

# **Payment Systems and Stored Value Facilities Ordinance**

## **(Cap. 584)**

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An Ordinance to provide for certain payment systems for funds or securities to be subject to oversight by the Monetary Authority; for the supervision of stored value facilities by the Monetary Authority; for the modification of the laws of Hong Kong in their application to transactions effected through and proceedings within certain clearing and settlement systems so as to ensure finality as regards those transactions and proceedings; and for related purposes.

*(Amended 18 of 2015 s. 3)*

[4 November 2004] *L.N. 145 of 2004*

## PART 1

### PRELIMINARY

#### 1. Short title

- (1) This Ordinance may be cited as the Payment Systems and Stored Value Facilities Ordinance. *(Amended 18 of 2015 s. 4)*
- (2) *(Omitted as spent)*

#### 2. Interpretation

In this Ordinance, unless the context otherwise requires—

**accounts** (帳目) means any accounts, whether kept in writing or print or by a machine or device; *(Added 18 of 2015 s. 5)*

**Advisor** (顧問), in relation to a licensee, means the person appointed to be an Advisor of the licensee under section 8ZG(1)(b) or 8ZX(2)(a); *(Added 18 of 2015 s. 5)*

**bank** (銀行) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155); *(Added 18 of 2015 s. 5)*

***banking licence*** (銀行牌照) means a licence granted under section 16 of the Banking Ordinance (Cap. 155); (*Added 18 of 2015 s. 5*)

“book-entry securities” (記帳證券) means any securities issued under any law transferable by a book-entry (whether on a register or of any other kind);

“certificate of finality” (終局性證明書) means a certificate issued by the Monetary Authority under section 16(3);

“Chairman of the Tribunal” (審裁處主席) means the person appointed as such under section 34(3);

“clearing and settlement system” (結算及交收系統) means a system established for—

- (a) the clearing or settlement of payment obligations; or
- (b) the clearing or settlement of obligations for the transfer of book-entry securities, or the transfer of such securities;

“collateral security” (附屬抵押品), in relation to a clearing and settlement system, means any realizable assets provided, whether under a charge or a re-purchase or similar agreement or otherwise (including money provided under a charge), for the purpose of securing rights and obligations potentially arising in connection with participation in the system;

***declared medium of exchange*** (經宣布兌換媒介) means a thing that is declared to be a medium of exchange under section 2C; (*Added 18 of 2015 s. 5*)

“default arrangements” (違責處理安排), in relation to a payment system, means the arrangements in place within the system for limiting systemic and other types of risk in the event of a participant appearing to be, or likely to become, unable to meet his obligations in respect of a transfer order; and,

without affecting the generality of the foregoing, includes any arrangements for— (*Amended 18 of 2015 s. 5*)

- (a) the netting of obligations owed to or by the participant;
- (b) the closing out of open positions held by the participant;  
or
- (c) the realizing of collateral security securing obligations owed by the participant;

“defaulting participant” (違責參與者), in relation to a clearing and settlement system, means a participant in respect of whom action has been taken by the system operator or settlement institution under the system’s default arrangements;

**designated clearing and settlement system** (指定結算及交收系統) means a clearing and settlement system designated under section 4(1); (*Added 18 of 2015 s. 5*)

**designated retail payment system** (指定零售支付系統) means a retail payment system designated under section 4(1); (*Added 18 of 2015 s. 5*)

**designated system** (指定系統) means—

- (a) a designated clearing and settlement system; or
- (b) a designated retail payment system; (*Replaced 18 of 2015 s. 5*)

**director** (董事) includes a person occupying the position of director (by whatever name called); (*Added 18 of 2015 s. 5*)

“directors’ voluntary winding up statement” (董事自動清盤陳述書) means a statement made under section 228A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), and a reference to such a statement taking effect is a reference to it being delivered for registration as specified in section 228A(3) of that Ordinance; (*Amended 28 of 2012 ss. 912 & 920; 14 of 2016 s. 187*)

“disposition of property” (財產產權處置), in the context of a disposition made to or by a participant in a designated system, includes a payment made to or by the participant in the designated system or in a clearing and settlement system, wherever located, that is utilized by the designated system to effect payments;

**efficiency** (效率)—

- (a) in relation to a payment system—see section 8(2);
- (b) in relation to a stored value facility—see section 8P(2);  
(*Added 18 of 2015 s. 5*)

**facilitate** (促進)—see section 2B; (*Added 18 of 2015 s. 5*)

**facilitator** (促進人) means a person who facilitates the issue of a stored value facility in the manner as mentioned in section 2B; (*Added 18 of 2015 s. 5*)

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

- (a) means the stored value remaining on the facility; but
- (b) does not include any SVF deposit; (*Added 18 of 2015 s. 5*)

**investigator** (調查員) means a person directed under section 33B(2)(a), or appointed under section 33B(2)(b), to carry out an investigation under Part 3A; (*Added 18 of 2015 s. 5*)

**issue** (發行), in relation to a stored value facility, includes the operation of the facility by the issuer for use by the user of the facility after its issue; (*Added 18 of 2015 s. 5*)

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

- (a) issues the facility; and
- (b) gives, in respect of the facility, an undertaking as specified in section 2A(2) or (3); (*Added 18 of 2015 s. 5*)

**licence** (牌照) means a licence granted under section 8F, or regarded as granted under section 8G; (*Added 18 of 2015 s. 5*)

**licensee** (持牌人) means—

- (a) the person to whom a licence is granted under section 8F; or
- (b) a bank that is regarded as being granted a licence under section 8G; (*Added 18 of 2015 s. 5*)

**Manager** (管理人), in relation to a licensee, means the person appointed to be a Manager of the licensee under section 8ZH(1)(b) or 8ZX(2)(a); (*Added 18 of 2015 s. 5*)

**minimum criteria** (最低準則) means the criteria set out in Part 2 of Schedule 3; (*Added 18 of 2015 s. 5*)

“Monetary Authority” (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66);

“netting” (淨額計算), in relation to a clearing and settlement system, means the conversion of the various obligations owed to or by a participant, as between that participant and all the other participants in the system, into one net obligation owed to or by the participant;

“obligations” (義務), in the context of the default arrangements under a clearing and settlement system, means obligations resulting from the issue and receipt of transfer orders between participants, or otherwise resulting from action taken under the operating rules of the system;

**officer** (高級人員)—

- (a) in relation to a licensee, means—
  - (i) a chief executive, or manager, of the licensee as defined by section 8A; or
  - (ii) a director of the licensee;

- (b) in relation to a corporation that is a system operator or settlement institution of a designated system, means—
  - (i) a chief executive, director, manager or secretary of the corporation; or
  - (ii) any other person involved in the management of the corporation; or
- (c) in relation to any other corporation, means—
  - (i) a director, manager or secretary of the corporation; or
  - (ii) any other person involved in the management of the corporation; (*Replaced 18 of 2015 s. 5*)

“operating rules” (運作規則), in relation to a payment system or a stored value facility, means the rules or terms that govern the operation, use or functioning of the system or facility; (*Amended 18 of 2015 s. 5*)

“participant” (參與者), in relation to a payment system, means a person who for the time being is a party to the arrangement by which the system is established; (*Amended 18 of 2015 s. 5*)

**payment system** (支付系統) means—

- (a) a clearing and settlement system; or
- (b) a retail payment system; (*Added 18 of 2015 s. 5*)

**prescribed** (訂明) means prescribed by regulation made under section 49; (*Added 18 of 2015 s. 5*)

**public** (公眾) means the public of Hong Kong, and includes any class of that public; (*Added 18 of 2015 s. 5*)

“relevant insolvency office-holder” (有關破產清盤人員) means—

- (a) the Official Receiver appointed under section 75 of the Bankruptcy Ordinance (Cap. 6);



- (b) a person acting under the laws of Hong Kong in relation to a company as its liquidator, provisional liquidator, receiver or manager or an equivalent officer;
- (c) a person acting under the laws of Hong Kong in relation to an individual as his trustee in bankruptcy or interim trustee of his property or an equivalent officer; or (*Amended 18 of 2005 s. 48*)
- (d) a person appointed under the laws of Hong Kong pursuant to an order for the administration in bankruptcy of an insolvent estate of a deceased person;

**resolution authority** (處置機制當局) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); (*Added 23 of 2016 s. 225 and E.R. 2 of 2017*)

**Resolution Compensation Tribunal** (處置補償審裁處) means—

- (a) the Tribunal established by section 127(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); or (*Amended E.R. 2 of 2017*)
- (b) an additional tribunal established under section 128(1) of that Ordinance; (*Added 23 of 2016 s. 225*)

**resolution for voluntary winding up** (自動清盤決議) means a resolution for voluntary winding up passed under section 228(1)(a) or (b) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) in respect of which a certificate of solvency has not been issued and delivered in accordance with section 233 of the Ordinance; (*Replaced 14 of 2016 s. 187*)

**Resolvability Review Tribunal** (處置可行性覆檢審裁處) means—

- (a) the Tribunal established by section 110(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); or (*Amended E.R. 2 of 2017*)



- (b) an additional tribunal established under section 111(1) of that Ordinance; (*Added 23 of 2016 s. 225*)

**retail payment system** (零售支付系統)—

- (a) means a system or arrangement for the transfer, clearing or settlement of payment obligations relating to retail activities (whether the activities take place in Hong Kong or elsewhere), principally by individuals, that involve purchases or payments; and
- (b) includes related instruments and procedures; (*Added 18 of 2015 s. 5*)

**safety** (安全)—

- (a) in relation to a payment system—see section 8(1);
- (b) in relation to a stored value facility—see section 8P(1); (*Added 18 of 2015 s. 5*)

“settlement account” (交收帳戶), in relation to a clearing and settlement system, means an account at a settlement institution used to hold funds or securities (or both) and to settle transfer orders between participants in the system;

**settlement institution** (交收機構)—

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

the operating rules of the system; (*Replaced 18 of 2015 s. 5*)

**specified form** (指明格式) means a form specified under section 54A; (*Added 18 of 2015 s. 5*)

**stored value** (儲值) has the meaning given by section 2A(5); (*Added 18 of 2015 s. 5*)

**stored value facility** (儲值支付工具)—see section 2A; (*Added 18 of 2015 s. 5*)

**SVF deposit** (工具按金), in relation to a stored value facility issued, or the issue of which is facilitated, under a licence, means a deposit placed with the licensee, or another person on behalf of the licensee, for enabling the facility to be used; (*Added 18 of 2015 s. 5*)

**system operator** (系統營運者)—

- (a) in relation to a clearing and settlement system, means a person who, for the purposes of the operating rules of the system, is responsible for the operation of the clearing or settlement functions of the system; or
- (b) in relation to a retail payment system, means a person who, for the purposes of the operating rules of the system, is responsible for the operation of—
  - (i) the transfer, clearing or settlement functions of the system; or
  - (ii) any other related functions; (*Replaced 18 of 2015 s. 5*)

**transfer order** (轉撥指令)—

- (a) in relation to a clearing and settlement system, means—
  - (i) an instruction by a participant to place at the disposal of another participant an amount of money

by means of a book-entry on the accounts of a settlement institution for the system;

- (ii) an instruction that results in the assumption or discharge of a payment obligation for the purposes of the operating rules of the system; or
- (iii) an instruction by a participant either to settle an obligation for the transfer of book-entry securities, or for the transfer of such securities; or

(b) in relation to a retail payment system, means an instruction that results in the assumption or discharge of a payment obligation relating to retail activities for the purposes of the operating rules of the system; *(Replaced 18 of 2015 s. 5)*

“Tribunal” (審裁處) means the Tribunal established under section 34(1); *(Amended 18 of 2015 s. 5)*

**user** (使用者), in relation to a stored value facility, means a person who uses the facility for the purposes mentioned in section 2A(1)(a) or (b). *(Added 18 of 2015 s. 5)*

*(Amended 18 of 2015 s. 5)*

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

- (1) For the purposes of this Ordinance, a facility is a stored value facility if—
  - (a) the facility may be used for storing the value of an amount of money that—
    - (i) is paid into the facility from time to time; and
    - (ii) may be stored on the facility under the rules of the facility; and
  - (b) the facility may be used for either or both of the following purposes—

- (i) as a means of making payments for goods or services under an undertaking (whether express or implied) given by the issuer as specified in subsection (2);
  - (ii) as a means of making payments to another person (other than payments mentioned in subparagraph (i)) under an undertaking (whether express or implied) given by the issuer as specified in subsection (3).
- (2) The undertaking for subsection (1)(b)(i) is an undertaking that, if the facility is used as a means of making payments for goods or services, the issuer, or a person procured by the issuer to accept such payments, will accept the payments up to the amount of the stored value that is available for use under the rules of the facility.
- (3) The undertaking for subsection (1)(b)(ii) is an undertaking that, if the facility is used as a means of making payments to another person (***recipient***) (other than payments mentioned in subsection (1)(b)(i)), the issuer, or a person procured by the issuer to make such payments, will make the payments to the recipient up to the amount of the stored value that is available for use under the rules of the facility.
- (4) A facility is not a stored value facility for the purposes of this Ordinance if it is a single-purpose stored value facility.
- (5) In this section—

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

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

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

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

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

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

*(Added 18 of 2015 s. 6)*

## **2B. Interpretation: facilitator**

- (1) For the purposes of this Ordinance, a person facilitates the issue of a stored value facility if the person—
  - (a) is not the issuer of the facility; and
  - (b) provides the issuer with valuable consideration the value of which determines, in whole or in part, the extent to which the issuer may give an undertaking that falls

within the description of section 2A(2) or (3) in respect of the facility.

- (2) For the purposes of subsection (1)(b), the person may provide valuable consideration—
- (a) directly or indirectly; or
  - (b) by electronic means or otherwise.

*(Added 18 of 2015 s. 6)*

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

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

*(Added 18 of 2015 s. 6)*

**3. Application in relation to designated systems, etc. outside Hong Kong**

*(Amended 18 of 2015 s. 7)*

This Ordinance applies to and in relation to—

- (a) a designated system that is established in a place outside Hong Kong;
- (b) a system operator or settlement institution of, or a participant in, a designated system who, being an individual, is outside Hong Kong;
- (c) a system operator or settlement institution of, or a participant in, a designated system that, being a corporation, is incorporated in a place outside Hong Kong; or
- (d) an officer of a corporation that is a system operator or settlement institution of, or a participant in, a designated system who is outside Hong Kong,

as it applies to and in relation to such a system that is established in Hong Kong, such an individual who is in Hong Kong, such a corporation that is incorporated in Hong Kong, or such an officer of a corporation who is in Hong Kong.

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## **PART 2**

# **DESIGNATION AND OVERSIGHT OF PAYMENT SYSTEMS**

*(Amended 18 of 2015 s. 8)*

### **Division 1—Designation of Payment Systems**

*(Amended 18 of 2015 s. 9)*

#### **4. Monetary Authority may designate payment systems**

*(Amended 18 of 2015 s. 10)*

- (1) The Monetary Authority may, by notice published in the Gazette, designate for the purposes of this Ordinance a clearing and settlement system or retail payment system described in subsection (2) as a designated clearing and settlement system or designated retail payment system (as the case may be) if—
  - (a) the Monetary Authority is of the opinion that the system is, or is likely to become, a clearing and settlement system or retail payment system (as the case may be) whose proper functioning is—
    - (i) material to the monetary or financial stability of Hong Kong; or
    - (ii) material to the functioning of Hong Kong as an international financial centre; or
  - (b) having regard to matters of significant public interest, the Monetary Authority is of the opinion that the system should be so designated. *(Amended 18 of 2015 s. 10)*



- (2) A clearing and settlement system or retail payment system is a system referred to in subsection (1) if— (*Amended 18 of 2015 s. 10*)
- (a) it is in operation in Hong Kong; or
  - (b) it meets either of the following descriptions—
    - (i) for a clearing and settlement system, it accepts for clearing or settlement transfer orders denominated in Hong Kong dollars;
    - (ii) for a retail payment system, it accepts for transfer, clearing or settlement transfer orders denominated in any currency or declared medium of exchange, (*Replaced 18 of 2015 s. 10*)

and if it is not a system that is, or is operated by, a company recognized as a clearing house under section 37(1) of the Securities and Futures Ordinance (Cap. 571).

- (3) For the purposes of subsection (1)(a), a system is regarded as a system whose proper functioning is material to the monetary or financial stability of Hong Kong, or to the functioning of Hong Kong as an international financial centre, if—
- (a) the occurrence of any significant disruption to, or the presence of any significant inefficiency in, the functioning of the system is likely to adversely affect—
    - (i) the monetary or financial stability of Hong Kong; or
    - (ii) the functioning of Hong Kong as an international financial centre; or
  - (b) the occurrence of any significant disruption to the functioning of the system is likely to cause—
    - (i) further disruption to the activities of the participants of the system or to other payment systems; or

- (ii) systemic disruption to the financial system of Hong Kong. *(Replaced 18 of 2015 s. 10)*
- (3A) For the purposes of subsection (1)(b), the following matters are regarded as matters of significant public interest—
  - (a) whether the occurrence of any significant disruption to, or the presence of any significant inefficiency in, the functioning of the system is likely to adversely affect the public's confidence in payment systems;
  - (b) whether the occurrence of any significant disruption to, or the presence of any significant inefficiency in, the functioning of the system is likely to adversely affect the public's confidence in the financial system of Hong Kong;
  - (c) whether the occurrence of any significant disruption to, or the presence of any significant inefficiency in, the functioning of the system is likely to adversely affect day-to-day commercial activities. *(Added 18 of 2015 s. 10)*
- (4) Without limiting subsection (1), (3) or (3A), the Monetary Authority may have regard to one or more of the factors specified in subsection (4A), as the factors then apply or appear to be likely to apply, for determining—
  - (a) whether a system is, or is likely to become, a system whose proper functioning is—
    - (i) material to the monetary or financial stability of Hong Kong; or
    - (ii) material to the functioning of Hong Kong as an international financial centre; or
  - (b) whether a matter is of significant public interest. *(Replaced 18 of 2015 s. 10)*
- (4A) The factors are—

- (a) the estimated aggregate value of transfer orders transferred, cleared or settled through the system in a normal business day;
  - (b) the estimated average value of transfer orders transferred, cleared or settled through the system in a normal business day;
  - (c) the estimated number of transfer orders transferred, cleared or settled through the system in a normal business day;
  - (d) the estimated number of participants of the system;
  - (e) whether the system is linked to any designated system or any clearing and settlement system that is, or is operated by, a company recognized as a clearing house under section 37(1) of the Securities and Futures Ordinance (Cap. 571). *(Added 18 of 2015 s. 10)*
- (4B) In designating a retail payment system under subsection (1), the Monetary Authority may, in the notice published in the Gazette under that subsection, declare the activities that are allowed to be carried out through the system, having regard to—
  - (a) the activities that are carried out through the system before the designation; and
  - (b) the operating rules of the system. *(Added 18 of 2015 s. 10)*
- (5) If the Monetary Authority intends to designate a system under subsection (1), or make a declaration under subsection (4B), the Monetary Authority must—
  - (a) publish in the Gazette notice of the intention, stating the grounds on which the designation or declaration is to be made; and

- (b) specify in the notice a period of not less than 14 days within which any system operator or settlement institution of the system may make oral or written representations to the Monetary Authority as to why the designation or declaration should not be made. *(Replaced 18 of 2015 s. 10)*
- (6) The Monetary Authority must, before making the designation or declaration, take into consideration any representation made in the manner mentioned in subsection (5)(b). *(Added 18 of 2015 s. 10)*

## **5. Revocation of designation**

- (1) The Monetary Authority may at any time, by notice published in the Gazette, revoke the designation of a designated system if—
  - (a) the Monetary Authority is satisfied that the system is not a system as is described in section 4(2); or
  - (b) the system—
    - (i) was designated under section 4(1)(a) and, in the opinion of the Monetary Authority, has ceased to be, or to be likely to become, a system mentioned in that section; or
    - (ii) was designated under section 4(1)(b) and, in the opinion of the Monetary Authority, the matters based on which the system was designated have ceased to exist. *(Replaced 18 of 2015 s. 11)*
- (2) If the Monetary Authority intends to revoke the designation of a designated system, the Monetary Authority must—
  - (a) publish in the Gazette notice of the intention, stating the grounds under subsection (1) on which the revocation is to be made; and

- (b) specify in the notice a period of not less than 14 days within which any system operator or settlement institution of the system may make oral or written representations to the Monetary Authority as to why the grounds for revocation stated in the notice have not been made out. *(Replaced 18 of 2015 s. 11)*
- (2A) The Monetary Authority must, before revoking the designation, take into consideration any representation made in the manner mentioned in subsection (2)(b). *(Added 18 of 2015 s. 11)*
- (3) A revocation of the designation of a designated system effected under this section shall not operate so as to affect any settlement of a transfer order effected through the system prior to the revocation taking effect.

## **Division 2—Obligations of designated systems**

### **6. Obligation to inform Monetary Authority of name and address, etc.**

- (1) Every person who, at the time of designation of a payment system under this Ordinance, is a system operator or settlement institution of the system must, within 6 days of the designation, inform the Monetary Authority in writing of—*(Amended 18 of 2015 s. 12)*
  - (a) his name, his place of business, a postal address and an electronic mail address;
  - (b) the aspects of the management or operations of the system for which he is responsible; and
  - (c) in addition, where the person is a corporation, the names and particulars of the directors and shareholders of the corporation and the name and particulars of the chief executive (if any) of the corporation.

- (2) Where, subsequent to the designation of a payment system, there is any change to the information given or required to be given to the Monetary Authority under subsection (1) in respect of the system, every person to whom the change relates must, within 6 days of the change taking effect, inform the Monetary Authority in writing of the change. (*Amended 18 of 2015 s. 12*)
- (3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 6 months; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues. (*Added 18 of 2015 s. 12*)
- (4) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—

- (i) to a fine at level 6 and to imprisonment for 6 months; and
- (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues. (*Added 18 of 2015 s. 12*)

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

- (1) If a declaration of activities is made in respect of a designated retail payment system under section 4(4B), then except with the Monetary Authority's written consent, a system operator or settlement institution of the system must not carry out through the system an activity that is not declared under that section.
- (2) A system operator or settlement institution who contravenes subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 6 months; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

*(Added 18 of 2015 s. 13)*

**6B. Monetary Authority may give consent for designated retail**



**payment system to carry out activities not declared under section 4(4B)**

- (1) The Monetary Authority may, on the written request of a system operator or settlement institution of a designated retail payment system, give a written consent mentioned in section 6A to allow the activities specified in the consent to be carried out through the system by the operator or institution.
- (2) The Monetary Authority may—
  - (a) attach to the consent conditions that the Monetary Authority considers appropriate;
  - (b) attach to the consent any new conditions that the Monetary Authority considers appropriate, including by amending the conditions already attached; or
  - (c) cancel a condition so attached.
- (3) If the Monetary Authority intends to attach conditions to the consent, the Monetary Authority must—
  - (a) give a written notice to the system operator or settlement institution stating—
    - (i) the intention;
    - (ii) the conditions to be attached; and
    - (iii) the grounds for attaching the conditions; and
  - (b) specify in the notice a period of not less than 14 days within which the system operator or settlement institution may make oral or written representations to the Monetary Authority as to why the grounds for attaching the conditions have not been made out.
- (4) The Monetary Authority must, before attaching the conditions, take into consideration any representation made in the manner mentioned in subsection (3)(b).



- (5) The Monetary Authority must, as soon as practicable after making a decision under this section, give a written notice of the decision to the system operator or settlement institution.
- (6) A written notice given under subsection (5) must state—
  - (a) for a decision to give the consent, the decision;
  - (b) for a decision to refuse to give the consent, the decision and the grounds for the decision;
  - (c) for a decision to attach conditions—
    - (i) the conditions;
    - (ii) the grounds for attaching the conditions; and
    - (iii) the date on which the conditions are to take effect or, if they are to take effect on the occurrence of an event, this fact and the event; or
  - (d) for a decision to cancel a condition, the decision.
- (7) A system operator or settlement institution who contravenes a condition attached under subsection (2) to a consent given to the operator or institution commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 6 months; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

*(Added 18 of 2015 s. 13)*

**7. Requirements applying to designated systems**

- (1) Every system operator and settlement institution of a designated system shall ensure that the following requirements are complied with in relation to the system, namely—
  - (a) that the operations of the system are conducted in a safe and efficient manner calculated to minimize the likelihood of any disruption to the functioning of the system;
  - (b) that there are in place operating rules that—
    - (i) comply with the requirements specified in subsection (2) and with any prescribed requirements relating to the operating rules of a designated system; and
    - (ii) provide for the system to be operated in accordance with this Ordinance as it applies in relation to that system;
  - (c) that there are in place adequate arrangements to monitor and enforce compliance with the operating rules of the system, including arrangements regarding the resources available to the system operator;
  - (d) that there are available to the system financial resources appropriate for the proper performance of the system's particular functions.
- (2) The operating rules of a designated system must— *(Amended 18 of 2015 s. 14)*
  - (a) impose on participants requirements that are no less stringent than the requirements imposed on participants under the other provisions of this Ordinance;

- (b) provide that if a participant becomes insolvent he may be suspended from the system;
  - (c) provide for default arrangements which are appropriate and adequate for the system in all circumstances; and *(Amended 18 of 2015 s. 14)*
  - (d) provide for appropriate and adequate arrangements to deal with the situation where a system operator or settlement institution of the system is likely to become unable to meet its obligations under the system. *(Added 18 of 2015 s. 14)*
- (3) No change shall be made to the operating rules of a designated system without the prior approval in writing of the Monetary Authority.
- (4) If a requirement set out in subsection (1)(a), (b), (c) or (d) is contravened as regards a designated system, every system operator and settlement institution of the system commits an offence and is liable—
  - (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. *(Added 18 of 2015 s. 14)*
- (5) If subsection (3) is contravened as regards a designated system, every system operator and settlement institution of the system commits an offence and is liable—

- (a) on conviction on indictment, to a fine of \$400,000; or
  - (b) on summary conviction, to a fine at level 6. (*Added 18 of 2015 s. 14*)
- (6) It is a defence for a person charged with an offence under subsection (4) to prove that—
  - (a) the requirement to which the charge relates concerns an aspect of the management or operation of the designated system that is not an aspect for which the person is responsible; or
  - (b) the person took all reasonable steps to ensure that the requirement to which the charge relates was complied with. (*Added 18 of 2015 s. 14*)

**8. Safety and efficiency of payment systems**

*(Amended 18 of 2015 s. 15)*

- (1) In this Ordinance, reference to the safety of a payment system includes in particular any matter relating to— (*Amended 18 of 2015 s. 15*)
  - (a) the extent to which the operating rules of the system provide for certainty as to the circumstances under which transfer orders effected through the system are to be regarded as settled for the purposes of the system;
  - (b) the reliability and robustness of operation of the system;
  - (c) access control over the system; (*Replaced 18 of 2015 s. 15*)
  - (d) the integrity of, and access control over, the information held within the system; (*Replaced 18 of 2015 s. 15*)
  - (e) the risk management and control procedures relating to the operation of the system; (*Added 18 of 2015 s. 15*)

- (f) the soundness of the system, including financial soundness; *(Added 18 of 2015 s. 15)*
  - (g) the services provided to the system by the infrastructure associated with the system; and *(Added 18 of 2015 s. 15)*
  - (h) the criteria regarding the safety of the system prescribed for the purposes of this section. *(Added 18 of 2015 s. 15)*
- (2) In this Ordinance, reference to the efficiency of a payment system includes in particular any matter relating to—*(Amended 18 of 2015 s. 15)*
  - (a) the speed and efficiency with which operations relating to transfer orders within the system are carried out;
  - (b) the overall cost to a participant of his participation in the system, having regard to the services provided by the system to its participants;
  - (c) the reasonableness of criteria for admission as a participant in the system; and
  - (d) for a clearing and settlement system, generally, the absence of measures having the effect of unfairly limiting, or exploiting the absence of, competition in relation to the functions performed by the system. *(Amended 18 of 2015 s. 15)*

**Division 3—***(Repealed 18 of 2015 s. 16)*

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## Part 2A

### Licensing and Supervision of Stored Value Facilities

(Part 2A added 18 of 2015 s. 17)

#### Division 1—Preliminary

##### 8A. Interpretation of Part 2A

(1) In this Part—

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

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

**company** (公司) means—

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

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

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

- (a) means an individual appointed—
  - (i) by the licensee; or

- (ii) by a person acting for or on behalf of, or by an arrangement with, the licensee, to be principally responsible (either alone or jointly with others) for the conduct of one or more of the licensee's affairs or business specified in Schedule 6; but
  - (b) does not include—
    - (i) a person declared, under subsection (2), not to be a manager;
    - (ii) a person belonging to a class of persons declared, under subsection (2), not to be managers; or
    - (iii) a chief executive or director of the licensee;
- subsidiary** (附屬公司) has the meaning given by section 15 of the Companies Ordinance (Cap. 622).
- (2) For the purposes of the definition of **manager** in subsection (1), the Monetary Authority may, by notice published in the Gazette and subject to any conditions specified in the notice, declare—
- (a) a person not to be a manager; or
  - (b) a class of persons not to be managers.

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

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

- (1) A person must not issue a stored value facility unless the issue of the facility is authorized by a licence held by the person.
- (2) A person must not facilitate the issue of a stored value facility unless the facilitation of the issue of the facility is authorized by a licence held by the person.

- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable—
  - (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 5 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.

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

- (1) A person must not knowingly promote or otherwise assist another person in issuing a stored value facility in contravention of section 8B(1).
- (2) A person must not knowingly promote or otherwise assist another person in facilitating the issue of a stored value facility in contravention of section 8B(2).
- (3) In this section, a reference to promoting or otherwise assisting includes promoting or otherwise assisting by means of providing network or internet portal access or any other technological means.
- (4) A person who, without reasonable excuse, contravenes subsection (1) or (2) commits an offence and is liable—
  - (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 5 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.

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

- (1) A person must not enter into a contract or an arrangement, or use any device or scheme, that has the effect of, or is



designed to have the effect of, avoiding section 8B(1) or (2) or 8C(1) or (2).

- (2) A person who contravenes subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 5 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.

## **Division 3—Licensing**

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

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

- (1) A person may apply to the Monetary Authority for a licence.
- (2) The application may only be made by a company.
- (3) The application must—
  - (a) be made in the specified form; and
  - (b) contain the address of the applicant's principal place of business in Hong Kong, a postal address and an electronic mail address.
- (4) The Monetary Authority may, by notice in writing to the applicant, require the applicant to provide any information or document specified in the notice that the Monetary Authority considers necessary for determining the application.
- (5) If the information or document is not provided, the Monetary Authority may—
  - (a) refuse to process the application further; or
  - (b) reject the application.

**8F. Determination of application**

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

- (b) specify in the licence the date on which the licence is to take effect.

**8G. Bank regarded as licensee**

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

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

**8H. Validity of licence**

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

**Subdivision 2—Conditions of Licence**

**8I. Monetary Authority may attach conditions to licence**

- (1) The Monetary Authority may—
  - (a) attach to a licence conditions that the Monetary Authority considers appropriate, whether the licence is granted under section 8F or regarded as granted under section 8G; or
  - (b) attach to the licence any new conditions that the Monetary Authority considers appropriate, including by amending the conditions already attached.
- (2) Without limiting subsection (1), conditions attached under that subsection may—
  - (a) impose restrictions, either generally or in a particular case, on the business of issuing, or facilitating the issue of, stored value facilities that may be carried on by the licensee;

- (b) impose requirements for the administration, maintenance, management, use and regulation of—
  - (i) the float of any stored value facility issued, or the issue of which is facilitated, under the licence, including requirements relating to measures for protecting the float; or
  - (ii) the SVF deposit of any stored value facility issued, or the issue of which is facilitated, under the licence, including requirements relating to measures for protecting the deposit;
- (c) require the licensee to cease to, on and after the date or occurrence of the event specified by the Monetary Authority—
  - (i) issue any stored value facility;
  - (ii) facilitate the issue of any stored value facility;
  - (iii) receive, as the issuer of any stored value facility issued under the licence, any amount of money in any currency, or of any declared medium of exchange, for storage as stored value on the facility; or
  - (iv) receive, as the facilitator of any stored value facility the issue of which is facilitated under the licence, any amount of money in any currency, or of any declared medium of exchange, for facilitating the issue of the facility;
- (d) impose requirements as to the accounts of the licensee, including a requirement to disclose to the Monetary Authority or the public—
  - (i) all or part of those accounts; or
  - (ii) any information relating to the business of the licensee; or

- (e) impose restrictions, either generally or in a particular case, as to the maximum amount of stored value that may be stored on a stored value facility issued, or the issue of which is facilitated, under the licence.
- (3) A licensee who contravenes a condition attached to its licence under subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

- (1) This section applies to the attachment of conditions under section 8I(1) on the grant of a licence under section 8F.
- (2) If the Monetary Authority intends to attach conditions to the licence, the Monetary Authority must—
  - (a) give a written notice to the person applying for the licence under section 8E (*applicant*) stating—
    - (i) the intention;
    - (ii) the conditions to be attached; and
    - (iii) the grounds for attaching the conditions; and
  - (b) specify in the notice a period of not less than 14 days within which the applicant may make oral or written representations to the Monetary Authority as to why the

grounds for attaching the conditions have not been made out.

- (3) The Monetary Authority must, before attaching the conditions, take into consideration any representation made in the manner mentioned in subsection (2)(b).
- (4) If the Monetary Authority decides to attach conditions to the licence, the Monetary Authority must, when the licence is granted, give a written notice to the applicant stating—
  - (a) the conditions;
  - (b) the grounds for attaching the conditions; and
  - (c) the date on which the conditions are to take effect or, if they are to take effect on the occurrence of an event, this fact and the event.

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

- (1) This section applies to the attachment of conditions to a licence under section 8I(1) other than on the grant of a licence under section 8F.
- (2) If the Monetary Authority intends to attach conditions to the licence, the Monetary Authority must—
  - (a) give a written notice to the licensee stating—
    - (i) the intention;
    - (ii) the conditions to be attached; and
    - (iii) the grounds for attaching the conditions; and
  - (b) specify in the notice a period of not less than 14 days within which the licensee may make oral or written representations to the Monetary Authority as to why the grounds for attaching the conditions have not been made out.

- (3) The Monetary Authority must, before attaching the conditions, take into consideration any representation made in the manner mentioned in subsection (2)(b).
- (4) Subsection (2) does not apply in respect of a condition if—
  - (a) the condition falls within the description of section 8I(2)(c); and
  - (b) the Monetary Authority considers that it is necessary in the interests of the user or potential user of the stored value facility concerned to make the licence subject to the condition immediately.
- (5) If the Monetary Authority decides to attach conditions to the licence, the Monetary Authority must give a written notice to the licensee stating—
  - (a) the conditions;
  - (b) the grounds for attaching the conditions; and
  - (c) the date on which the conditions are to take effect or, if they are to take effect on the occurrence of an event, this fact and the event.

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

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

**Division 4—Obligation of Licensee**

**8M. Licence fee payable by licensee that is not bank**

- (1) This section does not apply to a licensee that is a bank.
- (2) A licensee must pay to the Monetary Authority the appropriate licence fee specified in column 3 of Schedule 4—

- (a) within 14 days after the date specified under section 8F(5)(b) as the date on which its licence is to take effect; and
  - (b) annually on or before each anniversary of that date.
- (3) The Monetary Authority must pay the licence fee into the Exchange Fund established under section 3 of the Exchange Fund Ordinance (Cap. 66).

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

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

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

- (1) A licensee must ensure that the operation of any stored value facility issued, or the issue of which is facilitated,



under its licence is conducted in a safe and efficient manner calculated to minimize the likelihood of any disruption to the functioning of the facility.

- (2) A licensee who fails to comply with subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (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.

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

- (1) In this Ordinance, a reference to the safety of a stored value facility includes in particular any matter relating to—
  - (a) the reliability and robustness of the operation of the facility;
  - (b) access control over the facility;
  - (c) the integrity of, and access control over, the information held within the facility;
  - (d) the risk management and control procedures relating to the operation of the facility;
  - (e) the soundness of the facility, including financial soundness;
  - (f) the integrity of the facility;

- (g) the services provided to the facility by any infrastructure associated with the facility; and
  - (h) the criteria regarding the safety of the facility prescribed for the purposes of this section.
- (2) In this Ordinance, a reference to the efficiency of a stored value facility includes in particular any matter relating to the speed and efficiency with which operations relating to the facility are carried out.

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

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

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

- (1) This section does not apply to a licensee that is a bank.
- (2) If a licensee is likely to become unable to meet its obligations, or if it is about to suspend payment, it must immediately—
  - (a) report the matter to the Monetary Authority; and
  - (b) provide the Monetary Authority with all relevant facts, circumstances and information.
- (3) A licensee who, without reasonable excuse, fails to comply with subsection (2) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—

- (i) to a fine at level 6 and to imprisonment for 6 months; and
- (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

- (1) This section does not apply to a licensee that is a bank.
- (2) If, after a licence has been granted under section 8F, there is a change to any particulars given by the licensee under section 8E(3)(b), the licensee must notify the Monetary Authority in writing of the change within 6 days after the date on which the change takes place.
- (3) A licensee who, without reasonable excuse, fails to comply with subsection (2) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (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.

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

- (1) This section applies if it appears to a licensee that there is, or is likely to be, a material change in the circumstances that is

relevant to—

- (a) the licensee's ongoing fulfilment of any of the minimum criteria applicable in relation to the licensee;
  - (b) the licensee's ongoing compliance with any of the conditions attached to its licence under section 8I;
  - (c) the licensee's ongoing compliance with section 8O; and
  - (d) the ongoing issue, or facilitation of the issue of, stored value facilities by the licensee.
- (2) The licensee must—
  - (a) for a material change that has taken place, provide the Monetary Authority with details of the change without undue delay; or
  - (b) for a material change that is likely to take place, provide the Monetary Authority with details of the likely change within a reasonable period before the change is reasonably expected to take place.
- (3) Information required to be provided under this section must be provided in a form, or verified in a manner, required by the Monetary Authority.
- (4) A licensee who, without reasonable excuse, fails to comply with subsection (2) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$25,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 6 months; and

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

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

### **Subdivision 1—Revocation of Licence**

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

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

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

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

- (a) that the Monetary Authority proposes to revoke the licence; and
  - (b) the ground for the revocation.
- (4) After giving a notice of proposal to revoke, the Monetary Authority must give a notice (*notice of revocation*) to the licensee as soon as practicable after—
  - (a) the licensee has given a written notice to the Monetary Authority stating that it does not intend to refer the decision to propose to revoke the licence to the Tribunal for review under section 35(1);
  - (b) the date on which the period within which, under section 35(2)(b), the licensee may refer the decision to the Tribunal for review has expired without such a reference having been made; or
  - (c) if the licensee referred the decision to the Tribunal for review under section 35(1), the Monetary Authority is aware that—
    - (i) the review was unsuccessful; or
    - (ii) the reference was abandoned or withdrawn.
- (5) The notice of revocation must state that the licence is or is to be revoked on the date, or the occurrence of the event, specified in the notice.
- (6) The licence is revoked on the date, or the occurrence of the event, mentioned in subsection (5).
- (7) The Monetary Authority must, as soon as practicable after giving a notice of revocation, publish a notice in Chinese in 1 Chinese language newspaper circulating in Hong Kong, and a notice in English in 1 English language newspaper circulating in Hong Kong, each stating—
  - (a) the name of the licensee;

- (b) the fact that the licence has been revoked; and
- (c) that the revocation is to take effect on the date, or the occurrence of the event, specified in the notice.

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

- (1) On the revocation of a licence under section 8U or 8V, the person who held the licence immediately before the revocation (*former licensee*) must not, and must cease to—
  - (a) issue or facilitate the issue of any stored value facility;
  - (b) receive as the issuer of any stored value facility any amount of money in any currency, or of any declared medium of exchange, for storage as stored value on the facility;
  - (c) receive as the facilitator of any stored value facility any amount of money in any currency, or of any declared medium of exchange, for facilitating the issue of the facility; and
  - (d) unless with the written consent given under section 8X, hold the float and SVF deposit of any stored value facility issued, or the issue of which is facilitated, under the licence.
- (2) Subsection (1) does not prejudice the enforcement or other maintenance of any right or interest—
  - (a) by any other person against the former licensee; or
  - (b) by the former licensee against any other person.
- (3) A former licensee who contravenes subsection (1)(d) commits an offence and is liable—
  - (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 5 years; or

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

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

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



- (5) This section does not prejudice the enforcement or other maintenance of any right or interest—
  - (a) by any other person against the person; or
  - (b) by the person against any other person.
- (6) A person who contravenes a condition attached under subsection (2) to a consent given to the person commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (7) A person who, without reasonable excuse, fails to comply with a requirement under subsection (4) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$25,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 6 months; and

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

### **Subdivision 2—Suspension of Licence**

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

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

#### **8Z. Temporary suspension of licence**

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

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

#### **8ZA. Suspension of licence**

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

representations to the Monetary Authority as to why the ground for the suspension stated in the notice has not been made out.

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

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

- (1) During the period when a licence is suspended under section 8Y, 8Z or 8ZA, the licensee must not, and must cease to—
  - (a) issue or facilitate the issue of any stored value facility;

- (b) receive as the issuer of any stored value facility any amount of money in any currency, or of any declared medium of exchange, for storage as stored value on the facility;
  - (c) receive as the facilitator of any stored value facility any amount of money in any currency, or of any declared medium of exchange, for facilitating the issue of the facility; and
  - (d) unless with the written consent given under section 8ZC, hold the float and SVF deposit of any stored value facility issued, or the issue of which is facilitated, under the licence.
- (2) Unless otherwise stated in the notice under section 8Z(1) or 8ZA(1), the licensee must continue to comply with the following provisions as if the licence were not suspended—
  - (a) section 8M or 8N, as may be applicable;
  - (b) Division 6; and
  - (c) any other provisions of this Ordinance under which duties and obligations are imposed on a licensee.
- (3) Subsection (1) does not prejudice the enforcement or other maintenance of any right or interest—
  - (a) by any other person against the licensee; or
  - (b) by the licensee against any other person.
- (4) A person who contravenes subsection (1)(d) commits an offence and is liable—
  - (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 5 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.

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

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

- (5) This section does not prejudice the enforcement or other maintenance of any right or interest—
  - (a) by any other person against the licensee; or
  - (b) by the licensee against any other person.
- (6) A licensee who contravenes a condition attached under subsection (2) to a consent given to the licensee commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (7) A licensee who, without reasonable excuse, fails to comply with a requirement under subsection (4) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$25,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 6 months; and

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

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

### **Subdivision 1—Preliminary**

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

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

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

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

- (1) The Monetary Authority may, after consulting the Financial Secretary, exercise one or more of the powers under sections 8ZF, 8ZG and 8ZH that appear to the Monetary Authority to be necessary in respect of a licensee if—
  - (a) the licensee informs the Monetary Authority—
    - (i) that it is likely to become unable to meet its obligations; or
    - (ii) that it is insolvent or is about to suspend payment;
  - (b) the licensee is unable to meet its obligations or suspends payment; or
  - (c) the Monetary Authority is of the opinion that—
    - (i) the licensee is carrying on its business in a manner detrimental to the interests of the user or potential user of any stored value facility issued, or the issue of which is facilitated, under its licence;



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

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

- (1) The Monetary Authority may, by notice in writing to a licensee, require the licensee to take an immediate action relating to the licensee's affairs, business or property that the Monetary Authority considers necessary.
- (2) Without limiting subsection (1), the requirement may impose restrictions on the licensee's business of issuing, or facilitating the issue of, stored value facilities under the licence.
- (3) A licensee who fails to comply with a requirement under subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$2,000,000 and to imprisonment for 5 years; and

- (ii) in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or
- (b) on summary conviction—
  - (i) to a fine at level 6 and to imprisonment for 6 months; and
  - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

- (1) The Monetary Authority may—
  - (a) by notice in writing to a licensee, direct the licensee to seek advice on the management of the licensee's affairs, business or property specified in the terms of the direction from an Advisor appointed by the Monetary Authority while the direction is in force; and
  - (b) appoint a person to be an Advisor for paragraph (a).
- (2) The notice must—
  - (a) state the terms of the direction;
  - (b) be given to the licensee at its principal place of business in Hong Kong; and
  - (c) state the name and address of the Advisor.
- (3) The Monetary Authority must specify in the terms of the direction the affairs, business or property to which the direction relates.
- (4) The direction takes effect on the giving of the notice to the licensee by the Monetary Authority.

- (5) The Monetary Authority must not give a direction to a licensee under this section if an order for the winding up of the licensee made by the Court of First Instance is in force.

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

- (1) The Monetary Authority may—
- (a) by notice in writing to a licensee, direct that the licensee's affairs, business or property specified in the terms of the direction is to be managed by a Manager appointed by the Monetary Authority while the direction is in force; and
  - (b) appoint a person to be a Manager for paragraph (a).
- (2) The notice must—
- (a) state the terms of the direction;
  - (b) be given to the licensee at its principal place of business in Hong Kong; and
  - (c) state the name and address of the Manager.
- (3) The Monetary Authority must specify in the terms of the direction—
- (a) the affairs, business or property to which the direction relates; and
  - (b) one or more primary objectives, that are not inconsistent with this Ordinance, with which the Manager must comply.
- (4) The direction takes effect on the giving of the notice to the licensee by the Monetary Authority.
- (5) The Monetary Authority must not give a direction to a licensee under this section if an order for the winding up of the licensee made by the Court of First Instance is in force.

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

- (1) The Monetary Authority may, in exercising the power under section 8ZG(1)(b) or 8ZH(1)(b) in respect of a licensee, appoint 2 or more persons to be the Advisor or Manager of the licensee.
- (2) The Advisor or Manager may be—
  - (a) a corporation;
  - (b) a partnership; or
  - (c) a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority.
- (3) If 2 or more persons are appointed as the Manager of a licensee under section 8ZH(1)(b), the Monetary Authority must—
  - (a) by notice in writing (*appointment notice*), specify which of the duties and powers imposed or conferred under this Ordinance on a Manager may be discharged, or exercised, in respect of the licensee by—
    - (i) any such person alone;
    - (ii) any such persons jointly; or
    - (iii) each such person; and
  - (b) attach the appointment notice to the notice giving the direction under section 8ZH.
- (4) If an appointment notice is given under subsection (3), the provisions of this Ordinance that relate to the duties and powers imposed or conferred under this Ordinance on a Manager are to be construed with all necessary modifications to take into account the notice.

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

#### **8ZJ. Interpretation of Subdivision 3**

In this Subdivision—

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

#### **8ZK. Publication of direction**

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

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

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

- (2) If the terms of the direction are varied under section 8ZT, a reference to the terms in subsection (1) is to be construed as the terms as varied under that section.

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

- (1) On a direction taking effect in respect of a licensee—
- (a) an appointment of a person as a chief executive or director of the licensee that was in force immediately before the direction takes effect is regarded as revoked; and
  - (b) accordingly the person must not act as such a chief executive or director while the direction is in force.
- (2) Subsection (1)(a) does not apply to an appointment if the terms of the direction expressly state that the appointment is not to be regarded as revoked under that subsection.
- (3) A person who acts as a chief executive or director of a licensee in contravention of subsection (1)(b) commits an offence and is liable—
- (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 6 months; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

- (1) While a direction is in force in respect of a licensee—
  - (a) no general meeting of the members of the licensee nor any meeting of the directors of the licensee may be held, except with the consent and in the presence of the Manager of the licensee; and
  - (b) if any such meeting is held with the consent and in the presence of the Manager, no resolution may be passed at the meeting, except with the consent of the Manager.
- (2) If a member or director of the licensee requests the Manager of the licensee to give a consent for the purposes of subsection (1)(a), the Manager—
  - (a) must not unreasonably refuse the request; and
  - (b) if such a consent is given, must attend the meeting held with the consent.
- (3) Subject to section 8ZQ, if a resolution is passed in contravention of subsection (1)(b), the purported resolution, and any thing done in reliance on the purported resolution, is invalid because of the contravention.

**8ZO. Power of Manager**

- (1) Subject to the primary objective with which the Manager of a licensee must comply, the Manager may—
  - (a) do any thing necessary for the management of the licensee's affairs, business or property; and
  - (b) without limiting paragraph (a), exercise one or more of the powers specified in Schedule 7.
- (2) The Manager—

- (a) may call any meeting of the members, directors or creditors of the licensee; and
  - (b) may require any person whose appointment as a chief executive or director of the licensee is regarded as revoked under section 8ZM(1) or is not so revoked because of section 8ZM(2)—
    - (i) to provide the Manager with any information or document relating to the licensee's affairs, business or property that the Manager requires for discharging or exercising the Manager's duties or powers under this Ordinance in respect of the licensee; and
    - (ii) to provide the information or document within the period, and in the manner, required by the Manager.
- (3) The Manager may exercise one or more of the following powers with the approval of the Monetary Authority—
  - (a) appoint any person (including a person whose appointment as a chief executive or director of the licensee is regarded as revoked under section 8ZM(1)) as a chief executive or director of the licensee, whether or not to fill a vacancy that arises as a result of the operation of that section;
  - (b) at a meeting of the members of the licensee, move any resolution that is—
    - (i) seconded by a member of the licensee; or
    - (ii) approved by the Monetary Authority;
  - (c) at a meeting of the directors of the licensee, move any resolution that is—
    - (i) seconded by a director of the licensee; or
    - (ii) approved by the Monetary Authority;



- (d) revoke an appointment to which section 8ZM(2) relates or made under paragraph (a).
- (4) If, while a direction is in force in respect of a licensee, a conferred power may be exercised in such a way as to interfere with the exercise of the powers of the Manager of the licensee, the conferred power is not exercisable except with the consent of the Manager given either generally or in a particular case.
- (5) For the purposes of subsection (4), a conferred power is a power conferred on the licensee, or an officer or a member of the licensee, under—
  - (a) this Ordinance, the Companies Ordinance (Cap. 622) or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);
  - (b) the articles of association of the licensee; or
  - (c) any other instrument constituting the licensee.
- (6) Subject to the primary objective with which the Manager of a licensee must comply—
  - (a) the Manager exercising the powers conferred on the Manager under this Ordinance is regarded as acting as an agent of the licensee; and
  - (b) section 9 (other than subsections (4) and (5) of that section) of the Prevention of Bribery Ordinance (Cap. 201) applies to—
    - (i) the Manager acting as such an agent; and
    - (ii) a person who offers an advantage (within the meaning of that Ordinance) to the Manager acting as such an agent.
- (7) A person dealing with a Manager of a licensee in good faith and for good consideration is not required to inquire whether the Manager—

- (a) is acting within the Manager's powers; or
  - (b) is complying with the primary objective with which the Manager must comply.
- (8) A person who, without reasonable excuse, fails to comply with a requirement under subsection (2)(b) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 6 months; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

- (1) With the written approval of the Monetary Authority, a Manager may, subject to the terms and conditions that the Manager thinks fit to impose, delegate in writing to a person any or all of the duties and powers imposed or conferred under this Ordinance on the Manager.
- (2) Subsection (1) does not apply to any duties or powers that are not to be, or may not be, discharged or exercised by the Manager because of a notice given under section 8ZI(3).
- (3) A delegate of a Manager—

- (a) must discharge the delegated duties as if the delegate were the Manager;
- (b) may exercise the delegated powers as if the delegate were the Manager; and
- (c) is presumed to be acting in accordance with the terms and conditions of the delegation in the absence of evidence to the contrary.

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

- (1) The Court of First Instance may, while a direction is in force in respect of a licensee, approve or refuse to approve a resolution specified in subsection (2) on the application of—
  - (a) the Manager of the licensee;
  - (b) not less than 100 members of the licensee; or
  - (c) the members of the licensee holding not less than one-tenth of the issued shares in the licensee.
- (2) The resolution is—
  - (a) if the application is made under subsection (1)(a)—
    - (i) a resolution proposed to be moved at a general meeting of the members of the licensee but not so moved because a quorum is not present at the meeting; or
    - (ii) a resolution properly moved at a general meeting of the members of the licensee but not passed for whatever reason; or
  - (b) if the application is made under subsection (1)(b) or (c), a resolution properly moved at a general meeting of the members of the licensee but not passed for whatever reason.

- (3) In the hearing of the application, the Manager, the Monetary Authority or any member of the licensee is entitled to be heard, and may—
  - (a) call, examine and cross-examine witnesses; and
  - (b) support or oppose the application.
- (4) If the Court of First Instance approves a resolution under subsection (1), the resolution is regarded as passed and taking effect on that approval or at a later time the Court thinks fit to specify.
- (5) If a resolution mentioned in subsection (2)(a)(ii) or (b) is approved by the Court of First Instance under subsection (1), section 8ZN(3) does not apply to the resolution on and after the resolution is regarded as taking effect.

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

- (1) The Court of First Instance may, on the application of the Manager of a licensee made while a direction is in force in respect of the licensee, make one or more of the orders specified in subsection (2) if it appears to the Court that—
  - (a) a person is about to do an act that may adversely affect or conflict with the discharge or exercise of the Manager's duties or powers in respect of any of the affairs, business or property of the licensee; or
  - (b) a person is doing, or has done, an act that adversely affects or conflicts with the discharge or exercise of the Manager's duties or powers in respect of any of the affairs, business or property of the licensee.
- (2) The orders are—
  - (a) for subsection (1)(a), an order to restrain the person from doing the act mentioned in that subsection;
  - (b) for subsection (1)(b)—

- (i) an order to declare that, with effect on and after the date of the order, the act mentioned in that subsection is invalid; and
  - (ii) an order to declare that, with effect on and after the date of the order, any thing done in reliance on the act mentioned in that subsection is invalid;
- (c) an order to direct a person to do or refrain from doing an act, for securing compliance with any other order made under this section;
- (d) an ancillary order that the Court of First Instance considers necessary in consequence of the making of any other order under this section.
- (3) To avoid doubt, an order mentioned in subsection (2)(b) does not affect the validity of an act, or any thing done in reliance on the act, before the date of the order.
- (4) Subsection (1) does not prejudice—
  - (a) the operation of any other provisions of this Division; and
  - (b) any order that the Court of First Instance may make otherwise than under this section.
- (5) Before making an order under subsection (1), the Court of First Instance—
  - (a) may direct that a notice of the application under that subsection be given to those persons the Court thinks fit; and
  - (b) may direct that a notice of the application be published in the manner the Court thinks fit.
- (6) The Court of First Instance may, on its own initiative or on an application made to it for that purpose, by order suspend, reverse, vary or discharge an order made under this section.

- (7) Before making an order under subsection (1) or (6), the Court of First Instance must satisfy itself, in so far as it can reasonably do so, that the order would not unfairly prejudice any person.

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

- (1) A person must not wilfully obstruct, resist or delay a Manager of a licensee in the lawful discharge of the Manager's duties, or the lawful exercise of the Manager's powers, in respect of the licensee.
- (2) A person must not wilfully obstruct, resist or delay a person lawfully assisting the Manager in the lawful discharge of the Manager's duties, or the lawful exercise of the Manager's powers, in respect of the licensee.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable—
- (a) on conviction on indictment—
- (i) to a fine of \$2,000,000 and to imprisonment for 5 years; and
- (ii) in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or
- (b) on summary conviction—
- (i) to a fine at level 6 and to imprisonment for 2 years; and
- (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

**8ZT. Variations of directions**

- (1) The Monetary Authority may, by notice in writing, from time

to time vary a direction in respect of—

- (a) the affairs, business or property of a licensee that is to be managed by the Manager of the licensee; and
  - (b) the primary objective with which the Manager must comply.
- (2) The notice must—
- (a) state the variation;
  - (b) be given to the licensee at its principal place of business in Hong Kong; and
  - (c) be given to the Manager.
- (3) Unless otherwise specified in the notice, the variation takes effect when the notice is given to the licensee and the Manager under subsection (2).
- (4) An act or thing done in reliance on a direction before a variation is made is not invalid only because of the variation.

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

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

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



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

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

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

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

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

- (1) An Advisor or a Manager may, at any time by notice in



writing to the Monetary Authority, resign from office.

- (2) A resignation under subsection (1) takes effect when it is accepted by the Monetary Authority.

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

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

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

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

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

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

or part of the remuneration or expenses payable under a determination under subsection (1).

## **Division 7—Ownership and Management of Licensee**

### **Subdivision 1—Preliminary**

#### **8ZZA. Interpretation of Division 7**

In this Division—

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

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

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

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

***majority shareholder controller*** (大股東控權人), in relation to a corporation, means a person who, either alone or jointly with

an associate, is entitled to exercise, or control the exercise of, more than 50% of the voting rights at a general meeting of—

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

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

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

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

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

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

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

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

- (b) provide the Monetary Authority with any information on the arrangement or agreement that the Monetary Authority may require.
- (3) Subsection (2) applies irrespective of whether the arrangement or agreement is made or entered into with the approval mentioned in subsection (1).
- (4) A licensee who contravenes subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment, to a fine of \$400,000 and to imprisonment for 2 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.
- (5) A licensee who fails to comply with subsection (2) commits an offence and is liable—
  - (a) on conviction on indictment or on summary conviction, to a fine at level 6; and
  - (b) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

- (1) A licensee who makes a reconstruction of its capital must, as soon as practicable after doing so—
  - (a) notify the Monetary Authority of the reconstruction by written notice signed by a director of the licensee; and
  - (b) provide the Monetary Authority with any information on the reconstruction that the Monetary Authority may require.
- (2) A licensee who fails to comply with subsection (1) commits an offence and is liable—

- (a) on conviction on indictment or on summary conviction, to a fine at level 6; and
- (b) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

#### **8ZZE. Interpretation of Subdivision 3**

- (1) In this Subdivision—

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

**controller** (控權人) means—

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

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

- (2) Subject to subsection (3), a reference in this Subdivision to a specified notice period for the giving of a consent notice or an objection notice to a person is the aggregate of the following—
- (a) a period of 3 months; and
  - (b) if the person is required under section 8ZZF(3) or 8ZZG(4) to provide any information, the period beginning on the date on which the requirement is made and ending on the date on which the Monetary Authority receives the information.

- (3) If the person is given a preliminary notice under section 8ZZH(3) or 8ZZI(3), the specified notice period does not expire, if it would otherwise do so, until 14 days after the expiry of the period within which the person may make representations under that section.

**8ZZF. Becoming controller of licensee**

- (1) A person who is to become a controller of a licensee must give a written notice to the Monetary Authority stating that the person proposes to become such a controller.
- (2) After receiving from a person a notice under subsection (1), the Monetary Authority may, within the specified notice period beginning from the receipt of the notice (*notice period*)—
- (a) consent to the person becoming such a controller by giving the person a consent notice, whether or not subject to conditions attached under section 8ZZH; or
  - (b) object to the person becoming such a controller by giving the person an objection notice.
- (3) The Monetary Authority may require the person—
- (a) to provide the Monetary Authority with any information that the Monetary Authority requires for deciding whether to consent, or object, to the person becoming such a controller; and
  - (b) to provide the information within the period, and in the manner, required by the Monetary Authority.
- (4) The person may become such a controller only in the circumstances described below—
- (a) if a consent notice is given to the person within the notice period, the person becomes such a controller within 12 months from the receipt of the consent notice;



- (b) if an objection notice is given to the person within the notice period—
    - (i) the decision to give the objection notice is referred to the Tribunal for review under section 35(1) and the review is successful; and
    - (ii) the person becomes such a controller within 12 months from the date on which the Tribunal's determination on the decision is made; or
  - (c) if neither a consent notice nor an objection notice is given within the notice period, the person becomes such a controller within 12 months from the expiry of the notice period.
- (5) A person who contravenes subsection (4) commits an offence and is liable—
  - (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 5 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.
- (6) It is a defence for a person charged with an offence under subsection (5) to prove that the person did not know that the acts or circumstances because of which the person became such a controller were such as to have that effect.

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

- (1) This section applies to a person who—
  - (a) becomes a controller in circumstances other than those described in section 8ZZF(4);
  - (b) did not know that the acts or circumstances because of which the person became such a controller were such as to have that effect; and



- (c) subsequently becomes aware of the fact that the person has become such a controller.
- (2) The person must, within 14 days after the date on which the person becomes aware of that fact, give a written notice to the Monetary Authority stating that the person has become such a controller.
- (3) After receiving from a person a notice under subsection (2), the Monetary Authority may, within the specified notice period beginning from the day on which the Monetary Authority becomes aware of the fact that the person has become such a controller—
  - (a) consent to the person being such a controller by giving the person a consent notice, whether or not subject to conditions attached under section 8ZZH; or
  - (b) object to the person being such a controller by giving the person an objection notice.
- (4) The Monetary Authority may require the person—
  - (a) to provide the Monetary Authority with any information that the Monetary Authority requires for deciding whether to consent, or object, to the person being such a controller; and
  - (b) to provide the information within the period, and in the manner, required by the Monetary Authority.
- (5) A person who fails to comply with subsection (2) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or

- (b) on summary conviction—
  - (i) to a fine at level 6 and to imprisonment for 6 months; and
  - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

- (1) The Monetary Authority may—
  - (a) attach to a consent notice conditions that the Monetary Authority considers appropriate;
  - (b) attach to the notice any new conditions that the Monetary Authority considers appropriate, including by amending the conditions already attached; or
  - (c) cancel a condition so attached.
- (2) Without limiting subsection (1), the Monetary Authority may attach to a consent notice conditions that the Monetary Authority considers appropriate to safeguard the interests of the user or potential user of any stored value facility issued, or the issue of which is facilitated, under the licence of the licensee.
- (3) If the Monetary Authority intends to attach conditions to a consent notice, the Monetary Authority must—
  - (a) give a written notice (*preliminary notice*) to the person to whom the consent notice is or is to be given stating—
    - (i) the intention;
    - (ii) the conditions to be attached; and
    - (iii) the grounds for attaching the conditions; and
  - (b) state in the preliminary notice that the person may, within 1 month from the receipt of the preliminary

notice, make oral or written representations to the Monetary Authority as to why the grounds for attaching the conditions have not been made out.

- (4) The Monetary Authority must, before attaching the conditions, take into consideration any representation made in the manner mentioned in subsection (3)(b).
- (5) The Monetary Authority may attach a condition to a consent notice to a person only if—
  - (a) the condition is stated in a preliminary notice to the person under subsection (3); or
  - (b) the person consents to the condition to be so attached.
- (6) The Monetary Authority must, as soon as practicable after making a decision under this section, give a written notice of the decision to the person.
- (7) A written notice given under subsection (6) must state—
  - (a) for a decision to attach conditions—
    - (i) the conditions;
    - (ii) the grounds for attaching the conditions; and
    - (iii) the date on which the conditions are to take effect or, if they are to take effect on the occurrence of an event, this fact and the event; or
  - (b) for a decision to cancel a condition, the decision.
- (8) A person who contravenes a condition attached under this section to a consent notice given to the person commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 3 years; and

- (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
- (b) on summary conviction—
  - (i) to a fine at level 6 and to imprisonment for 6 months; and
  - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

- (1) This section applies to an objection notice to be given to a person under section 8ZZF(2)(b) or 8ZZG(3)(b).
- (2) The Monetary Authority may give an objection notice to the person only if the Monetary Authority considers that any of the following conditions (*specified conditions*) is not satisfied—
  - (a) that the person is a fit and proper person to become or to be a controller of the licensee concerned;
  - (b) that the interests of the user or potential user of any stored value facility issued, or the issue of which is facilitated, under the licence of the licensee would not be, or are not, in any manner threatened by the person becoming or being such a controller;
  - (c) if the person is not presently such a controller, having regard to the person's likely influence on the licensee if the person were to become such a controller—
    - (i) (if the Monetary Authority is of the opinion that the licensee is currently carrying on its business

- prudently) that the licensee is likely to continue so carrying on its business; or
- (ii) (if the Monetary Authority is of any other opinion) that the person is likely to take adequate remedial action to ensure that the licensee will carry on its business prudently;
- (d) if the person is presently such a controller, having regard to the person's influence on the licensee as such a controller—
- (i) (if the Monetary Authority is of the opinion that the licensee was carrying on its business prudently before the person became such a controller) that the licensee is, and is likely to continue, so carrying on its business; or
- (ii) (if the Monetary Authority is of any other opinion) that the person is taking, or is likely to take, adequate remedial action to ensure that the licensee will carry on its business prudently.
- (3) If the Monetary Authority intends to give an objection notice to a person, the Monetary Authority must—
- (a) give a written notice (*preliminary notice*) to the person stating—
- (i) the intention; and
- (ii) the specified condition that the Monetary Authority considers is not satisfied; and
- (b) state in the preliminary notice that the person may, within 1 month from the receipt of the preliminary notice, make oral or written representations to the Monetary Authority as to why an objection notice should not be given.

- (4) The Monetary Authority must, before giving an objection notice, take into consideration any representation made in the manner mentioned in subsection (3)(b).
- (5) On giving an objection notice, the Monetary Authority must state in the notice the specified condition that the Monetary Authority considers is not satisfied.
- (6) For the purposes of subsection (5), the Monetary Authority may only state a specified condition that is stated in a preliminary notice under subsection (3)(a).
- (7) The Monetary Authority is not obliged to disclose to any person the particulars of a matter that the Monetary Authority has considered in giving an objection notice.

**8ZZJ. Objection to existing controller**

- (1) This section applies to a person who—
  - (a) has become a controller of a licensee in the circumstances described in section 8ZZF(4); or
  - (b) has become a controller of a licensee in circumstances other than those described in that section but the Monetary Authority—
    - (i) has given the person a consent notice under section 8ZZG(3)(a); or
    - (ii) has not given the person an objection notice under section 8ZZG(3)(b).
- (2) The Monetary Authority may object to the person being such a controller by giving the person an objection notice if the Monetary Authority considers that any of the following conditions (*specified conditions*) is satisfied—
  - (a) that the person is not or is no longer a fit and proper person to be such a controller;

- (b) that the interests of the user or potential user of any stored value facility issued, or the issue of which is facilitated, under the licence of the licensee may be in any manner threatened by the person being such a controller;
  - (c) if applicable, that the person has contravened a condition attached to a consent notice under section 8ZZH.
- (3) If the Monetary Authority intends to give an objection notice to a person, the Monetary Authority must—
  - (a) give a written notice (*preliminary notice*) to the person stating—
    - (i) the intention; and
    - (ii) the specified condition that the Monetary Authority considers is satisfied; and
  - (b) state in the preliminary notice that the person may, within 1 month from the receipt of the preliminary notice, make oral or written representations to the Monetary Authority as to why an objection notice should not be given.
- (4) The Monetary Authority must, before giving an objection notice, take into consideration any representation made in the manner mentioned in subsection (3)(b).
- (5) On giving an objection notice to the person, the Monetary Authority must state in the notice the specified condition that the Monetary Authority considers is satisfied.
- (6) For the purposes of subsection (5), the Monetary Authority may only state a specified condition that is stated in a preliminary notice under subsection (3)(a).
- (7) The Monetary Authority is not obliged to disclose to any person the particulars of a matter that the Monetary Authority has considered in giving an objection notice.



**8ZZK. Prohibition regarding indirect controller**

- (1) A person is a *prohibited person* (受禁人) in respect of a licensee for the purposes of this section if the person has been given an objection notice objecting to the person's becoming or being an indirect controller of the licensee, and either—
  - (a) the period within which, under section 35(2)(b), the person may refer the Monetary Authority's decision of giving the objection notice to the Tribunal for review has expired without such a reference having been made; or
  - (b) the person referred the decision to the Tribunal for review under section 35(1) but—
    - (i) the review was unsuccessful; or
    - (ii) the reference was abandoned or withdrawn.
- (2) A person who is a prohibited person in respect of a licensee—
  - (a) must not act or continue to act as an indirect controller of the licensee; and
  - (b) must not give, or must cease to give, as such a controller any directions or instructions to the directors of—
    - (i) the licensee; or
    - (ii) another corporation of which the licensee is a subsidiary.
- (3) Subsection (4) applies if—
  - (a) a prohibited person in respect of a licensee gives (whether directly or indirectly) a director of the licensee any directions or instructions that are, or might reasonably be construed as being, prohibited from being so given under subsection (2)(b); and



- (b) the director knows, or ought reasonably to know, that the person is a prohibited person in respect of the licensee.
- (4) The director must, on being given the directions or instructions, notify the Monetary Authority of—
  - (a) the directions or instructions; and
  - (b) the circumstances in which the directions or instructions are given to the director.
- (5) A person who contravenes subsection (2) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$1,000,000 and to imprisonment for 5 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 6 months; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (6) A director who, without reasonable excuse, fails to comply with subsection (4) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or

- (b) on summary conviction—
  - (i) to a fine at level 6 and to imprisonment for 6 months; and
  - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

- (1) The Monetary Authority may require a controller of a licensee—
  - (a) to provide the Monetary Authority with any information that the Monetary Authority requires for performing the Monetary Authority's functions under this Ordinance; and
  - (b) to provide the information within the period, and in the manner, required by the Monetary Authority.
- (2) If a licensee becomes aware that a person has become, or has ceased to be, a controller of the licensee, the licensee must, within 14 days after the date on which the licensee becomes aware of that fact, notify the Monetary Authority of that fact in writing.
- (3) A controller who, without reasonable excuse, fails to comply with a requirement under subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$25,000 for every day during which the offence continues; or
  - (b) on summary conviction—

- (i) to a fine at level 6 and to imprisonment for 6 months; and
  - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (4) A licensee who fails to comply with subsection (2) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 6 months; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

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

In this Subdivision—

***controller*** (控權人) means—

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) A person must not—
  - (a) exercise or propose to exercise a right to dispose of any shares, or of any right to be issued with any

- shares, knowing that to do so contravenes a restriction mentioned in section 8ZZN(2);
- (b) vote in respect of any shares as holder or proxy knowing that to do so contravenes the restriction;
  - (c) appoint a proxy in respect of any shares knowing that to vote in respect of those shares would contravene the restriction;
  - (d) being the holder of any shares, fail to give notice that those shares are subject to the restriction, to any other person whom the person—
    - (i) does not know to be aware of the fact; but
    - (ii) does know to be entitled (apart from the restriction) to vote in respect of those shares whether as holder or proxy; or
  - (e) being the holder of any shares, or being entitled to any right to be issued with other shares in right of them, or any right to receive any payment on them (except in a liquidation), enter into any agreement that is void under section 8ZZP.
- (2) A person who contravenes subsection (1) commits an offence and is liable—
- (a) on conviction on indictment, to a fine of \$400,000 and to imprisonment for 2 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.
- (3) Subsection (4) applies if—
- (a) shares in a licensee or any other corporation are issued in contravention of the restriction under section 8ZZN(2)(c); or



- (b) payments are made by a licensee or any other corporation in contravention of the restriction under section 8ZZN(2)(d).
- (4) A chief executive, director or manager of the licensee or the corporation (as the case may be) who knowingly and wilfully permits the issue of the shares or the making of such a payment commits an offence and is liable—
  - (a) on conviction on indictment, to a fine of \$400,000 and to imprisonment for 2 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.

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

- (1) Subject to subsection (2), the Monetary Authority may, on the Monetary Authority's own initiative or on the request of a person under section 8ZZS(1), apply to the Court of First Instance for either or both of the following orders—
  - (a) an order for the sale of the specified shares of a controller to whom section 8ZZN applies;
  - (b) if the shares are subject to any restriction under section 8ZZN(2), an order that those shares cease to be subject to that restriction.
- (2) If the controller is a controller mentioned in section 8ZZN(1)(b), the Monetary Authority must not make an application under subsection (1) unless—
  - (a) the application relates to shares that are subject to a restriction under section 8ZZN(2); and
  - (b) the person to whom the notice under section 8ZZN(2) is given has not, within 14 days after the notice is given,

given a written notice mentioned in section 8ZZO(2) to the Monetary Authority.

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

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

- (1) If any specified shares are subject to a restriction under section 8ZZN(2), a person affected by the restriction may

request the Monetary Authority to make an application to the Court of First Instance under section 8ZZR(1).

- (2) If a request is made under subsection (1), the Monetary Authority must, within 1 month after receiving the request—
- (a) comply with the request; or
  - (b) give a written notice to the person making the request stating that—
    - (i) the Monetary Authority is prevented by section 8ZZR(2) from making the application; or
    - (ii) the Monetary Authority does not propose to make the application.

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

- (1) This section applies if—
- (a) a person has made a request to the Monetary Authority under section 8ZZS(1) in respect of specified shares that are subject to a restriction under section 8ZZN(2); and
  - (b) either—
    - (i) the person has received a notice under section 8ZZS(2)(b)(ii) in respect of the request; or
    - (ii) the period mentioned in section 8ZZS(2) has expired but the Monetary Authority has neither complied with the request nor given the person a notice under section 8ZZS(2)(b) in respect of the request.
- (2) The person may apply to the Court of First Instance for either or both of the following orders—
- (a) an order for the sale of the specified shares to which the request relates;

- (b) an order for the shares to be ceased to be subject to any restriction under section 8ZZN(2).
- (3) If the Court of First Instance makes an order mentioned in subsection (2), it may, on the application of the Monetary Authority, at any time make a further order relating to the sale or transfer of the shares as it thinks fit.
- (4) Without limiting subsection (3), a further order may be an order that the holder of the shares must—
  - (a) cause those shares to be transferred to a nominee of the Monetary Authority specified in the order; and
  - (b) cause those shares to be so transferred within the period specified in the order.
- (5) If any specified shares are sold under an order made under this section, then unless the Court of First Instance otherwise specifies, the proceeds of the sale, less the costs of the sale, are to be paid into court for the benefit of the persons beneficially interested in them.
- (6) A person mentioned in subsection (5) may apply to the Court of First Instance for an order that the whole or part of the amount paid into court under that subsection be paid to the person.

### **Subdivision 5—Officers and Employees of Licensee**

#### **8ZZU. Appointment of chief executive of licensee**

- (1) Subject to sections 8ZM(1) and 8ZO(3), a licensee must appoint a person as the chief executive, and at least one person as an alternate chief executive, of the licensee.
- (2) Only an individual who is ordinarily resident in Hong Kong may be appointed under subsection (1).

- (3) If the person appointed as the chief executive of a licensee is precluded by illness, absence from Hong Kong or any other cause from performing the functions as the chief executive, an alternate chief executive of the licensee is to act as the chief executive of the licensee.
- (4) A licensee who contravenes subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment or on summary conviction, to a fine at level 6; and
  - (b) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

- (1) A person must not become a chief executive or director of a licensee except with the Monetary Authority's consent.
- (2) If a person has become a chief executive or director of a licensee without the Monetary Authority's consent, the person must not act, or continue to act as such a chief executive or director.
- (3) Despite subsections (1) and (2), if a person has been given the Monetary Authority's consent to become a chief executive of a licensee and is such a chief executive, the person may—
  - (a) become a director of the licensee; and
  - (b) act as such a director without the Monetary Authority's consent.
- (4) Subsections (1) and (2) do not apply if—
  - (a) the person is appointed as a chief executive or director of a licensee under section 8ZO(3)(a); or
  - (b) the person is appointed to serve as such a chief executive or director immediately on the expiry of a

previous term by the person as such a chief executive or director.

- (5) A person who contravenes subsection (1) or (2) commits an offence and is liable—
- (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 6 months; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

- (6) In this section—

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

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

- (1) The Monetary Authority must refuse to give a consent to a person for the purposes of section 8ZZV unless the Monetary Authority is satisfied that the person is a fit and proper person to be a chief executive or director of the licensee concerned.
- (2) The Monetary Authority may require the person—
  - (a) to provide the Monetary Authority with any information that the Monetary Authority requires for deciding whether to give the consent; and

- (b) to provide the information within the period, and in the manner, required by the Monetary Authority.
- (3) The Monetary Authority may—
  - (a) attach to the consent conditions, or any new conditions (including by amending the conditions already attached), that the Monetary Authority considers appropriate for securing, or further securing, that the person will continue to be a fit and proper person to be a chief executive or director of the licensee; or
  - (b) cancel a condition so attached.
- (4) The Monetary Authority may withdraw the consent if the Monetary Authority ceases to be satisfied that the person is a fit and proper person to be a chief executive or director of the licensee.
- (5) If the Monetary Authority intends to attach conditions to the consent or withdraw the consent, the Monetary Authority must—
  - (a) give a written notice to the person and the licensee stating—
    - (i) the intention;
    - (ii) if applicable, the conditions to be attached; and
    - (iii) the grounds for doing so;
  - (b) state in the notice that the person may, within 7 days after the giving of the notice, make oral or written representations to the Monetary Authority as to why the grounds for attaching the conditions or withdrawing the consent have not been made out; and
  - (c) attach to the notice a copy of this section and section 8ZZV.



- (6) The Monetary Authority must, before making the decision, take into consideration any representation made in the manner mentioned in subsection (5)(b).
- (7) The Monetary Authority must, as soon as practicable after making a decision under this section, give a written notice of the decision to the person and the licensee.
- (8) A written notice given under subsection (7) must state—
  - (a) for a decision to give the consent, the decision;
  - (b) for a decision to refuse to give the consent, the decision and the grounds for the decision;
  - (c) for a decision to withdraw the consent, the decision and the grounds for the decision;
  - (d) for a decision to attach conditions—
    - (i) the conditions;
    - (ii) the grounds for attaching the conditions; and
    - (iii) the date on which the conditions are to take effect or, if they are to take effect on the occurrence of an event, this fact and the event; or
  - (e) for a decision to cancel a condition, the decision.
- (9) A person who contravenes a condition attached under subsection (3) to a consent given to the person commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—



- (i) to a fine at level 6 and to imprisonment for 6 months; and
- (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

- (1) The Monetary Authority may require a chief executive or director of a licensee—
  - (a) to provide the Monetary Authority with any information that the Monetary Authority requires for performing the Monetary Authority's functions under this Ordinance; and
  - (b) to provide the information within the period, and in the manner, required by the Monetary Authority.
- (2) If a licensee becomes aware that a person has become, or has ceased to be, a chief executive or director of the licensee, the licensee must, within 14 days after the date on which the licensee becomes aware of that fact, notify the Monetary Authority of that fact in writing.
- (3) A licensee is not required under subsection (2) to give a notification in respect of a person if—
  - (a) the person is appointed as a chief executive or director of the licensee under section 8ZO(3)(a);
  - (b) the person's appointment as a chief executive or director of the licensee is regarded as revoked under section 8ZM(1)(a); or
  - (c) the person's appointment as a chief executive or director of the licensee is revoked under section 8ZO(3)(d).

- (4) A person who, without reasonable excuse, fails to comply with a requirement under subsection (1) commits an offence and is liable—
- (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$25,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 6 months; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (5) A licensee who fails to comply with subsection (2) commits an offence and is liable—
- (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 6 months; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

**8ZZY. Appointment of manager**

- (1) This section applies if any of the following events occurs—
  - (a) a person becomes a manager of a licensee;
  - (b) a person ceases to be a manager of a licensee;
  - (c) a person, in the capacity as a manager of a licensee, becomes principally responsible (either alone or jointly with others) for the conduct of any of the licensee's affairs or business specified in Schedule 6 in addition to, or in place of, any other responsibility the person has or had in that capacity.
- (2) The licensee must, within 14 days after the date on which any of the events occurs, give a written notice to the Monetary Authority and the person mentioned in subsection (1)(a), (b) or (c) stating—
  - (a) the date on which the event occurs;
  - (b) the particulars of the licensee's affairs or business for which the person becomes or ceases to be responsible as a manager; and
  - (c) (for a written notice to the Monetary Authority) any other particulars that the Monetary Authority requires for performing the Monetary Authority's functions under this Ordinance.
- (3) Subsection (2) does not apply if the manager is appointed on a temporary basis.
- (4) However, if the appointment of the manager subsequently ceases to be on a temporary basis, subsection (2) applies in respect of the manager on and after the date of the cessation as if it were the date on which the event under that subsection occurs.

- (5) A licensee who fails to comply with subsection (2) commits an offence and is liable—
- (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 6 months; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

- (1) Except with the Monetary Authority's written consent, a person must not become an employee of a licensee if the person—
- (a) is bankrupt;
  - (b) has entered into a composition or scheme of arrangement with the person's creditors;
  - (c) has entered into a voluntary arrangement as defined by section 2 of the Bankruptcy Ordinance (Cap. 6) with the person's creditors; or
  - (d) has been convicted in any place of an offence involving fraud or dishonesty.
- (2) Except with the Monetary Authority's written consent, a person who is or was a chief executive, director or manager

of a licensee (*first licensee*) must not become an employee of another licensee if the person knows, or ought reasonably to know, that—

- (a) the first licensee is being, or has been, wound up or otherwise dissolved; or
  - (b) the licence of the first licensee has been revoked.
- (3) A person who has become an employee of a licensee in contravention of subsection (1) or (2) must cease to act as such an employee.
- (4) If the Monetary Authority refuses to give a written consent to a person seeking it for the purposes of subsection (1) or (2), the Monetary Authority must, as soon as practicable, give a written notice to the person stating—
- (a) the decision; and
  - (b) the grounds for the decision.
- (5) If the Monetary Authority has given a written consent to a person seeking it for the purposes of subsection (2), that subsection is not again applicable to the person in respect of the first licensee concerned.
- (6) A person who contravenes subsection (1), (2) or (3) commits an offence and is liable—
- (a) on conviction on indictment, to a fine of \$200,000 and to imprisonment for 1 year; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.

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

- (1) Except with the Monetary Authority's written consent, a person who is an employee of a licensee must cease to act as such if the person—

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

- (5) If the Monetary Authority has given a written consent to a person seeking it for the purposes of subsection (3), that subsection is not again applicable to the person in respect of the first licensee concerned.
- (6) A person who contravenes subsection (1) or (3) commits an offence and is liable—
  - (a) on conviction on indictment, to a fine of \$200,000 and to imprisonment for 1 year; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.

### **Division 8—Exemption**

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

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

- (a) on conviction on indictment—
  - (i) to a fine of \$400,000 and to imprisonment for 2 year; and
  - (ii) in the case of a continuing offence, to a further fine of \$25,000 for every day during which the offence continues; or
- (b) on summary conviction—
  - (i) to a fine at level 6 and to imprisonment for 6 months; and
  - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

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



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

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

- (1) The Monetary Authority may, by notice published in the Gazette, exempt a stored value facility from Divisions 2, 3, 4, 5, 6, 7 and 9 of this Part.

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- (2) The Monetary Authority may only exempt a stored value facility under subsection (1) if—
- (a) the issuer of the facility is a company (*issuing company*);
  - (b) if there is a facilitator for the issue of the facility, the facilitator is a company (*facilitating company*); and
  - (c) the Monetary Authority is satisfied that the risks posed by the facility to both of the following are immaterial—
    - (i) the user or potential user of the facility;
    - (ii) the payment or financial system of Hong Kong.
- (3) Without limiting subsection (2)(c), in deciding whether the risks posed by a stored value facility are immaterial, the Monetary Authority may take into consideration any matters that the Monetary Authority considers to be relevant, including—
- (a) whether the facility is or is to be used by its user only in, or in close proximity to, the premises occupied by the issuing company;
  - (b) the range of goods or services for which the facility may be used by its user as a means of making payments;
  - (c) the group of people to whom payments may be made by using the facility;
  - (d) whether the scheme proposed by the issuing company for the issue of the facility is sound, in particular having regard to the matters relating to the security and risk management of the scheme;
  - (e) whether the scheme proposed by the facilitating company to facilitate the issue of the facility is sound, in particular having regard to the matters relating to the security and risk management of the scheme; and

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

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

- (1) The Monetary Authority may, by notice published in the Gazette, revoke an exemption given in respect of a stored value facility under section 8ZZZD on being satisfied that any condition attached under section 8ZZZD(4) in respect of the exemption has been contravened.
- (2) The Monetary Authority must specify in the notice the date on which the revocation is to take effect or, if it is to take effect on the occurrence of an event, this fact and the event.
- (3) If the Monetary Authority intends to revoke an exemption under subsection (1), the Monetary Authority must—
  - (a) give a written notice to the issuer and (if any) facilitator of the stored value facility stating—

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

## **Division 9—Miscellaneous**

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

- (1) The Monetary Authority must establish and keep a register of licensees in the form the Monetary Authority thinks fit.
- (2) The register must contain in respect of each licensee—
  - (a) the name of the licensee;
  - (b) the address of the principal place of business in Hong Kong of the licensee; and
  - (c) the licence number of the licence held by the licensee.

- (3) The register may also contain any other particulars of a licensee that the Monetary Authority considers appropriate to be contained in the register.
- (4) If a licence is revoked under section 8U or 8V, the Monetary Authority must, as soon as practicable after the revocation takes effect, remove from the register the entry relating to the licensee concerned.
- (5) If a licence is suspended under section 8Y, 8Z or 8ZA, the Monetary Authority must—
  - (a) as soon as practicable after the suspension, make a notation that the licence has been so suspended in the register against the name of the licensee concerned; and
  - (b) ensure that the notation remains on the register until the suspension ceases to have effect.
- (6) The register is to be kept at—
  - (a) the office of the Monetary Authority; or
  - (b) any other place notified by the Monetary Authority in the Gazette.
- (7) The Monetary Authority must make the register available for inspection by the public in the form of an online record.

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

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

- (b) in the absence of evidence to the contrary, is to be presumed by the court—
  - (i) to have been signed and certified by the Monetary Authority; and
  - (ii) to be a true copy of an entry in, or an extract from, the register of licensees.

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

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

- (a) by the Manager of the licensee, acting in good faith in the course of managing the affairs, business and property of the licensee; or
- (b) by the licensee under the direction of the Manager, acting in good faith in the course of managing the affairs, business and property of the licensee.

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

- (1) A licensee who is an issuer of a stored value facility issued under its licence must ensure that the licence number of the licence is clearly stated—
  - (a) subject to paragraph (b), if the stored value facility is device-based, on each physical device concerned;
  - (b) if the stored value facility is device-based but it is not reasonably practicable for it to comply with paragraph (a), on the packaging containing each physical device concerned; and
  - (c) if the stored value facility is network-based, on each communication network concerned.
- (2) A licensee who is a facilitator of a stored value facility the issue of which is facilitated under its licence must ensure that the licence number of the licence is clearly stated—
  - (a) subject to paragraph (b), if the stored value facility is device-based, on each physical device concerned;
  - (b) if the stored value facility is device-based but it is not reasonably practicable for it to comply with paragraph (a), on the packaging containing each physical device concerned; and
  - (c) if the stored value facility is network-based, on each communication network concerned.



- (3) A licensee who fails to comply with subsection (1) or (2) commits an offence and is liable on summary conviction—
  - (a) to a fine at level 6; and
  - (b) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (4) For the purposes of this section—
  - (a) a stored value facility is device-based if it is in the form of a physical device provided by the issuer to the user and the stored value is stored on the device; and
  - (b) a stored value facility is network-based if—
    - (i) the stored value is stored on the facility by using a communication network or system (whether the Internet or any other network or system); and
    - (ii) it is not a facility mentioned in paragraph (a).
- (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.

**8ZZZJ. Publication of advertisement, etc. relating to stored value facility**

- (1) A person must not publish in Hong Kong or elsewhere an advertisement, invitation or document mentioned in subsection (3) 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.
- (2) A person must not publish in Hong Kong or elsewhere an advertisement, invitation or document mentioned in subsection (3) 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.
- (3) 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.
- (4) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction—
  - (a) to a fine at level 6; and
  - (b) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (5) It is a defence for a person charged with an offence under subsection (4) to prove that—

- (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.
- (6) 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.

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

- (1) A person who is not a licensee must not—
  - (a) describe themselves, in whatever terms, as a licensee; or
  - (b) behave, or otherwise hold themselves out, in a manner which indicates, or which is reasonably likely to be understood as indicating, that they are such a person.
- (2) A person who contravenes subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and

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- (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.
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## **Part 2B**

### **Matters Pertaining to Functions and Powers of Monetary Authority**

*(Added 18 of 2015 s. 18)*

#### **9. Functions of Monetary Authority**

- (1) It is the function of the Monetary Authority under this Ordinance—
  - (a) to monitor compliance with the obligations imposed under this Ordinance in relation to—
    - (i) designated systems; and
    - (ii) stored value facilities; and
  - (b) to promote the general safety and efficiency of—
    - (i) designated systems; and
    - (ii) stored value facilities. *(Replaced 18 of 2015 s. 19)*
- (2) Without limiting subsection (1), it is the function of the Monetary Authority— *(Amended 18 of 2015 s. 19)*
  - (a) to take reasonable steps to satisfy himself that every designated system and stored value facility is operated in a safe and efficient manner;
  - (b) to promote and encourage proper standards of operation and sound and prudent practices amongst designated systems and stored value facilities;
  - (c) whenever appropriate, to co-operate with and assist recognized financial services supervisory authorities of Hong Kong or of any place outside Hong Kong in maintaining and promoting safety and efficiency in

the operations of designated systems and stored value facilities; and

(d) to consider and propose reforms of the law relating to—  
(*Amended 18 of 2015 s. 19*)

(i) payment systems and stored value facilities; and

(ii) the operation of designated systems and stored value facilities. (*Amended 18 of 2015 s. 19*)

(3) The Monetary Authority may appoint persons as advisers or consultants to assist him in the performance of his functions under this Ordinance.

#### **10. Power of Chief Executive to give directions**

(1) After consulting the Monetary Authority, the Chief Executive may, on being satisfied that it is in the public interest to do so, give the Monetary Authority such written directions as he thinks fit as to the performance of any function of the Monetary Authority under this Ordinance.

(2) The Monetary Authority shall comply with any direction given under subsection (1).

(3) If a direction is given under subsection (1), a requirement in an Ordinance that the Monetary Authority shall—

(a) form any opinion;

(b) be satisfied as to any matter (including the existence of particular circumstances); or

(c) consult any person,

for the purpose of performing any function to which the direction relates, does not apply for any purpose connected with the performance of that function pursuant to or consequent upon the direction.

#### **11. Power of Monetary Authority to exempt designated system**

**established outside Hong Kong**

*(Amended 18 of 2015 s. 20)*

- (1) This section applies to a designated system that is established in a place outside Hong Kong and is under the supervision of an authority exercising functions in that place similar to the functions of the Monetary Authority under this Ordinance.
- (2) Where the Monetary Authority is satisfied that the scope and nature of the supervision exercised in relation to any designated system to which this section applies by the authority in the place outside Hong Kong is sufficient to achieve any or all of the objectives of this Part and Part 2 in relation to the system, the Monetary Authority may exempt a person from— *(Amended 18 of 2015 s. 20)*
  - (a) any or all of the obligations imposed on the person under the provisions in this Part and Division 2 of Part 2 in relation to the system; or
  - (b) any obligation arising from the exercise of any power conferred under those provisions in relation to the system. *(Amended 18 of 2015 s. 20)*
- (3) In addition to any exemption granted under subsection (2) in relation to a designated system, the Monetary Authority may exempt the system operator or settlement institution of the designated system from the application of section 30 or 53, or may exempt the participants of the system from the application of section 31; and where such an exemption in relation to section 30, 31 or 53 is in effect, that section shall not apply in relation to the system operator, settlement institution or participants to whom the exemption applies.
- (4) Where the Monetary Authority has granted (or has varied or withdrawn) an exemption under this section in any case, he shall publish in the Gazette notice of the particulars of that grant (or variation or withdrawal) of exemption.

**12. Monetary Authority may request information or documents from system operator, settlement institution, participant or licensee**

*(Amended 18 of 2015 s. 21)*

- (1) For the better performance of the Monetary Authority's functions under this Ordinance, the Monetary Authority may—
  - (a) by notice in writing given to a system operator or settlement institution of, or participant in, a designated system, request the system operator, settlement institution or participant to give the Monetary Authority information or documents relating to the system as may be specified in the notice; or
  - (b) by notice in writing given to the licensee who issues, or facilitates the issue of, a stored value facility under its licence, request the licensee to give the Monetary Authority information or documents relating to the facility as may be specified in the notice. *(Replaced 18 of 2015 s. 21)*
- (2) A request made under subsection (1) may specify a period, being a period that is reasonable in the circumstances, within which the request shall be complied with.
- (3) To avoid doubt—
  - (a) the power conferred by subsection (1) to request information or documents relating to a designated system or stored value facility includes the power to request any information or documents that the Monetary Authority considers necessary to determine whether there is or has been compliance with the provisions of this Ordinance in relation to the system or facility; and



- (b) a request made under subsection (1) may specify the giving of information or documents on a periodic basis or at any time and regardless of whether the Monetary Authority has reason to suspect that there is, has been or may be a failure to comply with a provision of this Ordinance in relation to the system or facility. *(Replaced 18 of 2015 s. 21)*
- (4) A person who fails to comply with a request made under subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (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. *(Added 18 of 2015 s. 21)*
- (5) It is a defence for a person charged with an offence under subsection (4) to prove that—
  - (a) the request to which the charge relates concerns an aspect of the management or operation of the designated system or stored value facility that is not an aspect for which the person is responsible; or
  - (b) the person took all reasonable steps to ensure that the request to which the charge relates was complied with. *(Added 18 of 2015 s. 21)*

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

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

(2) In this section—

***specified person*** (指明人士) means—

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

*(Added 18 of 2015 s. 22)*

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

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

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

(2) The Monetary Authority may specify—

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

- (3) Without limiting subsection (1)(b), the report may be prepared on the following matters—
  - (a) the state of affairs, or profit or loss, of the specified person based on an audit of the person's accounts carried out in respect of the period specified in the notice mentioned in subsection (1);
  - (b) whether or not the specified person has in place adequate systems of control to enable, as far as reasonably practicable—
    - (i) the person's affairs, business and property to be prudently managed; and
    - (ii) the person to discharge the person's duties imposed under this Ordinance.
- (4) A specified person may only appoint the following person to be an auditor for preparing a report required under subsection (1)—
  - (a) a person approved by the Monetary Authority for preparing the report; or
  - (b) a person amongst the persons nominated by the Monetary Authority for preparing the report.
- (5) A person who fails to comply with a requirement under subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$400,000 and to imprisonment for 2 years; and
    - (ii) in the case of a continuing offence, to a further fine of \$25,000 for every day during which the offence continues; or
  - (b) on summary conviction—

- (i) to a fine at level 6 and to imprisonment for 6 months; and
- (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

(6) In this section—

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

**specified person** (指明人士) means—

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

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

*(Added 18 of 2015 s. 22)*

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

- (1) Subject to subsection (2), for the purpose of an examination by the Monetary Authority under section 12A in respect of a specified person that is a licensee or a subsidiary of a licensee—
- (a) the person must permit the Monetary Authority to have access to—
    - (i) the person's books and accounts;
    - (ii) the documents of title to the person's assets and other documents;

- (iii) the securities held by the person in respect of the transactions of the person's customers and the person's cash; and
    - (iv) any facilities (including photocopying facilities) and information as may be required for the purpose of the examination; and
  - (b) the person must produce to the Monetary Authority its books, accounts, documents, securities, cash, facilities or information that the Monetary Authority may require for the examination.
- (2) In so far as is consistent with the carrying out of an examination, a person is not required under subsection (1) to provide for inspection any thing at a time or place that would interfere with the proper conduct of the normal daily business of the person.
- (3) A person who fails to comply with subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment—
    - (i) to a fine of \$200,000 and to imprisonment for 1 year; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction—
    - (i) to a fine at level 6 and to imprisonment for 6 months; and
    - (ii) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

*(Added 18 of 2015 s. 22)*

**13. Monetary Authority may give directions**

- (1) The Monetary Authority may, by notice in writing—
  - (a) direct a system operator or settlement institution of a designated system to take the action that the Monetary Authority considers necessary for bringing the designated system into compliance with the requirements set out in section 7(1)(a), (b), (c) or (d); or
  - (b) direct a licensee to take the action that the Monetary Authority considers necessary for bringing any stored value facility issued, or the issue of which is facilitated, under its licence into compliance with the requirements set out in section 8O(1). (*Replaced 18 of 2015 s. 23*)
- (2) A direction given under subsection (1)—
  - (a) must specify the action to be taken; (*Replaced 18 of 2015 s. 23*)
  - (b) for subsection (1)(a), must include a statement of the respect in which the Monetary Authority considers the designated system not to be in compliance with a requirement set out in section 7(1)(a), (b), (c) or (d); (*Replaced 18 of 2015 s. 23*)
  - (ba) for subsection (1)(b), must include a statement of the respect in which the Monetary Authority considers the stored value facilities not to be in compliance with a requirement set out in section 8O(1); and (*Added 18 of 2015 s. 23*)
  - (c) may specify a period, being a period that is reasonable in the circumstances, within which the direction shall be complied with.
- (3) A person who fails to comply with a direction given under subsection (1) commits an offence and is liable—

- (a) on conviction on indictment—
    - (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. (*Added 18 of 2015 s. 23*)
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that—
  - (a) the direction to which the charge relates concerns an aspect of the management or operation of the designated system or stored value facility that is not an aspect for which the person is responsible; or
  - (b) the person took all reasonable steps to ensure that the direction to which the charge relates was complied with. (*Added 18 of 2015 s. 23*)

**14. Monetary Authority may impose operating rules**

- (1) Without affecting the generality of section 13, the Monetary Authority may by notice in writing given to a system operator or settlement institution of a designated system direct that the operating rules of the system be amended in such manner as the Monetary Authority considers necessary to bring the operating rules into compliance with section 7(1)(b).
- (2) A direction given under subsection (1)—
  - (a) shall specify the amendment to be effected;

- (b) shall include a statement of the respect in which the Monetary Authority considers the operating rules of the system not to be in compliance with section 7(1)(b); and
  - (c) may specify a period, being a period that is reasonable in the circumstances, within which the amendment shall be effected, and may require that within a further period of 3 days a copy of the relevant part of the operating rules as so amended shall be provided to the Monetary Authority as confirmation of compliance with the direction.
- (3) Without affecting the generality of subsection (1), a direction under that subsection to amend a designated system's operating rules may include a direction to amend those rules by—
  - (a) adding a rule specified in the direction;
  - (b) amending a particular rule in the manner specified in the direction; or
  - (c) deleting a rule specified in the direction.
- (4) Before giving a direction under subsection (1), the Monetary Authority shall consult the Financial Secretary and the system operator or settlement institution to whom the direction relates.
- (5) If there is any failure to comply with a direction given under this section, the Monetary Authority may by notice published in the Gazette declare that the operating rules of the designated system shall be amended in the manner specified in the direction, and the operating rules of the system shall as from the time of publication of such have effect as if they had been so amended.



## PART 3

# FINALITY OF TRANSACTIONS AND PROCEEDINGS

### Division 1—Interpretation of Part 3

*(Amended 18 of 2015 s. 24)*

#### 15. Interpretation of Part 3

*(Amended 18 of 2015 s. 25)*

- (1) In this Part, other than section 26, a reference to the law of insolvency shall be construed as a reference to—
- (a) the Bankruptcy Ordinance (Cap. 6);
  - (b) Parts V, VI and X of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);  
*(Amended 28 of 2012 ss. 912 & 920)*
  - (ba) Part 15 of the Companies Ordinance (Cap. 622); and  
*(Added 28 of 2012 ss. 912 & 920)*
  - (c) any other written law or rule of law of Hong Kong which is concerned with or in any way related to the bankruptcy, winding up or insolvency of a person,
- or, for the purposes of the application by a court in Hong Kong (in accordance with the rules of private international law) of the laws of a place outside Hong Kong, as a reference to any written law or rule of law of the place outside Hong Kong which is concerned with or in any way related to the bankruptcy, winding up or insolvency of a person.
- (2) In this Part, unless the context otherwise requires, a reference to bankruptcy or winding up shall be construed as a reference to bankruptcy or winding up under the laws of Hong Kong.

## **Division 2—Certificate of finality**

### **16. Monetary Authority may issue certificate of finality**

- (1) Where a clearing and settlement system has been designated under Part 2, the Monetary Authority shall determine in accordance with subsection (2) whether the following criteria are met as regards that system, namely—
  - (a) ultimate settlement of transfer orders is effected within the system itself; and
  - (b) there is compliance with the requirements stipulated in section 7(1).
- (2) In making a determination under subsection (1) the Monetary Authority—
  - (a) shall have regard to such information relating to the system as may be submitted to him by the system operator for the purposes of this section; and
  - (b) may in addition have regard to such other information in his possession relating to the system as he considers relevant,but the Monetary Authority shall not be under any obligation to undertake any enquiries for the purpose of making the determination.
- (3) If the Monetary Authority determines that the criteria specified in subsection (1) have been met as regards a designated clearing and settlement system, the Monetary Authority must issue in respect of the system a certificate certifying to that effect (“certificate of finality”) and specifying a date and time from which the certificate shall have effect.

- (4) If the Monetary Authority finds himself unable to make a determination in the terms mentioned in subsection (3) as regards a designated clearing and settlement system, the Monetary Authority must inform the system operator in writing accordingly giving particulars of the respect in which any of the criteria specified in subsection (1) have not been met or of the further information he requires in order to make a determination in relation to such criteria.
- (5) Except for the period of any suspension under section 17(1), a certificate of finality in respect of a designated clearing and settlement system remains in effect until it is revoked or until the designation of the system for the purposes of this Ordinance has been revoked.
- (6) Except as otherwise provided, the following provisions of this Part apply to and in relation to any designated clearing and settlement system in respect of which a certificate of finality is in effect; and in Divisions 3, 4 and 5 of this Part, a reference to a designated system is a reference to such a designated clearing and settlement system.
- (7) The Monetary Authority shall publish in the Gazette notice of any certificate of finality issued under this section.

*(Amended 18 of 2015 s. 26)*

## **17. Suspension or revocation of certificate of finality**

- (1) The Monetary Authority may at any time by notice in writing, with effect from a date and time specified in the notice, suspend or revoke a certificate of finality in respect of a designated system if he is of the opinion that, as regards that system—
  - (a) any one or more of the criteria specified in section 16(1)(a) or (b) are no longer met; or

- (b) there has been any contravention of section 6(2), 7(3), 12, 13, 14, 45 or 53(4).
- (2) Before suspending or revoking a certificate of finality under this section the Monetary Authority shall—
  - (a) notify in writing the system operator and settlement institution of his intention to suspend or revoke the certificate of finality and the grounds on which the suspension or revocation is to be made; and
  - (b) allow such period as is specified in the notice, being a period of not less than 14 days, within which the system operator or settlement institution may be heard or may make representations as to why the certificate of finality should not be suspended or revoked.
- (3) The Monetary Authority shall publish in the Gazette notice of any suspension or revocation of a certificate of finality effected under this section.

### **Division 3—Finality of transactions and proceedings within designated systems**

#### **18. Scope of modification of law of insolvency under this Division**

- (1) The law of insolvency shall have effect in relation to—
  - (a) transfer orders effected through a designated system;
  - (b) action taken under the operating rules of a designated system with respect to such orders; and
  - (c) collateral security,subject to the provisions of this Division.
- (2) This Division shall apply in relation to bankruptcy and winding up proceedings in respect of a participant, but shall not apply in relation to bankruptcy and winding up proceedings in respect of any person who is not a participant.

- (3) For the avoidance of doubt, notwithstanding that rights or liabilities arising from transfer orders as mentioned in subsection (1)(a) are or may be dealt with in bankruptcy and winding up proceedings, this Division shall not apply to such proceedings if they are in respect of any person who is not a participant.

**19. Transfers and settlements within designated systems are final**

- (1) This section applies to any transfer or settlement of the following description that is effected through a designated system the operating rules of which provide that such a transfer or settlement is final and irrevocable—
  - (a) a transfer of funds into or out of an account of a participant;
  - (b) a settlement of a payment obligation; or
  - (c) a settlement of an obligation for the transfer of book-entry securities, or the transfer of such securities.
- (2) Notwithstanding anything to the contrary in any written law or rule of law, a transfer or settlement to which this section applies shall not be liable—
  - (a) to be reversed, repaid or set aside; or
  - (b) to an order made by a court for the rectification or stay of such transfer or settlement.

**20. Proceedings of designated systems take precedence over law of insolvency**

- (1) None of the following shall be regarded as to any extent invalid on the ground of inconsistency with the law of insolvency regarding distribution of the assets of a person on bankruptcy or winding up, or on the appointment of a liquidator, trustee in bankruptcy or equivalent officer over any of the assets of a person—

- (a) a transfer order;
  - (b) any disposition of property in pursuance of a transfer order;
  - (c) the default arrangements of a designated system;
  - (d) the operating rules of a designated system as to the settlement of transfer orders not dealt with under its default arrangements; or
  - (e) a contract for the purpose of realizing collateral security in connection with participation in a designated system otherwise than pursuant to its default arrangements.
- (2) The powers of a relevant insolvency office-holder in his capacity as such and the powers of a court under the law of insolvency, shall not be exercised in such a way as to prevent or interfere with—
  - (a) the settlement of a transfer order in accordance with the operating rules of a designated system not dealt with under its default arrangements;
  - (b) any action taken under the default arrangements of a designated system; or
  - (c) any action taken to realize collateral security in connection with participation in a designated system otherwise than pursuant to its default arrangements.
- (3) A debt or other liability arising out of a transfer order which is the subject of action taken under default arrangements may not be proved in a bankruptcy or winding up until the completion of the action taken under default arrangements.
- (4) A debt or other liability which by virtue of subsection (3) may not be proved shall not be taken into account for the purposes of any set-off until the completion of the action taken under default arrangements.

**21. Abrogation of statutory provisions relating to disclaimer of property, restriction on dispositions of property, etc.**

Without prejudice to the generality of section 20—

- (a) section 59 of the Bankruptcy Ordinance (Cap. 6) and section 268 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) shall not apply to a transfer order; and
- (b) section 42 of the Bankruptcy Ordinance (Cap. 6) and section 182 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) shall not apply to a transfer order or any disposition of property in pursuance of such an order.

*(Amended 28 of 2012 ss. 912 & 920)*

**22. Abrogation of statutory powers relating to adjustment of prior transactions**

- (1) Without prejudice to the generality of section 20, no order shall be made by a court under any of the following provisions in respect of a transfer order or any disposition of property in pursuance of such an order— *(Amended 14 of 2016 s. 188)*
  - (a) section 49 or 50 of the Bankruptcy Ordinance (Cap. 6);
  - (b) section 265D or 266 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); *(Amended 28 of 2012 ss. 912 & 920; 14 of 2016 s. 188)*
  - (c) section 60 of the Conveyancing and Property Ordinance (Cap. 219).
- (2) In subsection (1)(b), the reference to section 266 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) includes that section as in force



immediately before the commencement date of the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016 (14 of 2016). (*Added 14 of 2016 s. 188*)

**23. Net sum payable on completion of default arrangements provable in insolvency proceedings**

- (1) This section shall apply with respect to any net sum owed by or to a defaulting participant on the completion of the action taken under default arrangements.
- (2) Where a court has made an order for bankruptcy or winding up of a participant, or where a resolution for voluntary winding up of a participant has been passed or a directors' voluntary winding up statement in respect of a participant has taken effect, the net sum referred to in subsection (1) shall be—
  - (a) provable in the bankruptcy or winding up or, as the case may be, payable to the relevant insolvency office-holder; and
  - (b) taken into account, where appropriate, under section 35 of the Bankruptcy Ordinance (Cap. 6) (as regards the bankruptcy) or under that section as applied under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (as regards the winding up).
- (3) Subsection (2) applies notwithstanding section 34 or 35 of the Bankruptcy Ordinance (Cap. 6) and section 264 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

*(Amended 28 of 2012 ss. 912 & 920)*

**24. Transfer orders entered into designated system after insolvency not affected**

- (1) This Division shall not apply in relation to any transfer order



given by a participant in a designated system which is entered into the designated system after—

- (a) the expiry of the day on which—
  - (i) a court makes an order for bankruptcy or winding up of the participant;
  - (ii) a resolution for voluntary winding up of the participant is passed; or
  - (iii) a directors' voluntary winding up statement in respect of the participant takes effect; or
- (b) the receipt by the system operator of notice of the event specified in paragraph (a),

whichever first occurs.

- (2) Reference in subsection (1) to the expiry of the day on which an event specified in subsection (1)(a) occurs in relation to a participant in a designated system is a reference to—

- (a) the expiry of that day according to Hong Kong time; or
- (b) the expiry of the same calendar day according to local time in the place where the designated system is established,

whichever is the later.

- (3) For the purposes of subsection (1)(b), a system operator shall be taken to have received notice of an event mentioned in subsection (1)(a) if he deliberately failed to make enquiries as to that matter in circumstances in which a reasonable and honest person would have done so.

## **Division 4—Netting of obligations of insolvent participants**

### **25. Netting may be effected**

- (1) Where—

- (a) a court has made an order for bankruptcy or winding up of a participant in a designated system;
  - (b) a resolution for voluntary winding up of a participant in a designated system has been passed; or
  - (c) a directors' voluntary winding up statement in respect of a participant in a designated system has taken effect,then, notwithstanding any provision of the law of insolvency, the system operator of the designated system may effect the netting of all obligations owed to or by the participant incurred up to the point of time that applies for the purposes of section 24(1).
- (2) Where any netting has been effected as provided in subsection (1), then—
  - (a) the obligations that are netted shall be disregarded in the bankruptcy or winding up proceedings; and
  - (b) any net obligation owed to or by the participant that has not been discharged—
    - (i) is payable to the participant and may be recovered for the benefit of his creditors; or
    - (ii) is provable in the bankruptcy or winding up, as the case may be.
- (3) A netting effected as provided in subsection (1) and any payment made by a participant as provided in subsection (2) shall not be voidable in the bankruptcy or winding up proceedings.

## **Division 5—Miscellaneous**

### **26. Law of insolvency in other jurisdictions**

- (1) Notwithstanding any law to the contrary, a court shall not recognize or give effect to—

- (a) an order of a court exercising jurisdiction under the law of insolvency in a place outside Hong Kong; or
- (b) an act of a person appointed in a place outside Hong Kong to perform a function under the law of insolvency there,

in so far as the making of the order or doing of the act would be prohibited under this Part for a court in Hong Kong or a relevant insolvency office-holder.

- (2) In subsection (1), “law of insolvency” (破產清盤法), in relation to a place outside Hong Kong, means any written law or rule of law of the place which is concerned with or in any way related to the bankruptcy, winding up or insolvency of a person.

## **27. Preservation of rights, etc. in underlying transactions**

- (1) This Part shall not operate to limit, restrict or otherwise affect—
  - (a) any right, title, interest, privilege, obligation or liability of a person resulting from the underlying transaction in respect of a transfer order which has been entered into a designated system; or
  - (b) any investigation, legal proceedings or remedy in respect of any such right, title, interest, privilege, obligation or liability.
- (2) Nothing in subsection (1) shall be construed to require—
  - (a) the unwinding of any netting effected by the system operator of a designated system, whether pursuant to its default arrangements or otherwise;
  - (b) the revocation of any transfer order given by a participant which is entered into a designated system; or

- (c) the reversal of a payment or settlement made under the operating rules of a designated system.

**28. Right of relevant insolvency office-holder to recover gain from transaction at undervalue between 2 participants**

- (1) This section applies to any transaction between 2 participants in a designated system that—
  - (a) is entered into at an undervalue to the gain of one of the participants (“first participant”); and
  - (b) was entered into at any time during the period of 6 months ending with—
    - (i) the presentation of a petition for the bankruptcy or winding up of the other participant (“second participant”) or his principal;
    - (ii) the passing of a resolution for voluntary winding up of the second participant or his principal; or
    - (iii) the making of a directors’ voluntary winding up statement in respect of the second participant or his principal.
- (2) A relevant insolvency office-holder acting in respect of the second participant to a transaction to which this section applies or his principal may, unless a court otherwise orders, recover from the first participant to the transaction an amount equivalent to the gain made from the transaction.
- (3) For the purposes of this section, a transaction is entered into at an undervalue if it is entered into—
  - (a) on terms that provide for the second participant or his principal to receive no consideration; or
  - (b) for a consideration the value of which, in money or money’s worth, is less than the value, in money or

money's worth, of the consideration provided by the second participant or his principal.

- (4) At the request of a system operator or settlement institution of a designated system the Monetary Authority may, by notice published in the Gazette, exempt the system operator or settlement institution from the application of this section; and where such an exemption is in effect this section shall not apply in respect of any transaction entered into by the system operator or settlement institution (as the case may be) as first participant in his capacity as such system operator or settlement institution.
- (5) For the avoidance of doubt, nothing in this section has the effect of derogating from section 20(2) or 22.

**29. Right of relevant insolvency office-holder to recover transfer between 2 participants giving unfair preference**

- (1) This section applies to any transfer of funds or securities from one participant in a designated system to another, being—
  - (a) a transfer to which section 19 applies (other than a transfer that forms part of a transaction to which section 28 applies);
  - (b) a transfer by which the participant who is the recipient of the transfer (“first participant”) is given an unfair preference by the participant making the transfer (“second participant”) or by the principal of the second participant acting through the second participant; and
  - (c) a transfer that is effected at any time during the period of 6 months ending with—
    - (i) the presentation of a petition for the bankruptcy or winding up of the second participant or his principal;

- (ii) the passing of a resolution for voluntary winding up of the second participant or his principal; or
  - (iii) the making of a directors' voluntary winding up statement in respect of the second participant or his principal.
- (2) A relevant insolvency office-holder acting in respect of the second participant to a transfer to which this section applies or his principal may, unless a court otherwise orders, recover from the first participant to the transfer an amount equivalent to the value of the transfer.
- (3) For the purposes of this section, a transfer is a transfer as described in subsection (1)(b) if—
  - (a) the first participant is a creditor of, or is a surety or guarantor for any debts or liabilities of, the second participant or his principal;
  - (b) the transfer has the effect of putting the first participant into a position which, in the event of the bankruptcy or winding up of the second participant or his principal, will be a better position than the position he would have been in if the transfer had not been made; and
  - (c) the second participant in deciding to make the transfer, or the second participant's principal in deciding to cause him to make the transfer, is influenced by a desire to produce in relation to the first participant, the effect described in paragraph (b).
- (4) At the request of a system operator or settlement institution of a designated system the Monetary Authority may, by notice published in the Gazette, exempt the system operator or settlement institution from the application of this section; and where such an exemption is in effect this section shall not apply in respect of any transfer effected by the system operator or settlement institution (as the case may be) as

first participant in his capacity as such system operator or settlement institution.

- (5) For the avoidance of doubt, nothing in this section has the effect of derogating from section 20(2) or 22.

**30. Duty to report on completion of default proceedings**

- (1) The system operator and settlement institution of a designated system shall, not later than 6 days after the completion of any action taken under the default arrangements of the system in respect of a defaulting participant, together prepare in writing and give to the persons specified in subsection (3) a report (“default proceedings report”) on such action taken.
- (2) A default proceedings report—
- (a) shall state the net sum (if any) certified by the system operator or settlement institution to be payable by or to the defaulting participant, or the fact that no sum is so payable (as the case may be); and
  - (b) may contain such other particulars in respect of the action taken as the system operator and settlement institution consider appropriate.
- (3) The persons specified for the purposes of subsection (1) are—
- (a) the Monetary Authority; and
  - (b) any relevant insolvency office-holder acting in relation to the defaulting participant to whom the report relates or that defaulting participant’s estate or, if there is no such relevant insolvency office-holder, the defaulting participant to whom the report relates.
- (4) Where the Monetary Authority receives pursuant to subsection (1) a default proceedings report he may publish notice of that fact in such manner as he considers appropriate to bring it



to the attention of creditors of the defaulting participant to whom the report relates.

- (5) A relevant insolvency office-holder or defaulting participant who has received pursuant to subsection (1) a default proceedings report, shall, if so requested by a creditor of the defaulting participant to whom the report relates—
  - (a) make the report (or a copy of it) available for inspection by the creditor; and
  - (b) supply to the creditor all or any part of that report (or a copy of it), subject to receipt of payment of such reasonable fee as the relevant insolvency office-holder or defaulting participant (as the case may be) determines.
- (6) A person who contravenes subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment, to a fine of \$200,000 and to imprisonment for 1 year; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months. (*Added 18 of 2015 s. 27*)

### **31. Obligation of participant to notify of bankruptcy or winding up**

- (1) A participant in a designated system shall notify the system operator of the system and the Monetary Authority forthwith if there comes to his knowledge any of the following circumstances occurring in Hong Kong, or any analogous circumstances occurring outside Hong Kong, namely—
  - (a) the presentation of a petition for the bankruptcy or winding up of the participant;
  - (b) the making of an order for bankruptcy or winding up of the participant;



- (c) the passing of a resolution for voluntary winding up of the participant; or
  - (d) the making of a directors' voluntary winding up statement in respect of the participant.
- (2) A failure by a participant to notify a system operator or the Monetary Authority of a relevant event referred to in subsection (1) within the time required under that subsection is not a contravention of that subsection if the system operator or Monetary Authority (as the case may be) was already aware of the relevant event by that time.
- (3) A person who contravenes this section commits an offence and is liable—
  - (a) on conviction on indictment, to a fine of \$400,000 and to imprisonment for 2 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months. (*Added 18 of 2015 s. 28*)

**32. Order releasing relevant insolvency office-holder from obligations in relation to default proceedings**

A court may, on an application by a relevant insolvency office-holder, make such order as it considers appropriate altering or releasing him from compliance with the functions of his office to the extent that those functions are affected by the fact that action under default arrangements is being or could be taken, or has been or could have been taken.

**33. Enforcement of judgments over property of participant as judgment debtor**

- (1) This section applies to any property of a participant in a designated system that—

- (a) has been provided as collateral security in favour of a system operator or settlement institution of the system; and
    - (b) is held by or deposited with that system operator or settlement institution for the purpose of securing liabilities arising directly in connection with the clearing or settlement of those transfer orders issued by the participant.
  - (2) Except with the consent of the system operator or settlement institution mentioned in subsection (1)—
    - (a) no execution or other legal process for the enforcement of a judgment or order shall be commenced or continued; and
    - (b) no distress shall be levied,in respect of property to which this section applies; but this subsection does not apply to a person seeking to enforce any interest in or security over the property.
  - (3) Where by virtue of subsection (2) a person would not be entitled to enforce a judgment or order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.
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## **Part 3A**

### **Investigation**

*(Part 3A added 18 of 2015 s. 29)*

#### **33A. Interpretation of Part 3A**

In this Part—

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

#### **33B. Investigation by Monetary Authority**

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

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

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

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

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

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

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

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

investigator may, by notice in writing to the person, require the person—

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

**33E. Report by investigator**

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

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

- (1) A person commits an offence if the person, without reasonable

excuse, fails to comply with a requirement imposed on the person under section 33C(2), (3) or (4) or 33D(1) or (2).

- (2) A person commits an offence if the person—
  - (a) in purported compliance with a requirement imposed on the person under section 33C(2), (3) or (4)—
    - (i) produces a record or document that is false or misleading in a material particular; or
    - (ii) gives an answer, statement, explanation or particulars that are false or misleading in a material particular; and
  - (b) knows that, or is reckless as to whether, the record or document, or the answer, statement, explanation or particulars, are false or misleading in a material particular.
- (3) A person commits an offence if the person with intent to defraud—
  - (a) fails to comply with a requirement imposed on the person under section 33C(2), (3) or (4) or 33D(1) or (2); or
  - (b) in purported compliance with a requirement imposed on the person under section 33C(2), (3) or (4)—
    - (i) produces a record or document that is false or misleading in a material particular; or
    - (ii) gives an answer, statement, explanation or particulars that are false or misleading in a material particular.
- (4) An officer or employee of a corporation commits an offence if the officer or employee with intent to defraud—

- (a) causes or allows the corporation to fail to comply with a requirement imposed on the corporation under section 33C(2), (3) or (4) or 33D(1) or (2); or
  - (b) causes or allows the corporation to, in purported compliance with a requirement imposed on the corporation under section 33C(2), (3) or (4)—
    - (i) produce a record or document that is false or misleading in a material particular; or
    - (ii) give an answer, statement, explanation or particulars that are false or misleading in a material particular.
- (5) A person who commits an offence under subsection (1) is liable—
  - (a) on conviction on indictment, to a fine of \$200,000 and to imprisonment for 1 year; or
  - (b) on summary conviction, to a fine at level 5 and to imprisonment for 6 months.
- (6) A person who commits an offence under subsection (2) is liable—
  - (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.
- (7) A person who commits an offence under subsection (3) or (4) is liable—
  - (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 7 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.



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

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

- (1) If a person fails to comply with a requirement imposed on the person by an investigator under section 33C(2), (3) or (4) or 33D(1) or (2), the investigator may apply to the Court of First Instance for an inquiry into the failure.
- (2) On an application under subsection (1), the Court of First Instance may—
  - (a) on being satisfied that there is no reasonable excuse for the person not to comply with the requirement, order the

person to comply with the requirement within the period specified by the Court; and

- (b) on being satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and that other person had been guilty of contempt of court.
- (3) An application under subsection (1) must be made by an originating summons in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).
- (4) Despite anything in this Ordinance, no proceedings may be instituted against a person for the purposes of subsection (2)(b) for a conduct if—
  - (a) criminal proceedings have previously been instituted against the person under section 33F(1), (2), (3) or (4) for the same conduct; and
  - (b) either—
    - (i) those criminal proceedings are pending; or
    - (ii) because of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against the person under that section for the same conduct.

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

- (1) If an investigator requires a person to answer or respond to a question, or to give an explanation or further particulars, under section 33C(2), (3) or (4), the investigator must ensure that the person has first been informed or reminded of the limitations imposed by the application of subsection (2).
- (2) Despite anything in this Ordinance, and subject to subsection (3), if an investigator requires a person to answer or respond

to a question, or to give an explanation or further particulars, under section 33C(2), (3) or (4), the requirement and the following are not admissible in evidence against the person in criminal proceedings in a court of law—

- (a) the question and the answer or response;
  - (b) the explanation or particulars.
- (3) Subsection (2) applies only if—
- (a) the answer, response, explanation or particulars might tend to incriminate the person;
  - (b) the person so claims before giving the answer, statement, explanation or particulars; and
  - (c) the criminal proceedings are not those in which the person is charged with an offence in respect of the answer, statement, explanation or particulars—
    - (i) under this Part;
    - (ii) under section 36(5) for a contravention of section 36(3)(a);
    - (iii) under Part V of the Crimes Ordinance (Cap. 200); or
    - (iv) for perjury.

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

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

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

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

- (1) On information on oath laid by a person specified in subsection (2), a magistrate may, if satisfied that the condition in subsection (3) is met, issue a warrant authorizing a person specified in the warrant, a police officer, and any other person as may be necessary to assist in executing the warrant—
  - (a) to enter the premises specified in the information, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and
  - (b) to search for, seize and remove a record or document that the person specified in the warrant or the police officer has reasonable cause to believe may be required to be produced under this Part.
- (2) Each of the following persons is specified for the purposes of subsection (1)—
  - (a) an investigator;
  - (b) a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66).
- (3) For the purposes of subsection (1), the condition is that there are reasonable grounds to suspect that there is, or is likely to be, on the premises a record or document that may be required to be produced under this Part.

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

- (1) If an authorized person has reasonable cause to believe that a person on the premises is employed in connection with a business that is or has been carried on on the premises, the authorized person may require that person to produce for examination a record or document that—
  - (a) is in the possession of that person; and
  - (b) the authorized person has reasonable cause to believe may be required to be produced under this Part.

- (2) An authorized person may, in relation to a record or document required to be produced under subsection (1)—
  - (a) prohibit a person found on the premises from—
    - (i) removing the record or document from the premises;
    - (ii) erasing anything from, adding anything to or otherwise altering anything in, the record or document; or
    - (iii) otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document; or
  - (b) take any other step that appears to the authorized person to be necessary for—
    - (i) preserving the record or document; or
    - (ii) preventing interference with the record or document.
- (3) A person commits an offence if the person—
  - (a) without reasonable excuse, fails to comply with a requirement or prohibition under subsection (1) or (2); or
  - (b) obstructs an authorized person in the exercise of a power conferred by subsection (1) or (2) on the authorized person.
- (4) A person who commits an offence under subsection (3) is liable—
  - (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.
- (5) In this section—

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

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

- (1) A record or document removed under section 33J may be retained—
  - (a) for a period not exceeding 6 months beginning on the day of its removal; or
  - (b) if the record or document is or may be required for any criminal proceedings or any proceedings under this Ordinance, for any longer period that may be necessary for those proceedings.
- (2) If an authorized person removes a record or document under section 33J, the authorized person—
  - (a) must, as soon as practicable after the removal, give a receipt for the record or document; and
  - (b) may permit a person who would be entitled to inspect the record or document but for the removal, at all reasonable times—
    - (i) to inspect it; and
    - (ii) to make copies or otherwise record details of it.
- (3) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property that has because of this section come into the possession of the Monetary Authority, as it applies to property that has come into the possession of the police.
- (4) In this section—

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

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

- (1) This section applies if any information contained in a record or document required to be produced under this Part is not recorded in a legible form.
- (2) The power to require the production of the record or document includes—
  - (a) if the information can be reproduced in a legible form, a power to require the production of the information in a legible form; or
  - (b) if the information is recorded in an information system, a power to require the production of that recording in a form that enables the information to be reproduced in a legible form.
- (3) In this section—

**information system** (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553).
- (4) In this section, a reference to a recording of any information includes the relevant part of the recording.

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

- (1) This section applies if an investigator has taken possession of a record or document under this Part.
- (2) The investigator must permit a person who would be entitled to inspect the record or document had the investigator not taken possession of it under this Part, at all reasonable times—
  - (a) to inspect it; and
  - (b) to make copies or otherwise record details of it.

- (3) The investigator may in giving the permission impose any reasonable conditions as to security or otherwise that the investigator thinks fit.

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

- (1) This section applies to a person who is required to produce a record or document by another person (*requesting person*) under this Part.
  - (2) The person must not destroy, falsify, conceal or otherwise dispose of, or cause or permit the destruction, falsification, concealment or disposal of, the record or document with intent to conceal, from the requesting person, facts or matters capable of being disclosed by the record or document.
  - (3) A person who contravenes subsection (2) commits an offence and is liable—
    - (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 2 years; or
    - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.
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## **Part 3B**

### **Sanctions**

*(Part 3B added 18 of 2015 s. 29)*

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

In this Part—

***regulated person*** (受規管者) means—

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

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

- (1) The Monetary Authority may, by notice in writing, impose one or more of the sanctions specified in subsection (2) against a regulated person after having regard to the matters specified in subsection (3), if the Monetary Authority is satisfied that the person—
  - (a) has contravened a provision of this Ordinance;
  - (b) has contravened a requirement imposed under this Ordinance; or
  - (c) has contravened a condition attached to a licence, consent or any other instrument granted or given by the Monetary Authority under this Ordinance.
- (2) The sanctions specified for subsection (1) are—

- (a) to order the regulated person to pay a pecuniary penalty not exceeding the amount that is the greater of—
    - (i) \$10,000,000; or
    - (ii) 3 times the amount of profit gained or loss avoided by the person as a result of the contravention;
  - (b) to give the regulated person one or more of the following—
    - (i) a caution;
    - (ii) a warning;
    - (iii) a reprimand;
    - (iv) an order to take, by a date specified in the order, the action specified in the order for remedying the contravention;
  - (c) to prohibit the regulated person from doing all or any of the following for the period, or until the occurrence of the event, specified in the notice—
    - (i) making an application under section 8E;
    - (ii) giving a written notice under section 8ZZG(2);
    - (iii) seeking a consent mentioned in section 8ZZW(1);
    - (iv) seeking a consent mentioned in section 8ZZZ(1) or (2).
- (3) The matters specified for subsection (1) are—
  - (a) the circumstances in which the contravention occurred, including the factors occasioning it;
  - (b) the seriousness of the contravention;
  - (c) if applicable, the extent of the failure by the regulated person to co-operate in an investigation under section 33B relating to the contravention;

- (d) if applicable, the excuse or explanation given by the regulated person for the contravention or failure to co-operate in an investigation mentioned in paragraph (c);
- (e) the gain, whether financial or otherwise, made by the regulated person or by any other person in which the regulated person has a financial interest as a result of the contravention;
- (f) the amount of any loss suffered or costs incurred by a person other than the regulated person, or loss or costs avoided by the regulated person, as a result of the contravention;
- (g) the duration of the contravention;
- (h) if applicable, the continuation of the contravention after the regulated person was notified of an investigation mentioned in paragraph (c);
- (i) the extent to which the regulated person knew, or ought to have known, that the contravention had occurred or was occurring;
- (j) the extent and timeliness of any steps taken to cease the contravention and any steps taken for remedying the consequences of the contravention;
- (k) whether a sanction in respect of any similar contravention has already been imposed on the regulated person by a court, the Monetary Authority or another person;
- (l) whether imposing a sanction is appropriate and proportionate to the seriousness of the contravention and will have sufficient deterrent effect to ensure that any similar contravention will not occur in the future;
- (m) the repeated occurrence of contraventions of this Ordinance by the regulated person; and

- (n) if applicable, the absence, ineffectiveness or repeated failure of internal mechanisms or procedures of the regulated person intended to prevent contraventions of this Ordinance from occurring.
- (4) In reaching a decision to impose a sanction mentioned in subsection (2)(a) or (b), the Monetary Authority may have regard to any information or material in the Monetary Authority's possession that is relevant to the decision, regardless of how the information or material has come into the Monetary Authority's possession.

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

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

- (a) set out the particulars of why the Monetary Authority is satisfied that the person has committed the contravention;
- (b) state the sanction imposed; and
- (c) for a sanction mentioned in section 33Q(2)(a), state the amount of the pecuniary penalty to be paid.

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

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

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

- (1) This section applies if the Monetary Authority is considering exercising a power against a regulated person under this Part.

- (2) The Monetary Authority may, by agreement with the regulated person, take any further action in respect of the person that the Monetary Authority considers appropriate in the circumstance, whether in place of or in addition to the exercise of the power.
- (3) The Monetary Authority may take further action under subsection (2) only if the Monetary Authority considers it appropriate to do so having regard to—
  - (a) the public interest; or
  - (b) if the regulated person is a licensee, the interests of the user or potential user of any stored value facility issued, or the issue of which is facilitated, by the licensee under its licence.
- (4) If the Monetary Authority exercises the power under subsection (2) in respect of a regulated person, the Monetary Authority is not, subject to the agreement with the regulated person, obliged to comply with section 33R.

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

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

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

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

- (1) This section applies to a power that is exercisable by the Monetary Authority under section 33Q or 33T in relation to a regulated person in connection with a contravention committed by the person.

- (2) The power is also exercisable by the Monetary Authority in relation to a person who was a regulated person at the time of the contravention, regardless of whether the person is a regulated person at the time when the power is being exercised.
- (3) This Part is to be construed accordingly.

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

- (1) This section applies if—
    - (a) the Monetary Authority exercises a power under section 33Q or 33T in relation to a regulated person that is a corporation in connection with a contravention committed by the person; and
    - (b) either—
      - (i) in committing the contravention, the corporation is aided, abetted, counselled, procured or induced by an officer of the corporation or a person purporting to act as an officer of the corporation; or
      - (ii) the contravention is committed with the consent or connivance of, or is attributable to the recklessness on the part of, an officer of the corporation or a person purporting to act as an officer of the corporation.
  - (2) The power is also exercisable by the Monetary Authority in relation to the officer or the person purporting to act as such as if the officer or the person were a regulated person.
  - (3) This Part is to be construed accordingly.
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## PART 4

### APPEALS TRIBUNAL

#### 33X. Interpretation of Part 4

In this Part—

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

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

*(Added 18 of 2015 s. 30)*

#### 34. Establishment of Payment Systems and Stored Value Facilities Appeals Tribunal

*(Amended 18 of 2015 s. 31)*

- (1) There is established by this section a tribunal to be known as the “Payment Systems and Stored Value Facilities Appeals Tribunal” in English and “支付系統及儲值支付工具上訴審裁處” in Chinese. *(Amended 18 of 2015 s. 31)*
- (2) For the purpose of reviewing any decision referred to the Tribunal under this Part, the Tribunal is to consist of—
  - (a) the Chairman of the Tribunal; and
  - (b) such number of persons, not being fewer than 2, from the panel referred to in subsection (4) as the Financial Secretary may, on the recommendation of the Chairman of the Tribunal, appoint for that purpose.
- (3) The Chief Executive shall, on the recommendation of the Chief Justice, appoint to be the Chairman of the Tribunal a person who is—



- (a) a judge, or a deputy judge, of the Court of First Instance;
  - (b) a former Justice of Appeal of the Court of Appeal; or
  - (c) a former judge, or a former deputy judge, of the Court of First Instance.
- (4) The Chief Executive shall appoint a panel of persons, not being public officers, whom he considers suitable for appointment as members of the Tribunal.
- (5) The Chairman of the Tribunal (except where the Chairman is a judge, or a deputy judge, of the Court of First Instance), and members, of the Tribunal may be paid, as a fee for their services, such amount as the Chief Executive considers appropriate. Those amounts payable to the Chairman of the Tribunal shall be a charge on the general revenue, and those amounts payable to the members shall be a charge on the Exchange Fund established under section 3 of the Exchange Fund Ordinance (Cap. 66).
- (6) Part 1 of Schedule 1 has effect with respect to the Tribunal.  
*(Amended 18 of 2015 s. 31)*
- (7) Subject to this section and Part 1 of Schedule 1 and to rules made under section 40, the Chairman of the Tribunal may determine the procedures and practice of the Tribunal.  
*(Amended 18 of 2015 s. 31)*

### **35. Review of decisions by Tribunal**

- (1) Any person who is aggrieved by a reviewable decision may refer the decision to the Tribunal for review. *(Amended 18 of 2015 s. 32)*
- (2) A reference to the Tribunal under subsection (1) by a person aggrieved is—
  - (a) to be made in writing;

- (b) to be made—
  - (i) if the reference relates to a decision of the Monetary Authority under section 4(1) or (4B), 5(1), 8ZZZC(1), 8ZZZD(1) or 8ZZZE(1), within 30 days after publication in the Gazette of the notice referred to in that section;
  - (ii) if the reference relates to any other decision of the Monetary Authority, within 30 days after receiving notice in writing given by the Monetary Authority informing him of the decision,  
or within such further time as the Tribunal may, in the circumstances of any particular case, think fit; and  
(*Amended 18 of 2015 s. 32*)
- (c) to state the grounds for the review.
- (3) The Tribunal shall deliver to the Monetary Authority a copy of any reference under subsection (1) that it has received.
- (4) A reference under subsection (1) does not suspend the decision to which the reference relates.
- (5) As soon as practicable after receipt of a copy of a reference delivered under subsection (3), the Monetary Authority shall forward a copy of the decision to which the reference relates together with all other relevant papers in his possession to the Tribunal.
- (6) On receipt of the copy of the decision, and of the papers, forwarded under subsection (5), the Tribunal shall review the decision in question and, after taking into account the stated grounds for the review, may make its determination to—
  - (a) confirm, vary or set aside the decision; or
  - (b) remit the matter to the Monetary Authority with any direction that it considers appropriate.

- (7) In reviewing a decision of the Monetary Authority, the Tribunal—
  - (a) shall afford both the applicant and the Monetary Authority an opportunity of being heard; and
  - (b) may determine that any matter of fact has been established if it has been established on the balance of probabilities.
- (8) As soon as practicable after completing the review, the Tribunal shall deliver its determination made under subsection (6), with the reasons for its determination.
- (9) A determination made by the Tribunal shall be recorded in writing and signed by the Chairman of the Tribunal, and shall then be registered in the Court of First Instance; and a determination so registered shall be deemed to be an order of the Court.
- (10) The determination of the Tribunal is final and is not subject to appeal except on a point of law.
- (11) For the purposes of any proceedings in a court of law, a document purporting to be a determination of the Tribunal that is signed by the Chairman of the Tribunal shall, in the absence of evidence to the contrary, be regarded as a determination of the Tribunal duly made, without proof of its making, or proof of signature, or proof that the person signing the determination was in fact the Chairman of the Tribunal.

### **36. Powers of Tribunal**

- (1) In relation to a review of a decision of the Monetary Authority under this Ordinance, the Tribunal may—
  - (a) receive and consider any material by way of oral evidence, written statements or documents, whether or not the material would be admissible in a court of law;

- (b) determine the manner in which any such material is received;
- (c) by notice in writing signed by the Chairman of the Tribunal, require a person to attend before it and, subject to subsection (2), to give evidence and produce any article, record or document in his possession or control relating to the subject matter of the review;
- (d) administer oaths;
- (e) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purpose of the review;
- (f) order a witness to provide evidence for the purpose of the review by affidavit;
- (g) order a person not to publish or otherwise disclose any material produced to the Tribunal;
- (h) prohibit the publication or disclosure of any material the Tribunal receives at any sitting, or any part of a sitting, that is held in camera;
- (i) stay any of the proceedings in the review on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;
- (j) determine the procedure to be followed in connection with the review;
- (k) order that costs be paid to any party to the review or any person who is required to attend before it for the purpose of the review;
- (l) hear an application for stay of proceedings for a review at any time before its determination is made; and

- (m) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the review or the performance of its functions.
- (2) Nothing in subsection (1)(c), (e) or (f) empowers the Tribunal to require—
  - (a) the banker or financial adviser of an applicant to disclose any information relating to the affairs of any person other than the applicant; or
  - (b) a solicitor or counsel to disclose any privileged communication, whether oral or written, made to or by him in that capacity.
- (3) No person shall—
  - (a) fail to comply with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1);
  - (b) disrupt any sitting of the Tribunal or otherwise misbehaves during any such sitting;
  - (c) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leave the place where his attendance is so required without the permission of the Tribunal;
  - (d) hinder or deter any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purpose of a review;
  - (e) threaten, insult or cause any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance; or
  - (f) threaten, insult or cause any loss to be suffered by the Chairman, or any member, of the Tribunal at any time on account of the performance of his functions in that capacity.

- (4) A person is not excused from complying with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person.
- (5) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable—
  - (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months. (*Added 18 of 2015 s. 33*)

**37. Use of incriminating evidence given under compulsion**

Notwithstanding any other provisions of this Ordinance, where the Tribunal—

- (a) requires a person to give evidence under section 36(1)(c);
- (b) requires a person to answer any question under section 36(1)(e);
- (c) orders a person to provide evidence under section 36(1)(f); or
- (d) otherwise requires or orders a person to provide any information under section 36(1)(m),

and the evidence, answer or information might tend to incriminate the person, then the requirement or order as well as the evidence, the question and answer, or the information shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged with an offence under section 36(3)(a), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the evidence, answer or information.

**38. Contempt dealt with by Tribunal**

- (1) The Tribunal has the same powers as the Court of First Instance to punish for contempt.
- (2) Without limiting the generality of the powers of the Tribunal under subsection (1), the Tribunal has the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who, without reasonable excuse, commits any conduct falling within section 36(3).
- (3) The Tribunal shall, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.
- (4) Notwithstanding anything in this section or any other provision of this Ordinance, no power may be exercised under or pursuant to this section to determine whether to punish any person for contempt in respect of any conduct in the following case, namely—
  - (a) if criminal proceedings have previously been instituted against the person under section 36(3) in respect of the same conduct; and
  - (b) if—
    - (i) those criminal proceedings remain pending; or
    - (ii) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under that section in respect of the same conduct.
- (5) Notwithstanding anything in this section or any other provision of this Ordinance, no criminal proceedings may be instituted against any person under section 36(3) in respect of any conduct in the following case, namely—
  - (a) if any power has previously been exercised under or pursuant to this section to determine whether to punish



the person for contempt in respect of the same conduct;  
and

(b) if—

- (i) proceedings arising from the exercise of such power remain pending; or
- (ii) by reason of the previous exercise of such power, no power may again be lawfully exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct.

### **39. Appeal to Court of Appeal**

- (1) An applicant or the Monetary Authority may, if dissatisfied with a determination delivered under section 35(8), appeal to the Court of Appeal against the determination on a point of law.
- (2) Where an appeal has been lodged under subsection (1) the Court of Appeal may, on application made to it, order a stay of execution of the determination of the Tribunal, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate; but the lodging of an appeal under subsection (1) does not of itself operate as a stay of execution of the determination of the Tribunal.
- (3) The Court of Appeal may affirm, set aside or vary the determination appealed against, or may remit the matter in question to the Tribunal with such directions as it considers appropriate.
- (4) The Rules of the High Court (Cap. 4 sub. leg. A) apply in relation to such an appeal to the extent that those Rules are not inconsistent with this Ordinance.



- (5) In an appeal under this section, the Court of Appeal may make such order for payment of costs as it considers appropriate.

**40. Power of Chief Justice to make rules**

The Chief Justice may make rules—

- (a) providing for matters of procedure, or other matters, relating to requests for review, or reviews, under this Part, which are not provided for in this Part or section 4 of Part 1 of Schedule 1;
- (b) providing for the issue or service of any document (however described) for the purposes of this Part or section 4 of Part 1 of Schedule 1; or
- (c) prescribing anything required to be prescribed under this Part or section 4 of Part 1 of Schedule 1.

*(Amended 18 of 2015 s. 34)*

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## **PART 5**

### **OFFENCES**

**41-44.** *(Repealed 18 of 2015 s. 35)*

**45. Giving false information to Monetary Authority**

- (1) A person who, in giving information to the Monetary Authority in pursuance of an obligation under Part 2, 2A or 2B or section 31 or 52— *(Amended 18 of 2015 s. 36)*
  - (a) gives information that is false or misleading in a material particular; and
  - (b) knows or ought to know that the information being given is false or misleading,commits an offence. *(Amended 18 of 2015 s. 36)*
- (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. *(Added 18 of 2015 s. 36)*

**46. Misrepresentation in respect of designated system**

- (1) A person shall not describe or otherwise make any representation in respect of a payment system that is not a designated system in terms that indicate, or that could reasonably be construed as indicating, that the system is a designated system. *(Amended 18 of 2015 s. 37)*

- (2) It is a defence for a person charged with an offence under subsection (1) to prove that he reasonably believed that the system was a designated system.
- (3) A person shall not describe or otherwise make any representation in respect of a clearing and settlement system in respect of which a certificate of finality is not in effect in terms that indicate, or that could reasonably be construed as indicating, that a certificate of finality is in effect in respect of the system.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that he reasonably believed that a certificate of finality was in effect in respect of the system.
- (5) Subsections (1) and (3) do not apply in relation to any description or representation contained in information submitted to the Monetary Authority under this Ordinance.
- (6) Any person who contravenes subsection (1) or (3) commits an offence and is liable— (*Amended 18 of 2015 s. 37*)
  - (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. (*Amended 18 of 2015 s. 37*)

#### **47. False entry in document**

- (1) A person commits an offence if, wilfully and with intent to deceive, he does any act mentioned in subsection (2) and that act results in any information contained in the book of record or relevant document in question being incorrect or misleading in a material respect.
- (2) A person does an act referred to in subsection (1) if he—
  - (a) makes, or causes to be made, an entry that he knows or ought reasonably to know to be false in any book

- of record or in any relevant document relating to a designated system or stored value facility;
- (b) omits to make an entry in any book of record or in any relevant document relating to a designated system or stored value facility; or
  - (c) alters, abstracts, conceals or destroys an entry in any book of record or in any relevant document relating to a designated system or stored value facility, or causes any such entry to be altered, abstracted, concealed or destroyed. (*Amended 18 of 2015 s. 38*)
- (3) A person who commits an offence under subsection (1) is liable— (*Amended 18 of 2015 s. 38*)
- (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. (*Amended 18 of 2015 s. 38*)
- (4) In this section— (*Amended 18 of 2015 s. 38*)
- relevant document** (有關文件), in relation to a designated system or stored value facility, means a report, slip, document or statement of the business, affairs, transactions, condition, assets or accounts of the system or facility. (*Amended 18 of 2015 s. 38*)

#### 48. Liability of company officers

Where an offence under this Ordinance is committed by a corporation and— (*Amended 18 of 2015 s. 39*)

- (a) in committing the offence the corporation is aided, abetted, counselled, procured or induced by an officer of the corporation or a person purporting to act as such; or
- (b) the offence is committed with the consent or connivance of, or is attributable to any recklessness on the part of,

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an officer of the corporation or a person purporting to act as such,

then that officer of the corporation or person purporting to act as such (as well as the corporation) commits the offence and is liable to be proceeded against and punished accordingly.

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## PART 6

### MISCELLANEOUS

#### 49. Power of Monetary Authority to make regulations

- (1) The Monetary Authority may make regulations for the better carrying out of the purposes of this Ordinance after consulting—
  - (a) in so far as the regulations relate to designated systems—
    - (i) the Financial Secretary; and
    - (ii) the system operators and settlement institutions of designated systems;
  - (b) in so far as the regulations relate to stored value facilities—
    - (i) the Financial Secretary; and
    - (ii) the licensees of stored value facilities. *(Replaced 18 of 2015 s. 40)*
- (2) In particular, regulations made under subsection (1) may provide for all or any of the following—
  - (a) measures to be put in place for a designated system or stored value facility for the purposes of monitoring and enforcing compliance with the operating rules of the system or facility and the provisions of this Ordinance;
  - (b) measures in relation to the availability to a designated system or stored value facility of financial resources;
  - (c) matters to be provided for under the operating rules of a designated system or stored value facility, including

matters conducive to the better safety and efficiency of the system or facility;

(d) any other matter necessary or desirable for the better safety and efficiency of operation and financial soundness of designated systems or stored value facilities;

(e) any matter that shall or may be prescribed under this Ordinance. (*Amended 18 of 2015 s. 40*)

(3) Regulations made for the purpose of this section—

(a) may be of general or special application and may apply only in specified circumstances;

(b) may make different provisions for different circumstances and provide for different cases or classes of cases; and

(c) may provide for the exercise of discretion in such cases as may be specified in those regulations.

## **50. Confidentiality**

(1) Except in so far as is necessary for the performance of any function under this Ordinance or for carrying into effect any provision of this Ordinance, every person to whom this subsection applies—

(a) shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that come to his knowledge in the performance of any function under this Ordinance;

(b) shall not communicate any such matter to any person other than the person to whom such matter relates; and

(c) shall not suffer or permit any person to have access to any records in his possession, custody or control.

(2) Subsection (1) applies to—

- (a) the Monetary Authority and any person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority; (*Amended 18 of 2015 s. 41*)
  - (b) a person performing a function under this Ordinance or carrying into effect a provision of this Ordinance; and (*Replaced 18 of 2015 s. 41*)
  - (c) a person who assists a person mentioned in paragraph (b) (***assisted person***) in performing the assisted person's function under this Ordinance, or in carrying into effect a provision of this Ordinance. (*Added 18 of 2015 s. 41*)
- (3) Subsection (1) does not apply—
  - (a) to the disclosure of information in summary form that is so framed as to prevent particulars relating to the business of any particular system or person being ascertained from it;
  - (b) to the disclosure of information—
    - (i) with a view to the institution of, or otherwise for the purpose of, any criminal proceedings, whether under this Ordinance or otherwise; or
    - (ii) in connection with any other legal proceedings arising out of this Ordinance;
  - (c) to the disclosure of information to the police or the Independent Commission Against Corruption, at the request of the Secretary for Justice, relevant to the proper investigation of any criminal complaint;
  - (d) to the disclosure of information to the Chief Executive or the Financial Secretary for the purpose of enabling or assisting the Monetary Authority to perform his functions under this Ordinance;



- (e) to the disclosure of information to any person within the category of persons specified in subsection (2), where the disclosure will enable or assist that person to assist the Monetary Authority in the performance of any of the functions referred to in section 5A(2) of the Exchange Fund Ordinance (Cap. 66);
- (f) to the disclosure of information to the Tribunal;
- (fa) to the disclosure of information to the Resolution Compensation Tribunal; (*Added 23 of 2016 s. 226*)
- (fb) to the disclosure of information to the Resolvability Review Tribunal; (*Added 23 of 2016 s. 226*)
- (fc) to the disclosure of information by the Monetary Authority to a resolution authority for the purpose of enabling or assisting the resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (Cap. 628); (*Added 23 of 2016 s. 226 and E.R. 2 of 2017*)
- (g) to the disclosure of information to any person or body who may be appointed or established by the Chief Executive to review processes or procedures adopted by the Monetary Authority in making decisions under this Ordinance in so far as those decisions relate to or affect— (*Amended 18 of 2015 s. 41*)
  - (i) the designated systems specified in Schedule 2;
  - (ii) the designated systems in which the Monetary Authority has a legal or beneficial interest; or
  - (iii) stored value facilities; (*Amended 18 of 2015 s. 41*)
- (ga) if the condition specified in subsection (6) is satisfied, to the disclosure of information to a public officer authorized by the Financial Secretary under subsection (8); (*Added 18 of 2015 s. 41*)

- (h) to the disclosure of information with the consent of the person from whom the information was obtained or received or, where the information does not relate to such person, with the consent of the person to whom it relates; (*Amended 18 of 2015 s. 41*)
  - (i) to the disclosure of information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section; or (*Amended 18 of 2015 s. 41*)
  - (j) to the disclosure of information to the Commissioner as defined by section 1 of Part 2 of Schedule 1 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615). (*Added 18 of 2015 s. 41. Amended 4 of 2018 s. 48*)
- (4) Subsection (1) does not apply to any disclosure of information, being a disclosure that is not contrary to the public interest, of the following description—
- (a) disclosure of information to the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571) if, in the opinion of the Monetary Authority, such disclosure will assist the Securities and Futures Commission in exercising its functions; or
  - (b) disclosure of information to an authority in a place outside Hong Kong exercising in that place functions similar to the functions of the Monetary Authority under this Ordinance, being an authority that is subject to secrecy provisions in that place that in the opinion of the Monetary Authority are adequate, if in the opinion of the Monetary Authority such disclosure will—

- (i) assist that authority in exercising those functions; and
  - (ii) help maintain and promote safety and efficiency in the operation of designated systems or stored value facilities. (*Amended 18 of 2015 s. 41*)
- (4A) If information is disclosed under subsection (1), or in any of the circumstances mentioned in subsection (3) (other than subsection (3)(a), (h) or (i)) or (4)(a), the person to whom the information is so disclosed, or any other person obtaining or receiving the information, whether directly or indirectly, from the person to whom the information is so disclosed, must not disclose the information or any part of it to any other persons unless—
  - (a) the Monetary Authority consents to the disclosure;
  - (b) the information or the part of it has already been made available to the public;
  - (c) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance; or
  - (d) the disclosure is in accordance with an order of a court, or in accordance with a law or requirement made under a law. (*Added 18 of 2015 s. 41*)
- (4B) Despite subsection (1), the Monetary Authority may disclose information to an authority in a place outside Hong Kong if—
  - (a) that authority performs functions in that place broadly comparable to those of a resolution authority in Hong Kong; and
  - (b) in the opinion of the Monetary Authority—

- (i) that authority is subject to adequate secrecy provisions in that place; and
  - (ii) the information is necessary to enable or assist that authority to perform functions in that place broadly comparable to those of a resolution authority in Hong Kong. *(Added 23 of 2016 s. 226)*
- (5) The Monetary Authority may attach any conditions that the Monetary Authority considers appropriate in disclosing any information in the circumstances mentioned in subsection (3) or (4B) or in giving a consent under subsection (4A)(a). *(Replaced 18 of 2015 s. 41. Amended 23 of 2016 s. 226)*
- (6) The condition referred to in subsection (3)(ga) is that—
  - (a) it is desirable or expedient that the information should be disclosed in the public interest; or
  - (b) the disclosure will enable or assist the recipients of the information to perform their functions and the disclosure is not contrary to the public interest. *(Added 18 of 2015 s. 41)*
- (7) Subsection (3)(h) does not require the Monetary Authority to disclose in, or in relation to, any civil proceedings any information that the Monetary Authority may disclose, or has disclosed, under that subsection. *(Added 18 of 2015 s. 41)*
- (8) The Financial Secretary may authorize a public officer as a person to whom information may be disclosed under subsection (3)(ga). *(Added 18 of 2015 s. 41)*
- (9) A person who contravenes subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months. *(Added 18 of 2015 s. 41)*

- (10) A person who contravenes subsection (4A) commits an offence and is liable—
- (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months. *(Added 18 of 2015 s. 41)*
- (11) A person commits an offence if the person—
- (a) knows that a condition referred to in subsection (5) has been attached to—
    - (i) a disclosure of information made under subsection (3); or
    - (ii) a consent given under subsection (4A)(a); and
  - (b) contravenes, or aids, abets, counsels or procures any person to contravene, that condition. *(Added 18 of 2015 s. 41)*
- (12) A person who commits an offence under subsection (11) is liable—
- (a) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months. *(Added 18 of 2015 s. 41)*

## **51. Immunity**

- (1) No civil liability shall be incurred by any of the following persons as a result of anything done or omitted to be done by him in good faith in the exercise or purported exercise of any functions conferred or imposed by or under this Ordinance, namely—
- (a) any public officer;

- (b) any person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority;
  - (c) any person appointed under section 9(3); or
  - (d) an investigator. *(Added 18 of 2015 s.42)*
- (2) No civil liability shall be incurred by any of the following persons as a result of anything done or omitted to be done by him in good faith in the carrying out or purported carrying out of any directions given to him by the Monetary Authority, namely—
  - (a) any system operator or settlement institution of a designated system, or any employee of such person;
  - (ab) a licensee, or an officer or employee of a licensee; and *(Added 18 of 2015 s.42)*
  - (b) in addition, where the system operator or settlement institution of a designated system is a corporation, any officer of the corporation.

*(Amended 18 of 2015 s.42)*

**52. Power of Monetary Authority to require information to be given**

- (1) Where there are reasonable grounds for believing that a payment system exists, but the Monetary Authority is unable on the basis of the information before him to determine whether the system is eligible to be designated or, if eligible to be, should be designated under this Ordinance, the Monetary Authority may by notice in writing request any person who is or whom he reasonably believes to be a system operator or settlement institution of the system or a participant in the system, to give the Monetary Authority such information or documents regarding the system as the

Monetary Authority considers may assist him in making that determination.

- (2) A request under subsection (1)—
  - (a) shall specify the information or documents to be given; and
  - (b) may specify a period, being a period that is reasonable in the circumstances, within which the information or documents shall be given.
- (3) This section applies to and in relation to—
  - (a) a payment system that is established in a place outside Hong Kong;
  - (b) an individual who is outside Hong Kong; or
  - (c) a corporation that is incorporated in a place outside Hong Kong,as it applies to and in relation to such a payment system that is established in Hong Kong, such an individual who is in Hong Kong, or such a corporation that is incorporated in Hong Kong.
- (4) A person who, without reasonable excuse, fails to comply with a request made under subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment, to a fine of \$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. (*Added 18 of 2015 s. 43*)

*(Amended 18 of 2015 s. 43)*

## **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).

*(Added 18 of 2015 s. 44)*

### **53. Requirement to give information relating to default**

- (1) Where any action has been taken under the default arrangements of a designated system in respect of a participant in the system, the Monetary Authority may, by notice in writing given to the system operator or settlement institution of the system, direct the system operator or settlement institution to give to any person who has responsibility for any matter arising out of or connected with the default of the participant (“nominated official”) such information as the nominated official may request relating to that default or to any matter arising out of or connected with that default.
- (2) A notice given under subsection (1) shall specify the nominated official and the participant to whom the direction relates.
- (3) A request for information made by a nominated official shall be in writing and shall state—
  - (a) the information requested; and
  - (b) a period, being a period that is reasonable in the circumstances, within which the information shall be given.
- (4) A system operator or settlement institution to whom a request is made in accordance with subsection (3) shall comply with



the request by giving the information to the nominated official within the period specified.

- (5) A person who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable—
  - (a) on conviction on indictment, to a fine of \$400,000 and to imprisonment for 2 years; or
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months. (*Added 18 of 2015 s. 45*)

#### 54. Guidelines

- (1) The Monetary Authority may, for the purpose of making available relevant information— (*Amended 18 of 2015 s. 46*)
  - (a) after consulting the system operators and settlement institutions of designated systems, issue guidelines setting out the manner in which the Monetary Authority proposes to—
    - (i) discharge any duty imposed or exercise any power conferred on the Monetary Authority under this Ordinance, in so far as the duty or power relates to designated systems; or
    - (ii) perform any function assigned to the Monetary Authority under this Ordinance, in so far as the function relates to designated systems; or
  - (b) issue guidelines setting out the manner in which the Monetary Authority proposes to—
    - (i) discharge any duty imposed or exercise any power conferred on the Monetary Authority under this Ordinance, in so far as the duty or power relates to stored value facilities; or
    - (ii) perform any function assigned to the Monetary Authority under this Ordinance, in so far as the

function relates to stored value facilities. (*Amended 18 of 2015 s. 46*)

- (1A) The Monetary Authority may issue guidelines to—
- (a) assist system operators or settlement institutions of designated systems to comply with the provisions of this Ordinance relating to designated systems; or
  - (b) assist issuers or facilitators of stored value facilities to comply with the provisions of this Ordinance relating to stored value facilities. (*Added 18 of 2015 s. 46*)
- (1B) Without limiting subsection (1A)(b), the guidelines may provide that if a licensee engages in a business practice specified in the guidelines for the purposes of this subsection—
- (a) the Monetary Authority may consider the soundness of the financial position of the licensee to be dependent on the soundness of the financial position of a single party; and
  - (b) the Monetary Authority may, where the Monetary Authority is of the opinion that the case is of sufficient importance to justify the Monetary Authority to do so, consider exercising the power under Division 6 of Part 2A. (*Added 18 of 2015 s. 46*)
- (1C) Guidelines issued under subsection (1B)—
- (a) may be expressed to apply to all licensees or to any class of licensees; and
  - (b) may specify what constitutes a single party for the purposes of any of those guidelines. (*Added 18 of 2015 s. 46*)
- (1D) Without limiting subsection (1C)(b), a class or description of persons or businesses may constitute a single party for the purposes of that subsection. (*Added 18 of 2015 s. 46*)

- (1E) The Monetary Authority must, before exercising the power to impose a sanction mentioned in section 33Q(2)(a), issue guidelines setting out the manner in which the power is to be exercised. *(Added 18 of 2015 s. 46)*
- (2) The Monetary Authority shall publish in the Gazette any guidelines issued by him under this section.

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

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

*(Added 18 of 2015 s. 47)*

**55. Systems deemed to have been designated**

- (1) The clearing and settlement systems specified in Schedule 2 shall be deemed to have been designated for the purposes of

this Ordinance under section 4(1).

- (2) It shall also be deemed that a certificate of finality has been issued in respect of each of the systems referred to in subsection (1).

**55A. Saving provision**

The performance of a function under the Financial Institutions (Resolution) Ordinance (Cap. 628) has no effect on— (*Amended E.R. 2 of 2017*)

- (a) the designation of a clearing and settlement system that has been designated for the purposes of this Ordinance by the Monetary Authority under section 4(1); or
- (b) a certificate of finality issued by the Monetary Authority under section 16(3) in respect of a designated clearing and settlement system.

*(Added 23 of 2016 s. 227)*

**56. Service of notices**

- (1) A notice that is to be or may be given to any person by the Monetary Authority under this Ordinance is taken to have been given if it is given according to the following—
- (a) the notice may be delivered to him (if the person is an individual) or to any officer of the corporation (if the person is a corporation) by hand;
  - (b) if a place of business has been given by the person under section 6(1)(a) or 8E(3)(b), the notice may be left at that place;
  - (c) if a postal address has been given by the person under section 6(1)(a) or 8E(3)(b), the notice may be sent by post to that address; or

- (d) if an electronic mail address has been given by the person under section 6(1)(a) or 8E(3)(b), the notice may be sent by electronic mail transmission to that electronic mail address.
- (2) A notice taken to have been given under subsection (1)(b), (c) or (d) shall be taken to be given, and as coming to the notice of the person to whom it is given, at the following time—
  - (a) if the notice is left at the place of business given under section 6(1)(a) or 8E(3)(b), when it is so left;
  - (b) if the notice is sent by post to the postal address given under section 6(1)(a) or 8E(3)(b), when it would in the ordinary course of post be delivered to that address; or
  - (c) if the notice is sent by electronic mail transmission to the electronic mail address given under section 6(1)(a) or 8E(3)(b), when it would in the ordinary course of such transmission be received at that address.
- (3) In this section, reference to a notice being given includes reference to any notice, any document or information of any kind being given, served, sent or provided.

*(Amended 18 of 2015 s. 48)*

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

- (1) The following is recoverable from a licensee as a civil debt due to the Monetary Authority—
  - (a) a fee due and payable by the licensee under section 8M or 8N;
  - (b) an amount paid by the Monetary Authority under section 8ZZ(5) for any remuneration or expenses payable by the licensee under a determination under section 8ZZ(1).

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

*(Added 18 of 2015 s. 49)*

**57. Amendment of Schedules**

- (1) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 1 or 2. *(Amended 18 of 2015 s. 50)*
- (2) The Financial Secretary may, by notice published in the Gazette, amend Schedule 3, 4, 5, 6, 7 or 8. *(Added 18 of 2015 s. 50)*

**58. Notices, etc. as subsidiary legislation**

- (1) A notice published in the Gazette under section 1(2) , 2C,

8A(2) or 57 is subsidiary legislation for the purpose of section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). (*Amended 18 of 2015 s. 51*)

- (2) Except as provided in subsection (1), a notice or guideline published in the Gazette under this Ordinance is not subsidiary legislation for the purpose of section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

59. (*Omitted as spent*)

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

Schedule 9 provides for the savings and transitional arrangements relating to the Clearing and Settlement Systems (Amendment) Ordinance 2015 (18 of 2015).

(*Added 18 of 2015 s. 52*)

**61. Transitional and saving provision relating to the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016**

If a participant or the principal of a participant has passed a special resolution under section 228(1)(c) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) before the commencement date of the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016 (14 of 2016) (*Amendment Ordinance*), the definition *resolution for voluntary winding up* in section 2 as in force immediately before the commencement date of the Amendment Ordinance continues to apply in relation to the participant or the principal of the participant for the purposes of this Ordinance.

(*Added 14 of 2016 s. 189*)



## **SCHEDULE 1**

[ss. 33X, 34, 40 & 57]

*(Amended 18 of 2015 s. 53)*

### **PROVISIONS RELATING TO REVIEW UNDER PART 4**

*(Amended 18 of 2015 s. 53)*

#### **Part 1**

#### **Provisions Relating to Payment Systems and Stored Value Facilities Appeals Tribunal**

*(Added 18 of 2015 s. 53)*

##### **1. Interpretation**

In this Schedule—

“panel member” (小組成員) means a member of the panel referred to in section 34(4); *(Amended 18 of 2015 s. 53)*

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

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

(b) the Monetary Authority; *(Replaced 18 of 2015 s. 53)*

“Tribunal member” (審裁處成員) means a member of the Tribunal appointed under section 34(2)(b). *(Amended 18 of 2015 s. 53)*

##### **2. Tenure of Chairman of the Tribunal**

(1) The Chairman of the Tribunal shall be appointed for a term not exceeding 3 years.



- (2) On the expiry of his period of appointment or reappointment, the Chairman of the Tribunal is eligible for reappointment for such further term as the Chief Executive may specify.
- (3) The Chairman of the Tribunal may resign from office by giving notice in writing to the Chief Executive. A notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Chief Executive of the notice.
- (4) If the Chief Executive is satisfied that the Chairman of the Tribunal—
  - (a) has become bankrupt;
  - (b) is incapacitated by physical or mental illness; or
  - (c) is otherwise unable or unfit to perform the functions of the Chairman of the Tribunal,the Chief Executive may, after consultation with the Chief Justice, declare his office as Chairman of the Tribunal to be vacant, and shall notify the fact in such manner as the Chief Executive thinks fit; and upon such declaration the office becomes vacant.
- (5) If a review has been commenced by the Tribunal but not completed before the expiry of the term of office of the Chairman of the Tribunal, the Chief Executive may extend the term of office of the Chairman until the completion of the review.

### **3. Tenure of panel members**

- (1) A panel member shall be appointed for a term not exceeding 3 years.
- (2) On the expiry of his period of appointment or reappointment, a panel member is eligible for reappointment for such further term as the Chief Executive may specify.

- (3) A panel member may resign from office by giving notice in writing to the Chief Executive. A notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Chief Executive of the notice.
- (4) If the Chief Executive is satisfied that a panel member—
  - (a) has become bankrupt;
  - (b) is incapacitated by physical or mental illness;
  - (c) is otherwise unable or unfit to perform the functions of a Tribunal member; or
  - (d) has become a public officer,the Chief Executive may declare his office as panel member to be vacant, and shall notify the fact in such manner as the Chief Executive thinks fit; and upon such declaration the office becomes vacant.

#### **4. Sittings**

- (1) The Chairman of the Tribunal shall convene such sittings of the Tribunal as are necessary to determine a review.
- (2) Before convening a sitting under subsection (1) in respect of a review, the Chairman of the Tribunal may give directions to the parties to the review concerning—
  - (a) procedural matters to be complied with by any of the parties; and
  - (b) the time within which such procedural matters are to be complied with.
- (3) At a sitting of the Tribunal—
  - (a) the Chairman of the Tribunal shall preside;
  - (b) not fewer than 2 Tribunal members shall also be present; and

- (c) every question before the Tribunal shall be determined by the opinion of the majority of those referred to in paragraphs (a) and (b) except a question of law which shall be determined by the Chairman of the Tribunal alone.
- (4) Every sitting of the Tribunal shall be held in public unless the Tribunal, on its own motion or on the application of any of the parties to the review, determines that in the interests of justice a sitting, or any part of a sitting, shall not be held in public in which case it may hold the sitting, or the relevant part of the sitting, as the case may be, in camera.
- (5) If an application is made pursuant to subsection (4) for a determination that a sitting, or any part of a sitting, shall not be held in public, a hearing of the application shall be held in camera.
- (6) The parties to a review shall, at any sitting of the Tribunal relating to the review, be entitled to be heard—
  - (a) in person or, in the case of the Monetary Authority, through a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority; or
  - (b) through counsel or a solicitor or, with the leave of the Tribunal, through any other person.
- (7) The Chairman of the Tribunal shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.

## **5. Miscellaneous**

Except as otherwise provided in this Ordinance—

- (a) the Tribunal, its Chairman and its members; and

(b) the parties to, and any witness, counsel, solicitor, or any other person involved in, a review, shall have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.

## **Part 2**

### **Reviewable Decisions**

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

## Payment Systems and Stored Value Facilities Ordinance

### SCHEDULE 1—Part 2

S1-12

#### Section 8

Cap. 584

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

## Payment Systems and Stored Value Facilities Ordinance

### SCHEDULE 1—Part 2

S1-14

#### Section 19

Cap. 584

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18. A decision of the Monetary Authority to revoke an exemption under section 8ZZZE(1).
  19. A decision of the Monetary Authority to suspend or revoke a certificate of finality under section 17(1).
  20. A decision of the Monetary Authority to impose a sanction under section 33Q.
  21. A decision of the Monetary Authority to give a prior written permission under section 8 of Part 2 of Schedule 3.

*(Part 2 added 18 of 2015 s. 53)*

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## **SCHEDULE 2**

[ss. 50, 55 & 57]

### **CLEARING AND SETTLEMENT SYSTEMS DEEMED TO HAVE BEEN DESIGNATED**

1. Central Moneymarkets Unit.
  2. Hong Kong Dollar Clearing House Automated Transfer System.
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## Schedule 3

[ss. 2 & 57 & Sch. 1]

### Minimum Criteria

#### Part 1

#### Preliminary

##### 1. Interpretation

(1) In this Schedule—

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

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

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

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

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

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

- (a) the excess of the accumulated losses over the accumulated profits disclosed in the profit and loss account of the most recent audited accounts of the applicable company; and
- (b) other reserves separately disclosed in the balance sheet of the most recent audited accounts of the applicable company;

**SVF scheme** (儲值支付工具計劃)—



- (a) in relation to an applicable company that is a person applying for a licence under section 8E, means the scheme that the person proposes, if the licence is granted under section 8F—
  - (i) for the issue of stored value facilities under the licence; or
  - (ii) for facilitating the issue of stored value facilities under the licence; or
- (b) in relation to any other applicable company, means the scheme operated by the licensee—
  - (i) for the issue of stored value facilities under its licence; or
  - (ii) for facilitating the issue of stored value facilities under its licence;

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

- (2) In calculating the value of the paid-up share capital of an applicable company under this Schedule, the net debit balance of the applicable company is to be deducted from such share capital.
- (3) In applying the criteria set out in Part 2 of this Schedule in relation to a person applying for a licence under section 8E—
  - (a) a reference in this Schedule to a licence is a reference to the licence that may be granted to the person on an application under section 8F;
  - (b) a reference to a licence in a provision that defines a term or an expression used in this Schedule is a reference to the licence that may be granted to the person on an application under section 8F;
  - (c) a reference to a licensee in a provision that defines a term or an expression used in this Schedule is a reference to the person; and

- (d) the criteria set out in Part 2 of this Schedule are to be construed with necessary modifications to take into account the status of the person as an applicant for a licence.

## **2. Application of criteria**

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

## **Part 2**

### **Criteria**

#### **1. Principal business**

- (1) The principal business of the applicable company must be—
  - (a) the issue of stored value facilities under a licence; or
  - (b) the facilitation of the issue of stored value facilities under a licence.
- (2) This section does not apply in relation to an applicable company that is a bank.

#### **2. Financial resources**

- (1) The applicable company must have adequate financial resources (whether actual or contingent) for operating its SVF scheme.
- (2) The applicable company must satisfy either of the following—
  - (a) the applicable company's paid-up share capital is not less than—
    - (i) \$25,000,000; or

- (ii) an equivalent amount in any other currency that is freely convertible into Hong Kong dollars or is approved by the Monetary Authority for the purposes of this section;
- (b) the applicable company's other financial resources are equivalent to or exceed those mentioned in paragraph (a).
- (3) This section does not apply in relation to an applicable company that is a bank.

### **3. Fit and proper person**

- (1) The applicable company must have in place adequate systems of control to ensure that the Monetary Authority is kept informed of the identity of each controller of the applicable company.
- (2) Each chief executive, director or controller of the applicable company must be a fit and proper person to hold the position concerned.
- (3) The applicable company must have in place adequate systems of control to ensure that each manager of the applicable company is a fit and proper person to hold the position concerned.
- (4) This section does not apply in relation to an applicable company that is a bank.

### **4. Knowledge and experience**

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

implementing the company's SVF scheme or the day-to-day management of the scheme has the appropriate knowledge and experience to effectively discharge that responsibility.

## **5. Prudential and risk management**

- (1) The applicable company must have in place appropriate risk management policies and procedures for managing the risks arising from the operation of its SVF scheme that are commensurate with the scale and complexity of the scheme, including—
  - (a) adequate security and internal control to ensure the safety and integrity of data (in particular, personal data) and records;
  - (b) effective means to detect fraud and attempted fraud;
  - (c) robust and proven contingency arrangements to address any operational disruptions; and
  - (d) other operational and security safeguards appropriate for the scheme.
- (2) The applicable company—
  - (a) must implement the policies and procedures mentioned in subsection (1); and
  - (b) must not deviate from those policies and procedures except with the prior written consent of the Monetary Authority.

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

- (1) There must be in place in the SVF scheme of the applicable company adequate and appropriate systems of control for preventing or combating possible money laundering or terrorist financing.

- (2) The applicable company must have in place adequate and appropriate systems of control to ensure that it complies with—
- (a) the provisions of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) that are applicable to the applicable company; and (*Amended 4 of 2018 s. 49*)
  - (b) the measures (if any) promulgated by the Monetary Authority, whether in the form of rules, regulations, guidelines or otherwise, to prevent, combat or detect money laundering or terrorist financing.

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

If the applicable company holds the float or SVF deposit of a stored value facility to which its SVF scheme relates, the applicable company must—

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

**8. Redemption of outstanding stored value.**

- (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.

## **9. Operating rules**

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

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

- (1) The SVF scheme of the applicable company must be prudent and sound, having regard to the purpose, business model and

operational arrangement of the scheme.

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

*(Schedule 3 added 18 of 2015 s. 54)*

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# Payment Systems and Stored Value Facilities Ordinance

Schedule 4

S4-2

Cap. 584

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## Schedule 4

[ss. 8M, 8N & 57]

### Licence Fee

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

*(Schedule 4 added 18 of 2015 s. 54)*

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## Schedule 5

[ss. 8V, 8Z, 8ZA, 8ZE & 57]

### Grounds for Revocation of Licence

#### Part 1

1. In this Schedule—  
*chief executive* (行政總裁) has the meaning given by section 8A;  
*controller* (控權人) has the meaning given by section 8ZZE.
2. In this Schedule, a licensee is regarded as insolvent if the licensee—
  - (a) has ceased to pay its debts in the ordinary course of business; or
  - (b) cannot pay its debts as they become due.

#### Part 2

3. The Monetary Authority is satisfied that the licensee does not fulfil any of the minimum criteria applicable in relation to the licensee.
4. The Monetary Authority is satisfied that—
  - (a) the licensee—
    - (i) proposes to enter into, or has entered into, a composition or scheme of arrangement with its creditors; or

- (ii) proposes to enter into, or has entered into, a voluntary arrangement as defined by section 2 of the Bankruptcy Ordinance (Cap. 6) with its creditors;
  - (b) the licensee is insolvent; or
  - (c) the licensee is being, or has been, wound up or is otherwise dissolved.
- 5. The licensee has informed the Monetary Authority that—
  - (a) it is likely to become unable to meet its obligations; or
  - (b) it is about to suspend payment.
- 6. The Monetary Authority is satisfied that the licensee is unable to meet its obligations or has suspended payment.
- 7. The Monetary Authority is satisfied that the licensee has not provided the Monetary Authority (whether before, on or after the grant of the licence) with any information required to be provided under this Ordinance that is of a material nature relating to—
  - (a) the licensee; or
  - (b) any circumstances likely to affect the licensee's method of business.
- 8. The Monetary Authority is satisfied that the licensee has provided the Monetary Authority (whether before, on or after the grant of the licence) with any information (whether or not provided under this Ordinance) that is false, misleading or inaccurate in a material particular.
- 9. The Monetary Authority is satisfied that the licensee has contravened a condition of the licence attached under section 8I.

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10. The Monetary Authority is satisfied that the licensee has ceased to carry on the business of issuing or facilitating the issue of stored value facilities.
11. The licensee has failed to pay the fee required by section 8M or 8N after being advised in writing by the Monetary Authority that the licensee has failed to pay the fee.
12. A person has become a controller of the licensee despite there being in effect a notice given to the person under section 8ZZF(2)(b) objecting to the person becoming such a controller.
13. A person continues to be a controller of the licensee despite there being in effect a notice given to the person under section 8ZZG(3)(b) or 8ZZJ(2) objecting to the person being such a controller.
14. The licensee is in contravention of section 8ZZU.
15. A person has become or continues to be a chief executive or director of the licensee in contravention of section 8ZZV.
16. The licensee engages in a business practice specified in the guidelines issued under section 54(1B).
17. The Monetary Authority is satisfied that the interests of the user or potential user of any stored value facility issued, or the issue of which is facilitated, by the licensee under its licence are in any manner threatened by the licensee continuing to be licensed.

18. The Monetary Authority is satisfied that the licensee engages in business practices which would be likely to prejudice the interests of Hong Kong as an international financial centre.
19. The licensee has failed to pay any pecuniary penalty required to be paid by it under section 33Q after being advised in writing by the Monetary Authority that the period within which the penalty was required to be paid has expired without the penalty being paid.

### **Part 3**

20. The licensee requests in writing the Monetary Authority to revoke the licence, and the Monetary Authority is satisfied that the interests of the user of any stored value facility issued, or the issue of which is facilitated, by the licensee under its licence will be adequately safeguarded even if the request is acceded to.

*(Schedule 5 added 18 of 2015 s. 54)*

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## **Schedule 6**

[ss. 8A, 8ZZY & 57]

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

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

*(Schedule 6 added 18 of 2015 s. 54)*

## **Schedule 7**

[ss. 8ZO & 57]

### **Powers of Manager of Licensee**

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

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

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18. Power to grant or accept a surrender of a lease or tenancy of any property of the licensee concerned, and to take a lease or tenancy of any property required or convenient for the business of the licensee.
19. Power to make any arrangement or compromise on behalf of the licensee concerned.
20. Power to call up any uncalled capital of the licensee concerned.
21. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of a person indebted to the licensee concerned, and to receive dividends, and to accede to trust deeds for the creditors of any such person.
22. Power to change the location of any business office of the licensee concerned.
23. Power to do all other acts that are incidental to the exercise of the powers set out in this Schedule.

*(Schedule 7 added 18 of 2015 s. 54)*

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## **Schedule 8**

[ss. 8ZZZB, 8ZZZC & 57]

### **Stored Value Facilities Exempt from Divisions 2, 3, 4, 5, 6, 7 and 9 of Part 2A**

#### **1. Stored value facilities used for certain cash reward schemes**

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

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

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

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

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

- (c) the telecommunication, digital or IT operator does not act only as an intermediary between the user of the facility and the provider of the goods or services.

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

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

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

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

- (1) Subject to subsection (2), a stored value facility is one specified for the purposes of section 8ZZZB if—
  - (a) it may be used as a means of making payments only for goods or services provided by—
    - (i) the issuer; or

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

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

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

*(Schedule 8 added 18 of 2015 s. 54)*

## Schedule 9

[s. 60]

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

#### 1. Interpretation

In this Schedule—

***amending Ordinance*** (《修訂條例》) means the Clearing and Settlement Systems (Amendment) Ordinance 2015 (18 of 2015);

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

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

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

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

#### 2. Chairman of old Tribunal

(1) This section applies to a person who—

- (a) was appointed to be the Chairman of the old Tribunal under section 34(3) of the pre-amended Ordinance; and
- (b) holds the office immediately before the appointed date.

- (2) On the appointed date, the person continues to hold the office of the Chairman of the new Tribunal under section 34(3) of this Ordinance on the same terms and conditions that were applicable to the appointment had the amending Ordinance not been enacted.

**3. Panel members**

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

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

- (1) On and after the appointed day, a notice published in the Gazette under section 4(1) of the pre-amended Ordinance continues to have effect and is regarded to have been published under section 4(1)(a) of this Ordinance.
- (2) On and after the appointed day—
  - (a) an exemption granted under section 11(2) or (3) of the pre-amended Ordinance continues to have effect and is regarded as an exemption granted under section 11(2) or (3) of this Ordinance; and
  - (b) a notice published in the Gazette under section 11(4) of the pre-amended Ordinance in relation to the exemption continues to have effect and is regarded to have been published under section 11(4) of this Ordinance.

- (3) On and after the appointed day—
- (a) a certificate issued under section 16(3) of the pre-amended Ordinance continues to have effect and is regarded to have been issued under section 16(3) of this Ordinance; and
  - (b) a notice published in the Gazette under section 16(7) of the pre-amended Ordinance in relation to the certificate continues to have effect and is regarded to have been published under section 16(7) of this Ordinance.
- (4) On and after the appointed day, a notice published in the Gazette under section 28(4) of the pre-amended Ordinance continues to have effect and is regarded to have been published under section 28(4) of this Ordinance.
- (5) On and after the appointed day, a notice published in the Gazette under section 29(4) of the pre-amended Ordinance continues to have effect and is regarded to have been published under section 29(4) of this Ordinance.
- (6) In the notice mentioned in subsection (1), (2)(b), (3)(b), (4) or (5)—
- (a) a reference to Division 3 of Part 2 of the pre-amended Ordinance is to be construed as a reference to Part 2B of this Ordinance; and
  - (b) a reference in any other provision of the pre-amended Ordinance is to be construed as a reference to the corresponding provision of this Ordinance.

*(Schedule 9 added 18 of 2015 s. 54)*