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Payment Systems (Oversight) Bill

Bill No. 39/2005.

Read the first time on 21st November 2005.

THE PAYMENT SYSTEMS (OVERSIGHT) ACT 2005

(No. of 2005)

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A BILL

i n t i t u l e d

An Act to provide for the oversight of payment systems and stored value facilities, to make related amendments to the Banking Act (Chapter 19 of the 2003 Revised Edition) and to make consequential amendments to the Companies Act (Chapter 50 of the 1994 Revised Edition) and the Road Traffic Act (Chapter 276 of the 2004 Revised Edition), and for matters connected therewith.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART I

PRELIMINARY

Short title and commencement

- 5 **1.** This Act may be cited as the Payment Systems (Oversight) Act 2005 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

- 2.—(1) In this Act, unless the context otherwise requires —
- 10 “access”, in relation to a designated payment system, means the entitlement or eligibility of a person to become a participant in the payment system, on a commercial basis on terms that are fair and reasonable;
- 15 “access regime”, in relation to a designated payment system, means an access regime imposed by the Authority under section 15 and that is in force;
- “approved bank” means a bank in Singapore that is approved by the Authority under section 35(1) as an approved bank in respect of a stored value facility;
- 20 “approved holder” means a holder that is approved by the Authority under section 35(1) as an approved holder in respect of a stored value facility;
- “Authority” means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186);
- 25 “bank in Singapore” has the same meaning as in section 2(1) of the Banking Act (Cap. 19);
- “book” includes any record, register, document or other record of information, and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or in any electronic form or otherwise;
- 30 “chief executive officer”, in relation to the operator of a designated payment system, means any person by whatever name described, who is —

(a) in the direct employment of, or acting for or by arrangement with, the operator of the designated payment system; and

(b) principally responsible for the management and conduct of the business of the operator in Singapore;

5 “corporation” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“designated payment system” means a payment system that is designated by the Authority under section 7 to be a designated payment system for the purposes of this Act;

10 “director” has the same meaning as in section 4(1) of the Companies Act;

“holder”, in relation to a stored value facility, means the person who holds the stored value and makes payment for goods or services referred to in the definition of “stored value facility”;

15 “operator”, in relation to a payment system, means a person who operates the payment system;

“participant”, in relation to a payment system, means any person who is recognised in the rules of the payment system or otherwise recognised as being eligible to settle payments through the payment system with other participants;

20 “payment system” means a funds transfer system or other system that facilitates the circulation of money, and includes any instruments and procedures that relate to the system;

“settlement institution” means a person who provides facilities for —

25 (a) the participants of a payment system to hold funds; and

(b) the settling of transactions between the participants;

“share” has the same meaning as in section 4(1) of the Companies Act;

30 “statutory corporation” means any body corporate established by or under written law to perform or discharge any public function;

“stored value”, in relation to a stored value facility, means the sum of money that —

(a) has been paid in advance for goods or services intended to be purchased through the use of the stored value facility;

(b) is available for use from time to time for making payment under the terms and conditions applying to the stored value facility; and

(c) is held by the holder of the stored value facility;

5 “stored value facility” means —

(a) a facility (other than cash), whether in physical or electronic form, which is purchased or otherwise acquired by a person (referred to in this Act as the user) to be used as a means of making payment for goods or services up to the amount of the stored value that is available for use under the terms and conditions applying to the facility, and payment for the goods or services is made by the holder of the stored value in respect of the facility (rather than by the user); or

10 (b) all the facilities referred to in paragraph (a) provided under the same terms and conditions;

“substantial shareholder” has the same meaning as in Division 4 of Part IV of the Companies Act (Cap. 50);

“widely accepted stored value facility” means a stored value facility —

20 (a) in which the stored value is held by an approved holder; and

(b) in respect of which an approved bank has undertaken to be fully liable for the stored value.

(2) In any case where the functions of —

25 (a) the operator or settlement institution of a payment system are assumed by or shared among more than one operator or settlement institution, a reference in this Act to the operator or settlement institution shall be read as a reference to each of such operators or settlement institutions; and

30 (b) the holder of a stored value facility are assumed by or shared among more than one holder, a reference in this Act to the holder shall be read as a reference to each of such holders.

(3) In this Act —

(a) a reference to a facility includes a reference to a right to use a facility;

(b) a reference to the purchase of a facility includes a reference to the payment of an amount of money for a right to use a facility; and

5 (c) a reference to a payment system includes a reference to a system that operates a stored value facility.

Application of Act

3.—(1) Parts III and IV shall not apply to the Authority in its capacity as —

- (a) a participant;
 - 10 (b) an operator; or
 - (c) a settlement institution,
- of any payment system.

(2) Part VII shall not apply to any statutory corporation unless the Minister prescribes by order in the *Gazette* that that statutory corporation
15 is a statutory corporation to which Part VII applies.

PART II

FUNCTIONS AND POWERS OF AUTHORITY

Authority to exercise oversight functions in respect of payment systems and stored value facilities

20 4. The Authority shall —

- (a) exercise oversight functions in respect of payment systems and stored value facilities under this Act; and
- (b) have power to do all such acts, matters and things as are necessary to be carried out by the Authority under this Act.

Authority to have regard to public interest

25 5. In exercising its powers in relation to payment systems under this Act, the Authority shall have regard to the interests of the public, and in this respect, the Authority may take into consideration —

- (a) whether any payment system is, in the opinion of the
30 Authority —

- (i) financially safe for use by participants;
 - (ii) efficient; and
 - (iii) not materially causing or contributing to increased risk to the financial system; and
- 5 (b) such other matters as the Authority may consider to be relevant.

PART III

INFORMATION GATHERING POWERS OVER PAYMENT SYSTEMS

Provision of information to Authority

10 **6.—**(1) The Authority may, by notice in the form and manner prescribed, require —

- (a) any participant;
- (b) any operator or any person acting on behalf of an operator; or
- (c) any settlement institution,

15 of a payment system to provide to the Authority, within a reasonable period specified in the notice, all such information relating to the payment system as may be required by the Authority.

(2) Without prejudice to the generality of subsection (1), the Authority may in a notice issued under that subsection require any person referred to in paragraph (a), (b) or (c) of subsection (1) to provide, whether in the form of a return to be provided on a periodic basis or otherwise —

- (a) information relating to —
 - (i) the operation of the payment system; and
 - (ii) the pricing of, or other form of consideration for, the services offered by the payment system;
- (b) information relating to the participation or other involvement of that person in the payment system; and
- (c) such other information as the Authority may require for the purposes of this Act.

(3) Subject to subsection (5), any person to whom a notice is issued under subsection (1) shall comply with the notice.

(4) Any person who fails to comply with a notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(5) A person to whom a notice is issued under subsection (1) shall not be obliged to disclose any information where he is prohibited by any written law from disclosing such information.

PART IV

DESIGNATION OF PAYMENT SYSTEMS

Power of Authority to designate payment systems

7.—(1) The Authority may, by order published in the *Gazette*, designate a payment system as a designated payment system for the purposes of this Act, if the Authority is satisfied that —

- (a) a disruption in the operations of the payment system could trigger, cause or transmit further disruption to participants or systemic disruption to the financial system of Singapore;
- (b) a disruption in the operations of the payment system could affect public confidence in payment systems or the financial system of Singapore; or
- (c) it is otherwise in the interests of the public to do so.

(2) Any order made under subsection (1) shall identify the operator and the settlement institution of the designated payment system, and shall continue to have effect until it is withdrawn by the Authority.

(3) An operator or a settlement institution who is aggrieved by a decision of the Authority to designate the payment system as a designated payment system may, within 30 days after the order is published in the *Gazette*, appeal in writing to the Minister whose decision shall be final.

(4) Notwithstanding the lodging of an appeal under subsection (3), the designation by the Authority under this section shall continue to have effect pending the decision of the Minister.

5 (5) The Minister may, when deciding an appeal under subsection (3), direct that the Authority shall not designate the payment system as a designated payment system, and such direction shall have effect from the date of the Minister's decision.

Prohibition on holding out as designated payment system

10 **8.**—(1) No person shall hold himself out as the operator or settlement institution of a designated payment system unless the payment system has been designated by the Authority under section 7.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both and, in the
15 case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Annual fees payable by operator of designated payment system

20 **9.**—(1) Every operator of a designated payment system shall pay to the Authority such annual fees as may be prescribed and in such manner as may be specified by the Authority.

(2) The Authority may, where it considers appropriate, refund or remit in whole or in part any annual fee paid or payable under subsection (1).

Withdrawal of designation of payment system

25 **10.**—(1) The Authority may, by order published in the *Gazette*, withdraw the designation of any designated payment system at any time if the Authority is of the opinion that the considerations in section 7(1) are no longer valid or satisfied.

30 (2) The Authority shall not on its own initiative withdraw the designation of any designated payment system without giving the operator and the settlement institution an opportunity to be heard.

PART V

OBLIGATIONS OF OPERATORS AND SETTLEMENT
INSTITUTIONS OF DESIGNATED PAYMENT SYSTEMS**Obligation of operator to notify Authority of businesses and
acquisition of corporations**

11.—(1) An operator of a designated payment system shall notify the Authority as soon as practicable after the occurrence of any of the following events:

(a) the carrying on of any business by the operator of the designated payment system other than —

(i) the business of operating a payment system;

(ii) a business incidental to operating a payment system; or

(iii) such business or class of businesses as the Authority may prescribe;

(b) the acquisition by the operator of the designated payment system of a substantial shareholding in a corporation which does not carry on —

(i) the business of operating a payment system;

(ii) a business incidental to operating a payment system; or

(iii) such business or class of businesses as the Authority may prescribe.

(2) An operator of a designated payment system shall, within 2 months after the designation of the payment system, notify the Authority of its substantial shareholding in a corporation which does not carry on —

(a) the business of operating a payment system;

(b) a business incidental to operating a payment system; or

(c) such business or class of businesses as the Authority may prescribe.

(3) Without prejudice to the generality of section 20(1), the Authority may, at any time after receiving the notification referred to in subsection

(1) or (2), issue directions to the operator of the designated payment system —

(a) where the notification relates to a matter referred to in subsection (1)(a) —

5 (i) to cease carrying on the first-mentioned business referred to in subsection (1)(a); or

(ii) to carry on the first-mentioned business referred to in subsection (1)(a) on such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that
10 this is necessary for any of the purposes referred to in section 20(1); or

(b) where the notification relates to a matter referred to in subsection (1)(b) or (2) —

15 (i) to dispose of the shareholding referred to in subsection (1)(b) or (2); or

(ii) to exercise its rights relating to such shareholding on such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any of the purposes referred to in section 20(1),

20 and the operator of the designated payment system shall comply with such directions.

(4) Any person who contravenes subsection (1) or (2) or any direction issued by the Authority under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in
25 the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Obligation of operator and settlement institution to notify Authority of certain events

30 **12.**—(1) An operator and a settlement institution of a designated payment system shall notify the Authority as soon as practicable after the occurrence of any of the following events:

(a) an intention to make a material change to the nature of the operating rules, settlement procedures or activities of the
35 designated payment system;

- (b) an event or irregularity that impedes or prevents access to, or impairs the usual operations of the designated payment system or its settlement operations, as the case may be;
 - (c) the operator or settlement institution, as the case may be, becoming, or likely to become, insolvent or unable to meet its financial, statutory, contractual or other obligations;
 - (d) any other event that the Authority may prescribe by regulations or specify by notice in writing.
- (2) Any operator or settlement institution of a designated payment system who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000.

Obligation of operator to submit periodic reports

- 13.**—(1) An operator of a designated payment system shall submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.
- (2) Any operator of a designated payment system who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Obligation of operator and settlement institution to appoint auditor

- 14.**—(1) An operator and a settlement institution of a designated payment system shall appoint an auditor to audit the accounts of the operator or the settlement institution, as the case may be, and where, for any reason, that auditor ceases to act for such operator or settlement institution, the operator or settlement institution shall, as soon as practicable thereafter, appoint another auditor.
- (2) A person shall not be qualified for appointment as an auditor under subsection (1) unless he is a public accountant who is registered or deemed to be registered under the Accountants Act (Cap. 2).

PART VI

OVERSIGHT POWERS OVER DESIGNATED PAYMENT SYSTEMS

Power of Authority to impose access regime

5 **15.**—(1) The Authority may, by order published in the *Gazette*, impose an access regime in respect of a designated payment system on the person who determines access to the designated payment system, regardless of whether he is a participant, an operator or a settlement institution of the designated payment system, on such terms and conditions as the Authority may consider appropriate.

10 (2) In considering whether to impose an access regime under subsection (1), the Authority shall have regard to the following:

- (a) whether the imposition of the access regime in respect of the designated payment system would be in the interests of the public;
- 15 (b) the interests of the current participants, operator and settlement institution of the designated payment system;
- (c) the interests of persons who, in the future, may require or desire access to the designated payment system; and
- (d) such other matters as the Authority may consider to be relevant.

20 (3) The Authority, in imposing an access regime under subsection (1), shall ensure that the access regime is fair and not discriminatory.

Variation of access regime

25 **16.**—(1) The Authority may, by order published in the *Gazette*, vary an access regime which has been imposed in respect of a designated payment system under section 15, on such terms and conditions as the Authority may consider appropriate.

(2) In considering whether to vary an access regime under subsection (1), the Authority shall have regard to —

- 30 (a) whether variation of the access regime in respect of the designated payment system would be in the interests of the public;

- (b) the interests of the current participants, operator and settlement institution of the designated payment system;
- (c) the interests of persons who, in the future, may require or desire access to the designated payment system; and
- 5 (d) such other matters as the Authority may consider to be relevant.

Cessation and revocation of access regime

17.—(1) An access regime in respect of a designated payment system shall cease to be in force if —

- 10 (a) the order imposing or varying the access regime under section 15(1) or 16(1), as the case may be, provides for an expiry date and that date is reached;
- (b) the Authority revokes the access regime under subsection (2); or
- (c) the payment system concerned ceases to exist or operate, or ceases to be a designated payment system.

15 (2) The Authority may, by order published in the *Gazette*, revoke an access regime if the Authority considers it appropriate to do so.

(3) In considering whether to revoke an access regime under subsection (2), the Authority shall have regard to the following:

- 20 (a) whether the revocation of the access regime would be in the interests of the public;
- (b) the interests of the current participants, operator and settlement institution of the designated payment system;
- (c) the interests of persons who, in the future, may require or desire access to the designated payment system; and
- 25 (d) such other matters as the Authority may consider to be relevant.

Right to apply to High Court

30 **18.**—(1) If a person has been denied access to a designated payment system by the person who determines access to the designated payment system, regardless of whether he is a participant, an operator or a settlement institution of the designated payment system, in contravention of a term or condition of the access regime that has been imposed under section 15(1) or 16(1), he may apply to the High Court for an order under subsection (2).

(2) An applicant for an order under subsection (1) shall give to the Authority notice in writing of the application together with a copy of the application, and the Authority may apply to the High Court to be joined as a party to the proceedings.

5 (3) If the High Court is satisfied that the person who determines access to a designated payment system, regardless of whether he is a participant, an operator or a settlement institution of the designated payment system, has contravened a term or condition of the access regime, the High Court may make —

10 (a) an order directing the participant, operator or settlement institution, as the case may be, to comply with that term or condition of the access regime;

(b) an order directing the participant, operator or settlement institution, as the case may be, to compensate any person who
15 has suffered loss or damage as a result of the contravention; or

(c) such other order as the High Court thinks fit.

(4) The High Court may, upon an application by any person having a sufficient interest, or on its own motion, discharge or vary any order made under this section but no discharge or variation of any order shall be made
20 by the High Court unless a reasonable opportunity has been given for the Authority to make representations to the High Court.

Power of Authority to impose conditions or restrictions

19.—(1) The Authority may, by notice in writing, impose on a participant, an operator or a settlement institution of a designated payment
25 system such conditions or restrictions as the Authority may think fit.

(2) The Authority may, at any time, by notice in writing to a participant, an operator or a settlement institution of the designated payment system, vary any condition or restriction as the Authority may think fit.

(3) Without affecting the generality of subsection (1) or (2), the
30 conditions or restrictions that the Authority may impose include conditions or restrictions relating to —

(a) the activities that the operator or settlement institution of the designated payment system may undertake; and

(b) the requirement for the operator or settlement institution of the
35 designated payment system to operate as a corporation.

- (4) Any participant, operator or settlement institution of a designated payment system which fails to comply with any condition or restriction imposed under subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case
 5 of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Power of Authority to issue written directions

20.—(1) The Authority may, if it thinks —

- 10 (a) it is necessary or expedient for ensuring the integrity and proper management of a designated payment system;
- (b) it is necessary or expedient for the effective administration of the Act; or
- (c) it is otherwise in the interests of the public or a section of the public,

15 issue written directions, either of a general or specific nature, to —

- (i) any participant or class of participants;
- (ii) any operator; or
- (iii) any settlement institution,

20 of a designated payment system, and that person or class of persons shall comply with such directions.

(2) Without prejudice to the generality of subsection (1), any written direction issued under that subsection may relate to —

- 25 (a) the appropriate actions to be taken by the participant or class of participants, or the operator or the settlement institution, in relation to its business;
- (b) the appointment of a person approved by the Authority to advise the participant or class of participants, or the operator or the settlement institution, on the proper conduct of its business;
- 30 (c) the conditions that will apply if any function of the operator or the settlement institution is outsourced; and
- (d) such other matters as the Authority may consider necessary or expedient or in the interests of the public or a section of the public.

(3) Any person who fails to comply with a written direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Power of Authority to approve chief executive officer and directors of operator

21.—(1) No operator of a designated payment system shall appoint a person as its —

- (a) chief executive officer in Singapore; or
- (b) director in Singapore,

unless the operator has obtained the approval of the Authority.

(2) Subject to section 22, where an operator of a designated payment system has obtained the approval of the Authority to appoint a person as its chief executive officer or director under subsection (1), the person may, upon the expiry of his term, be reappointed as chief executive officer or director, as the case may be, without the approval of the Authority.

(3) An application for approval under subsection (1) shall be made in such form and manner as the Authority may prescribe.

(4) Without prejudice to any other matters that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1), have regard to such criteria as the Authority may prescribe or specify in written directions.

(5) Subject to subsection (6), the Authority shall not refuse an application for approval under this section without giving the operator of the designated payment system an opportunity to be heard.

(6) The Authority may refuse an application for approval under subsection (1) on any of the following grounds without giving the operator of the designated payment system an opportunity to be heard:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(8) The operator of a designated payment system shall, as soon as practicable, give written notice to the Authority of the resignation or removal of its chief executive officer or director.

(9) Any person who contravenes subsection (1) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Removal of chief executive officer and directors

22.—(1) Where the Authority is satisfied that the chief executive officer or a director of an operator of a designated payment system —

(a) has wilfully contravened or wilfully caused that operator of the designated payment system to contravene this Act;

(b) has without reasonable justification or excuse failed to ensure compliance with this Act;

(c) has failed to discharge the duties or functions of his office or employment;

(d) is an undischarged bankrupt, whether in Singapore or elsewhere;

(e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;

(f) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or

(g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly,

the Authority may, if it thinks it necessary in the interests of the public or a section of the public, by notice in writing direct the operator of the designated payment system to remove the chief executive officer or director from his office or employment, and that operator shall comply with such notice notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether the chief executive officer or a director of an operator of a designated payment system has failed to discharge the duties or functions of his office or employment for the purposes of subsection (1)(c), have regard to such criteria as the Authority may prescribe or specify in written directions.

(3) Subject to subsection (4), the Authority shall not direct an operator of a designated payment system to remove from office or employment the chief executive officer or a director without giving that operator an opportunity to be heard.

(4) The Authority may direct an operator of a designated payment system to remove the chief executive officer or a director from his office or employment under subsection (1) on any of the following grounds without giving the operator an opportunity to be heard:

(a) the chief executive officer or director is an undischarged bankrupt, whether in Singapore or elsewhere;

(b) the chief executive officer or director has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(5) Where the Authority directs an operator of a designated payment system to remove from his office or employment the chief executive officer or director under subsection (1), the Authority need not give that chief executive officer or director an opportunity to be heard.

(6) Any operator who is aggrieved by a direction of the Authority under subsection (1) may, within 30 days after the operator is notified of the direction, appeal in writing to the Minister whose decision shall be final.

5 (7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.

10 (8) The Minister may, when deciding an appeal under subsection (6), make such modifications as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the Minister's decision.

(9) Subject to subsection (10), no criminal or civil liability shall be incurred by —

(a) an operator of a designated payment system; or

15 (b) any person acting on behalf of an operator of a designated payment system,

in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

20 (10) Any operator of a designated payment system which, without reasonable excuse, contravenes a written direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

25 **Control of substantial shareholding in operator**

30 **23.**—(1) No person shall enter into any agreement to acquire shares in an operator of a designated payment system by virtue of which he would, if the agreement had been carried out, become a substantial shareholder of the operator without first obtaining the approval of the Authority to enter into the agreement.

(2) No person shall become —

(a) a 12% controller; or

(b) a 20% controller,

of an operator of a designated payment system without first obtaining the approval of the Authority.

(3) In subsection (2) —

“12% controller” means a person who, alone or together with his
5 associates —

(a) holds 12% or more but less than 20% of the number of shares
in the operator of the designated payment system; or

(b) is in a position to control 12% or more but less than 20% of
the votes in the operator of the designated payment system;

10 “20% controller” means a person who, alone or together with his
associates —

(a) holds 20% or more of the number of shares in the operator of
the designated payment system; or

(b) is in a position to control 20% or more of the votes in the
15 operator of the designated payment system.

(4) In this section —

(a) a person holds a share if —

(i) he is deemed to have an interest in that share under section
7(6) to (10) of the Companies Act (Cap. 50); or

20 (ii) he otherwise has a legal or an equitable interest in that share,
except such interest as is to be disregarded under section
7(6) to (10) of the Companies Act;

(b) a reference to the control of a percentage of the votes in an
operator of a designated payment system is a reference to the
25 control, whether direct or indirect, of that percentage of the total
number of votes that might be cast in a general meeting of the
operator of the designated payment system; and

(c) a person, *A*, is an associate of another person, *B*, if —

30 (i) *A* is the spouse, a parent, remoter lineal ancestor or step-
parent, a son, daughter, remoter issue, step-son or step-
daughter or a brother or sister of *B*;

(ii) *A* is a corporation the directors of which are accustomed or
under an obligation, whether formal or informal, to act in

accordance with the directions, instructions or wishes of *B*,
or where *B* is a corporation, of the directors of *B*;

(iii) *B* is a corporation the directors of which are accustomed or
under an obligation, whether formal or informal, to act in
accordance with the directions, instructions or wishes of *A*,
or where *A* is a corporation, of the directors of *A*;

(iv) *A* is a person who is accustomed or under an obligation,
whether formal or informal, to act in accordance with the
directions, instructions or wishes of *B*;

(v) *B* is a person who is accustomed or under an obligation,
whether formal or informal, to act in accordance with the
directions, instructions or wishes of *A*;

(vi) *A* is a related corporation of *B*;

(vii) *A* is a corporation in which *B*, alone or together with other
associates of *B* as described in sub-paragraphs (ii) to (vi), is
in a position to control not less than 20% of the votes in *A*;

(viii) *B* is a corporation in which *A*, alone or together with other
associates of *A* as described in sub-paragraphs (ii) to (vi), is
in a position to control not less than 20% of the votes in *B*;
or

(ix) *A* is a person with whom *B* has an agreement or
arrangement, whether oral or in writing and whether express
or implied, to act together with respect to the acquisition,
holding or disposal of shares or other interests in, or with
respect to the exercise of their votes in relation to, the
operator of the designated payment system.

Approval of applications for substantial shareholding

24.—(1) The Authority may grant its approval referred to in section
23(1) or (2) subject to such conditions or restrictions as the Authority may
think fit.

(2) Without prejudice to subsection (1), the Authority may, for the
purposes of securing compliance with section 23(1) or (2) or any
condition or restriction imposed under subsection (1), by notice in writing,
direct the transfer or disposal of all or any of the shares of an operator of a

designated payment system in which the substantial shareholder has an interest.

(3) Until a person to whom a direction is issued under subsection (2) transfers or disposes of the shares which are the subject of the direction, and notwithstanding anything to the contrary in the Companies Act (Cap. 50) or the memorandum or articles of association of the operator of the designated payment system —

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) the operator of the designated payment system shall not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and
- (c) except in a liquidation of the operator of the designated payment system, the operator of the designated payment system shall not make any payment (whether by way of cash dividend, dividend in kind, or otherwise) in respect of the shares which are the subject of the direction.

(4) Any offer or issue of shares by an operator of a designated payment system in contravention of subsection (3)(b) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (2) shall immediately return those shares to the operator of the designated payment system, upon which the operator of the designated payment system shall return to the person any payment received from him in respect of those shares.

(5) Any payment made by an operator of a designated payment system in contravention of subsection (3)(c) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (2) shall immediately return the payment he has received to the operator of the designated payment system.

(6) The Authority may exempt —

- (a) any person or class of persons; or
 - (b) any class or description of shares or interests in shares,
- from section 23(1) or (2), subject to such conditions or restrictions as may be imposed by the Authority.

Contravention of sections 23 and 24

25.—(1) Any person who contravenes section 23(1) or (2), or any condition or restriction imposed by the Authority under section 24(1), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

(2) Any person who contravenes section 24(3)(b) or (c), (4) or (5) or any direction issued by the Authority under section 24(2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Additional powers of Authority in respect of auditors

26.—(1) If an auditor of an operator or a settlement institution of a designated payment system, in the course of the performance of his duties, becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the operator or settlement institution, as the case may be, to a material extent;
- (b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts of the operator or settlement institution, as the case may be, including any irregularity that affects or jeopardises, or may affect or jeopardise, the interests of the participants of the designated payment system,

the auditor shall immediately send to the Authority a written report of the matter or the irregularity.

(2) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in his report under subsection (1).

(3) Subsection (2) shall not restrict or affect any right, privilege or immunity that the auditor may have, apart from this section, as a defendant in an action for defamation.

5 (4) The Authority may impose all or any of the following duties on an auditor of an operator or a settlement institution of a designated payment system:

- (a) a duty to submit to the Authority such additional information and reports in relation to his audit as the Authority considers necessary;
- 10 (b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the operator or settlement institution of the designated payment system, as the case may be;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- 15 (d) a duty to submit to the Authority a report on any matter arising out of his audit, examination or establishment referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

20 (5) The operator or settlement institution of the designated payment system shall remunerate the auditor in respect of the discharge by him of such duties as the Authority may impose under subsection (4).

(6) Any auditor of an operator or a settlement institution of a designated payment system who contravenes subsection (1) or fails to comply with any duty imposed under subsection (4) shall be guilty of an offence.

25 **Inspection by Authority**

27.—(1) The Authority may inspect, under conditions of secrecy, the books of an operator or a settlement institution of a designated payment system.

(2) For the purposes of an inspection under this section —

- 30 (a) an operator or a settlement institution of a designated payment system or any person in possession of the books, shall produce such books to the Authority and give such information and facilities as may be required by the Authority; and

- (b) an operator or a settlement institution of a designated payment system shall procure that any person who is in possession of the books referred to in paragraph (a) produce such books to the Authority and give such information and facilities as may be required by the Authority.

(3) Nothing in subsection (2) shall require the production of any of the books of an operator or a settlement institution of a designated payment system at such times or at such places as would unduly interfere with the conduct of the normal daily operations of the designated payment system.

(4) The Authority may —

- (a) make copies of, or take possession of, any of the books;
- (b) use, or permit the use of, any of the books for the purposes of any proceedings under this Act; and
- (c) retain possession of any of the books for so long as is necessary —
 - (i) for the purposes of exercising a power conferred by this section (other than subsection (7));
 - (ii) for a decision to be made about whether or not any proceedings under this Act to which the books concerned would be relevant should be instituted; or
 - (iii) for such proceedings to be instituted and carried on.

(5) No person shall be entitled, as against the Authority, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(6) While the books are in the possession of the Authority, the Authority —

- (a) shall permit another person to inspect at all reasonable times such of the books (if any) as the other person would be entitled to inspect if they were not in the Authority's possession; and
- (b) may permit another person to inspect any of the books.

(7) The Authority may require a person who produced any of the books to the Authority to explain to the best of his knowledge and belief any matter about the compilation of the books or to which the books relate.

(8) Any person who fails, without reasonable excuse, to comply with subsection (2) or with a requirement of the Authority under subsection (7)

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

5 **Emergency powers of Authority**

28.—(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public, the Authority may, by notice in writing, direct an operator or a settlement institution of a designated payment
10 system to take such action as the Authority considers necessary to maintain or restore the safe and efficient operation of the designated payment system.

(2) Without prejudice to the generality of subsection (1), the actions which the Authority may direct an operator or a settlement institution of a
15 designated payment system to take include modifying or suspending any of the rules of the designated payment system.

(3) Where an operator or a settlement institution of a designated payment system fails to comply with a direction of the Authority under subsection (1) within such time as is specified by the Authority, the
20 Authority may —

- (a) appoint a person to advise the operator or settlement institution in the proper conduct of its operations;
- (b) assume control of and carry on the operations of the operator or settlement institution (or both) or direct some other person to do
25 so on behalf of the Authority;
- (c) present a petition to the High Court for the winding up or bankruptcy, as the case may be, of the operator or settlement institution;
- (d) require the operator to cease operation of the designated payment
30 system; or
- (e) take such other action, as the Authority thinks fit, to maintain or restore the safe and efficient operation of the designated payment system.

(4) The Authority may modify or cancel any action taken by it under
35 subsection (1), and in so modifying or cancelling any such action, the

Authority may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

5 (5) Where the Authority has assumed control of the operations of an operator or a settlement institution of a designated payment system pursuant to subsection (3)(b), the Authority shall remain in control of, and continue to carry on, the operations in the name of the operator or settlement institution, as the case may be, and on its behalf until such time as the Authority is satisfied that the reasons for which it assumed control have ceased to exist or that it is no longer necessary that the Authority
10 should remain in control.

(6) Where the Authority has assumed control of the operations of an operator or a settlement institution of a designated payment system pursuant to subsection (3)(b) or ceased to control the operations of an operator or a settlement institution of a designated payment system
15 pursuant to subsection (5), the Authority shall notify that fact in the *Gazette*.

(7) Where the Authority has assumed control of the operations of an operator or a settlement institution of a designated payment system pursuant to subsection (3)(b), the operator or settlement institution shall
20 submit its operations to the control of the Authority and shall provide the Authority with such facilities as the Authority may require to carry on its operations.

(8) Any operator or settlement institution which fails to comply with a direction issued under subsection (1), or with subsection (7) or with any
25 requirement of the Authority under subsection (7), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

30 (9) The Authority may at any time (whether or not the appointment of the person has terminated) fix the remuneration and expenses to be paid by the operator or settlement institution of the designated payment system to any person appointed by the Authority under subsection (3)(a) to advise the operator or settlement institution in the proper conduct of its
35 operations.

(10) Where, under subsection (3)(b), the Authority has assumed control of the operations of an operator or a settlement institution of a designated

payment system or directed some other person to do so, the Authority may, at any time, whether or not the Authority or that other person has ceased to be in control of the operations of the operator or settlement institution, fix the remuneration and expenses to be paid by the operator or settlement institution to —

(a) the Authority; and

(b) any person employed or authorised by it to assist the Authority in the control of, and the carrying on of the operations of the operator or settlement institution.

(11) An operator or a settlement institution which is aggrieved by any action taken by the Authority under this section may, within 30 days after the person is notified of the action, appeal in writing to the Minister whose decision shall be final.

(12) Notwithstanding the lodging of an appeal under subsection (11), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.

(13) The Minister may, when deciding an appeal under subsection (11), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the Minister's decision.

(14) In this section, "emergency" means —

(a) any situation which prevents a designated payment system from carrying out its functions;

(b) any situation in which, in the opinion of the Authority, a designated payment system is carrying on its operations in a manner likely to be detrimental to the interests of its participants; or

(c) any undesirable situation or practice which, in the opinion of the Authority, constitutes an emergency.

PART VII

STORED VALUE FACILITIES

Provision of information to Authority

5 **29.**—(1) The Authority may, by notice in the form and manner prescribed, require any holder of a stored value facility to provide to the Authority, within a reasonable period specified in the notice, all such information relating to the stored value facility as may be required by the Authority.

10 (2) Without prejudice to the generality of subsection (1), the Authority may in a notice issued under that subsection, require any holder to provide, whether in the form of a return to be provided on a periodic basis or otherwise —

- (a) information relating to the amount of money received for the stored value facility;
- 15 (b) information relating to the number of users of the stored value facility; and
- (c) such other information as the Authority may require for the purposes of this Act.

20 (3) Subject to subsection (5), any holder to whom a notice is issued under subsection (1) shall comply with the notice.

(4) Any holder who fails to comply with a notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, 25 to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(5) A holder to whom a notice is issued under subsection (1) shall not be obliged to disclose any information where he is prohibited by any written law from disclosing such information.

30 **Labelling, etc., of stored value facility**

30. The Authority may by regulations made under section 56 impose requirements for securing that stored value facilities, other than widely accepted stored value facilities, be marked or labelled with or

accompanied by any statement relating to such matters as may be prescribed.

Restriction on soliciting

5 **31.**—(1) No person outside Singapore shall, whether by himself or through any person in Singapore, offer or invite, or issue any advertisement containing any offer or invitation to the public or any section of the public in Singapore to purchase or otherwise acquire a stored value facility or the value stored in a stored value facility, whether in Singapore or elsewhere.

10 (2) For the purposes of subsection (1), in determining whether an offer, invitation or advertisement is made or issued to the public or any section of the public in Singapore, regard shall be had to such considerations as the Authority may prescribe.

15 (3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction —

20 (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction; or

 (b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

25 (4) Any person in Singapore who, on behalf of a person outside Singapore, offers or invites, or issues any advertisement containing any offer or invitation to, the public or any section of the public in Singapore to purchase or otherwise acquire a stored value facility or the value stored in the facility, whether in Singapore or elsewhere, shall be guilty of an offence and shall be liable on conviction —

30 (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction; or

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- (b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

5 (5) A person whose business it is to publish or to arrange for the publication of advertisements shall not be guilty of an offence under subsection (3) or (4) if he proves that —

- (a) he received the advertisement for publication in the ordinary course of his business;
- 10 (b) the matters contained in the advertisement were not, wholly or in part, devised or selected by him or by any person under his direction or control; and
- (c) he did not know and had no reason for believing that the publication of the advertisement would constitute an offence.

15 **Prohibition on holding out as approved holder**

32.—(1) No person, other than a person who has obtained the approval of the Authority under section 35(1), shall hold himself out as an approved holder of a widely accepted stored value facility.

20 (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

25 **Holding of stored value exceeding prescribed limit**

33.—(1) No person shall directly or indirectly, alone or together with any person over whom he has control or influence, hold stored value in stored value facilities, other than —

- (a) widely accepted stored value facilities; and
- 30 (b) stored value facilities or classes of stored value facilities excluded under subsection (2)(b),

in excess of \$30 million.

(2) The Authority may by order published in the *Gazette* —

- (a) vary the amount of stored value specified in subsection (1); or
- (b) exclude such stored value facility or class of stored value facilities from being included in the computation of the stored value for the purposes of subsection (1) as the Authority thinks fit.

(3) For the purposes of subsection (1), the Authority may prescribe the circumstances in which a person shall be deemed to be under the control or influence of another person.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Application for approval

34.—(1) A holder of a stored value facility may apply to the Authority for approval as an approved holder in respect of that stored value facility.

(2) An application under subsection (1) shall be —

- (a) in such form and manner as the Authority may require; and
- (b) accompanied by an application by a bank in Singapore for approval to be an approved bank.

(3) The Authority may require an applicant to furnish it with such information or documents as the Authority considers necessary in relation to the application.

Power of Authority to approve holders and banks

35.—(1) Where, in relation to a stored value facility, a holder has made an application under section 34(1) and a bank in Singapore has made an application under section 34(2)(b), the Authority may approve —

- (a) the holder as an approved holder in respect of that stored value facility; and
- (b) the bank as an approved bank in respect of that stored value facility if the Authority is satisfied that the bank has undertaken to be fully liable for the stored value of that stored value facility,

subject to such conditions or restrictions as the Authority thinks fit.

(2) The Authority shall not grant approval to the holder under subsection (1) unless the Authority has approved a bank in Singapore to be an approved bank in respect of the stored value facility concerned.

5 (3) The Authority may, at any time, by notice in writing to an approved holder or approved bank, vary or revoke any condition or restriction or attach such further conditions or restrictions.

(4) The approval granted by the Authority to the approved holder or approved bank shall remain valid notwithstanding that the stored value does not exceed \$30 million or such other amount as the Authority may vary under section 33(2).
10

(5) The Authority shall not refuse to approve a holder as an approved holder or a bank as an approved bank without giving the holder or the bank, as the case may be, an opportunity to be heard.

15 (6) An applicant who is aggrieved by a refusal of the Authority to grant approval under subsection (1) may, within 30 days after the applicant is notified of the decision, appeal in writing to the Minister whose decision shall be final.

(7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority under this Act shall continue to have effect pending the decision of the Minister.
20

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he considers necessary to any action taken by the Authority, and such modified action shall have effect from the date of the Minister's decision.

25 (9) The Authority shall cause notice to be published in the *Gazette* where approval is given to a person to be an approved holder.

(10) An approved holder or approved bank which contravenes any of the conditions or restrictions imposed under subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.
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Power of Authority to issue written directions

35 **36.**—(1) The Authority may issue written directions, either of a general or specific nature, to an approved holder or approved bank if the

Authority thinks it is necessary or expedient for ensuring the integrity of the stored value of the widely accepted stored value facility concerned.

(2) Without prejudice to the generality of subsection (1), a written direction issued under that subsection may relate to the obligations of the approved holder or approved bank to the users of a widely accepted stored value facility.

(3) An approved holder or approved bank to which a written direction is issued under this section shall comply with the direction.

(4) An approved holder or approved bank that fails to comply with a written direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Cancellation of approval

37.—(1) An approved holder may apply to the Authority to cancel the approval granted to him under section 35(1).

(2) An approved bank may apply to the Authority to cancel the approval granted to it under section 35(1).

(3) The Authority may prescribe or specify in written directions such factors that the Authority may consider relevant in determining whether to cancel the approval granted to approved holders or approved banks.

(4) Any cancellation under this section of approval granted to the approved holder or approved bank shall not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement entered into by the holder or bank for which approval is cancelled, whether the agreement, transaction or arrangement was entered into before or after the cancellation of the approval; or

(b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

Revocation of approval

38.—(1) The Authority may revoke any approval of a holder as an approved holder if the Authority is satisfied that —

- (a) the holder has contravened any condition or restriction imposed by the Authority under this Act;
- (b) the Authority has cancelled the approval to the approved bank under section 37(2); or
- 5 (c) the Authority considers it appropriate to do so.

(2) The Authority may revoke any approval of a bank in Singapore as an approved bank if the Authority is satisfied that —

- (a) the bank has contravened any condition or restriction imposed by the Authority under this Act;
- 10 (b) the Authority has cancelled the approval to the approved holder under section 37(1); or
- (c) the Authority considers it appropriate to do so.

(3) Subject to subsection (4), the Authority shall not revoke the approval that was granted to a holder or bank in Singapore under section 35(1) without giving the holder or bank, as the case may be, an opportunity to be heard.

(4) The Authority may revoke an approval that was granted to a holder or bank in Singapore under section 35(1) in any of the following circumstances without giving the holder or bank, as the case may be, an opportunity to be heard:

- (a) the holder or bank is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the holder or bank;
- 25 (c) the holder or bank has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he or it had acted fraudulently or dishonestly.

30 (5) A holder or bank in Singapore that is aggrieved by the decision of the Authority to revoke the approval under subsection (1) or (2) may, within 30 days after the holder or bank, as the case may be, is notified of the decision, appeal in writing to the Minister whose decision shall be final.

(6) Any revocation of approval granted to the approved holder or approved bank under this section shall not operate so as to —

- 5 (a) avoid or affect any agreement, transaction or arrangement entered into by the holder or bank for which approval is revoked, whether the agreement, transaction or arrangement was entered into before or after the revocation of the approval; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

Publication of list of widely accepted stored value facilities

- 10 **39.** The Authority shall, from time to time, prepare and publish in the *Gazette* a list of all widely accepted stored value facilities, their respective approved holders and approved banks, and the dates of approval.

Section 14 of Currency Act not to apply to stored value facilities

- 15 **40.** Section 14 of the Currency Act (Cap. 69) shall not apply to the issue of a stored value facility.

PART VIII

ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

Interpretation of this Part

- 20 **41.** In this Part, unless the context otherwise requires —
 - “enforce” means enforce through criminal or administrative proceedings;
 - “enforcement” means the taking of any action to enforce a law or regulatory requirement against a specified person, being a law or regulatory requirement that relates to the payment systems or
 - 25 stored value facilities of the foreign country of the regulatory authority concerned;
 - “foreign country” means a country or territory other than Singapore;
 - “investigation” means an investigation to determine if a specified
 - 30 person has contravened or is contravening a law or regulatory requirement, being a law or regulatory requirement that relates to

the payment systems or stored value facilities of the foreign country of the regulatory authority concerned;

“material” includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

“regulatory authority”, in relation to a foreign country, means an authority of the foreign country exercising any function that corresponds to a regulatory function of the Authority under this Act;

“supervision”, in relation to a regulatory authority, means the taking of any action for or in connection with the supervision of an operator, a settlement institution or a participant of a designated payment system, or any other person, regulated by the regulatory authority.

Conditions for provision of assistance

42.—(1) The Authority may provide the assistance referred to in section 44 to a regulatory authority of a foreign country if the Authority is satisfied that all of the following conditions are fulfilled:

- (a) the assistance is intended to enable the regulatory authority, or any other authority of the foreign country, to carry out the supervision, investigation or enforcement;
- (b) the regulatory authority has given a written undertaking that any material or copy thereof obtained pursuant to its request shall not be used for any purpose other than a purpose that is specified in the request and approved by the Authority;
- (c) the regulatory authority has given a written undertaking not to disclose to a third party (other than a designated third party of the foreign country in accordance with paragraph (d)) any material received pursuant to the request unless the regulatory authority is compelled to do so by the law or a court of the foreign country;
- (d) the regulatory authority has given a written undertaking to obtain the prior consent of the Authority before disclosing any material received pursuant to the request to a designated third party, and to make such disclosure only in accordance with such conditions as may be imposed by the Authority;

- (e) the material requested is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means;
 - 5 (f) the matter to which the request relates is of sufficient gravity; and
 - (g) the rendering of assistance will not be contrary to the public interest.
- (2) For the purposes of subsection (1)(c) and (d), “designated third party”, in relation to a foreign country, means —
- 10 (a) any person or body responsible for supervising the regulatory authority in question;
 - (b) any authority of the foreign country responsible for carrying out the supervision, investigation or enforcement in question; or
 - 15 (c) any authority of the foreign country exercising a function that corresponds to a regulatory function of the Authority under this Act.

Other factors to consider for provision of assistance

- 20 **43.** In deciding whether to grant a request for assistance referred to in section 44 from a regulatory authority of a foreign country, the Authority may also have regard to the following:
- (a) whether the act or omission that is alleged to constitute the contravention of the law or regulatory requirement to which the request relates would, if it had occurred in Singapore, have constituted an offence under this Act;
 - 25 (b) whether the regulatory authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the regulatory authority for similar assistance; and
 - 30 (c) whether the regulatory authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance that the regulatory authority has requested.

Assistance that may be rendered

44.—(1) Notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, the Authority or any person authorised by the Authority may, in relation to a request by
5 a regulatory authority of a foreign country for assistance —

- (a) transmit to the regulatory authority any material in the possession of the Authority that is requested by the regulatory authority or a copy thereof;
- 10 (b) order any person to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority;
- (c) order any person to transmit directly to the regulatory authority any material that is requested by the regulatory authority or a copy thereof;
- 15 (d) order any person to make an oral statement to the Authority on any information requested by the regulatory authority, record such statement, and transmit the recorded statement to the regulatory authority; or
- 20 (e) request any Ministry, Government department or statutory authority to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority.

(2) The assistance referred to in subsection (1)(c) may only be rendered if the material sought is to enable the regulatory authority to carry out
25 investigation or enforcement.

(3) An order under subsection (1)(b), (c) or (d) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any
30 rule of professional conduct.

(4) Nothing in this section shall compel an advocate and solicitor —

- (a) to furnish or transmit any material or copy thereof that contains;
or
- (b) to disclose,
- 35 a privileged communication made by or to him in that capacity.

(5) An advocate and solicitor who refuses to furnish or transmit any material or copy thereof that contains, or to disclose, any privileged communication shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(6) A person is not excused from making an oral statement pursuant to an order made under subsection (1)(d) on the ground that the statement might tend to incriminate him.

Offences under this Part

- 10 **45.** Any person who —
- (a) without reasonable excuse refuses or fails to comply with an order under section 44(1)(b), (c) or (d);
 - (b) in purported compliance with an order made under section 44(1)(b) or (c), furnishes to the Authority or transmits to a regulatory authority any material or copy thereof known to the person to be false or misleading in a material particular; or
 - (c) in purported compliance with an order made under section 44(1)(d), makes a statement to the Authority that is false or misleading in a material particular,
- 20 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Immunities

- 25 **46.**—(1) No civil or criminal proceedings, other than proceedings for an offence under section 45, shall lie against any person for —
- (a) furnishing to the Authority or transmitting any material or copy thereof to the Authority or a regulatory authority of a foreign country if he had furnished or transmitted that material or copy in good faith in compliance with an order made under section 44(1)(b) or (c);
 - (b) making a statement to the Authority in good faith and in compliance with an order made under section 44(1)(d); or

(c) doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with such an order.

5 (2) Any person who complies with an order referred to in subsection (1)(a) or (b) shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

PART IX

10

MISCELLANEOUS

Duty not to provide false or misleading information

15 **47.**—(1) Any person who provides the Authority with any information under this Act which is false or misleading in any material particular shall be guilty of an offence unless he has exercised due care to ensure that the information is not false or misleading in any material particular.

(2) Subsection (1) shall apply only to a requirement in relation to which no other provision of this Act creates an offence in connection with the provision of information.

20 (3) Any person who signs any document provided to the Authority which is false or misleading in any material particular shall be guilty of an offence unless he has exercised due care to ensure that the document is not false or misleading in any material particular.

25 (4) Any person who is guilty of an offence under subsection (1) or (3) shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

Publication of certain information

48. The Authority may, from time to time, prepare and publish —

- 30 (a) consolidated statements aggregating any information provided under this Act; or
- (b) for statistical purposes, statements that relate to or are derived from any information provided under this Act in respect of a

payment system or a stored value facility, being the only payment system or stored value facility in its class.

Jurisdiction of District Court

5 **49.** Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of the offence.

Composition of offences

10 **50.**—(1) The Authority may, in its discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the maximum fine prescribed for that offence.

15 (2) On payment of such sum of money, no further proceedings shall be taken against that person in respect of the offence.

(3) The Authority may make regulations to prescribe the offences which may be compounded.

(4) All sums collected under this section shall be paid to the Authority.

Offences by officers

20 **51.**—(1) Any person, being an officer of —

- (a) a participant, an operator or a settlement institution of a payment system;
- (b) a holder of a stored value facility; or
- 25 (c) an approved bank in respect of a widely accepted stored value facility,

who fails to take all reasonable steps to secure —

- (i) compliance by the participant, operator, settlement institution, holder or approved bank, as the case may be, with any provision of this Act; or
- 30 (ii) the accuracy and correctness of any information provided by the participant, operator, settlement institution, holder or approved bank, as the case may be, to the Authority under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

5 (2) In any proceedings against an officer under subsection (1), it shall be a defence for the defendant to prove that he had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that the information was accurate, as the case may be, and that that person was competent, and in a position, to discharge that duty.

10 (3) An officer shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court trying the offence, he committed the offence wilfully.

General penalty

15 **52.** Any person guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$50,000.

Exemption

20 **53.**—(1) The Authority may by regulations, either permanently or for such period as the Authority may think fit, exempt any person or class of persons, any payment system or class of payment systems, any stored value facility or class of stored value facilities, from all or any of the provisions of this Act subject to such conditions or restrictions as may be prescribed.

25 (2) The Authority may, on the application of any person, by notice in writing exempt the person from all or any of the provisions of this Act or the requirements specified in any written direction made by the Authority under this Act if the Authority considers it appropriate to do so in the circumstances of the case.

(3) An exemption granted under subsection (2) —
 30 (a) may be granted subject to such conditions or restrictions as the Authority may specify by notice in writing;
 (b) need not be published in the *Gazette*; and
 (c) may be withdrawn at any time by the Authority.

(4) Any person who contravenes any condition or restriction imposed under subsection (1) or (3)(a) shall be guilty of an offence.

Opportunity to be heard

5 **54.** Where this Act provides for a person to be given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the person shall be given an opportunity to be heard.

Directions and notices not subsidiary legislation

55. Any written direction or notice in writing given by the Authority under this Act shall be deemed not to be subsidiary legislation.

Regulations

10 **56.**—(1) The Authority may make regulations for carrying out the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Authority may make regulations for or with respect to designated payment systems,
15 including but not limited to the following matters:

- (a) the imposition, variation or revocation of an access regime, and such transitional or savings provisions as the Authority may consider necessary or expedient;
- 20 (b) the standards to be maintained by a participant, an operator or a settlement institution;
- (c) the responsibilities and duties of the chief executive officer and directors of an operator;
- (d) the preparation and publication of reports on the performance of a designated payment system;
- 25 (e) the acquisition or holding of shares or any other interest in an operator;
- (f) the acquisition or holding of shares or any other interest by an operator in any other person;
- (g) different requirements for the audit of accounts in relation to
30 different designated payment systems;
- (h) the responsibilities of an operator or a settlement institution relating to the audit of its accounts;

- (i) the responsibilities of the auditor for the accounts of an operator or a settlement institution;
 - (j) the procedures applicable in the event of a default in payment obligations, including the suspension and re-admission of participants;
 - (k) the fees to be paid in respect of any matter or thing required for the purposes of this Act, including the refund and remission whether in whole or in part of such fees; and
 - (l) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.
- (3) Without prejudice to the generality of subsection (1), the Authority may make regulations for or with respect to stored value facilities, including but not limited to the following matters:
- (a) all matters necessary and expedient to ensure that an approved bank is fully liable to the users of a widely accepted stored value facility;
 - (b) the standards to be maintained by a holder in respect of a stored value facility; and
 - (c) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.
- (4) Except as otherwise expressly provided in this Act, the regulations —
- (a) may be of general or specific application;
 - (b) may provide that any contravention of any specified provision thereof shall be an offence; and
 - (c) may provide for penalties not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence, and in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

Codes, guidelines, etc., by Authority

57.—(1) The Authority may issue, in such manner as it considers appropriate, such codes, guidelines, policy statements and practice notes as it considers appropriate for providing guidance —

- 5 (a) in furtherance of its regulatory objectives;
- (b) in relation to any matter relating to any of the functions of the Authority under any of the provisions of this Act; or
- (c) in relation to the operation of any of the provisions of this Act.

10 (2) The Authority may publish any such code, guideline, policy statement or practice note, and in such manner as it thinks fit.

 (3) The Authority may revoke, vary, revise or amend the whole or any part of any code, guideline, policy statement or practice note issued under this section in such manner as it thinks fit.

 (4) Where amendments are made under subsection (3) —

- 15 (a) the other provisions of this section shall apply, with the necessary modifications, to such amendments as they apply to the code, guideline, policy statement and practice note; and
- (b) any reference in this Act or any other written law to the code, guideline, policy statement or practice note however expressed
- 20 shall, unless the context otherwise requires, be a reference to the code, guideline, policy statement or practice note as so amended.

 (5) Any person who fails to comply with any of the provisions of a code, guideline, policy statement or practice note issued under this section that applies to him shall not of itself render that person liable to criminal

25 proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

 (6) Any code, guideline, policy statement or practice note issued under this section —

- 30 (a) may be of general or specific application; and
- (b) may specify that different provisions thereof apply to different circumstances or provide for different cases or classes of cases.

(7) For the avoidance of doubt, any code, guideline, policy statement or practice note issued under this section shall be deemed not to be subsidiary legislation.

Related amendments to Banking Act

- 5 **58.** The Banking Act (Cap. 19) is amended —
- (a) by deleting subsections (2) to (5) of section 59; and
 - (b) by repealing section 77A.

Consequential amendment to Companies Act

- 10 **59.** The Companies Act (Cap. 50) is amended by inserting, immediately after the words “41(1)(b) of the Insurance Act (Cap. 142)” in section 145(6), the words “, section 22 of the Payment Systems (Oversight) Act 2005”.

Consequential amendments to Road Traffic Act

- 15 **60.** The Road Traffic Act (Cap. 276) is amended —
- (a) by deleting paragraph (c) of section 25(2) and substituting the following paragraph:
 - “*(c)* prescribe the fees and charges payable for the issue of such permit in accordance with such rates as may be approved by the Minister;”;
 - 20 (b) by deleting paragraphs (g), (h) and (i) of section 25(2) and substituting the following paragraphs:
 - “*(g)* provide for such permit to be stored in such electronic form as the Authority may determine;
 - (h)* regulate the use of such permit;”;
 - 25 (c) by deleting subsection (5) of section 25;
 - (d) by deleting the semi-colon at the end of the definition of “specified road” in section 34A and substituting a full-stop;
 - (e) by deleting the definition of “stored value card” in section 34A;
 - (f) by deleting sub-paragraph (ii) of section 34D(1)(c); and
 - 30 (g) by deleting subsection (3) of section 34D.

Transitional and savings provisions

61. The Authority may, within 2 years of the date of commencement of this Act, prescribe such transitional and savings provisions as it may consider necessary or expedient.

5

EXPLANATORY STATEMENT

This Bill seeks to provide for the oversight of payment systems and stored value facilities, to make related amendments to the Banking Act (Cap. 19) and to make consequential amendments to the Companies Act (Cap. 50) and the Road Traffic Act (Cap. 276), and for matters connected therewith.

PART I

PRELIMINARY

Clause 1 relates to the short title and commencement.

Clause 2 defines certain terms used in the Bill.

Clause 3 provides that Parts III and IV of the Bill do not apply to the Monetary Authority of Singapore (the Authority) in its capacity as a participant in, or an operator or a settlement institution, of any payment system. The clause also provides that Part VII of the Bill does not apply to any statutory corporation unless the Minister prescribes by order in the *Gazette* that that statutory corporation is a statutory corporation to which Part VII applies.

PART II

FUNCTIONS AND POWERS OF AUTHORITY

Clause 4 provides for the exercise by the Authority of oversight functions and powers in respect of payment systems and stored value facilities.

Clause 5 provides that the Authority must have regard to public interest when exercising its powers in relation to payment systems.

PART III

INFORMATION GATHERING POWERS OVER PAYMENT SYSTEMS

Clause 6 empowers the Authority to require participants, operators or settlement institutions of payment systems to provide to the Authority information relating to the payment systems.

PART IV

DESIGNATION OF PAYMENT SYSTEMS

Clause 7 empowers the Authority to designate a payment system as a designated payment system. The clause also sets out the considerations that the Authority would take into account in deciding whether to designate a payment system as a designated payment system.

Clause 8 prohibits a person from holding himself out as the operator or settlement institution of a designated payment system unless the Authority has designated the payment system as a designated payment system.

Clause 9 empowers the Authority to impose annual fees on an operator of a designated payment system.

Clause 10 empowers the Authority to withdraw the designation of a designated payment system when the considerations for designating a payment system as a designated payment system are no longer valid or satisfied.

PART V

OBLIGATIONS OF OPERATORS AND SETTLEMENT INSTITUTIONS OF DESIGNATED PAYMENT SYSTEMS

Clause 11 sets out the notification obligations imposed on operators of designated payment systems in relation to the carrying on of or investing in any business other than the business of operating a payment system, any business that is incidental to the operation of a payment system or a prescribed business. The clause also empowers the Authority to direct operators of designated payment systems to cease carrying on such business or to dispose of the investment in such business.

Clause 12 imposes an obligation on operators and settlement institutions of designated payment systems to notify the Authority of certain events.

Clause 13 requires an operator of a designated payment system to submit to the Authority periodic reports.

Clause 14 imposes an obligation on operators and settlement institutions of designated payment systems to appoint auditors. The clause also sets out the qualifications of an auditor.

PART VI

OVERSIGHT POWERS OVER DESIGNATED PAYMENT SYSTEMS

Clause 15 empowers the Authority to impose an access regime in respect of a designated payment system on the person who determines access to the designated payment system, whether he is a participant, an operator or a settlement institution of the designated payment system. The clause also sets out the considerations that the Authority would take into account in deciding whether to impose an access regime.

Clause 16 empowers the Authority to vary an access regime. The clause also sets out the considerations that the Authority would take into account in deciding whether to vary an access regime.

Clause 17 specifies when an access regime ceases to be in force. The clause also empowers the Authority to revoke an access regime.

Clause 18 confers a right on a person who has been denied access to a designated payment system to apply to the High Court for an order. The orders that the High Court may make are specified in the clause.

Clause 19 empowers the Authority to impose conditions or restrictions on an operator, a settlement institution or a participant of a designated payment system.

Clause 20 empowers the Authority to issue directions to participants, operators or settlement institutions of designated payment systems.

Clause 21 provides that the approval of the Authority is required for appointments to the positions of chief executive officer and director of an operator of a designated payment system.

Clause 22 empowers the Authority to direct the removal of the chief executive officer or a director of an operator of a designated payment system under certain circumstances.

Clause 23 provides that a person shall obtain the approval of the Authority before acquiring a substantial shareholding in an operator of a designated payment system or becoming a 12% or 20% controller of an operator of a designated payment system.

Clause 24 provides for the grant of approval by the Authority of the matters referred to in clause 23.

Clause 25 provides that a contravention of clause 23(1) or (2), various provisions of clause 24, any condition or restriction imposed under clause 24(1), or any direction issued under clause 24(2), is an offence.

Clause 26 imposes certain duties on an auditor of an operator or a settlement institution of a designated payment system.

Clause 27 empowers the Authority to inspect, under conditions of secrecy, the books of an operator or a settlement institution of a designated payment system.

Clause 28 empowers the Authority to take emergency action in an emergency or where it is necessary or expedient in the interests of the public or a section of the public.

PART VII

STORED VALUE FACILITIES

Clause 29 empowers the Authority to require any holder of a stored value facility to provide to the Authority information relating to the stored value facility.

Clause 30 empowers the Authority to impose by regulations requirements for securing that stored value facilities, other than widely accepted stored value facilities, be marked or labelled with or accompanied by certain statements.

Clause 31 prohibits a person from offering, inviting or issuing any advertisement to the public or any section of the public in Singapore to purchase or acquire a stored value facility or the value stored in a stored value facility.

Clause 32 prohibits a person from holding himself out as an approved holder of a widely accepted stored value facility unless the Authority has so approved.

Clause 33 prohibits a person from directly or indirectly, alone or together with persons over whom he has control or influence, holding the stored value in all stored value facilities, other than widely accepted stored value facilities and stored value facilities or classes of stored value facilities excluded by the Authority, in excess of \$30 million.

Clause 34 provides that a holder of a stored value facility may apply to the Authority for approval to be an approved holder. The clause further provides that the application shall be accompanied by an application by a bank in Singapore for approval to be an approved bank.

Clause 35 empowers the Authority to approve holders and banks in respect of stored value facilities, subject to conditions and restrictions as the Authority thinks fit.

Clause 36 empowers the Authority to issue directions to an approved holder or approved bank, either generally or of a specific nature.

Clause 37 provides that an approved holder or an approved bank may apply to the Authority to cancel the approval granted under clause 35(1).

Clause 38 empowers the Authority to revoke any approval granted to an approved holder or approved bank under certain circumstances. The clause also provides that the Authority may revoke any approval without giving the holder or bank an opportunity to be heard in certain circumstances. The clause further provides that an aggrieved holder or bank may, within 30 days after it is notified of the Authority's decision, appeal to the Minister whose decision is final.

Clause 39 provides for the preparation and publication by the Authority of a list of all widely accepted stored value facilities, their respective approved holders and approved banks and the dates of the approval.

Clause 40 provides that section 14 of the Currency Act (Cap. 69) shall not apply to the issue of a stored value facility.

PART VIII

ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

Clause 41 defines the terms used in Part VIII.

Clause 42 sets out the conditions that must be fulfilled before assistance may be rendered under that Part. For example, the assistance must be intended for one of

several specified purposes, the requesting authority must undertake not to disclose any acquired information to any person except to a designated third party with the prior consent of the Authority and in accordance with conditions imposed by the Authority, and the matter to which the request relates must be of sufficient gravity.

Clause 43 provides that in considering whether to grant the request, the Authority may also consider —

- (a) whether it would be an offence under the Act if the act or omission were committed in Singapore; and
- (b) whether the requesting authority is willing to extend similar assistance to the Authority and to contribute towards the costs of assistance.

Clause 44 lays down the types of assistance that may be rendered. These include the transmission of material in the Authority's possession to the requesting authority and the ordering of a person to furnish material or an oral statement to the Authority for onward transmission to the requesting authority or to furnish material directly to the requesting authority.

Clause 45 makes the doing of certain acts offences, namely, the non-compliance with an order made under clause 44(1) (b), (c) or (d), and the production to the Authority or transmission to the regulatory authority of material or a copy of material, or the making to the Authority of an oral statement, that contains anything that is false or misleading in a material particular.

Clause 46 provides certain immunities to a person who complies with an order made under clause 44(1) (b), (c) or (d).

PART IX

MISCELLANEOUS

Clause 47 imposes a duty on any person not to provide the Authority with information or document which is false or misleading in any material particular.

Clause 48 empowers the Authority to prepare and publish certain statements from time to time.

Clause 49 provides that, notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court will have jurisdiction to try any offence under the Bill and may impose the full penalty or punishment in respect of the offence.

Clause 50 empowers the Authority to compound any offence under the Bill.

Clause 51 provides that any person being an officer of a participant, an operator or a settlement institution of a payment system, a holder of a stored value facility or an approved bank in respect of a widely accepted stored value facility, will be guilty of an offence if he fails to take reasonable steps to secure compliance by the participant, operator, settlement institution, holder or approved bank, as the case may be, with any provision of the Bill, or the accuracy or correctness of any information provided by the

participant, operator, settlement institution, holder or approved bank, as the case may be, to the Authority under the Bill.

Clause 52 provides that where a person commits an offence under the Bill for which no penalty is expressly provided, the punishment on conviction will be a fine not exceeding \$50,000.

Clause 53 provides for a general power of exemption exercisable by the Authority.

Clause 54 provides that where any affected person is given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the affected person will be given the hearing.

Clause 55 provides that any written direction or notice in writing given by the Authority under the Bill is deemed not to be subsidiary legislation.

Clause 56 empowers the Authority to make regulations either generally or for certain specified purposes.

Clause 57 empowers the Authority to issue and, in its discretion, publish such codes, guidelines, policy statements and practice notes as it considers necessary for providing guidance on, among other things, the operation of the provisions of the Bill. The clause also provides that the failure by a person to observe any code, guideline, policy statement or practice note may be relied upon, by any party in civil or criminal proceedings, to establish or negate any liability in question.

Clause 58 deletes subsections (2) to (5) of section 59 of the Banking Act (Cap. 19) and repeals section 77A of that Act.

Clause 59 makes consequential amendment to the Companies Act (Cap. 50).

Clause 60 makes consequential amendments to the Road Traffic Act (Cap. 276).

Clause 61 allows the Authority, within 2 years of the date of commencement of the Bill, to prescribe such transitional and savings provisions as it may consider necessary or expedient.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

TABLE OF DERIVATIONS

Payment Systems (Oversight) Act 2005		Derivations		
Section Heading	Clause	Australia Payment Systems (Regulation) Act 1998	Securities and Futures Act (Cap. 289)	Others
		Section		
PRELIMINARY	PART I			
Short title and commencement	1	—	—	—
Interpretation	2(1)	—	—	—
	definition of “access”	7 (modified)	—	—
	definition of “access regime”	7	—	—
	definition of “book”	—	2(1)	—
	definition of “chief executive officer”	—	—	Section 56(8) of Financial Advisers Act (Cap. 110) Section 35ZJ(10) of Insurance Act (Cap. 142) Section 86(10) of Business Trusts Act 2004
	definition of “corporation”	—	—	Section 4(1) of Companies Act (Cap. 50)
	definition of “director”	—	—	Section 4(1) of Companies Act (Cap. 50)

Payment Systems (Oversight) Act 2005		Derivations		
Section Heading	Clause	Australia Payment Systems (Regulation) Act 1998	Securities and Futures Act (Cap. 289)	Others
		Section		
	definition of “payment system”	7 (modified)	—	—
	definition of “settlement institution”	—	—	Section 2(1) of Payment and Settlement Systems (Finality and Netting) Act (Cap. 231)
	definition of “share”	—	—	Section 4(1) of Companies Act (Cap. 50)
	definition of “statutory corporation”	—	—	Section 7A of Financial Procedure Act (Cap. 109)
Application of Act	3	—	—	—
FUNCTIONS AND POWERS OF AUTHORITY	PART II			
Authority to exercise oversight functions in respect of payment systems and stored value facilities	4	—	—	—
Authority to have regard to public interest	5	8 (modified)	—	—
INFORMATION GATHERING POWERS OVER PAYMENT SYSTEMS	PART III			

Payment Systems (Oversight) Act 2005		Derivations		
Section Heading	Clause	Australia Payment Systems (Regulation) Act 1998	Securities and Futures Act (Cap. 289)	Others
		Section		
Provision of information to Authority	6	26 (modified)	—	—
DESIGNATION OF PAYMENT SYSTEMS	PART IV			
Power of Authority to designate payment systems	7	8 (modified)	55 (1) (modified)	Section 3 of Payment and Settlement Systems (Finality and Netting) Act (Cap. 231)
Prohibition on holding out as designated payment system	8	—	56 (modified)	—
Annual fees payable by operator of designated payment system	9	—	69	—
Withdrawal of designation of payment system	10	—	58 (modified)	—
OBLIGATIONS OF OPERATORS AND SETTLEMENT INSTITUTIONS OF DESIGNATED PAYMENT SYSTEMS	PART V			

Payment Systems (Oversight) Act 2005		Derivations		
Section Heading	Clause	Australia Payment Systems (Regulation) Act 1998	Securities and Futures Act (Cap. 289)	Others
		Section		
Obligation of operator to notify Authority of businesses and acquisition of corporations	11	—	60	—
Obligation of operator and settlement institution to notify Authority of certain events	12	—	—	—
Obligation of operator to submit periodic reports	13	—	66 (modified)	—
Obligation of operator and settlement institution to appoint auditor	14	—	106	—
OVERSIGHT POWERS OVER DESIGNATED PAYMENT SYSTEMS	PART VI			
Power of Authority to impose access regime	15	12 (modified)	—	—
Variation of access regime	16	14 (modified)	—	—
Cessation and revocation of access regime	17	15 (modified)	—	—
Right to apply to High Court	18	—	—	—

Payment Systems (Oversight) Act 2005		Derivations		
Section Heading	Clause	Australia Payment Systems (Regulation) Act 1998	Securities and Futures Act (Cap. 289)	Others
		Section		
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Power of Authority to issue written directions	20	—	79 (modified)	—
Power of Authority to approve chief executive officer and directors of operator	21(1)	—	96 (1)	—
	(2)	—	96(1A)	—
	(3)	—	76(3)	—
	(4)	—	76(4)	Section 31(5) of Insurance Act (Cap. 142)
	(5)	—	76(5)	—
	(6)	—	76(6) and 96(4)	—
	(7)	—	76(7) and 96(5)	—
	(8)	—	76(8)	—
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Payment Systems (Oversight) Act 2005		Derivations		
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		Section		
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Payment Systems (Oversight) Act 2005		Derivations		
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		Section		
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Payment Systems (Oversight) Act 2005		Derivations		
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