



HONG KONG MONETARY AUTHORITY
香港金融管理局

EXPLANATORY NOTE
ON
DESIGNATION AND ISSUANCE OF CERTIFICATE OF FINALITY
OF
CLEARING AND SETTLEMENT SYSTEMS
UNDER
THE PAYMENT SYSTEMS AND STORED VALUE FACILITIES
ORDINANCE
(CAP. 584)

INTRODUCTION

1. Background

1.1. A robust financial infrastructure is essential to Hong Kong’s monetary and financial stability and its effectiveness as an international financial centre. One of the key policy objectives of the Monetary Authority¹ (the “MA”) is to promote the safety and efficiency of financial infrastructure in Hong Kong, particularly the clearing and settlement systems (“CSSs”).

1.2. The Payment Systems and Stored Value Facilities Ordinance (the “Ordinance”) expressly sets out the powers of the MA in relation to the designation and oversight of

¹ The Monetary Authority is the public officer appointed by the Financial Secretary under section 5A of the Exchange Fund Ordinance. The powers under the Payment Systems and Stored Value Facilities Ordinance are vested in the Monetary Authority personally. To perform his statutory duties and functions, the Monetary Authority heads an office known as the “Hong Kong Monetary Authority” (the “HKMA”) of which he is the Chief Executive.

CSSs that (a) in the opinion of the MA is, or is likely to become, a CSS 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; or (b) having regard to matters of significant public interest, the MA is of the opinion that the CSS should be so designated. The Ordinance also provides settlement finality for transfer orders effected through those designated CSSs that have been issued with certificates of finality by protecting the effected transfer orders from being reversed as necessary under insolvency laws or any other laws of Hong Kong.

1.3. The objectives of the Ordinance are set out in its long title: -

“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.”

2. Purpose of this Note

2.1. This Explanatory Note² is to explain the relevant policies and procedures that the MA intends to follow with respect to the designation of CSSs and the issuance of certificates of finality under the Ordinance. This Note also outlines the major obligations of a designated CSS, the powers of the MA in respect thereof, the appeal mechanism in respect of the designation and revocation of designation of a CSS and the issuance, suspension or revocation of a certificate of finality issued to a designated CSS.

² All references to section numbers in this Explanatory Note refer to those of the Ordinance, unless specified otherwise. This Note covers only the designation of CSSs, the issuance of certificates of finality and related matters. The designation of retail payment systems and matters related thereto are not covered in this Note.

2.2. This Note is for information only and is not intended to be a comprehensive guide of the provisions in the Ordinance nor to the issues that may be faced by the MA as the overseer, or the designated CSSs. It is therefore not to be taken as a substitute for legal or other professional advice to a CSS or relevant parties in any given case.

2.3. This Note is organised as follows: -

(a) Designation of CSSs

- (i) paragraph 3 - eligibility and criteria
- (ii) paragraphs 4 and 5 - designation process
- (iii) paragraph 6 - CSSs deemed to have been designated

(b) Exemption

- (i) paragraph 7 - scope of exemption
- (ii) paragraph 8 - co-operation with overseas authorities

(c) Revocation of Designation

- (i) paragraph 9 - grounds for revocation
- (ii) paragraph 10 - revocation process

(d) Obligations of Designated CSSs

- (i) paragraph 11 - principal obligations

(e) Certificate of Finality

- (i) paragraph 12 - finality of settlement
- (ii) paragraph 13 - certificate of finality
- (iii) paragraph 14 - issuance criteria
- (iv) paragraph 15 - issuance process
- (v) paragraph 16 - obligations of designated CSSs with certificates of finality
- (vi) paragraph 17 - suspension or revocation of certificate of finality

- (vii) paragraph 18 - exemptions under sections 28 and 29

- (f) Appeal Mechanism
 - (i) paragraph 19 - the Payment Systems and Stored Value Facilities Appeals Tribunal

- (g) Miscellaneous
 - (i) paragraph 20 - publication of information
 - (ii) paragraph 21 - contact information

- (h) Annex – information or documents that may be requested under section 52.

DESIGNATION OF CSSs

3. Eligibility and Criteria

3.1. The terms “clearing” and “settlement” are defined in “A glossary of payments and market infrastructure terminology”³ (the “Glossary”) as follows: -

“Clearing” – “the process of transmitting, reconciling and, in some cases, confirming transactions prior to settlement, potentially including the netting of transactions and the establishment of final positions for settlement”; and

“Settlement” – “an act that discharges obligations in respect of funds or securities transfers between two or more parties”.

3.2. To designate a system, the MA will need to determine if it is a “clearing and settlement system” as defined under section 2 and satisfies the conditions set out in section 4(1)

³ Published by the Committee on Payments and Market Infrastructures of the Bank for International Settlements (version updated on 16 June 2015).

and (2). A “clearing and settlement system” for the purposes of the Ordinance is defined as 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.

In addition, under section 4(2), such a CSS will need to be a system which: -

- (a) is in operation in Hong Kong; or
- (b) accepts for clearing or settlement transfer orders denominated in Hong Kong dollars.

3.3. Section 4(2) further provides that 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 (the “SFO”) (Cap. 571) will not be regarded as a CSS eligible to be designated under the Ordinance.

3.4. To determine if a CSS may be designated under section 4(1), the MA will have to form an opinion as to whether such a system is, or is likely to become, a CSS 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, or having regard to matters of significant public interest, the system should be so designated.

3.5. Under section 4(3), a system is or is likely to become a CSS as described in section 4(1) if the occurrence of any significant disruption to, or the presence of any significant inefficiency in, the functioning of such system is likely to adversely affect the monetary or financial stability of Hong Kong or the functioning of Hong Kong as an international financial centre, or if the occurrence of any significant disruption to the functioning of the system is likely to cause further disruption to the activities of the participants of the

system or to other payment systems or systemic disruption to the financial system of Hong Kong.

3.6. In forming an opinion as to whether a CSS satisfies the designation criteria, the MA may consider one or more of the following factors as set out in section 4(4A): -

- (a) the estimated aggregate value of transfer orders transferred, cleared or settled through the system in a normal business day⁴.

This refers to the total value (either in Hong Kong dollars or other currencies) of individual instructions transferred, cleared or settled in the system. It also represents the sum of total debits (or credits) to all accounts maintained by the system prior to or in the absence of any netting of transactions in a normal business day. For established systems, the estimated value can be worked out with reference to historical data and business plan;

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

This refers to the aggregate value of instructions transferred, cleared or settled through the system in a normal business day, divided by the number of instructions processed;

- (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.

The MA considers that any bilateral relationship between two parties does not constitute a “system” for the purposes of the Ordinance, and thus has no

⁴ A “normal business day” does not include a shortened business day such as Saturday.

intention to designate any bilateral arrangement regardless of the volume of the activities under the arrangement; and

- (e) whether such system is linked to any designated system⁵ or any CSS that is, or is operated by, a company recognized as a clearing house under section 37(1) of the SFO.

3.7. The above factors are intended to identify a CSS 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 or that should be designated, having regard to matters of significant public interest. During the designation process, should the need arise, the MA will discuss with the system operator and settlement institution of the relevant CSS so as to understand the design and features of the system and assess the possible application of the Ordinance to the system.

4. Designation Process

4.1. The MA will initiate the designation process under the designation regime of the Ordinance if he considers a system is or is likely to meet the criteria for designation. The MA is not obliged to consider any request for designation made to the MA.

4.2. For the MA to determine whether a CSS is eligible to be designated and whether it satisfies the designation criteria for the purposes of the Ordinance, section 52(1) provides the power for the MA to request for information or documents regarding the system from any person who is, or whom he reasonably believes to be, a system operator or settlement institution of a CSS or a participant in a system. This power to request for information or documents applies to CSSs, individuals or corporations established, located or incorporated in Hong Kong and in a place outside Hong Kong.

⁵ As defined in section 2 of the Ordinance.

- 4.3. The types of information or documents that the MA may require vary from system to system. Generally speaking, the MA will seek to request for the information or documents as set out in the Annex of this Note and may, where necessary, seek additional information as is required in order to assist him in making such determination. Section 52(4) provides that any person who, without reasonable excuse, fails to comply with a request made under section 52(1) commits an offence and is liable to a fine and imprisonment.
- 4.4. After the relevant information and documents have been received, the MA may discuss with the system operator and settlement institution of such system where necessary on issues relating to the determination of the system's eligibility for designation.
- 4.5. Findings of a designation review will be prepared by the Financial Market Infrastructure Oversight and Licensing Division of the HKMA for submission to the Clearing and Settlement Systems Designation Committee (the "CSS Designation Committee"), an internal committee of the HKMA, for consideration. The CSS Designation Committee comprises senior officers of the HKMA and is chaired by a Deputy Chief Executive of the HKMA. One of the major responsibilities of the CSS Designation Committee is to consider the designation review findings and form a recommendation (i.e., to designate or not to designate) in respect of a CSS for consideration by the MA to assist him to form a determination. The time for the designation process may vary depending on the particular situation of each case, including the nature and complexity of the prospective designated CSS, the completeness of information and documents submitted to the MA, and so on.
- 4.6. Under section 4(5), the MA is required to publish a notice in the Gazette of his intention to designate a CSS under section 4(1), stating the grounds on which the designation is to be made. The MA is also required to specify in the notice a period of not less than 14 days within which any system operator or settlement institution of the system whom the notice concerns may be heard, or may make written representations, as to why the system should not be designated.

- 4.7. If any system operator or settlement institution of the system whom a Gazette notice under section 4(5) concerns wishes to be heard or to make written representations, it should make such a request to the MA in writing within the specified period, giving reasons as to why its system should not be designated. The CSS Designation Committee will review the representations made by the system operator or settlement institution and make further recommendation to the MA as to whether designation of such system should be made. In the course of reviewing the matter, the MA may meet with the system operator or settlement institution of the system should such need arise.
- 4.8. After section 4(5) has been complied with, if the MA decides to proceed to designate the CSS, he will, by notice published in the Gazette, designate such system accordingly and the designation will take effect as from the date of the Gazette notice. The MA will notify the system operator and settlement institution of the system in writing of his decision.

5. Designation

- 5.1. For those CSSs that are not eligible or do not meet the criteria for designation under section 4(1), they will be able to operate or continue to operate without a designation. However, under section 52, the MA may by notice in writing request for information or documents regarding the system from 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 where there is reasonable ground for him to believe that such a system may have become eligible or have met the criteria for designation under the Ordinance.
- 5.2. It is important to note that designation of a CSS does not in any way represent or imply that the MA endorses such system. Designation of CSSs is to provide for such systems to be subject to oversight by the MA with a view to maintaining and promoting the general safety and efficiency of such systems.

6. CSSs deemed to have been designated

- 6.1. Under section 55, the Central Moneymarkets Unit⁶ (the “CMU”) and the Hong Kong Dollar Clearing House Automated Transfer System⁷ (the “HKD CHATS”) are CSSs that are deemed to have been designated for the purposes of the Ordinance under section 4(1). A certificate of finality is also deemed to have been issued in respect of each of the CMU and HKD CHATS.
- 6.2. The CMU and HKD CHATS are, however, required to observe all the obligations imposed on designated CSSs under the Ordinance in the same manner as other designated CSSs. A Process Review Committee (the “PRC”) has been established to review and advise the MA on the adequacy of the MA’s internal operational procedures and guidelines for applying the standards set under the Ordinance to designated CSSs in which the MA has a legal or beneficial interest. The PRC submits annual reports and, if appropriate, special reports to the Financial Secretary under its terms of reference.

EXEMPTION

7. Scope of exemption

- 7.1. The Ordinance provides the MA with the power to designate any CSS so long as it satisfies the criteria under section 4(1), regardless of where such a system is located. For a designated CSS that is established in a place outside Hong Kong and is adequately supervised by an authority exercising functions in that place similar to those of the MA under the Ordinance (usually the relevant authority is in the place where the

⁶ CMU is a central securities depository established by the HKMA to provide clearing, settlement and custodian services for debt securities issued by both public and private sector entities denominated in Hong Kong dollar and other major currencies.

⁷ The HKD CHATS provides inter-bank settlement for Hong Kong dollar across the books of the HKMA.

system operator or settlement institution of a designated CSS is incorporated), the MA may, under section 11(2), exempt such designated CSS from complying with the relevant obligations.

7.2. Before granting an exemption to a designated CSS outside Hong Kong, the MA must satisfy himself that the scope and nature of the oversight or supervision exercised in relation to that system by the relevant authority is sufficient to achieve any or all of the oversight objectives under the Ordinance. In making his assessment, the MA will take into account: -

- (a) the scope and nature of the oversight regime of the relevant authority;
- (b) the oversight/supervisory framework of the relevant authority;
- (c) the oversight/supervisory process of the relevant authority; and
- (d) past experience in dealings with the relevant authority.

7.3. Under section 11(2), the exemption granted to any overseas designated CSS which is being adequately supervised by the relevant authority is in respect of any or all of the obligations imposed under Division 2 of Part 2 and Part 2B, or any obligation arising from the exercise of any power conferred under those provisions, in relation to such system. In addition, under section 11(3), the MA may exempt the system operator or settlement institution of the exempted designated CSS from the application of section 30 (duty to report on completion of default proceedings) or 53 (requirement to give information relating to default) or may exempt the participants in that system from the application of section 31 (obligation of participant to notify of bankruptcy or winding-up).

7.4. Where the MA has granted (or has varied or withdrawn) an exemption in any case, he is required to publish in the Gazette notice of the particulars of that grant (or variation or withdrawal) of exemption.

7.5. It should be noted that the exemption status is fluid. If the MA considers that any of the exemption criteria is no longer met by the exempted designated CSS, he will vary or withdraw the relevant exemption.

8. Co-operation with overseas authorities

8.1. The MA will, where appropriate, rely on co-operative oversight with the relevant supervisory authority of a designated CSS to which an exemption under section 11(2) or (3) is granted. In this connection, the MA expects to work closely with the relevant authority, using the framework set out in the “Principles for Financial Market Infrastructures”⁸ (“PFMI”).

8.2. Under section 50(4)(b), the MA may, if such disclosure is not contrary to the public interest, disclose information to an overseas authority which exercises in that place functions similar to those of the MA under the Ordinance and is subject to adequate secrecy provisions in that place, where in the opinion of the MA, such disclosure will: –

- (a) assist that authority in exercising those functions; and
- (b) help maintain and promote safety and efficiency in the operation of designated CSSs.

REVOCAION OF DESIGNATION

9. Grounds for revocation

9.1. Under section 5(1), the MA may revoke the designation of a designated CSS if: -

⁸ The PFMI was published jointly by the Committee on Payments and Market Infrastructures of the Bank for International Settlements and the Technical Committee of the International Organization of Securities Commissions (CPMI/IOSCO) in April 2012. Responsibility E of the PFMI sets out the principles for co-operation with other authorities.

- (a) the MA is satisfied that the system is not a CSS as is described in section 4(2);
or
- (b) the system was designated under section 4(1)(a) and, in the opinion of the MA, the system has ceased to be or to be likely to become a CSS 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; or
- (c) the system was designated under section 4(1)(b) and, in the opinion of the MA, the matters based on which the system was designated (i.e., matters of significant public interest) have ceased to exist.

9.2. A designated CSS is no longer a CSS as is described in section 4(2) if it: -

- (a) ceases its operations in Hong Kong and no longer accepts clearing or settlement transfer orders denominated in Hong Kong dollars; or
- (b) becomes recognized as a clearing house under section 37(1) of the SFO.

9.3. The other ground for revocation is where the designated CSS no longer meets the designation criteria under section 4(1), i.e., the occurrence of any significant disruption to, or the presence of any significant inefficiency in, the functioning of the system is unlikely to adversely effect the monetary or financial stability of Hong Kong or the functioning of Hong Kong as an international finance centre, or the occurrence of any significant disruption to the functioning of the system is unlikely to cause further disruption to the activities of the participants of the system or to other payment systems or systemic disruption to the financial system of Hong Kong.

10. Revocation process

10.1. The Financial Market Infrastructure Oversight and Licensing Division of the HKMA will prepare a review report on whether a designated CSS satisfies the revocation

criteria under section 5(1)(a) or (b) for the consideration of the CSS Designation Committee, which will make recommendation to the MA for his determination. If the MA intends to revoke the designation of a system, he is required under section 5(2) to publish notice of his intention to revoke the designation in the Gazette, stating the grounds on which the revocation is to be made and specify in the notice a period of not less than 14 days within which any system operator or settlement institution of the system may be heard, or may make written representations, as to why the grounds for revocation stated in the notice have not been made out.

10.2. If any system operator or settlement institution of the designated CSS whom a Gazette notice under section 5(2) concerns wishes to be heard or to make written representations, it should make such a request to the MA in writing before the revocation takes effect, giving reasons as to why the grounds for revocation specified in the Gazette notice have not been established. After reviewing the reasons given by the system operator and/or settlement institution, the CSS Designation Committee will make recommendation to the MA as to whether the designation should be revoked. In the course of reviewing the matter, the MA may meet with the system operator or settlement institution of the designated CSS should such need arise.

10.3. After section 5(2) has been complied with, if the MA decides to proceed to revoke the designation of the designated CSS, he will, by notice published in the Gazette, revoke such designation and the relevant revocation will take effect as from the date of the Gazette notice. The MA will notify the system operator and settlement institution of the system of the MA's decision in writing.

OBLIGATIONS OF DESIGNATED CSSs

11. Principal Obligations

11.1. Upon designation, a designated CSS is required to comply with the obligations imposed under the Ordinance. Failure to comply with any of those obligations is an offence and the party concerned will be liable to a fine and/or imprisonment as provided by relevant provisions of the Ordinance. The principal obligations include: -

(a) Submission of particulars

Section 6(1) requires any system operator or settlement institution of a newly designated CSS to inform the MA in writing within 6 days of the designation particulars about himself, including the name, place of business, postal address and electronic mail address, as well as the aspects of the management or operations of the system for which he is responsible. For any system operator or settlement institution which is a corporation, the names and personal particulars of the directors, chief executive (if any) and shareholders of the corporation are similarly required to be submitted to the MA. Details of any subsequent change in any of those particulars are to be notified to the MA in writing within 6 days of the change taking effect: section 6(2);

(b) Compliance with safety and efficiency requirements

Section 7(1) sets out the general requirements to be complied with in relation to designated CSSs, and places the responsibility for such compliance on their system operators and settlement institutions. Those requirements include safe and efficient operation of the system, the establishment of appropriate operating rules, the existence of adequate compliance arrangements, and the availability of appropriate financial resources. Section 7(3) prohibits any change to a designated CSS's operating rules from being made without the prior written approval of the MA.

Regarding the details of the requirements stipulated in section 7 of the Ordinance, please refer to the "*Guideline on Oversight Framework for Designated Clearing and Settlement Systems*";

(c) Submission of information or documents

Section 12(1) empowers the MA to request information or documents relating to a designated CSS from any system operator or settlement institution of, or participant in, the system when performing his oversight functions under the Ordinance. The system operator or settlement institution of, or the participant in, the system to whom a request is made under section 12(1) is required to submit the information or documents within the period specified in the request;

(d) Examination of books, accounts and transactions

Section 12A(1) empowers the MA to at any time, with or without prior notice to the person concerned, examine any books, accounts or transactions of the system operator or settlement institution of a designated CSS when performing his oversight functions under the Ordinance;

(e) Preparation of audit report when required

Section 12B(1) empowers the MA, after consulting the person concerned, to require the system operator or settlement institution of, or a participant in, a designated CSS to submit to the MA a report prepared by one or more auditors on matters that the MA may require for discharging or exercising his duties and powers under the Ordinance. Section 12B(3) provides the matters on which the report may be prepared. Section 12B(4) provides that the system operator or settlement institution of, or a participant in, a designated CSS may only appoint an auditor approved by the MA or an auditor amongst auditors nominated by the MA for preparing a report required under section 12B(1);

(f) Compliance with directions

Section 13(1) empowers the MA to direct a system operator or settlement institution of a designated CSS to take any action necessary to bring the system into compliance with any of the requirements under section 7(1). Such a direction must specify the action(s) to be taken, include a statement of the respect in which the MA considers the designated CSS not to be in compliance with a requirement under section 7(1) and specify the period within which the direction is to be complied with; and

(g) Provision of information relating to default

Where action has been taken under default arrangements of a designated CSS in respect of a participant in the system, section 53(1) empowers the MA to direct a system operator or settlement institution of a designated CSS to give to any official nominated by the MA, who is responsible for any matter arising out of or connected with the default of the participant in that system, such information as that nominated official may request relating to the default or any matter arising out of or connected with the default.

CERTIFICATE OF FINALITY

12. Finality of settlement

12.1. In general terms, “settlement finality” means “the discharge of an obligation by a transfer of funds and a transfer of securities that have become irrevocable and unconditional”.⁹ Specifically, “finality” refers to the abrogation of all rights otherwise existing at law that would allow the setting aside of a transfer order effected through, or proceedings within, a CSS.

⁹ Definition from the Glossary, *supra*.

12.2. Under the Ordinance, the settlement finality regime is to provide statutory protection of the integrity of transfer orders settled through eligible designated CSSs from the insolvency and other laws in Hong Kong and, where private international law applies, the equivalent laws of a place outside Hong Kong. This is to ensure that transfer orders settled through designated CSSs are irrevocable and will not be reversed by the insolvency of a participant in those systems, whereas any rights resulting from the underlying transaction of any such transfer order will be preserved. Besides finality in respect of transfer orders, the Ordinance also provides legal certainty on: -

- (a) the netting arrangements in designated CSSs; and
- (b) the interests of the system operator and/or the settlement institution of a designated CSS (as the case may be) in collateral security which has been provided by a participant in that system.

13. Certificate of finality

13.1. The certificate of finality invokes the finality provisions as regards a designated CSS in respect of which a certificate of finality is in effect. Under section 16(3), a certificate of finality will be issued to a designated CSS if the MA determines that the system effects ultimate settlement of transfer orders within itself and is in compliance with the relevant requirements under section 7(1). The certificate of finality can be revoked or suspended by the MA if any of the above criteria is no longer met or that there has been a contravention of certain provisions under the Ordinance as regards the system.

13.2. It should be noted that all designated CSSs, regardless of whether the system is issued a certificate of finality or not, are expected to comply with the same set of requirements as stipulated in section 7 of the Ordinance.

13.3. Regarding the requirements stipulated in section 7, please refer to the “*Guideline on Oversight Framework for Designated Clearing and Settlement Systems*”.

14. Issuance criteria

14.1. For the purpose of determining whether the ultimate settlement of transfer orders is effected within a designated CSS itself, the MA will have regard to the definition of the term “settlement” provided in the Glossary, which is “an act that discharges obligations in respect of funds or securities transfers between two or more parties”.

14.2. The term “transfer order”, in relation to a CSS, is defined in the Ordinance to mean: -

an instruction—

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

15. Issuance process

15.1. The Financial Market Infrastructure Oversight and Licensing Division of the HKMA will prepare a review report on whether a designated CSS satisfies the criteria under section 16(1). The review report will then be submitted to the CSS Designation Committee which will consider the review report and make recommendation to the MA for his determination.

15.2. If the MA is unable to determine if a designated CSS meets the criteria under section 16(1), he must inform the system operator in writing, stating which of the criteria

specified in section 16(1) has not been met or what further information he requires in order to make a determination. Where appropriate, the MA may also inform the settlement institution of the MA's concern either in writing or by other means as he considers appropriate. In the course of reviewing the matter, the MA may meet with the system operator or settlement institution of the designated CSS should such need arise.

15.3. If the MA is satisfied that a designated CSS meets the criteria under section 16(1), he must issue a certificate of finality in respect of the system under section 16(3). The certificate will specify a date and the time from which the certificate is to have effect. The MA is required to publish in the Gazette notice of any certificate of finality issued under section 16(3).

16. Obligations of designated CSSs with certificates of finality

16.1. The system operator and settlement institution of, and the participants in, a designated CSS to which a certificate of finality is issued will have the following additional obligations under the Ordinance: -

- (a) under section 30(1), the system operator and settlement institution together are required to prepare a written default proceedings report, 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, to the MA and the persons responsible for the insolvency affairs of the defaulting participant¹⁰. The report shall state the net sum to be payable by or to the defaulting participant and include any other appropriate particulars in respect of the action taken. Subsequent to the receipt of a default proceedings report, the MA may publish the information in such manner as he considers appropriate (e.g., on the HKMA

¹⁰ Or the defaulting participant if there are no such persons.

website) in order to bring it to the attention of the creditors of that defaulting participant; and

- (b) under section 31(1), every participant in the designated CSS is required to notify the system operator and the MA forthwith of his insolvency or prospective insolvency. In this connection, the designated CSS is expected to have appropriate rules and procedures in place to ensure that its participants are in compliance with such requirement.

17. Suspension or revocation of certificate of finality

17.1. Under section 17(1), the MA may at any time suspend or revoke a certificate of finality in respect of a designated CSS if he is of the opinion that: -

- (a) any of the criteria under section 16(1)(a) and (b) is no longer met; or
- (b) there has been any contravention of any of the sections set out in section 17(1)(b) as regards the system.

Any contravention referred to in sub-paragraph (b) above is an indication that there is apparent weakness in the operations and controls of the system, which is likely to adversely affect the safety and efficiency of the system, and, in turn, the integrity of the transfer orders settled through that system.

17.2. As mentioned in the preceding paragraph, it is a ground for the suspension or revocation of a certificate of finality in respect of a designated CSS if , as regards the system, there has been a contravention of any of the following sections as set out in section 17(1)(b): -

- (a) section 6(2) – failure to inform the MA of any change in particulars;

- (b) section 7(3) – failure to seek the prior written approval of the MA for any change to the operating rules;
- (c) section 12 – failure to submit to the MA information or documents as requested;
- (d) sections 13 and 14 – failure to comply with the directions given by the MA;
- (e) section 45 – giving information to the MA that is false or misleading in a material particular; and
- (f) section 53(4) – failure to give information relating to default to the nominated official within the specified period of time.

17.3. The Financial Market Infrastructure Oversight and Licensing Division of the HKMA will prepare a review report on whether a designated CSS meets the criteria under section 17(1)(a) or (b) for the consideration of the CSS Designation Committee, which will make recommendation to the MA for his determination. If the MA decides to suspend or revoke the certificate of finality of the designated CSS, he is required under section 17(2)(a) to notify the system operator and settlement institution of the system in writing of his intention to suspend or revoke the certificate of finality, specifying the grounds on which the suspension or revocation (as the case may be) is to be made. Under section 17(2)(b), the MA is also required to specify in such a notice 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 (as the case may be).

17.4. If any system operator or settlement institution of the designated CSS whose certificate of finality is the subject of a suspension or revocation notice wishes to be heard or to make representations, it should make such a request to the MA in writing within the specified period, giving reasons as to why the certificate of finality should not be suspended or revoked (as the case may be). After reviewing the reasons given by the

system operator and/or settlement institution, the CSS Designation Committee will make recommendation to the MA as to whether the certificate of finality should be suspended or revoked (as the case may be). In the course of reviewing the matter, the MA may meet with the system operator or settlement institution of the designated CSS should such need arise.

17.5. After section 17(2) has been complied with, if the MA decides to proceed to suspend or revoke the certificate of finality of the designated CSS, he is required to issue a notice in writing, specifying in the notice a date and the time from which the suspension or revocation (as the case may be) is to take effect. Under section 17(3), the MA is also required to publish in the Gazette notice of any suspension or revocation of a certificate of finality so effected.

18. Exemptions under sections 28 and 29

18.1. Under sections 28 and 29, certain rights of a relevant insolvency office-holder¹¹ in respect of a defaulting participant in a designated CSS to whom a certificate of finality is issued are preserved even though the relevant transfer orders of that defaulting participant settled through the designated CSS, including the netting of obligations, are protected from insolvency laws. The situations where the rights are preserved are where the underlying transactions are at an undervalue, or there is unfair preference involved in the transfer from the defaulting participant (or his principal), within the 6-month period preceding the insolvency of the defaulting participant (or his principal). Any of the system operators or settlement institutions of a designated CSS with a

¹¹ The term “relevant insolvency office-holder” is defined in the Ordinance to mean: -

- “(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*
- (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”.*

certificate of finality may request the MA to exempt it from the application of these two sections in respect of transactions or transfers that are covered by the two sections, in which it is a party only in the capacity of a system operator or settlement institution (as the case may be). For example, such transactions or transfers may relate to service charges debited by the system operator or settlement institution from the accounts of its participants.

18.2. Under sections 28(4) and 29(4), the MA may so exempt the system operator or settlement institution of a designated CSS which has made an exemption request, by notice published in the Gazette. Where a system operator or settlement institution wishes to seek an exemption under section 28(4) or section 29(4), it should submit its request to the MA in writing with the relevant information or documents specifying those types of transactions with, and/or transfers from, its participants for which the exemption is sought (i.e., those that are done in its capacity as settlement operator or settlement institution (as the case may be)). The MA may also discuss with the relevant system operator or settlement institution of the designated CSS if further clarification is needed.

18.3. The Financial Market Infrastructure Oversight and Licensing Division of the HKMA will review the exemption request and prepare a review report for the consideration of the CSS Designation Committee, which will make recommendation to the MA for his determination. If the MA decides to grant the exemption, he will, by notice published in the Gazette, exempt the relevant system operator or settlement institution under section 28(4) or section 29(4) (as the case may be) and such exemption will take effect as from the date of the Gazette notice.

18.4. It should be noted that where an exemption under section 28(4) or section 29(4) is in effect, it does not exempt the application of the relevant section from transactions or transfers in which the exempted system operator or settlement institution is involved in its own right as a participant (and not as a system operator or settlement institution (as the case may be)) in the system.

APPEAL MECHANISM

19. Payment Systems and Stored Value Facilities Appeals Tribunal (the “Tribunal”)

19.1. The Tribunal is a statutory body established under the Ordinance to review the decisions of the MA relating to, among others¹²: -

- (a) designation – section 4(1);
- (b) revocation of designation – section 5(1);
- (c) issuance of certificate of finality – section 16(1); and
- (d) suspension or revocation of certificate of finality – section 17(1).

19.2. Under the Ordinance, any person aggrieved by any of the decisions set out in paragraph 19.1 above may refer the decision to the Tribunal in writing for review within 30 days of that decision having been published in the Gazette (in the case of a decision under section 4(1) or 5(1)) or having been communicated to the aggrieved person (in the case of a decision under section 16(1) or 17(1)). The Tribunal, if it considers appropriate, may accept referral made beyond the 30-day period.

19.3. The Tribunal has the necessary powers to allow it to properly review the decision referred (e.g., powers to call witnesses, to demand production of evidence, to administer oaths, to punish for contempt, etc.). A determination made by the Tribunal is final and is only subject to appeal on a point of law to the Court of Appeal.

19.4. Any person who intends to refer any of the relevant decisions of the MA to the Tribunal is required to do so in writing stating the grounds on which the review is sought. The contact information of the Tribunal is: -

¹² The Tribunal also reviews the decisions of the MA relating to designated retail payment systems, but they are not covered in this Note.

Secretariat to Payment Systems and Stored Value Facilities Appeals Tribunal

Address: 38/F, Immigration Tower

7 Gloucester Road

Wanchai

Hong Kong.

MISCELLANEOUS

20. Publication of information

20.1. For general information purpose, information regarding the designation of CSSs, issuance of certificates of finality and related matters will be published on the HKMA's website (www.hkma.gov.hk).

21. Contact information

21.1. Any questions in relation to this Note can be made in writing to:

Head, Financial Market Infrastructure Oversight and Licensing Division

Address: Hong Kong Monetary Authority

55/F, Two International Finance Centre

8 Finance Street, Central

Hong Kong.

Information or documents that may be requested under section 52(1)

1. A copy of the operating rules of the system.
2. Details of the type of services offered by the system as a clearing and settlement system.
3. Details of the constitution, structure, nature of business, ownership and management of the system, the system operator and the settlement institution (please use the following standard forms as attached: FMIO-A, FMIO-B, FMIO-C and FMIO-D. Forms FMIO-B, C and D apply to corporations only).
4. Details of the design and function and external system interfaces of the system, including details specifying the point at which a transfer order takes effect as having been entered into the system and of the point after which a transfer order may not be revoked by a participant or any other party.
5. A copy of the last three annual reports, if any, and the financial statements (with any auditor's reports) for the current financial year of the system, the system operator and the settlement institution.
6. The basis for membership of or participation in the system (i.e. admission criteria) and a list of the current members of or participants in the system.
7. Tariff information and schedule.
8. Names of the system operator and settlement institution, if any, of the system and whether the system operator and settlement institution are also participants in the system under the operating rules of the system. Legal contracts or documents between the system operator and the settlement institution in relation to the system.
9. Details of the types, volume and values of transfer orders processed by the system (please use standard form FMIO-E as attached).
10. Detailed business contingency plan.
11. Name and contact details of the person to whom questions relating to the designation of the system should be directed.

For overseas systems, the following additional information may be required: -

1. Name of each of the relevant regulators where the system is regulated by one or more regulators not within the Hong Kong jurisdiction.

2. An outline of any laws and other regulatory requirements relating to the operations of the system, if regulated by a regulator not within the Hong Kong jurisdiction.
3. Evidence of the system's compliance with any applicable laws and regulatory requirements of a jurisdiction outside Hong Kong, which may include comments from home supervisory authority on the system's compliance with any applicable laws and regulatory requirements of a jurisdiction outside Hong Kong.

**INFORMATION ON
SETTLEMENT INSTITUTION / SYSTEM OPERATOR**

1. Name of clearing and settlement system to which this form relates:

| | |
|---|--|
| 2. Name of *settlement institution/ system operator | |
| 3. Legal form (body corporate, partnership, etc) | |
| 4. Country of incorporation or formation | |
| 5. Date of incorporation or formation | |
| 6. Registered office | |
| 7. Principal place of business | |
| 8. Postal address | |
| 9. Electronic mail address / website address | |
| 10. Aspects of the management or operations of the system for which the entity is responsible | |
| 11. Name of contact person • Telephone number • Fax number • Electronic mail address | |
| 12. Please provide an organisation chart of your company. | |

* Delete whichever is not applicable

Date: _____

NAME AND PARTICULARS OF DIRECTORS

Name of company to which this form relates:

| Name | Particulars | | |
|------|------------------------|----------------|-------------------------|
| | Correspondence Address | Contact number | Electronic mail address |
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |

Date: _____

FORM FMIO-C
(applicable to corporations only)

NAME AND PARTICULARS OF THE CHIEF EXECUTIVE

Name of company to which this form relates:

| Name | Particulars | | |
|------|------------------------|----------------|-------------------------|
| | Correspondence Address | Contact number | Electronic mail address |
| | | | |

Date: _____

FORM FMIO-D
(applicable to corporations only)

NAME AND PARTICULARS OF TOP TEN SHAREHOLDERS

Name of company to which this form relates:

| Name | Number of shares | % of holding |
|------|------------------|--------------|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |
| 9. | | |
| 10. | | |

Date: _____

TURNOVER INFORMATION

Name of clearing and settlement system to which this form relates:

1. Aggregate value of transfer orders transferred, cleared or settled through the system in a normal business day (in billions of the original currency transferred, cleared or settled)

| Types | *20xxQ4 | 20xxQ3 | 20xxQ2 | 20xxQ1 | 20(xx-1)Q4 |
|-------|---------|--------|--------|--------|------------|
| 1. | | | | | |
| 2. | | | | | |
| 3. | | | | | |
| 4. | | | | | |
| 5. | | | | | |

* The latest figures available. For a clearing and settlement system that has not yet been in operation, the estimated figures should be provided.

2. Average value of transfer orders transferred, cleared or settled through the system in a normal business day (in thousands of the original currency transferred, cleared or settled)

| Types | *20xxQ4 | 20xxQ3 | 20xxQ2 | 20xxQ1 | 20(xx-1)Q4 |
|-------|---------|--------|--------|--------|------------|
| 1. | | | | | |
| 2. | | | | | |
| 4. | | | | | |
| 5. | | | | | |
| 6. | | | | | |

* The latest figures available. For a clearing and settlement system that has not yet been in operation, the estimated figures should be provided.

3. Number of transfer orders transferred, cleared or settled through the system in a normal business day

| Types | *20xxQ4 | 20xxQ3 | 20xxQ2 | 20xxQ1 | 20(xx-1)Q4 |
|-------|---------|--------|--------|--------|------------|
| 1. | | | | | |
| 2. | | | | | |
| 3. | | | | | |
| 4. | | | | | |

FORM FMIO-E

| | | | | | |
|----|--|--|--|--|--|
| 5. | | | | | |
|----|--|--|--|--|--|

* The latest figures available. For a clearing and settlement system that has not yet been in operation, the estimated figures should be provided.

Date: _____

Information to be Collected from SO/SI

| Information | To be submitted by |
|---|--------------------|
| (a) To be submitted before the end of the first year of designation | |
| Liquidity commitment or other financial commitment by SI for daily operation of system | SI |
| Current credit rating(s) | SI |
| Throughput guidelines (if changed) | SI |
| Results of stress testing, if any (once the results are available) | SO |
| Fees and cost <ul style="list-style-type: none"> - Joining cost (breakdown into (i) entry/admission fee, (ii) basic system set-up costs (limit to those costs known to SO) and (iii) membership fee). - Calculation basis of (i) admission fee and (ii) membership fee. - Transaction tariff (breakdown by types) and how the tariff is determined (e.g. whether determined on a cost-recovery basis). - Other fees of participating in the system, if any. | SO |
| Outsourcing plan (if any) (for any outsourcing plan not yet implemented) | SO |
| Internal and/or external auditor's report on various risk areas (if any) | SO and SI |
| (b) To be submitted if and when available | |
| Development plan and business forecast for the designated CSS for the coming year, if available. | SO and/or SI |
| Budgetary plan highlighting the resources devoted to system maintenance and development for the coming year, if available. | SO and/or SI |
| (c) To be submitted within 2 weeks after available | |
| Audited financial statements and accounts of SO and SI, such as balance sheet, cash flow statement, profit and loss account for the latest financial year. | SO and SI |
| Results of stress testing, if any (once the results are available) | SO |

FORM FMIO-E

| | |
|--|-----------|
| Internal and/or external auditor's report on various risk areas (if any) if initiated by SO/SI | SO and SI |
| (d) To be submitted within 2 weeks when changes are made, highlighting the changes | |
| Current credit rating(s) | SI |
| Throughput guidelines (if changed) | SI |
| Fees and cost <ul style="list-style-type: none"> - Joining cost (breakdown into (i) entry/admission fee, (ii) basic system set-up costs (limit to those costs known to SO) and (iii) membership fee). - Calculation basis of (i) admission fee and (ii) membership fee. - Transaction tariff (breakdown by types) and how the tariff is determined (e.g. whether determined on a cost-recovery basis). - Other fees of participating in the system, if any. | SO |
| Outsourcing plan (if any) (when new plan is available) | SO |
| Business continuity plan (if any, during the year) | SO and SI |
| Organisation chart and structure (if changed) | SO and SI |
| System specifications | SO and SI |
| (e) To be submitted as and when required by the MA | |
| Internal and/or external auditor's report on various risk areas as and when required by the MA | SO and SI |
| (f) To be submitted on a yearly basis | |
| Liquidity commitment or other financial commitment by SI for daily operation of system. | SI |
| Development plan and business forecast for the designated CSS for the coming year, if available. | SO and SI |
| Budgetary plan highlighting the resources devoted to system maintenance and development for the coming year, if available. | SO and SI |