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Payment Systems and Stored Value Facilities Ordinance

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Introduction

- Amendment of the Clearing and Settlement Systems Ordinance (Cap. 584) (“**CSSO**”) → Payment Systems and Stored Value Facilities Ordinance (“**New Ordinance**”)
- New regulatory regime for stored value facilities (“**SVF**”) and designated retail payment systems (“**RPS**”)
- Effective date: 13 November 2015



Regulatory Framework prior to the New Ordinance

- S.16 of Banking Ordinance (Grant or refusal of authorization, etc.): device based stored value products, e.g. multi-purpose stored value card. Only Authorized Institutions may issue multi-purpose stored value card.
- Clearing and settlement systems under CSSO: provided large value clearing and settlement systems and securities transfer system which process transactions at the interbank level
- Self-regulatory: Development of Code of Practice for Payment Card Scheme Operators (the “**Code**”) by 8 payment card scheme operators with credit or debit card operations in HK. The development of the Code was overseen and has been endorsed by the MA.



New Regulatory Regime - SVF

- Definition of SVF covers both device-based SVF and non-device based SVF (s. 2A, New Ordinance)
 - may be used for storing the value of an amount of money that is paid into the facility from time to time; and
 - may be stored on the facility under the rules of the facility; and
 - may be used for the following purposes:
 - (a) as a means of making payments for goods or services under an undertaking given by the issuer; and/or
 - (b) as a means of making payments to another person under an undertaking given by the issuer.



What are device-based and non-device based SVF?

- For device-based SVF, the value is stored in an electronic chip on a card or physical device, e.g. watches.
- For non-device based SVF, the value is stored on a network-based account which can be accessed through the internet, a computer network or mobile network, e.g. internet-payment platforms which provide network-based accounts with which users can store value for making payments for online purchases, or for person-to-person fund transfers.

New Regulatory Regime - SVF

- Licensing Regime
 - Unless an SVF is a single purpose SVF or is exempt from the provisions of the New Ordinance, an SVF is subject to the licensing requirement. Under s.8(B) of the New Ordinance, a person issuing or facilitating of an SVF without licence commits an offence and is liable on conviction on indictment, to a fine of HK\$1,000,000 and to imprisonment for 5 years, or on summary conviction, to a fine at level 6 (currently set at HK\$100,000 in sch. 8 of Criminal Procedure Ordinance) and to imprisonment for 6 months.

- **Licensing Regime**

- Type of Licence (s. 8F, New Ordinance)
 - a) The issue of SVF; or
 - b) The facilitation of the issue of SVF: facilitate the issue of an SVF by providing the issuer with valuable consideration that contribute to the funding of the SVF scheme;
 - c) The MA may grant licence with or without conditions (s. 8I)
- Scope of licence
 - a) Single-purpose SVF (“**SPSVF**”) vs Multi-purpose SVF (“**MPSVF**”)
 - b) A bank holding a banking licence granted under s.16 of BO is regarded as being granted a licence
 - c) Certain types of SVF are exempt even if they are MPSVF





What is an SPSVF as defined by the New Ordinance?

- An SPSVF is a facility that may be used for storing the value of an amount of money that is paid into the facility from time to time; and in respect of which the issuer gives an undertaking that, if the facility is used as a means of making payments for goods or services (not being money or money's worth) provided by the issuer, the issuer will provide the goods or services under the rules of the facility and **does not** give any other undertaking that:
 - (i) if the facility is used as a means of making payment for goods or services, the issuer, or a person procured by the issuer to accept such payments, will accept the payments up to the amount of the stored value that is available for use under the rules of the facility, or
 - (ii) if the facility is used as a means of making payments to another person (recipient), the issuer, or a person procured by the issuer to make such payments, will make the payments to the recipient up to the amount of the stored value that is available for use under the rules of the facility.

Exempt SVF (s.8ZZZB, New Ordinance)

- Some SVF that are exempt from the licensing regime even if they are MPSVF. Usually this is because the user does not need to pay money into the SVF, or the usage and the risk of the SVF are somewhat limited. The types of exempt SVF specified in sch. 8 of the New Ordinance are as follows:
 1. **SVF used for certain cash reward schemes (sch. 8(1), New Ordinance).** Such SVF may be used for storing only a sum of money paid by (i) the issuer; (ii) a person who agrees to pay a sum of money for storage in the facility under an agreement with the issuer; and the sum of money stored may only be used for making payments for goods or services provided by the issuer or person under the T&Cs of the facility, e.g. loyalty schemes provided by supermarkets which offer cash rewards for customer loyalty.

Exempt SVF (s.8ZZZB, New Ordinance)

2. **SVF for purchasing certain digital products (sch. 8(2), New Ordinance).** Such SVF may be used as a means of making payments only for goods or services that are delivered to and are to be used through (i) a telecommunication, digital or information technology device; (ii) the payments are executed through such a device; and (iii) the telecommunication digital or information technology operator does not only act as an intermediary between the user of the facility and the provider of the goods or services.

2. **SVF used for certain bonus point schemes (sch. 8(3), New Ordinance).** Such SVF may be used for storing only points or units that are money's worth provided by (i) the issuer; or (ii) a person who agrees to provide goods or services to the user of the facility under an agreement with the issuer either by (i) using only the points or units; or (ii) using the points or units together with a sum of money that is stored on the facility temporarily for the sole purpose of executing the payments; and the sum of money so stored is not redeemable for cash, e.g. airline mileage programmes.

Exempt SVF (s.8ZZZB, New Ordinance)

4. **SVF used within limited group of goods or service providers (sch. 8(4), New Ordinance).** Such SVF may be used as a means of making payments only for goods or services under an agreement with the issuer; and it may be so used within only any of the premises occupied by the issuer and the amount of the float (儲值金額) of the facility (facilities) not exceeding HK\$1,000,000 or its equivalent, e.g. store cards that can only be used at the store's premises.

Exempt SVF (s.8ZZZB, New Ordinance)

5. **SVF used within certain premises (sch. 8(5), New Ordinance).** Such SVF is issued under an agreement between the issuer and another person; and it may be used as a means of making payment only for goods or services within any of the premises occupied by that other person and the amount of the float of the facility (facilities) not exceeding HK\$1,000,000 or its equivalent, e.g. membership cards where the cards can only be used in the shops or restaurants in a specific club or organisation.



Exempt SVF (s.8ZZZB, New Ordinance)

- The MA has the power to request any information from an exempt SVF issuer when the MA considers it necessary to determine its eligibility for exemption (s. 8ZZZB, New Ordinance).
- If the MA considers that it is necessary in the public interest or in the interests of the user or potential user of the facility; or the MA is not satisfied that the risks posed by such SVF to users or to payment or financial system of HK are immaterial, the MA may declare an SVF not to fall within the exemption in Sch. 8 of the New Ordinance and require the issuer of the SVF to apply for an SVF licence under s. 8E of the New Ordinance (s. 8ZZZC, New Ordinance).

Exempt SVF (s.8ZZZB, New Ordinance)

- The MA may exempt an SVF from the Ordinance if the risks posed by it to the user or potential user or payment or financial system of HK are immaterial. An exemption granted by the MA may be subject to conditions that the MA considers appropriate (e.g. a limit on the size of the float, the number of user accounts to be established, submission of information on a regular basis).

New Regulatory Regime - SVF

- Licensing Regime (con't)
 - Minimum criteria to grant licence (part 2, sch. 3, New Ordinance)

a) **Principal business (part 2(1), sch. 3, New Ordinance)**

Principal business of the applicant must be the issue of SVF under an SVF licence. In general, the applicant should not engage in business not related to the issue of SVF unless the conduct of such business is necessary for the operation of the SVF business. The MA may attach conditions for each SVF licence requiring the licensee to consult with the MA if it would like change its business or engage in any new business after it is granted the SVF licence.

This requirement is not applicable to a bank.

- **Licensing Regime (con't)**

The licensee may provide remittance and/or money changing services as ancillary or incidental services to its principal business. To avoid any regulatory overlap, licensees are not required to obtain a money service operator licence from the Customs and Excise Department as their AML-related matters are subject to the SVF regulatory regime.



- **Licensing Regime (con't)**

- b) Financial resources (part 2(2), sch. 3, New Ordinance),**
not applicable to a bank

The paid-up capital of the applicant must not be less than HK\$25million or an equivalent amount in another currency that is freely convertible into HK dollars or is approved by the MA.

The paid-up capital of HK\$25million is only meant to be a minimum requirement. The MA may impose a higher level of capital requirement on an applicant as a licensing condition if the MA considers it appropriate.

The MA will take into account, among others, the risk profile, the size of the float, the number of user accounts and the complexity of the SVF business when determining the amount of a higher level of capital requirement.

- **Licensing Regime (con't)**

- c) **Fit and proper person, knowledge and experience (part 2(2) &(3), sch. 3, New Ordinance)**

The New Ordinance requires that each chief executive, director and controller of the applicant must be a fit and proper person. The detailed requirements can be found in Annex A (part one) of the New Ordinance. The applicant must ensure that the MA is informed of the identity of each chief executive, director and controller and consent from the MA is received prior to taking up their appointment.

The applicant must have in place adequate systems of control to ensure that each manager of the applicant is a fit and proper person to hold the position concerned. The detailed requirements regarding the adequacy of systems of control can be found in Annex A (part two) of the New Ordinance.

- **Licensing Regime (con't)**

The MA further expects that the senior management team and the key personnel responsible for financial management, control and risk management functions, compliance and internal audit of the company should be based in Hong Kong.

The MA may conduct a separate face-to-face meeting between directors or the Chairman of the board of directors, and the chief executive (including alternate chief executive) of the applicant and the SVF Licensing Team during the licensing process.

- **Licensing Regime (con't)**

- d) **Prudential and risk management (part 2(5), sch. 3, New Ordinance)**

The applicant must have in place appropriate risk management policies and procedures for managing the risks arising from the operation of its SVF business that are commensurate with the scale and complexity of the business, which shall include:

- (i) adequate security and internal controls to protect its systems and data (in particular, personal and sensitive data);
- (ii) effective control to guard against cyber threats and detect fraud and attempted fraud;
- (iii) robust and proven contingency arrangements to address any operational disruptions as well as major disasters; and
- (iv) other operational and security safeguards appropriate for the business.

- **Licensing Regime (con't)**

- e) **Anti-money laundering and counter-terrorist financing measures (part 2(6), sch. 3, New Ordinance)**

Applicants must have in place in the SVF scheme adequate and appropriate systems of control for preventing or combating possible money laundering or terrorist financing and ensure compliance with (i) the provisions of AMLO that are applicable to the applicant; and (ii) measures (if any) promulgated by the MA to prevent, combat or detect ML/TF.

- **Licensing Regime (con't)**

- f) **Management of float and SVF deposit (工具按金) (part 2(7), sch. 3, New Ordinance)**

The applicant shall:

- (i) put in place and implement adequate risk management policies and procedures for managing the float and SVF deposits to ensure that there will always be sufficient funds for the redemption of the stored value that remains on the facility;
 - (ii) ensure that at all times the float and SVF deposit
 - (A) is segregated from any other funds paid to or maintained or received by the applicant; and
 - (B) is adequately protected by the measures adopted by the applicant for protecting the float and SVP deposit.

- **Licensing Regime (con't)**

The MA may take into account factors such as the applicant's financial strength, scale of business, risk management and internal control environment in considering whether it is satisfied with the related arrangements.

- g) Redemption of outstanding stored value (part 2(8), sch. 3, New Ordinance)**

The applicant must redeem in full the total of the stored value that remains on the facility as soon as practicable after being requested by the user. The applicant should provide the users with easy access for redemption. If the redemption process is through physical channels, they should be made available at convenient and easily accessible locations.

- **Licensing Regime (con't)**

The New Ordinance further requires that if a fee or charge is payable for a request for the redemption, the applicant must state clearly and prominently the amount of the fee or charge in the contract with the user.

Under exceptional circumstances, the MA may give permission to the applicant that its SVF scheme is not subject to the redemption requirement if the MA considers it appropriate to do so. In such case the applicant must state in the contract with the user clearly and prominently

- (i) that the stored value remaining on the SVF is not redeemable after an expiry date;
- (ii) the expiry date for redeeming the stored value remaining on the facility; and
- (iii) other T&Cs relating to redemption.

- **Licensing Regime (con't)**

- h) **Operating rules (part 2(9), sch. 3, New Ordinance)**

- must be prudent and sound;
 - properly documented, clear, understandable, comprehensive, up-to-date and available to all parties;
 - have a well-founded legal basis consistent with relevant laws and regulations, be enforceable, and provide a high degree of certainty for each material aspect of the SVF scheme;
 - cover complete chain of an SVF's operation including accounting, pre-transaction and authorization to clearing and settlement and post-transaction process;
 - adequate arrangements to monitor and enforce compliance with the operating rules of the SVF scheme;
 - related parties should be informed of any changes to the operating rules ASAP.

- **Licensing Regime (con't)**

- i) **Purpose and soundness of relevant scheme (part 2(10), sch. 3, New Ordinance)**

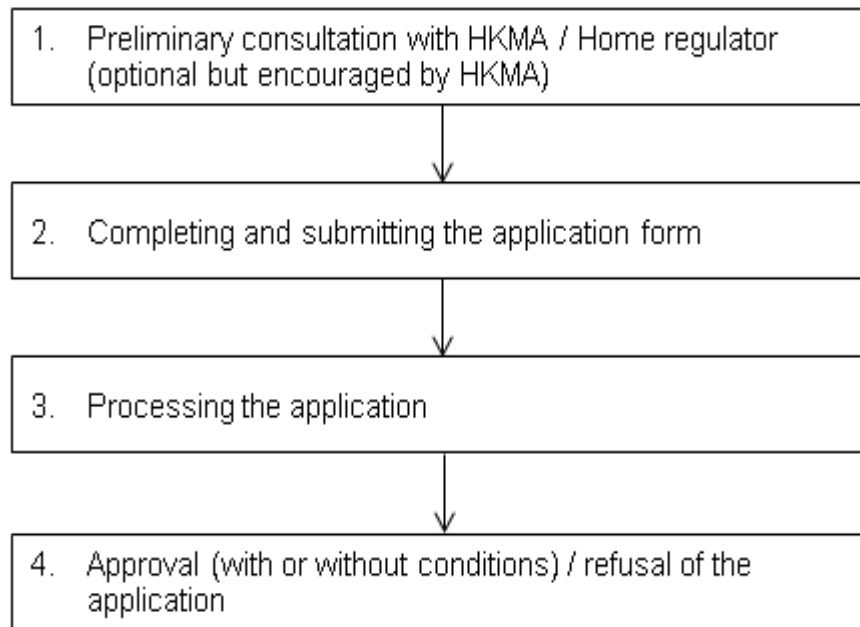
- must be prudent and sound, operated prudently and competently and in a manner that will not adversely affect the stability of any payment system in HK or the interests of the user or potential user of the SVF.

- j) **Other obligations**

- pay licence fee annually (s.8M, New Ordinance): currently at HK\$113,020;
 - report to HKMA of inability to meet the obligations (s. 8R, New Ordinance);
 - notify the MA on change of particulars or change of circumstances (ss.8S &8T, New Ordinance).

New Regulatory Regime - SVF

- Application Procedure
 - Only a company may apply for an SVF licence (s.8E(2), New Ordinance)
 - Procedures



New Regulatory Regime - SVF

- Upon granting of licence:
 - The MA will assign a number to the licence (s.8F(5));
 - the licence number must be clearly stated on each physical device and each communication network (website) (s.8ZZZI);
 - The licensee shall pay the licence fees HKD113,020 within 14 days after the date the licence takes effect and annual licence fees thereafter (s.8M(2)).
- The MA may revoke the SVF licence on one or more grounds specified in sch. 5 of the New Ordinance (s8V); or suspension of the licence as an alternate penalty (s.8ZA).

New Regulatory Regime - SVF

- HKMA may also exercise its power:
 - (a) to issue a requirement (s.8ZF);
 - (b) to appoint an advisor (s.8ZG); or
 - (c) to appoint a manager (s.8ZH).

New Regulatory Regime - SVF

- Transitional period
 - One year since 13 November 2015. During the transition period, certain provisions of the New Ordinance do not take effect. With regard to SVF, these sections include 8B (restrictions relating to issue, etc. of SVF), 8C (prohibition on promoting issues, etc. of SVF in contravention of s. 8B), 8D (prohibition on entering into contracts, etc. for avoiding s. 8B or 8C), 8G (Bank regarded as licencee), 8U (revocation of licence regarded as granted under 8G), 8Y (suspension of licence regarded as granted 8G) and 8ZZZI (display of licence number of SVF) ;

- **Transitional period**

- During the transitional period, SVF issuers already exist on the commencement date or before the end of the transitional period may continue its operations without contravening the above sections but remain subject to the relevant regulation of relevant legislation, such as the Banking Ordinance and the AMLO;
- Applicants (i.e. both new and existing issuers) who wish to be granted SVF licence by the time when transition period expires are required to prepare the necessary information and reports in advance and submit their applications following the commencement of the New Ordinance;

- **Transitional period**

- If the MA refuses to grant an SVF licence, the applicant who already issues an SVF scheme in HK will be notified the result as soon as practicable to allow its orderly exit from the market.
- It is an offence to issue SVF without a licence after the transitional period.



New Regulatory Regime - RPS

- Amendment of s.4 of the CSSO
 - S.4 of the CSSO is amended:
 - a) Designated clearing and settlement system (existing power) or designated retail payment system (**NEW**);
 - b) Definition of RPS: means a system or arrangement for the transfer, clearing or settlement of payment obligations relating to retail activities (whether the activities take place in Hong Kong or elsewhere), principally by individuals, that involve purchases or payments; and includes related instruments and procedures.
 - c) Empower HKMA to determine whether or not an RPS should be designated;
 - d) The pre-existing designation criteria will also apply to RPS;

New Regulatory Regime - RPS

- Amendment of s.4 of the CSSO (con't)
 - S.4 of the CSSO is amended:
 - e) A new designation criterion : HKMA may designate a clearing and settlement system or RPS if having regard to matters of significant public interest, factors to be considered set out in s. 4(4A):
 - the estimated aggregate value of transfer orders transferred, cleared or settled through the system in a normal business day;
 - the estimated average value of transfer orders transferred, cleared or settled through the system in a normal business day;

New Regulatory Regime - RPS

- Amendment of s.4 of the CSSO (con't)
 - S.4 of the CSSO is amended:
 - the estimated number of transfer orders cleared or settled through the system in a normal business day;
 - the estimated number of participants of the system;
 - whether such system is linked to any designated system or any clearing and settlement system that is, or is operated by, a company recognized as a clearing house under s. 37(1) of the Securities and Futures Ordinance.

New Regulatory Regime - RPS

- Regulatory requirements
 - HKMA may declare the activities that are allowed to be carried out through the system.
 - A system operator or settlement institution of the system must not carry out the activities that not so declared without the consent from HKMA (ss. 6A and 6B).
 - S.7 sets out the general requirements to be complied with, and places the responsibility for such compliance on the system operators and settlement institutions, including:
 - a) safe and efficient operation of the system;
 - b) the establishment of appropriate operating rules;
 - c) the existence of adequate compliance arrangements with participants; and
 - d) the availability of sufficient financial resources.

HKMA other relevant regulatory requirements

- The Code remains in force after the commencement of the New Ordinance.
- Payment card scheme operator responsible for data security and integrity.

Disclaimer

The above presentation materials are a brief introduction of the concerned laws only and not a substitute of specific legal advice on the facts of each case.



Q & A

solutions • not complications

Annex A

List of documents to be submitted in an application for SVF licence:

1. Completed application form for licence;
2. A report on paid-up capital certified by external auditor;
3. A copy of the ownership structure;
4. The latest audited financial statements for each institutional controller;
5. Completed application form(s) for each controller;
6. Outline of the senior management and staff structure;
7. Completed application forms for chief executive, alternate chief executive and director;
8. Information on the systems of control for the appointment of managers;
9. Independent assessment report(s) on
 - (a) corporate governance and risk management;
 - (b) float management;
 - (c) anti-money laundering and counter-terrorist financing (“**AML/CFT**”) systems;
 - (d) technology risk management;
 - (e) payment security management; and
 - (f) business continuity management;
10. Copies of risk management policies and procedures on AML/CFT systems;
11. A copy of money laundering and terrorist financing risk assessment report;
12. Copies of risk management policies and procedures for managing the float and SVF deposit;
13. A copy of the investment policy for managing the investment of float;
14. A copy of contract, and terms & conditions between the applicant and the user;
15. A copy of operating rules for each SVF scheme;
16. A copy of contractual agreements which describe the rights and obligations of the related parties involved in the SVF scheme;
17. Business plan that covers a three-year time horizon;
18. Business projection for the upcoming three years of operations;
19. Board resolution in support of the application, certified as true copy by the chief executive;
20. Two copies of the articles of association (or equivalent) of the applicant company in English or Chinese, certified as true copies by the chief executive;
21. Two copies of the applicant's audited annual reports and / or audited financial statements for the past three financial years immediately prior to application. The reports should be certified as true copies by the chief executive;
22. Each of the followings (certified as true copy by the chief executive):
 - (a) Certificate of incorporation;
 - (b) Return of allotments;
 - (c) Incorporation Form (Company Limited by Shares) (Form NC1 or NNC1 Company Registry specified form);
 - (d) Business registration certificate.

Annex B

Grounds for revocation (Part 2 of Schedule 5 to the New Ordinance)

1. Criteria for licensing no longer satisfied;
2. Insolvency or winding-up of the licensee and actual or prospective inability of the licensee to meet its obligations;
3. Failure by the licensee to provide HKMA with information of a material nature and provision of information by the licensee to HKMA which is materially false, misleading or inaccurate;
4. Contravention of any condition attached to a licence under s.8I;
5. Cessation of SVF business;
6. Failure by the licensee to pay fees;
7. Person has become a controller of a licensee despite HKMA's objection and such person continues to be a controller of a licensee despite the HKMA's objection;
8. Licensee fails to appoint a chief executive and person has become or continues to be a chief executive or director of the licensee without the HKMA's consent or is in breach of any condition attached to HKMA's consent;
9. Licensee engages in prohibited business practice;
10. Any other threat to the interests of the user or potential user;
11. Threats to the interests of Hong Kong as an international financial centre;
12. Failure by the licensee to pay any pecuniary penalty; or
13. Voluntary revocation by the licensee.