutions 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.

22. The Government has responded that as a subsidiary of a licensed bank is a legal entity separate from the licensed bank per se, that subsidiary should be subject to the licensing requirements applying to a non-bank licensee contained in the Bill if it is to issue SVF. Moreover, not all provisions in BO are applicable to a subsidiary of a bank. The proposed arrangement is in line with the regulation of securities and insurance business of a licensed bank. To ensure a level playing field between banks and non-banks operating an SVF business, all SVF licensees shall pay a licence fee for their SVF business.

Stored value facilities exempt from licensing requirements

23. By virtue of the definition of SVF in the proposed section 2A(4), single-purpose SVF is not an SVF for the purposes of the Ordinance. Division 8 of the new Part 2A proposes that certain SVFs be exempt from the licensing requirements under that Part. The proposed section 8ZZZB provides that SVF specified in the new Schedule 8 are exempt from the proposed regulatory regime. The exempt SVF include those facilities used for certain cash reward schemes, purchasing certain digital products, certain bonus point schemes, facilities used within a limited group of goods or services providers or used only within certain premises and with a float size of not more than HK\$1 million. Under the proposed sections 8ZZZC and 8ZZZD respectively, the MA may, by notice published in the Gazette, declare that an SFV specified in Schedule 8 not to be exempt, or exempt an SVF from the relevant provisions of the new Part 2A. According to the Government, such notices are not subsidiary legislation.

24. The Bills Committee has enquired about the rationale for the proposed exemption and the factors to be considered by the Government in exempting SVF, and how HKMA would monitor the business development of single-purpose SVF and ensure that they would be brought under the regulatory regime when their business expands. The Bills Committee notes that HKAB has suggested putting in place a self-reporting mechanism for issuers of single-purpose SVF to report to HKMA to allow the latter to determine whether such schemes amount to single-purpose SVF.

25. The Government has explained that the proposal to exclude single-purpose SVFs from regulation is in line with the existing "multi-purpose cards" regime under BO which also excludes single-purpose cards from regulation, as well as the practices adopted by major jurisdictions including the United Kingdom, Singapore and Australia. A single-purpose SVF is in essence a bilateral contractual arrangement between a service provider and its respective users for advance payment for specific goods or services. Given its

bilateral nature and magnitude, the degree of "moneyness" entailed by a single-purpose SVF is minimal, posing insignificant risks to the payment and financial systems of Hong Kong. In addition, if the proposed licensing regime is to be imposed on single-purpose SVF, some existing single-purpose SVF may be driven out of business due to regulatory obligations and costs. To ring-fence the proposed regulatory regime to relevant payment facilities essential to financial stability, SVF which do not involve payment of money by users or have limited usage will be excluded from the regulatory regime. The MA will consider issuing guidelines to facilitate compliance of the amended ordinance after passage of the Bill.

26. On the monitoring of single-purpose SVF, the Government has advised that the proposed section 8B provides that it is an offence to issue, or facilitate the issue of, an SVF without being authorized by a licence. In other words, an issuer who intends to expand its SVF business from a single-purpose usage to a multi-purpose one must apply for a licence in accordance with the proposed section 8E. As far as monitoring of the float of an exempt SVF is concerned, the Government has responded that the MA can require SVF issuers to provide information under the proposed section 8ZZZB to satisfy the MA that the requirements in sections 4 and 5 of the new Schedule 8 are complied with. Such information can include documents showing the float amount of the facility or the aggregate float amount of all facilities of the SVF issuer. After passage of the Bill, HKMA will monitor the market development, on an on-going basis, through surveillance, to identify any unlicensed SVF operating in Hong Kong. Moreover, the new Part 3A includes provisions to enable the MA to conduct investigations if it has reasonable cause to believe that an offence under the Ordinance may have been committed.

Regulatory powers of the Monetary Authority over stored value facility licensees

27. Divisions 3 to 7 of the new part 2A contain provisions on the MA's regulatory powers over the operation of SVF licensees and licensees' obligations. The MA's regulatory powers include attaching conditions to an SVF licence to, among others, restrict the business and management of the float (proposed sections 8I – 8L); revocation or suspension of a licence (proposed sections 8U – 8ZC) with the grounds for revocation setting out in the new Schedule 5; exercising powers over SVF licensees (proposed sections 8ZD – 8ZZ) to require a licensee to take immediate action relating to its affairs, or appoint a Manager to manage the licensee's affairs, business or property (the powers of the Manager are specified in the new Schedule 7); supervising the ownership and management of an SVF licensee (proposed sections 8ZZA – 8ZZZA) such as requiring a licensee to inform the MA on its controllers, approving the

appointment of licensee's chief executive officer, director and manager. In respect of licensees' obligations (proposed sections 8M – 8T), they include paying of licensee fees and reporting to the MA on change of circumstances.

28. On HKAB's views that the proposed section 8R which requires an SVF licensee to notify the MA of its inability to meet obligations should not apply to bank-SVF licensee as there is already a similar requirement under section 67 of BO, the Bills Committee notes that the Government will move CSAs to the proposed section 8R to exclude bank SVF licensees from that section.

Suspension and revocation of a stored value facility licence and conditions attached to the licence

29. The Bills Committee has enquired about the reasons for not including provisions to require a suspension notice of an SVF licence (made under the proposed section 8ZA) to be published in the Gazette, any local newspaper or mass media. While a notice of revocation of an SVF licence (under the proposed section 8V) will be required to be published in one Chinese and one English language newspapers circulating in Hong Kong, members are concerned how users of an SVF would be informed of the suspension of the SVF licence in order to protect their interests.

30. The Government has advised that the MA must establish and keep a register of SVF licensees under the proposed section 8ZZZF. Subsection (5) of that section provides that, if a licence is suspended under the proposed section 8ZA, the MA must, as soon as practicable after the suspension, make a notation that the licence has been suspended in the register against the name of the licensee concerned and ensure that the notation remains on the register until the suspension ceases to have effect. Subsections (6) and (7) further provide that the register should be kept at the MA's office or any other place notified by the MA in the Gazette, and that the MA must make the register available for inspection by the public in the form of an online record. It is believed that the above arrangements are appropriate to keep the public informed of the suspension of an SVF licence. The MA will issue a press release to keep the public informed as necessary.

31. The Bills Committee has considered whether the register of SVF licensees should include conditions currently attached to the licences and any additional criteria imposed by the MA in order to enhance transparency and facilitate the public to monitor the operation of SVF. The Government has explained that the purpose of establishing and keeping the register of licensees is to allow the public to verify whether an SVF issuer is a licenced issuer. It may not be appropriate to include in the register the conditions imposed by the

MA in respect of individual licensees, as some of the conditions may have to be handled with care as they may relate to business plan and information, whether current or future, of the licensees. That said, the proposed section 8I(2)(d) provides that the MA may impose a condition to require a licensee to disclose to the public all or part of the accounts of the licensee, or any information relating to the business of the licensee. The provision would provide the MA with the power to require disclosure of attached conditions by the licensees where it considers necessary.

Monitoring of stored value facility licensees for meeting the minimum licensing criteria

32. The Bills Committee has enquired how the MA would ensure compliance of SVF licensees with all the licensing criteria on an on-going basis. The Government has pointed out that, under the proposed section 8O, an SVF licensee has obligations to ensure safety and efficiency of its SVF to minimize the likelihood of any disruption to the functioning of the facility. The proposed section 8Q provides that a licensee must ensure that all the minimum criteria applicable to the licensee are fulfilled. These provisions would ensure prudent operation of the SVF schemes. In addition, the Bill contains amendments or new provisions to empower the MA to request information or documents (proposed amendments to section 12); examine books, accounts and transactions (proposed section 12A); give directions (proposed amendments to section 13); and issue guidelines (proposed amendments to section 54). These provisions will empower the MA to conduct on-site and off-site examinations, and to exercise appropriate supervisory powers on licensees in future.

Regulation of stored value facilities with systems located outside Hong Kong

33. The Bills Committee is concerned how HKMA can regulate an SVF issuer if its systems and operations are located outside Hong Kong, and how it will determine whether an SVF issuer operating outside Hong Kong is soliciting business from the Hong Kong public, in particular if the issuer does not actively promote its business, or claims that it incidentally attracts Hong Kong consumers to use its services. The Bills Committee notes that Octopus Card Limited is concerned that overseas SVF issuers may circumvent the relevant regulatory requirements, whereas local SVF issuers would be subject to supervision.

34. The Government has explained that the regulatory regime requires licensees to be companies formed and registered in Hong Kong (the proposed section 8E(2) and definition of company in the proposed section 8A). This will allow the MA to exercise effective supervision over the licensee even if

some of its systems and operations are located outside Hong Kong. Furthermore, the MA will have to be satisfied that the minimum licensing criteria set out in Part 2 of the new Schedule 3 are fulfilled by the licensee on an on-going basis. This will help ensure the prudent operation of the licensee in the interest of users in Hong Kong, even though some components of its systems may be located, or linked to other systems, outside Hong Kong.

35. The Government has supplemented that the proposed section 8ZZZJ prohibits a person from publishing an advertisement relating to the issue of an SVF that may only be issued under a licence, unless the advertisement relates to the issue of the facility by a licensee and the licence number is clearly stated in the advertisement ("the two conditions"). The Bill does not restrict any entity from issuing an SVF outside Hong Kong. The Government has advised that in determining whether an issuer is "issuing" an SVF in Hong Kong (and one which has to be licensed), the MA may, having regard to similar supervisory experience in monitoring e-banking service, look into relevant circumstances such as (a) the place of the issue of the SVF in question; (b) the denomination of the value stored in the facility; (c) the location for the delivery of the facility and the subsequent customer service to facility holders; (d) the degree of the acceptance of the use of the facility in Hong Kong for making payments for goods and services; (e) the location for and the manner in which a facility holder may store value or additional value onto the facility; and/or (f) the representation made in any advertisements regarding the location of the issue of the facility and the usage of that facility. The MA will consider the circumstances in its totality in enforcing the relevant provisions.

36. In response to the Bills Committee's suggestion that the policy intent of prohibiting SVF not licensed in Hong Kong from soliciting business from the Hong Kong public should be better reflected in the Bill, the Government will move CSAs to amend the proposed section 8ZZZJ to provide that a person must not publish an advertisement, invitation or document in Hong Kong or elsewhere relating to the issue or facilitation of the issue of an SVF unless the two conditions mentioned in paragraph 35 above are met. For clarity purpose, the CSAs will include definitions of "advertisement", "invitation" and "publish". Moreover, a definition of "public" will be added in section 2 to clarify that any reference to "public" in CSSO means the public of Hong Kong and includes any class of that public.

Regulatory regime for retail payment systems

37. Under the existing section 4, the MA may designate any large-value clearing and settlement systems as described in subsection (2) of that section. The Bill seeks to amend section 4 to empower the MA to designate RPS. The

definition of RPS is provided in the amended section 2 which 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 includes related instruments and procedures. The proposed section 4(4B) provided that the MA may declare the activities that are allowed to be carried out through the designated RPS (i.e. the declared activities). Under the proposed section 6A, it would be an offence if an operator of a designated RPS carries out through the RPS an activity that is not among the declared activities without the MA's written consent¹². Amendments in sections 6 to 8 relate to obligations of designated systems and seek to strengthen the MA's oversight of such systems by placing more emphasis on the risk management and control procedures relating to their operation, including financial soundness and safety requirements.

Definition and designation of retail payment systems

38. Noting the Government's intention that "retail activities" in the proposed definition of RPS in the amended section 2 is not confined to retail activities taking place in Hong Kong as the relevant system may involve cross-border retail payment transactions, the Bills Committee has requested the Government to revise the drafting to better reflect the intention. The Government has agreed to move CSAs to amend the definition such that "retail activities" include retail activities taking place in Hong Kong and otherwise.

39. The Bills Committee has enquired about the criteria for designating an RPS. The Government has explained that the designation criteria are set out in the proposed section 4(1), (3), (3A) and (4), under which the MA may designate an RPS if it is of the opinion that (a) the system whose proper functioning is material to the monetary or financial stability of Hong Kong, or material to the functioning of Hong Kong as an international financial centre; or (b) having regard to matters of significant public interest, the MA is of the opinion that the system should be so designated. In brief, the MA may designate an RPS if any significant 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

¹² The maximum penalty for the offence is a fine of \$400,000 and imprisonment for two years on conviction on indictment, or a fine at level 6 (i.e. 100,000) and imprisonment for six months on summary conviction.

- (c) day-to-day commercial activities being adversely and materially affected.

40. The Government has added that the MA may take into account factors provided in section 4(4A) in applying the above designation criteria, 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.

41. As to whether a disruption to or inefficiency of an RPS would be considered "significant" and whether the disruption/inefficiency would be considered adversely affecting the "day-to-day commercial activities" of the system, the Government has explained that the MA may take into account factors such as the overall impact on the smooth conducting of daily commercial activities, the population affected, and the extent of economic losses arising from the halt of the commercial activities, etc. This will involve the MA's supervisory assessment of the factual circumstances of a particular system.

42. The Bills Committee is aware of the views expressed by some deputations that the designation criteria should primarily focus on the integrity and soundness of the system, and avoid issues that could be dealt with appropriately through competitive behaviours. It is necessary for the MA to take into account the experience and capabilities of potential RPS, and allow ample time for exchange of views with prospective RPS operators before making decisions in relation to designation of as well as the declared activities.

43. The Government has responded that the MA will initiate the designation process of an RPS if it considers a system is or is likely to meet the designation criteria. To determine whether an RPS is eligible for designation and whether it satisfies the designation criteria for the purposes of the Ordinance, the MA needs to collect information or documents from any person who is, or whom it reasonably believes to be, a system operator or settlement institution of an RPS or a participant in an RPS. Also, the MA may discuss with the system operator or settlement institution of such system where necessary issues relating to the determination of the system's eligibility for designation. The proposed section 4(5) provides that, if the MA intends to designate a system or make a declaration, it must publish in the Gazette notice of the intention, stating the grounds on which the designation or declaration is to

be made; and 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 MA as to why the designation or declaration should not be made. The proposed section 4(6) provides that the MA must, before making the designation or declaration, take into consideration any representation so made.

Investigation powers of the Monetary Authority over stored value facilities and retail payment systems

44. The Bill introduces a new Part 3A about the investigation powers of the MA. The proposed section 33B empowers the MA to conduct investigations into SVF licensees and designated systems when it has a reasonable cause to believe that an offence has been committed in connection with the proposed regulatory regime. The MA can direct an investigator to conduct investigation, compel provision of evidence from all persons relevant to the suspected contravention, inspect records or documents taken in possession for the purpose of an investigation, or require certain persons to render assistance in connection with the investigation (sections 33C and 33D). There will be criminal sanctions for failing to comply with the requirements, and the MA can impose a range of civil sanctions under section 33Q on specified regulated persons¹³.

Protection for legal professional privilege and against provision of self-incriminating evidence

45. The Bills Committee has examined the protection offered in the Bill for material or information subject to legal professional privilege ("LPP"), and against provision of self-incriminating evidence in respect of persons under investigation by the MA.

46. The Government has pointed out that the requirements imposed on a person under the proposed section 33C(2), (3) or (4), or section 33D(1) or (2) do not have the effect of overriding any privilege which may be claimed by the person in relation to investigation. The Government has affirmed that LPP is protected by Article 35 of the Basic Law, and nothing in the Bill affects any claims, rights or entitlements that would, apart from this ordinance, arise on the ground of legal professional privilege. The Government has taken on board the Bills Committee's suggestion and will move a CSA to add a new section 52A to put the above position beyond doubt.

¹³ The civil sanctions include a pecuniary penalty not exceeding \$10,000,000 or three times the amount of profit gained or loss avoided as a result of the contravention (whichever is the greater), a caution, warning, reprimand, an order to take specified action(s) or the temporary suspension of a licence.

47. As regards the use of incriminating evidence in proceedings, the Government has pointed out that, while any incriminating information compulsorily obtained by an investigator under the new Part 3A may be used in the investigation, the proposed section 33H provides that, if the person has claimed in advance that the information he is going to provide might tend to incriminate him, such incriminating information shall not be admissible in evidence against the person in criminal proceedings except the proceedings in which the person is charged with an offence relating to perjury or the investigation. The proposed section 33H is in line with the protection currently afforded under the relevant provisions in relation to investigations under the Securities and Futures Ordinance (Cap. 571) ("SFO") and AMLO.

Investigation powers over stored value facility licensees which are banks

48. The Bills Committee notes the comments of HKAB that bank SVF licensees should be exempt from new Part 3A as the MA already has extensive powers of investigation over banks under Part XX of BO; and the power for the MA to impose civil sanctions would amount to a form of extra judicial criminal sanction for a regulator.

49. The Government has reiterated that, given that SVF business is distinct from banking services and to ensure a level playing field between banks and non-banks, banks that engage in an SVF business would need to comply with requirements of the proposed regulatory regime which is specifically tailored for the SVF business. The proposed investigation powers of the MA are necessary to serve the regulatory purposes of the Ordinance consistently, insofar as banks and non-banks are concerned. The MA also has separate investigation powers for banks under SFO and AMLO. In devising the proposed regulatory regime, reference is made to similar arrangements in SFO and AMLO, under which the MA is empowered to impose sanctions (including the proposed civil fine) on the regulatees if there is a contravention of the relevant provisions in these Ordinances. The proposed pecuniary penalty is considered appropriate. The proposed section 33Q relates to the exercise of the civil disciplinary power of the MA as a regulator, as opposed to criminal prosecution in relation to a contravention. Moreover, the decision of the MA to impose a civil sanction under that section is subject to review by the Appeals Tribunal.

Sanctions imposed on regulated persons

50. The Bills Committee is concerned how the public would be informed of the sanctions imposed by the MA on regulated persons under the proposed

section 33Q. The Government has responded that the MA may consider issuing a press release, and publishing the information on HKMA's website to disclose the details of the sanctions, the reasons for imposing the sanctions, and the relevant material facts, in accordance with the proposed section 33U. It is considered not necessary to make provisions to prescribe the manner of such disclosure, as the MA may take into account the circumstances of a case before deciding the most appropriate and effective means to disclose the information to the public.

51. The Bills Committee notes that under the proposed section 33V there is no time limit for the MA to impose sanction or take further action in relation to a person who was a regulated person at the time of the contravention, regardless of whether the same person is a regulated person at the time when the power is being exercised. The Government has responded that prescribing a time limit for the MA to exercise the sanctioning power in relation to a former regulated person may reduce the deterrence effect of the sanction. There is a similar provision in section 34ZZA of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) in relation to the application of disciplinary powers to former regulated persons. Likewise, Part IX of SFO empowers the Securities and Futures Commission to discipline a "regulated person", and the power is wide enough to cover a person who was a licensed person at the relevant time when the person was guilty of misconduct.

Regulations made by the Monetary Authority

52. The Bills Committee notes that under the proposed section 49(1)(a), the MA may make regulations relating to designated systems after consulting the Financial Secretary ("FS") and the system operators and settlement institutions of designated systems. However, under the proposed section 49(1)(b), when making regulations relating to SVF, there is no requirement for the MA to consult potential or existing SVF licensees (or other stakeholders). Some depositions are of the views that the MA should consult operators of SVF when it makes regulations under the proposed section 49. After considering the views, the Government will move CSAs to section 49(1)(b) to require the MA to consult the SVF licensees in addition to FS.

Revised Clearing and Settlement Systems Appeals Tribunal

53. The existing Part 4 deals with matters relating to the review of the MA's decisions made under CSSO and the functions of the Clearing and Settlement Systems Appeals Tribunal. The Bill seeks to amend Part 4 so as to revise the list of decisions that are subject to review by the Appeals Tribunal to cover all the relevant decisions ("reviewable decisions") made in relation to

SVF and RPS. The existing Process Review Committee will continue to review the processes and procedures adopted by the MA in applying supervisory standards.¹⁴

Timeframe for consideration of appeals

54. Some deputations are concerned that there is no provision requiring the Appeals Tribunal to deal with cases within a specific timescale, and hence the appeal process may be unduly long which would be disadvantageous to the applicants. The Government has advised that according to the existing section 35(5), the MA shall forward a copy of the decision together with all other relevant papers in its possession to the Appeals Tribunal, as soon as practicable after receipt of a copy of a reference delivered by the Appeals Tribunal. Section 35(8) provides that the Appeals Tribunal shall deliver its determination as soon as practicable after completing the review. The Government considers it inappropriate to specify a definitive timeframe for the above processes in the law as the complexity of proceedings may vary in individual cases.

Reviewable decisions

55. The amended section 35(1) provides that any person who is aggrieved by the relevant decisions of the MA may refer the decision to the Appeals Tribunal. Part 2 of the new Schedule 1 specifies a list of reviewable decisions ("the list") which may be referred to the Appeals Tribunal. The Government has pointed out that all decisions of the MA which may adversely affect a regulatee have been included in the list.

56. The Bills Committee considers that there may be a case to include in the list certain MA's decisions of which parties other than the SVF licensees concerned may feel aggrieved. These decisions include, for example, the decision to declare a person not to be "manager" of an SVF licensee under the proposed section 8A(2) and the decision to revoke the appointment of an "Advisor" or a "Manager" under the proposed section 8ZV. The Government has explained that for a decision under the proposed section 8A(2), it is unlikely that the person whom the MA declares not to be a "manager" would be aggrieved because such a person will not be subject to specific provisions regarding the supervision of "manager" principally responsible for the conduct of any of the licensee's affairs or business specified in the new Schedule 6, and

¹⁴ The Process Review Committee reviews and advises the MA on the adequacy of the MA's internal operational procedures and guidelines for applying the standards set under CSSO to those designated systems in which the MA 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 MA has an interest in them.

will not fall in the scope of "officer" subject to sanctions under the proposed Part 3B or liability by virtue of section 49. As for the decision under the proposed section 8ZV, it is believed that the MA's power to revoke the appointment of an Advisor or a Manager, if their appointment is no longer necessary, will unlikely cause any person to be aggrieved. Therefore, the Government considers it not necessary to include the two aforesaid decisions in the list. The Bills Committee notes that similar decisions in BO (viz. sections 2(14)(cb) and 53G(2)) are not subject to review or appeal in that ordinance.

Phased implementation of the regulatory regime for stored value facilities

57. To cater for the time required for potential and existing SVF issuers to apply for licences, as well as for the MA to process the applications, the Bills Committee notes that provisions contained in the Bill will be implemented in two phases after passage of the Bill. 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 and enforcement of the proposed licensing regime for SVF (i.e. the proposed sections 8B, 8C, 8D, 8G, 8U, 8Y and 8ZZZI, and the relevant amendments to BO and AMLO), will come into operation one year after the commencement of the provisions in Phase One. The Government has explained that 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.

Market development in stored value facilities and retail payment systems

58. Some deputations have expressed concerns that the Bill lacks the interface between the banking system and retail system, as well as open data interchange ("ODI")¹⁵, which may impede innovation and participation of small corporations in the market. Some members of the Bills Committee, including Mr Charles MOK, opine that the Bill should adopt a forward looking approach in order to facilitate the development of new/innovative SVF/RPS

¹⁵ In essence, "open data interchange technologies" in the banking sector are said to cover the relevant innovations on computer technologies or solutions to allow different software applications or components to communicate with each other and exchange data (including account history and transaction data) directly, without the need for human input each time, and for sharing with and access by third parties outside the banking sector for any derived or new business opportunities therefrom.

products/technologies and the Government should introduce measures to encourage ODI.

59. The Government has pointed out that the Bill seeks to establish a regulatory regime for SVF and RPS. Consistent with the legislative approach adopted by most financial markets, the Bill does not prescribe or preempt a particular choice of format, standard or technology (including the ODI technologies) in relation to the operations or data transmission of a large value clearing and settlement system or an RPS, or an SVF scheme. The present approach avoids creating unnecessary impediments to restrict the development of payment, clearing or settlement technologies in future, and will not discourage system operators or settlement institutions from making any enhancements or innovations in accordance with market demands, business needs or technological developments.

60. Regarding the concern that the Bill may create unnecessary barriers for small and medium-sized players to enter the markets, the Government has stressed that there are provisions in the Bill to exempt certain types of SVF from regulation (i.e. under sections 4 and 5 of the new Schedule 8) and exclude single-purpose SVF from regulation (the proposed section 2A(4)). With regard to RPS, the Bill seeks to empower the MA to designate an RPS under certain conditions (the proposed sections 4(1) and 4(3A)). In view of their scale of operation, small and medium-sized RPS operators will unlikely be qualified for designation by the MA under the Bill. The MA will continue to engage the banking and payment industries to facilitate the evolving financial infrastructure development in the financial markets. Separately, the Government has established the Steering Group on Financial Technologies ("Fintech") to advise on economic and business opportunities provided by the development of Fintech for Hong Kong, potential of developing Hong Kong into a Fintech hub, and the measures needed to promote Hong Kong as such a hub. The Government will work with stakeholders to look into the potential of the Fintech sector and the possible measures to promote the development in that context as appropriate.

Publicity on the regulatory regime

61. The Bills Committee has stressed the need for the Government to promote the public's understanding of the new regulatory regime, including enhancing the public's awareness of SVF licensed and RPS designated by the MA, and to inform the public about the mechanism for handling complaints/disputes concerned in order to protect the interests of users.

62. The Government has stressed that it attaches importance to enhance the public's awareness of the proposed licensing and designation regime introduced by the Bill. In respect of licensed SVF in future, the MA must establish and keep a register of such licensees under the proposed section 8ZZZF which will be available online for public inspection. The proposed section 8ZZZI requires a licensee to display its licence number on the physical device if the SVF is device-based, or state clearly the number on each communication network concerned if the facility is network-based. In relation to any designation of RPS for regulatory purposes, the designation will take the form of a Gazette notice, under the proposed section 4(1), to keep the public informed. In addition, upon passage of the Bill, the MA plans to roll out relevant education and publicity programmes to enhance the understanding by the public in using payment facilities. The minimum licensing criteria for SVFs as set out in the new Schedule 3 and the proposed amendments to section 8 will respectively impose prudential and risk management requirements on SVF issuers and RPS operators to ensure prudent, sound, safe and efficient operation of the SVF schemes and the designated systems. Accordingly, the MA will expect SVF licensees and operators of designated RPS to establish a sound mechanism to deal with complaints, enquiries or disputes, as in the case of authorized institutions subject to the supervision of the MA under BO. Moreover, the MA has in place its own complaints handling mechanism to address the needs of customers in relation to the regulatees subject to the MA's supervision.

Cross-boundary cooperation in regulation

63. Given that SVF and RPS usually operate in a boundary-free environment, the Bills Committee has urged the Government to enhance cooperation with other jurisdictions in exchanging supervisory information and taking enforcement against non-complying SVF issuers and RPS operators.

64. The Government has responded that the MA will liaise and cooperate with relevant authorities outside Hong Kong to maintain and promote the safety in the operation of the licensed SVF and designated RPS. It is common for financial regulators in this regard to enter into Memorandum of Understanding to facilitate the sharing of supervisory information and the conduct of cross-boundary supervision. The MA is minded to pursue this kind of cooperation with relevant authorities outside Hong Kong, whenever the regulatory or enforcement situation will warrant so, to perform the functions provided for in the Bill effectively.

Committee stage amendments to be moved by the Government

65. Apart from the CSAs outlined in various paragraphs above, the Government will move CSAs in light of comments of the legal adviser to the Bills Committee, and on certain technical and textual matters. The major ones are as follows:

- (a) CSAs to add the proposed penalties on summary conviction for offences in various sections, including 6, 7, 8O, 8S, 12, 13, 30, 31, 36, 45, 46, 47, 50, 52 and 53. The amendments are in line with other comparable provisions in the Bill where penalties are provided for both conviction on indictment and summary conviction;
- (b) CSAs to add section 8ZZZI(6) so that the requirement for an SVF licensee to specify the license number on the SVF device will not apply to an SVF that is a multi-purpose card issued under BO before the commencement date of that section. The amendment is to avoid creating undue burden on any licensee to re-issue after passage of the Bill multi-purpose SVF cards issued under BO; and
- (c) CSAs to make technical amendments to sections 13(2)(a), 33J (the English text), 8ZZZI(5), the heading of section 2 (the Chinese text) and content of section 3 (the Chinese text) of the proposed Schedule 8; to amend or introduce new consequential amendments in respect of BO, AMLO, the Insurance Companies Ordinance (Cap. 41), and the Deposit Protection Scheme Ordinance (Cap. 581). The purposes of these amendments are to improve the drafting of the Bill.

66. The Bills Committee has examined all the proposed CSAs from the Government and raised no objection. A full set of the CSAs to be moved by the Government is in **Appendix III**. The Bills Committee will not propose any CSAs to the Bill.

Resumption of Second Reading debate on the Bill

67. The Bills Committee has no objection to the resumption of the Second Reading debate on the Bill at the LegCo meeting of 4 November 2015.

Advise Sought

68. Members are invited to note the deliberations of the Bills Committee above and the recommendation in paragraph 67.

Council Business Division 1
Legislative Council Secretariat
14 October 2015

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

Membership list

Chairman	Hon Andrew LEUNG Kwan-yuen, GBS, JP
Members	Hon CHAN Kam-lam, SBS, JP Hon WONG Ting-kwong, SBS, JP Hon Cyd HO Sau-lan, JP (up to 8 March 2015) Hon Starry LEE Wai-king, JP Hon CHAN Kin-por, BBS, JP Hon NG Leung-sing, SBS, JP Hon Charles Peter MOK, JP Hon CHAN Chi-chuen Hon Kenneth LEUNG Hon Christopher CHEUNG Wah-fung, SBS, JP Hon SIN Chung-kai, SBS, JP
	(Total : 11 members)
Clerk	Ms Connie SZETO
Legal Adviser	Mr YICK Wing-kin

Appendix II

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

List of organizations/individual from which the Bills Committee has received views

1. The Association of Cloud and Mobile Computing Professionals
2. CLS Bank International
3. Communications Association of Hong Kong
4. Consumer Council
5. Deloitte Touche Tohmatsu
6. Edenred Hong Kong Ltd
7. Hong Kong Association of Banks
8. Internet Professional Association
9. MasterCard International Inc.
10. Octopus Cards Limited
11. PayPal Pte. Ltd
12. UnionPay International Ltd
13. Visa Hong Kong Limited
14. Dr Witman HUNG

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>(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);”.