



HONG KONG MONETARY AUTHORITY
香港金融管理局

Explanatory Note on Licensing for Stored Value Facilities

Hong Kong Monetary Authority
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Chapter 1: Introduction

1. Following the commencement of the Payment Systems and Stored Value Facilities Ordinance (the Ordinance), the issue¹ of the stored value facilities (SVF) is subject to a licensing regime administered by the Monetary Authority (MA).² The Ordinance provides the legal basis for the powers of the MA in relation to the regulation and supervision of SVF business, and provides the general principles and requirements based on which the MA will determine whether an SVF licence should be granted.
2. The licensing regime aims to ensure the safety and soundness of the SVF operation in Hong Kong, and that there is adequate protection of the float. Moreover, by providing legal clarity and a level playing field for market participants, the regime aims to foster development of SVF in Hong Kong and maintain the status of Hong Kong as an international financial centre.
3. Under the regulatory regime for SVF, the MA is empowered to (i) decide whether an SVF licence should be granted; (ii) conduct ongoing supervision of licensees; and (iii) conduct investigation and impose sanctions on licensees where appropriate.

The purpose of this note

4. This explanatory note intends to provide guidance about the licensing regime established by the Ordinance, and the policies and approach of the MA in implementing it. While this note summarises a number of principal provisions of the Ordinance, it does not set them all out or analyse them all. Nor is it a comprehensive guide to the regulatory issues that may be confronted by the licensee. It is therefore not a substitute for appropriate legal advice and other professional advice in a given case. Parties applying for an SVF licence are therefore advised to familiarize themselves not only with this note but also with

¹ Facilitation of the issue of SVF is also subject to the same requirements under the licensing regime. Under section 2B of the Ordinance, a facilitator is defined as a person who facilitates the issue of an SVF by providing the issuer with valuable consideration the value of which determines, whether in whole or in part, the extent to which the issuer may give an undertaking that falls within the description of section 2A(2) or (3) of the Ordinance in respect of the facility.

² The Monetary Authority (MA) is a person appointed by the Financial Secretary under section 5A(1) of the Exchange Fund Ordinance (Cap. 66 of the Laws of Hong Kong). The powers under the Ordinance are vested in the MA.

the Ordinance and the relevant guidelines issued by the MA.

5. This note is relevant both to parties intending to seek approval to become licensees under the Ordinance and to the existing licensees, as the licensing criteria are of a continuing nature. Failure to meet the licensing criteria by an existing licensee would mean that the MA's powers of revocation might become exercisable in respect of the SVF licence of that licensee.
6. Licensed banks in Hong Kong are regarded as being granted an SVF licence under the Ordinance. Hence this note is not applicable to them should they decide to carry out SVF business. Separate guidance will be provided to the licensed banks.

Major regulatory tools

7. It may help to briefly outline the major tools that the MA intends to use in regulating licensees. In general, they comprise: (a) on-site examinations; (b) off-site reviews; (c) independent assessments; (d) auditors' reports; and (e) meetings with the management of the licensee.

On-site examinations

8. On-site examinations are conducted, based on the MA's powers as set out in section 12A, on a periodic basis. Their frequencies vary from licensee to licensee and are determined upon a risk-based approach. The scope is also risk-based and focuses on high priority areas identified by the MA. The MA will discuss the main findings and recommendations of the examination with the management of the licensee before issuing a formal examination report. The MA will closely monitor and follow-up the implementation of the recommendations by the licensee.

Off-site reviews

9. The scope of off-site reviews ranges from analysis of regular returns covering aspects of the operations of licensees to an extensive annual review of the performance and financial position of individual licensees.

10. The MA's powers to collect information on both a routine and an ad hoc basis are set out in section 12 of the Ordinance. The key information sources include: (a) statutory returns and ad hoc reports; (b) internal management accounts and other management information; and (c) published financial information.
11. The licensee should, at all times, provide information to the MA within the time specified by the MA. Failure to do so is an offence and may result in the revocation of the SVF licence.

Independent assessments

12. Pursuant to section 8E(4), the MA may require the applicant to provide any information or document that the MA considers necessary for determining the application. To this end, an applicant is required to submit reports of independent assessment on six key areas: (i) corporate governance and risk management; (ii) float management; (iii) anti-money laundering and counter-terrorist financing (AML/CFT) systems; (iv) technology risk management; (v) payment security management; and (vi) business continuity management. The MA expects the applicant to appoint competent and qualified assessor(s) which are independent from the business units (the "assessor(s)") to carry out the independent assessment. The MA might need to be satisfied with the capability of the assessor(s) who should be preferably qualified with relevant professional qualifications and/or industry recognised certification.
13. Thereafter, the licensee should perform a formal risk assessment on the six key areas set out in paragraph 12 above, at least on an annual basis, to determine if any independent assessments are necessary and if so the frequency and scope of such independent assessments. As part of the on-going supervisory process, the licensee should appoint assessor(s) to carry out an independent assessment before the launch of a new service, or major enhancements to the existing services.

Auditors' reports

14. The MA may require a licensee to submit ad hoc reports prepared by auditors approved or nominated by the MA under section 12B. The report may be

prepared on the following matters:

- (a) the state of affairs, or profit or loss of the licensee based on an audit of the accounts carried out in respect of a specified period; or
- (b) whether or not the licensee has in place adequate systems of control to enable, as far as reasonably practicable, the affairs, business and property of the licensee to be prudently managed and the licensee to discharge its duties or obligations under the Ordinance.

Meetings with the management of a licensee

- 15. The MA may hold regular meetings with the senior management of a licensee to discuss the findings of the off-site reviews (and on-site examinations if conducted), particularly any significant matters of concern or mutual interest.
- 16. The MA may also meet the senior management, the specialised committees (e.g. audit committee) or the board of directors of a licensee on a periodic basis. The frequency of such meetings, if any, will depend on the risk profile, size and scale of the business of the licensee concerned. The meetings enable the MA to better understand how the senior management view and control the risks in their SVF business and how they assess their business situation and future development.

Chapter 2: Definition of SVF and the scope of application

Definition of SVF

1. Section 2A of the Ordinance states that for the purposes of the Ordinance a facility is an SVF if—

(a) it may be used for storing the value of an amount of money that—

(i) is paid into the facility from time to time; and

(ii) may be stored on the facility under the rules of the facility; and

(b) it may be used for either or both of the following purposes—

(i) as a means of making payments for goods or services under an undertaking (whether express or implied) given by the issuer.

That means an undertaking that, if the facility is used as a means of making payments for goods or services, the issuer, or a person procured by the issuer to accept such payments, will accept the payments up to the amount of the stored value that is available for use under the rules of the facility;

(ii) as a means of making payments to another person (other than payments mentioned in sub-paragraph (i) above) under an undertaking (whether express or implied) given by the issuer.

That means an undertaking that, if the facility is used as a means of making payments to another person (recipient) (other than payments mentioned in sub-paragraph (i) above), 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.

2. The above definition covers both device-based SVF and non-device based SVF (i.e. network-based SVF).

- (a) For device-based SVF, the value is stored in an electronic chip on a card or physical device such as watches and ornaments; and
- (b) 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. Examples include internet-based payment platforms which provide “network-based accounts” with which users can store value for making payments for online purchases, or for person-to-person funds transfers.

Licence is required for issuing SVF

- 3. Unless an SVF is a single-purpose SVF or is exempt from the provisions of the Ordinance, an SVF is subject to the licensing requirement. Under section 8B of the Ordinance, it is an offence to issue an SVF without an SVF licence.

Licence is not required for issuing single-purpose SVF (SPSVF)

- 4. For the purposes of the Ordinance, an SPSVF is not an SVF.
- 5. Section 2A(5) defines an SPSVF as a facility that may be used for the purpose mentioned in section 2A(1)(a); 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 falls within the description of section 2A(2) or 2A(3).

Certain types of SVF are exempt

- 6. Under section 8ZZZB of the Ordinance, some SVF are exempt from the licensing regime even if they are multi-purpose SVF. 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.
- 7. The exact types of SVF that are exempt are specified in Schedule 8 to the

Ordinance. They are:

- (a) SVF used for certain cash reward schemes. Such SVF may be used for storing only a sum of money paid by (i) the issuer; or (ii) a person who agrees to pay a sum of money for storage in the facility under an agreement with the issuer; and the sum of money stored may only be used for making payments for goods or services provided by the issuer or person under the terms and conditions of the facility. Examples include loyalty schemes provided by shops and supermarkets which offer cash rewards for customer loyalty;
- (b) SVF used for purchasing certain digital products. 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, a telecommunication, digital or information technology device; the payments are executed through such a device; and the telecommunication, digital or information technology operator does not act only as an intermediary between the user of the facility and the provider of the goods or services. Examples include purchase of digital contents such as ringtones, music, videos, electronic books, games and applications that can be used on smartphones, computers or other information technology devices only;
- (c) SVF used for certain bonus point schemes. Such SVF may be used for storing only points or units (by whatever name called) that are money's worth provided by (i) the issuer; or (ii) a person who agrees to provide goods or services to the user of the facility under an agreement with the issuer. The user may use the points or units for making payments for the goods or services provided by the issuer or person either by (i) using only the points or units; or (ii) using the points or units together with a sum of money (in any currency) that is stored on the facility temporarily for the sole purpose of executing the payments; and the sum of money so stored is not redeemable for cash. Examples are airline mileage programmes and customer loyalty schemes that provide non-cash points to customers to reward their patronage and that such points and value stored, if any, are not redeemable for cash;
- (d) SVF used within limited group of goods or services providers. Such SVF

may be used as a means of making payments only for goods or services provided by (i) the issuer; or (ii) a person who provides the goods or services under an agreement with the issuer; and it may be so used within only any of the premises occupied by the issuer. The SVF is not one so specified in Schedule 8 if (i) the amount of the float of the facility exceeds \$1,000,000 or its equivalent; or (ii) the issuer issues more than one such facility, the aggregate amount of the float of those facilities exceeds \$1,000,000 or its equivalent. Example includes store cards where the cards can only be used at the store's premises; and

- (e) SVF used within certain premises. Such SVF is issued under an agreement between the issuer and another person; and it may be used as a means of making payments only for goods or services within any of the premises occupied by that other person. The SVF is not one so specified in Schedule 8 if (i) the amount of the float of the facility exceeds \$1,000,000 or its equivalent; or (ii) the issuer issues more than one such facility, the aggregate amount of the float of those facilities exceeds \$1,000,000 or its equivalent. Example includes membership cards where the cards can only be used in the shops or restaurants in a specific club or organisation.
8. Section 8ZZZB of the Ordinance provides the MA with the power to request any information from an exempt SVF issuer when the MA considers it necessary to determine its eligibility for exemption. Pursuant to section 8ZZZC, 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 if the MA is not satisfied that the risks posed by such SVF to users or potential users or to payment or financial system of Hong Kong are immaterial, the MA may declare an SVF not to fall within the exemption in Schedule 8 and require the issuer of the SVF to apply for an SVF licence under section 8E.
9. In addition, section 8ZZZD of the Ordinance provides that 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 Hong Kong are immaterial. Pursuant to subsections (4) and (5) of section 8ZZZD, any 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, submit information on a regular basis, etc).

Overseas SVF schemes

General principles

10. Under section 8B, subject to certain exemptions as specified in the Ordinance, no person shall issue SVF in Hong Kong unless an SVF licence is granted by the MA. The term “issue” is defined in section 2 of the Ordinance as “in relation to a stored value facility, includes the operation of the facility by the issuer for use by the user of the facility after its issue”. And under section 8ZZZJ, a person without an SVF licence must not publish in Hong Kong or elsewhere an advertisement, invitation or document which is, or contains, an invitation to the public relating (whether in whole or in part) to the issue of SVF.
11. It is noted that some overseas SVF issuers may want to extend their SVF business to cover the Hong Kong market through the issue of the SVF in Hong Kong. The MA will take into account a number of factors, as elaborated in the subsequent paragraphs, in ascertaining whether an SVF scheme that might fall within the scope under sections 8B and 8ZZZJ.

Relevant factors considered by the MA

12. For determining the applicability of the regime, the MA will consider the following factors when determining whether an overseas SVF is issued in Hong Kong or a person publishes advertisement, invitation or document which is, or contains, an invitation to the Hong Kong public relating to the issue of SVF:
 - (a) factors relating to the way in which the SVF scheme is presented or promoted (see paragraph 13 below for examples);
 - (b) factors relating to the content of the issuer’s website (see paragraph 14 below for examples); and
 - (c) factors relating to precautionary steps implemented (see paragraph 15 below for examples).

(A) Promotion of services

13. In determining whether an SVF scheme is presented or provided in such a manner that it appears to be issued in Hong Kong, the MA will consider all relevant factors including, in particular, the following:

- (a) whether the location for the delivery of the facility and the provision of the subsequent customer service to facility holders is in Hong Kong;
- (b) whether the location for and the manner in which an SVF holder may store and add value onto the SVF is or through channels in Hong Kong;
- (c) whether the promotional material is targeted, via “push” techniques, at a group or groups of people whom the issuer knows, or should reasonably know, reside in Hong Kong. “Push” techniques include spamming, broadcasting or directing information to a particular person or group of people through, for instance, e-mails, SMS messages and any social media channels;
- (d) whether any news group, bulletin board, chat room or similar facility associated with the site has been used to promote the SVF service in Hong Kong; and
- (e) in the case of services details and promotional material hosted on a site:
 - (i) whether the website's existence has been included in a Hong Kong search engine or the Hong Kong section of a search engine;
 - (ii) whether the SVF advertisements, in print or online forms, are easily accessible in Hong Kong and whether the website has been advertised in Hong Kong through advertising agencies, in periodicals (e.g. newspapers, journals or electronic publications) or by broadcasting (e.g. television or radio); and
 - (iii) whether a third-party site that is targeted at Hong Kong has hyperlinks to the issuer's website.

(B) Contents of issuer's website

14. In determining whether the contents of the issuer's website and the relevant promotional materials are written in a manner which gives an impression that the SVF is issued in Hong Kong, the MA will take a holistic approach and consider a host of factors including but not limited to the following:

(a) whether representations made in any promotional materials and advertisements regarding the location of the issue of the SVF and the usage of that facility is in Hong Kong;

(b) whether the issuer's website contains a disclaimer, which is viewed with or before the promotional materials and which states clearly that:

(i) the SVF services will only be available to certain jurisdictions (and, if so, whether Hong Kong is included in the list of such jurisdictions); or

(ii) the SVF services will not be available to certain jurisdictions (and, if so, whether Hong Kong is included in the list of such jurisdictions). A disclaimer that simply states in general terms that no service is intended to be provided to those jurisdictions where it is not authorized or permitted without specification of the excluded jurisdictions will not be considered by the MA as sufficient; and

(c) whether the website and its functions are designed in a manner that seems to be issued in Hong Kong, for example:

(i) whether the languages used in the SVF website include the traditional Chinese language;

(ii) whether the SVF issuer uses a Hong Kong domain name or a domain name that may give the impression that the SVF issuer is established in Hong Kong;

(iii) whether the currencies accepted for the services includes Hong Kong dollar;

- (iv) contact details of any persons, agents, correspondents or other parties in Hong Kong are provided to users for the purposes of enquiries or customer services. This may include a Hong Kong telephone number, Hong Kong email address, Hong Kong fax number, Hong Kong postal address even if the actual operation is not conducted in Hong Kong; and
- (v) whether the SVF issuer requests specific information from the customer to verify his/her identify such as a copy of HKID or HK passport.

(C) Precautions implemented by issuer

15. In determining whether reasonable precautions have been taken by the issuer to avoid using of SVF services by members of the public in Hong Kong as a result of promotional materials issued over the internet, the MA will consider all relevant factors including, in particular, the following:
 - (a) whether reasonable precautions are in place to avoid the promotional materials being made available or accessible to persons in Hong Kong. Precautions may include a pre-registration process (and the issuing of passwords) to ensure that only targeted groups are granted access;
 - (b) whether the issuer has systems in place to avoid providing services to persons residing in Hong Kong, e.g. where the system would reject any users with a correspondence address in Hong Kong; and
 - (c) whether steps have been taken to disallow users with a Hong Kong IP address from accessing the SVF services.
16. Furthermore, where applicable, the MA may also consider matters such as whether the SVF issuer has established a physical presence in Hong Kong; and whether it has established business relationships with banks or financial institutions in Hong Kong for payment or other banking support services in Hong Kong. The MA may also take into account the level of acceptance by users or merchants in Hong Kong which are patronising the services if such information

is available.

17. The above factors and criteria are neither exhaustive nor conclusive. The presence or absence of any factor may not necessarily lead the MA to consider that a particular SVF is issued in Hong Kong. The MA will judge each case on its merits and take into account the particular circumstances and all relevant facts.

Further development

18. The MA will keep the criteria under regular review in the light of technological developments and any other international regulatory initiatives in this area.

Chapter 3: Licensing criteria and obligations

1. Section 8F(3) of the Ordinance states that the MA may grant an SVF licence to the applicant only if the MA is satisfied that all the minimum criteria applicable in relation to the applicant are fulfilled, and if the SVF licence is granted, the minimum criteria will continue to be fulfilled in relation to the applicant as a licensee.
2. Part 2 of Schedule 3 to the Ordinance lists out these minimum criteria.
3. This chapter discusses, without necessarily repeating all relevant contents in the Ordinance, how the MA intends to interpret and implement these criteria.

Principal business (paragraph 1, part 2, Schedule 3)

4. This requirement means that the 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 to each SVF licence requiring the licensee to consult with the MA if it would like to change its business or engage in any new business after it is granted the SVF licence.
5. This is to ensure that most if not all resources of the licensee will only be used on its SVF business. On the one hand, this helps ensure that the SVF business operation is as robust as possible, as the resources available to, and the attention of, the licensee will not be diverted to other businesses. On the other hand, it helps avoid possible “contamination” or “spill-over implication” arising from the failure of other businesses.

Money services as ancillary services

6. The licensee may provide remittance and/or money changing services as ancillary or incidental services to its principal business.
7. Such services may fall within the Money Service Operators (MSO) licensing regime administered by the Customs and Excise Department (C&ED) under the

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO). To avoid any regulatory overlap, licensees are not required to obtain an MSO licence from the C&ED as their AML-related matters are subject to the SVF regulatory regime.

Financial resources (paragraph 2, part 2, Schedule 3)

8. The applicant must satisfy either of the following:
 - (a) its paid-up share capital is not less than HK\$25 million or an equivalent amount in any other currency that is freely convertible into HK dollars or is approved by the MA;
 - (b) its other financial resources are equivalent to or exceed those mentioned in sub-paragraph (a) above.
9. The stated requirement for an applicant to have a paid-up share capital of HK\$25 million, as with other provisions in Part 2 of Schedule 3, is only meant to be a minimum requirement. The MA may impose a higher level of capital requirement on an applicant (say 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.

'Fit and proper' person; 'knowledge and experience' (paragraphs 3 & 4, part 2, Schedule 3)

10. The 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)**. The applicant must have in place adequate systems of control to ensure that the MA is kept informed of the identity of each chief executive, director and controller of the applicant and consent from the MA is received prior to taking up their appointment.
11. Also, 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)**.

12. In addition, the MA 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.
13. It is expected that 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 may be conducted during the licensing process.

Prudential and risk management (paragraph 5, part 2, Schedule 3)

14. 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, including—
 - (a) adequate security and internal controls to protect its systems and data (in particular, personal and sensitive data);
 - (b) effective controls to guard against cyber threats and detect fraud and attempted fraud;
 - (c) robust and proven contingency arrangements to address any operational disruptions as well as major disasters; and
 - (d) other operational and security safeguards appropriate for the business.
15. In determining whether an applicant satisfies these requirements, the MA attaches particular importance to the effectiveness of the applicant's technology risk management, payment security management and business continuity management.
16. Detailed requirements of technology risk management, payment security management and business continuity management are set out in the relevant

SVF supervisory guideline³.

AML/CFT measures (paragraph 6, part 2, Schedule 3)

17. The Ordinance requires that applicant must have in place in the SVF scheme adequate and appropriate systems of control for preventing or combating possible money laundering or terrorist financing (ML/TF) and ensure it complies with-
- (a) the provisions of the AMLO that are applicable to the applicant; and
 - (b) the measures (if any) promulgated by the MA, whether in the form of rules, regulations, guidelines or otherwise, to prevent, combat or detect ML/TF.
18. Detailed requirements on AML/CFT systems are set out in the Guideline on Anti-Money Laundering and Counter-Terrorist Financing (For Stored Value Facility Licensees)⁴ (“the AML Guideline”).
19. Interested parties should refer to the AML Guideline for the specific and detailed requirements of the MA on AML/CFT systems.

Management of float and SVF deposit (paragraph 7, part 2, Schedule 3)

20. The Ordinance requires that the applicant must—
- (a) have in place adequate risk management policies and procedures for managing the float and SVF deposit to ensure that there will always be sufficient funds for the redemption of the stored value that remains on the facility;
 - (b) implement those policies and procedures; and
 - (c) ensure that at all times the float and SVF deposit—
 - (i) is kept separate from any other funds paid to or maintained or

^{3,4} To be issued

received by the applicant; and

- (ii) is adequately protected by the measures adopted by the applicant for protecting the float and SVF deposit.

21. Detailed requirements in relation to float management are set out in the relevant SVF supervisory guideline⁵.
22. The applicant must ensure that all the minimum criteria applicable in relation to float management are fulfilled in which they have float safeguarding measures and related risk management policies and procedures that are adequate for the protection of the float.
23. The MA, in considering whether he is satisfied with the related arrangements, may take into account all relevant factors, for example the applicant's financial strength, scale of business, risk management and internal control environment.

Redemption of outstanding stored value (paragraph 8, part 2, Schedule 3)

24. The Ordinance requires that 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 to do so. In this aspect, the applicant should provide 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.
25. The Ordinance also requires that, if a fee or charge is payable for a request for the redemption made at any time, the applicant must, in the contract with the user, state clearly and prominently the amount of the fee or charge. The MA expects that such fees and charges should be proportionate and in line with the costs actually incurred by the applicant.
26. Under exceptional circumstances, the MA may give permission to the applicant to the effect that its SVF scheme is not subject to the redemption requirement as set out in paragraph 24 if the MA considers it appropriate to do so. In this

⁵ To be issued

case, the applicant must, in the contract with the user, state clearly and prominently –

- (a) that the stored value remaining on the stored value facility is not redeemable after an expiry date;
- (b) the expiry date for redeeming the stored value remaining on the facility; and
- (c) any other terms or conditions relating to the redemption.

Operating rules (paragraph 9, part 2, Schedule 3)

- 27. The Ordinance states that the operating rules of the SVF scheme must be prudent and sound, having regard to the purposes of the scheme and how it is to be operated and governed.
- 28. The operating rules, if properly designed and maintained, help ensure safe and efficient operation of an SVF scheme. The operating rules of the SVF scheme should be properly documented, clear, understandable, comprehensive, up-to-date and available to all related parties. They should 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. It is expected that the operating rules cover the complete chain of an SVF's operation including account opening, pre-transaction and authorization to clearing and settlement and post-transaction processes.
- 29. The applicant should ensure that adequate arrangements are in place to monitor and enforce compliance with the operating rules of the SVF scheme. The related parties should be informed of any changes to the operating rules as soon as practicable.

Purpose and soundness of relevant scheme (paragraph 10, part 2, Schedule 3)

- 30. The applicant must satisfy the MA that the SVF scheme will be prudent and sound, and operated prudently and with competence and in a manner that will not adversely affect the stability of any payment system in Hong Kong or the

interests of the user or potential user of the SVF to which the SVF scheme relates.

Other obligations of licensee

31. In addition to the minimum criteria set out above, a licensee must also fulfil a range of obligations. It includes, but not limited to –

(a) Pay licence fee (section 8M);

(b) Report to the MA its inability to meet obligations (section 8R); and

(c) Notify the MA of a change of particulars or change of circumstances (sections 8S and 8T).

32. These obligations, and the criminal liability (if any) for which the licensee is liable in case they fail to comply with the relevant requirements are set out in the relevant provisions of the Ordinance and are self-explanatory.

Chapter 4: Application procedures

Introduction

1. Section 8B of the Ordinance states that a person must not issue an SVF unless an SVF licence has been granted to the person. A person who contravenes this section commits an offence.
2. Section 8E(2) further states that only a company may apply to the MA for an SVF licence.

Preliminary consultation with the MA

3. Any company that is interested in obtaining an SVF licence to issue an SVF, and is ready to observe the minimum licensing criteria may obtain the application form from the SVF Licensing Team.
4. The management of the company is strongly encouraged to discuss the plan with the MA before submitting a formal application. Such preliminary discussions are useful in ensuring that the prospective applicant is fully aware of the requirements and licensing procedures. This should help avoid the premature submission of a formal application and shorten the time required to process an application.

Consultation with home regulator

5. Where the parent company of the applicant is also engaging an SVF business and regulated in its country of incorporation, the MA may contact the relevant home regulator and take into account its views in respect of matters such as the financial soundness and the overall internal control environment of the parent company, and whether the relevant home regulator has any concern about that parent company extending its SVF business to Hong Kong. Therefore it is important that the applicant should liaise with its parent company to consult its home regulator prior to submitting an application to the MA.

Completing and submitting the application form

6. Section 8E(3) states that the application must be made in the specified form, and contain the address of the applicant's principal place of business in Hong Kong, a postal address and an electronic mail address.
7. In practice, the application must be lodged with the MA with the application form and the required documents as set out in **Annex B**.

Processing of application

8. Section 8E(4) states that the MA may, by notice in writing to the applicant, require the applicant to provide any information or document specified in the notice that the MA considers necessary for determining the application.
9. The MA may seek such additional information from the applicant as is necessary for the MA to reach a decision on the application. The circumstances of each particular application will dictate the additional information required. As mentioned in Chapter 1, when making an application for the first time, the applicant is required to submit reports of independent assessment on six key areas: (i) corporate governance and risk management; (ii) float management; (iii) AML/CFT systems ; (iv) technology risk management; (v) payment security management; and (vi) business continuity management. The validity of the assessment report is no more than six months after the report's sign-off date.
10. Incomplete information may result in delays. Applicant should, therefore, pay attention to the following points –
 - (a) All applications must be submitted with documents and information listed in **Annex B**. The applicant will be informed in writing that the application will be treated as "formal" and the processing of the application will begin;
 - (b) Where an application received is incomplete or supporting documents or information is lacking, making it difficult for the MA to perform an assessment against the licensing criteria, the applicant will be informed in writing that the application will be treated as "draft" and will be asked to complete the application or provide the missing information by a date specified by the MA. Once a properly completed application with all necessary supporting documents and information is received, the applicant

will be notified in writing that application will be handled as “formal” and the processing of the application will begin;

- (c) Where information requested is not received by the specified date or a revised date agreed in writing by the MA at the request of the applicant, the application may be treated as “suspended” and the applicant will be notified of this in writing;
 - (d) Even when properly completed applications are received, it is almost always necessary for the MA to seek further information from applicant as part of the processing. Requests for such information will generally carry a deadline. The application may be treated as “suspended” if the requested information does not reach the MA by the deadline;
 - (e) Where an application is “suspended”, the applicant will be informed in writing that the processing of the application will cease temporarily. Suspended applications will be reactivated only when the outstanding information is submitted. Applicant should note that, depending on the length of the suspension, it may be necessary to update the information previously submitted when the application is reactivated. In some cases, this will effectively mean a fresh application if substantial changes to previous submitted information are made; and
 - (f) Where an application is “suspended” for 6 months or more for any reasons, a fresh application will generally be required if the applicant wishes to pursue the matter further.
11. All applications will be considered by an SVF Licensing and Advisory Committee comprising senior officers of the MA and chaired by a senior executive. The Committee is responsible for considering and making recommendations to the MA on licensing matters under the Ordinance.

Approval of application

12. Section 8F(1)(a) states that the MA may determine an application for an SVF licence made by a person (the applicant) under section 8E by granting an SVF licence to the applicant.

13. Section 8F(2) further states that the MA may grant the SVF licence without conditions or subject to any conditions attached under section 8I of the Ordinance. Conditions attached to an SVF licence may include, among others, imposing a higher level of capital requirement, restrictions on the SVF business, requirements relating to protection of the float or SVF deposit, requirement to cease the issue of the SVF or to cease the receipt of any amount for the storage of the SVF, requirement to disclose any information relating to the business of the licensee, and restrictions as to the maximum amount of value that may be stored on an SVF, etc.
14. As mentioned in Chapter 3, section 8F(3) states that the MA may grant the SVF licence to the applicant only if he is satisfied that (a) all the minimum criteria applicable in relation to the applicant are fulfilled; and (b) if the SVF licence is granted, the minimum criteria will continue to be fulfilled in relation to the applicant as a licensee. (Elaborations on the minimum criteria can be found in Chapter 3.)
15. Section 8F(5) states that if the MA grants an SVF licence, the MA must:
 - (a) assign a unique number, which may be an alphanumeric number, to the licence; and
 - (b) specify in the licence the date on which the licence is to take effect.
16. Specifically, section 8ZZZI requires that a licensee must ensure that the licence number of the SVF licence is clearly stated:
 - (a) subject to sub-paragraph (b), if the SVF is device-based, on each physical device concerned;
 - (b) if the SVF is device-based but it is not reasonably practicable for it to comply with sub-paragraph (a), on the packaging containing each physical device concerned; and
 - (c) if the SVF is network-based, on each communication network concerned, which includes a website of the licensee.

17. Section 8M(2) requires that a licensee must pay to the MA the appropriate licence fee specified in Schedule 4 within 14 days after the date on which its SVF licence is to take effect (and then annually on or before each anniversary of that date.) Currently, the licence fee payable, as stated in Schedule 4, is HK\$113,020.

Refusal of application

18. Section 8F(1)(b) states that the MA may determine an application for an SVF licence made by a person (the applicant) under section 8E by refusing to grant the SVF licence.
19. If the MA refuses to grant the SVF licence, section 8F(4) requires that the MA must give a written notice to the applicant stating (a) the decision; and (b) the grounds for the decision.
20. A decision to refuse to grant an SVF licence under section 8F(1)(b) is a reviewable decision (see Part 2 of Schedule 1 to the Ordinance). That means any person who is aggrieved by such decision may refer the decision to the Payment Systems and Stored Value Facilities Appeals Tribunal (Tribunal) for review under section 35 of the Ordinance.

Chapter 5: Transitional period

1. The one-year transitional period will commence on the date the Ordinance comes into operation. During this period, certain provisions of the Ordinance do not take effect. With regard to SVF, these sections include 8B, 8C, 8D, 8G, 8U, 8Y and 8ZZZI.
2. During the transitional period, SVF issuers who already exist on the commencement date of the Ordinance (“the existing issuers”) or before the end of the transitional period may continue its operations without contravening the above sections but remain subject to the regulation of relevant legislation, such as the Banking Ordinance and the AMLO.
3. As a general reminder, applicant (i.e. both new and existing issuers) who wish to be granted an SVF licence by the time when the transitional period expires are strongly advised to prepare the necessary information and reports in advance and submit their applications as soon as possible following the commencement of the Ordinance.
4. Applicant who submits its application in the later stages of the transitional period should be aware of the risk that if they are not granted an SVF licence by the time when the transitional period expires, it will be an offence for them to continue the issue and operation of SVF without an SVF licence.
5. If the MA refuses to grant an SVF licence, the applicant who already issues and operates an SVF scheme in Hong Kong will be notified about the result as soon as practicable to allow its orderly exit from the market before the end of the transitional period. It is an offence to issue SVF without an SVF licence after the transitional period.

CHAPTER 6: Revocation and suspension of licence

Introduction

1. Under section 8V of the Ordinance, the MA may revoke the SVF licence on one or more of the grounds specified in Part 2 or 3 of Schedule 5.
2. There are a number of steps which must be gone through before a revocation takes effect. First, the MA must, under section 8V(1), give the licensee a written notice stating the MA's intention to propose to revoke the SVF licence, the grounds for the proposed revocation and a period of not less than 14 days after the date of the notice within which the licensee may make oral or written representation (unless the revocation is requested by the licensee concerned). After taking into consideration any representation made, the MA may propose to revoke the SVF licence by serving a notice in writing (***notice of proposal to revoke***) to that effect on the licensee concerned under section 8V(3).
3. A licensee that is aggrieved by a proposed revocation may refer the MA's proposal to revoke to the Tribunal for review under section 35. Only when the review by the Tribunal was unsuccessful or the licensee has waived its right of appeal would the MA specify by notice in writing (***notice of revocation***) under section 8V(4) to the licensee the date on which the proposed revocation shall take effect. From that date, the licensee must cease to carry on the business which was the subject of its SVF licence. After serving the notice of revocation to the licensee, the MA is required to make a public announcement of the revocation.
4. The MA's powers of revocation under section 8V are discretionary. In considering whether to exercise such power, the MA would have primary regard to the need to maintain the stability of the payment system in Hong Kong, and to protect the interests of the user or potential user of the SVF scheme in question. It should however be noted that even if the powers to revoke become exercisable, the MA may choose not to exercise them if the MA considers that remedial action can be speedily taken by the licensee concerned which would resolve the problem identified in a satisfactory manner.
5. A description of each of the grounds for revocation in Part 2 of Schedule 5 and

the MA's interpretation of them is set out below. The paragraph references are to those in the Schedule.

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

Criteria for licensing no longer satisfied (paragraph 3)

6. The licensing criteria set out in Schedule 3 are continuing requirements which continue to apply after an SVF issuer or facilitator has been licensed. Accordingly, paragraph 3 of Schedule 5 provides that it is a ground for revocation if the MA is satisfied that the licensee does not fulfil any of the criteria applicable in relation to the licensee.

Insolvency or winding up of the licensee (paragraph 4) and actual or prospective inability of the licensee to meet its obligations (paragraphs 5 and 6)

7. Under section 8R of the Ordinance, a licensee has a duty to report to the MA that it is likely to become unable to meet its obligations. The winding-up of the licensee is dealt with in section 8ZZZH. Even if the licensee concerned is in the process of being wound up, the MA may not immediately revoke its SVF licence. For example, the MA may direct that the licensee's affairs, business or property specified in the terms of the direction is to be managed by a Manager appointed by the MA (section 8ZH).

Failure by the licensee to provide the MA with information of a material nature (paragraph 7) and provision of information by the licensee to the MA which is materially false, misleading or inaccurate (paragraph 8)

8. Paragraph 7 of Schedule 5 provides that the MA's powers to revoke become exercisable if the MA is satisfied that the licensee has not provided him, before or after the grant of the SVF licence, with information of a material nature relating to it as is required under the Ordinance. Paragraph 8 of Schedule 5 refers to a situation where the MA is satisfied that the licensee has provided him, before or after licensing, with information which is, to a material extent, false, misleading or inaccurate. This applies whether or not the information was provided pursuant to a requirement under the Ordinance.

9. Failure to provide the MA with material information as required under the Ordinance could indicate weaknesses in the management and/or internal controls of the licensee. It may cast doubt on the fitness and propriety of the management of the licensee, whether the licensee is being prudently managed and on the attitude of its management towards regulatory compliance. In determining whether or not to exercise the power of revocation on this ground, the MA would have regard to such factors as the nature of the information concerned, the frequency of the failure to provide information, whether effective measures had been implemented to rectify the situation, and whether there were other mitigating factors in the circumstances.
10. The MA considers that the provision of false, misleading or inaccurate information of a material nature by a licensee would be a serious matter as it would raise significant doubt not only as to the effectiveness of the licensee's internal control systems but also, perhaps, as to the fitness and propriety of its management and the general attitude of the management towards regulatory compliance. Such a situation could pose a serious threat to the interests of the user or potential user of the SVF scheme concerned. The MA would take into account such factors as the materiality of the information and the inaccuracy, the frequency with which such inaccuracies occurred, whether there was a deliberate intent to deceive the MA, whether effective measures had been implemented to rectify the situation, and whether there were other mitigating factors in the circumstances.

Contravention of any condition attached to a licence (paragraph 9)

11. The MA has the power under section 8I of the Ordinance to attach conditions to an SVF licence. Paragraph 9 of Schedule 5 provides that the MA may exercise the power where the MA is satisfied that a licensee has breached such a condition. In considering whether to exercise the power, the MA would take into account the particular circumstances of the breach (including how serious it was, whether it was deliberate and how often it had been repeated) and any remedial action which had been taken to prevent a recurrence.

Cessation of SVF business (paragraph 10)

12. Under paragraph 10 of Schedule 5 the MA may revoke an SVF licence if the

licensee is no longer carrying on the business which was the subject of its SVF licence, or if its objects as stated in its articles of association no longer include the carrying on of such business.

13. If a licensee has ceased to carry on SVF business, it is required under section 8T of the Ordinance to notify the MA in writing of that fact. In considering whether to exercise his power of revocation under paragraph 10 of Schedule 5, the MA would take into account the particular circumstances of the cessation (including whether it was temporary or permanent) and whether there were any reasons why the SVF licence should be retained.

Failure by the licensee to pay fees (paragraph 11)

14. Under section 8M of the Ordinance, licensees are required to pay fees specified in Schedule 4. Under paragraph 11 of Schedule 5, the MA may revoke the SVF licence if he is satisfied that the licensee has failed to pay any such fee after being advised in writing by the MA that it is contravening section 8M. In considering whether to exercise his powers of revocation, the MA would take into account the particular circumstances of the failure to pay the licence fees and any remedial action which had been taken to prevent a recurrence.

Person has become a controller of a licensee despite the MA's objection (paragraph 12) and person continues to be a controller of a licensee despite the MA's objection (paragraph 13)

15. Under section 8ZZF of the Ordinance, the MA may serve a notice of objection on a person notifying the MA to become a controller of a licensee. The MA will generally do this if, for example, the MA is not satisfied that the person is fit and proper to be a controller of the licensee. Under section 8ZZJ, the MA may also issue a notice of objection in respect of an existing controller (for example, on the grounds that the MA considers that the controller is no longer fit and proper).
16. If a person continues to be a controller of a licensee despite the MA's objection, section 8ZZR of the Ordinance allows the MA to impose certain restrictions on the shares in question and to apply to the Court of First Instance for an order for the shares to be sold. In addition to this action which can be taken in relation

to the controller, paragraphs 12 and 13 of Schedule 5 would allow the MA to revoke the SVF licence concerned where a person had become a controller despite being served with a notice of objection under section 8ZZF or had continued to be a controller despite being served with a notice of objection under sections 8ZZG and 8ZZJ.

17. The MA would not take such action against the licensee until the controller in respect of whom the notice of objection had been issued had exhausted all the appeal procedures available to him. The MA would also, where applicable, consider whether the measures available to the MA under section 8ZZI of the Ordinance would be sufficient to deal with any threat to users or potential users of the SVF scheme concerned arising from the association of the controller with the licensee. The closeness of the links between the licensee and the controller (including the size of the latter's shareholding) would also be a relevant factor.

Licensee fails to appoint a chief executive (paragraph 14) and person has become or continues to be a chief executive or director of the licensee without the MA's consent or is in breach of any condition attached to the MA's consent (paragraph 15)

18. Under section 8ZZV of the Ordinance the directors and chief executives (including their alternates) of the licensee require the MA's consent prior to taking up their appointment. The MA may also withdraw his approval if, for example, the MA is no longer satisfied that the person is fit and proper for the position that he/she holds. Section 8ZZU of the Ordinance requires every licensee to appoint a chief executive and not less than one alternate chief executive.
19. Under paragraph 15 of Schedule 5, the MA may revoke the SVF licence where a person has become or continues to be a chief executive or director of the licensee in contravention of section 8ZZV, i.e. without the consent of the MA or that consent having been withdrawn. The MA would only exercise this power after the person concerned had exhausted all the appeal procedures available to him regarding the MA's refusal to grant approval or withdrawal of approval. The MA would likely not exercise the power to revoke simply in respect of an unintentional and brief breach of section 8ZZV. Nor would the MA likely do so

in relation to an unintentional and brief breach of section 8ZZU.

Licensee engages in prohibited business practices (paragraph 16)

20. Under section 54(1B) of the Ordinance, the MA may by notice in the Gazette publish guidelines specifying business practices which should not be engaged in by the licensee because, in the MA's opinion, such business practices will or may cause the soundness of the financial position of the licensee to be dependent upon the soundness of the financial position of a single party. ("Single party" may be defined to include any class or description of persons or business.)
21. Under paragraph 16 of Schedule 5, the MA may revoke the licence of a licensee which engages in business practices specified in a notice under section 54(1B). In considering whether to exercise the power of revocation, the MA would take into account the particular circumstances of the breach (including how serious it was, whether it was deliberate and how often it had been repeated) and any remedial action which had been taken to prevent a recurrence.

Any other threat to the interests of the user or potential user (paragraph 17)

22. Although the grounds for revocation specified in the Part 2 of Schedule 5 cover most of the circumstances which could pose a threat to the interests of the user or potential user, they do not cover all - for example the imposition of restrictions by a government. Paragraph 17 of Schedule 5 thus provides that the MA may exercise the power to revoke an SVF licence where the MA is satisfied that the interests of the user or potential user are in any other manner threatened by the SVF issuer or facilitator concerned continuing to be licensed.

Threat to the interests of Hong Kong as an international financial centre (paragraph 18)

23. Under paragraph 18 of Schedule 5, the MA may revoke the SVF licence of the licensee if the MA is satisfied that it is engaging in business practices which would be likely to prejudice the interests of Hong Kong as an international financial centre. Such practices include money laundering or breach of United Nations sanctions. The power would be exercisable even when the conduct in question does not pose any immediate threat to the interests of the user or

potential user of the licensee concerned.

Failure by the licensee to pay any pecuniary penalty (paragraph 19)

24. Under paragraph 19 of Schedule 5, the MA may revoke the SVF licence of a licensee if the licensee has failed to pay any pecuniary penalty required to be paid by it under section 33Q of the Ordinance after being advised in writing by the MA that the period within which the penalty was required to be paid has expired without the penalty being paid.

Voluntary revocation by the licensee (paragraph 20)

25. Under paragraph 20 of Schedule 5, the MA may revoke the SVF licence of a licensee if the licensee makes such a request in writing and the MA is satisfied that the interests of the user of the SVF scheme concerned are or will be adequately safeguarded. The MA will generally seek to ensure that the interests of the user are safeguarded by requiring the licensee to repay all its float and SVF deposit to the user prior to the MA agreeing to the request for voluntary revocation. An auditor's certificate that there are no float liabilities outstanding will normally be required. In exceptional circumstances, the MA may use his powers under section 8X of the Ordinance to allow a licensee to continue to hold float liabilities after revocation, for example where the relevant accounts are dormant and the user cannot be traced. Such consent may be subject to conditions relating to such matters as the period for which, and the manner in which, the float may be held. In any case, the licensee will be required to discuss with and seek consent from the MA as to how to handle the outstanding float liabilities in relation to accounts that are dormant and the user cannot be traced.

Suspension

26. Under section 8ZA of the Ordinance, where the MA's powers to revoke an SVF licence become exercisable, the MA may by notice in writing suspend the SVF licence of a licensee for a period not exceeding 6 months (which may be extended upon expiration for a period not exceeding 6 months). The effect of suspension is that the licensee concerned must, from the date specified by the MA, cease to take any further sum of money from issuing, or facilitating the

issue of, SVF. Before exercising his powers under section 8ZA, the MA must give the licensee a written notice of intention to suspend setting out the grounds for the proposed suspension and stating that a date not less than 14 days after the date of the notice before which the licensee may make oral or written representation. If the MA decides to proceed with the suspension, the licensee has the right to appeal, but the suspension takes immediate effect from the date specified by the MA. After a licensee has been suspended (but not before), the MA would provide such information in the register maintained by the MA under section 8ZZZF.

27. Suspension may be a step before revocation or it may provide an alternative to revocation. While preventing a licensee from the business of taking any sum of money from issuing, or facilitating the issue of, SVF, suspension allows the licensee to retain its licensing status which may help in a restructuring or rescue operation, for example by making the issuer or facilitator more attractive to a would-be purchaser.
28. As already noted, the power of suspension under section 8ZA cannot be exercised until the licensee concerned has been given the opportunity of being heard. This could create problems if the licensee continued to receive float from users while the right to be heard was being exercised. Under section 8Z, therefore, the MA also has a power of temporary suspension whereby the MA may suspend the licensee for a period of not more than 14 days. In this case, it is at the MA's discretion whether the licensee is given the opportunity of being heard prior to the suspension. This power would only be used in urgent cases, where the MA considered that it was necessary to protect the interests of the user or potential user of SVF issued by it or the issue of which is facilitated by it.

CHAPTER 7: Powers of control over licensees

Introduction

1. Division 6 of Part 2A of the Ordinance gives the MA the power to take action in respect of licensees which are in difficulties. This chapter sets out the powers which the MA may exercise, and the possible actions that the MA may take to implement those statutory powers when they become exercisable.
2. Section 8ZE states that the MA, after consultation with the Financial Secretary, may exercise his powers under sections 8ZF, 8ZG and 8ZH if -
 - (a) a licensee informs the MA that it is likely to become unable to meet its obligations or that it is insolvent or about to suspend payment;
 - (b) a licensee is unable to meet its obligations or suspends payment;
 - (c) the MA is of the opinion that:
 - (i) a licensee is carrying on its business in a manner detrimental to the interests of the user or potential user or creditors;
 - (ii) a licensee is insolvent or likely to become unable to meet its obligations or is about to suspend payment;
 - (iii) a licensee has contravened any provisions of the Ordinance;
 - (iv) a licensee has contravened any condition attached under section 8I to its SVF licence; or
 - (v) a ground for revoking an SVF licence specified in Part 2 or 3 of Schedule 5 exists.

3. Where the MA's powers under section 8ZF, 8ZG and 8ZH become exercisable, the MA may take one or more of the following actions under that section -
 - (a) The MA may, by notice in writing to a licensee, require the licensee to take an immediate action relating to the licensee's affairs, business or property that the MA considers necessary (section 8ZF);
 - (b) The MA may, by notice in writing to a licensee, direct the licensee to seek advice on the management of the licensee's affairs, business or property specified in the terms of the direction from an Advisor appointed by the MA while the direction is in force; and appoint a person to be an Advisor for this purpose (section 8ZG); or
 - (c) The MA may, by notice in writing to a licensee, direct that the licensee's affairs, business or property specified in the terms of the direction is to be managed by a Manager appointed by the MA while the direction is in force; and appoint a person to be a Manager for this purpose (section 8ZH).

Issue of a requirement under section 8ZF

4. This course of action may be used to stop a problem from getting worse while allowing time for the licensee concerned to take appropriate steps, as directed by the MA, to rectify the problems identified. Requirements issued under this section may include, for example, restricting the licensee from expanding its business, entering into new financial commitments or disposing of assets, or taking any further sum of money from the issue of SVF or facilitating the issue of SVF.
5. This power can also be used in a broader sense to require a licensee to cease to carry on its normal business. As such, it is akin to the power of suspension under section 8ZA of the Ordinance. Such a requirement may or may not be accompanied by the appointment of a Manager (see below).

Appointment of Advisor under section 8ZG

6. The MA may appoint a person to advise the licensee on the management of its affairs, business and property. This usually applies in cases where the MA considers that the management of the licensee can still function and is acting in good faith, but requires the additional knowledge, experience and support of the appointed Advisor.

Appointment of a Manager under section 8ZH

7. This usually applies where the MA is of the view that the management of the licensee cannot be relied upon to take appropriate steps to rectify a problem situation. The main objectives of appointing a Manager to take control of a problem licensee are -
 - (a) to provide for the control of the affairs, business and property of a troubled licensee so that it can be nursed back to health or else be run down in an orderly fashion; or
 - (b) to safeguard the assets and maintain the fabric of the business of the licensee until a liquidator can be appointed.
8. Ultimately, both objectives aim to protect the interests of the user or potential user of the SVF concerned, and to maintain the stability of the payment system in Hong Kong.

Annex A

Assessment of licensing criteria - fit and proper person (Part 2, Schedule 3)

Part One

1. Part 2 of Schedule 3 provides that each person who is, or is to be, a chief executive, director or controller⁶ of the applicant must be a fit and proper person to hold the particular position.
2. In considering whether a person fulfils the requirements, the MA has regard to a number of general considerations, while also taking account of the circumstances of the particular position held and the applicant concerned.

Directors and chief executive

3. The MA must be satisfied that the directors and chief executive (including their alternates) of the applicant are fit and proper persons to occupy their positions. The MA also has a statutory power to give consent to such persons to occupy such positions under section 8ZZV of the Ordinance.
4. The MA considers that the board of directors plays an important role in the corporate governance of the company. In general, the MA expects that an appropriate number of independent, or at least non-executive, directors should be included in their boards. The appropriate number of such directors may however vary depending on the size of the applicant, the total number of directors on the board and whether the applicant is majority-owned by a corporation in or outside Hong Kong.
5. With regard to a person who is, or is to be, a director or chief executive, the relevant considerations include whether he has sufficient skills, knowledge, experience, and soundness of judgment to properly undertake

⁶ Controller means: (a) a majority shareholder controller excising more than 50% of the voting rights; (b) a minority shareholder controller excising at least 10% but no more than 50% of the voting rights; or (c) an indirect controller.

and fulfil his particular duties and responsibilities. The standards required of persons in these respects will vary considerably, depending on the precise position held by the person concerned. Thus a person could be fit and proper for one position, but not fit and proper for another position involving different responsibilities and duties. The diligence with which he/she is fulfilling or is likely to fulfil those duties and responsibilities is also considered, so that the MA can assess whether the person does or will devote sufficient time and attention to the role required of him/her.

6. To enable the MA to consider whether a proposed candidate for appointment to an applicant's board or as its chief executive or alternate chief executive is fit and proper to carry out his or her duties, the MA may conduct a face-to-face meeting with the candidate. This will allow the MA to assess first-hand the candidate's personal qualities, skills, knowledge and understanding of the applicant's business and key regulatory requirements and whether he or she will be able to fulfil adequately the role for which he or she is being considered.
7. The probity of the person concerned is very important - it is essential that a person with responsibilities in relation to an SVF business is of high integrity. More specifically, the MA takes into account the following factors -
 - (a) the person's reputation and character. This consideration includes, among others, whether the person has a relevant criminal record, e.g. convictions for fraud or other dishonesty would obviously be relevant to probity. The MA gives particular weight to whether the person has contravened any provision of banking, insurance, securities or other legislation designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice. Persons who are known to the MA to have been involved in any business practices that appear to be deceitful or oppressive or otherwise improper or which otherwise reflect discredit on their method of conducting business are unlikely to qualify under these criteria;
 - (b) the person's knowledge and experience, competence, soundness

- of judgment and diligence. In making such an assessment, the MA would consider whether the person has had experience of similar responsibilities previously, his record in fulfilling them and, where appropriate, whether he has appropriate qualifications and training. As to his soundness of judgment, the MA looks to, among other things, the degree of balance, rationality and maturity demonstrated in his conduct and decision-taking;
- (c) the person's records of non-compliance. Any record of non-compliance with various non-statutory codes or has been reprimanded or disqualified by regulators (including overseas regulators) or professional bodies will be taken into account when assessing the person's fitness and propriety;
- (d) the person's records as a director. Specifically, the MA would consider whether the person has been concerned as a director with a company which has been wound up by the court on the application of creditors, and whether the person has been concerned as a director with a company which has been subject to any investigation by inspectors appointed by the Financial Secretary under section 840 or 841 of the Companies Ordinance. In looking at these cases, the seriousness of the circumstances leading to the winding up or investigation, the extent of the person's involvement in them, the lapse of time and his conduct since are relevant;
- (e) the person's business record and other business interests, and his financial soundness and strength. The MA would consider this factor to ensure that any adverse financial position of the person would not undermine the confidence of the user of the scheme through "contagion" and that business decisions of the applicant will be made at arm's length; and
- (f) the person's interests in the company. The MA will consider whether the person, in the case of an independent non-executive director, has direct or indirect financial or other interests in the business of the applicant as well as his relationship, if any, with

significant shareholders of the applicant, taking into account relevant international standards and local rules such as the Listing Rules of the Stock Exchange of Hong Kong.

8. Many of the above criteria can be similarly applied to the assessment of the eligibility of corporate applicant to become directors by looking into the quality of management, financial strength and reputation of these corporate bodies.
9. The applicant must, on a continuing basis, comply with the legal requirements applicable to it after it is licensed. Imprudence in the conduct of a licensee's business, or actions which have threatened (without necessarily having damaged) the interests of the user or potential user of the scheme concerned will reflect adversely on the competence and soundness of judgment of those responsible. Similarly, failure by a licensee to conduct its business with integrity, prudence and professional competence will reflect adversely on the probity and/or competence and/or soundness of judgment of those responsible.

Controllers

10. Controllers may hold a wide variety of positions in relation to an applicant, and can exert significant influence on the business decisions of the company. Accordingly, the fit and proper requirements are also applicable to them. A key consideration is the likely or actual impact of a person holding his particular position as controller on the interests of the user and potential user of the scheme concerned. This is viewed in the context of the circumstances of the individual case, and of the particular position held. The general presumption is that the greater the influence on the applicant, the higher the standard will be for the controller to fulfil the criterion.
11. The Schedule provides that the MA must be satisfied with respect to the fitness and propriety of the controller of an applicant. The MA also has a statutory responsibility to approve such controllers under the Ordinance. In applying the licensing criteria, the MA must be satisfied that such persons are fit and proper persons.

12. With respect to a controller, the MA will first consider what influence the person has, or is likely to have, on the conduct of the affairs of the applicant. If the person does, or is likely to, exercise close control over the business, the MA would look for evidence that he/she has the knowledge and experience, competence, soundness of judgment and diligence required for running the SVF business of the applicant. The MA would look therefore for the same range of qualities and experience that he would expect of the executive directors of an applicant. On the other hand, if the controller does not, and is not likely to, influence the directors and management of the company in relation to the day to day conduct of the business, it would not be necessary to require such a level of relevant qualities and experience. In considering the degree of influence exercised by the controller, the size of the relevant shareholding in the company will be taken into account.
13. Secondly, the MA will consider the probity of the person as he/she would in the case of directors and chief executives. The MA will also have regard to whether there could be conflicts of interest arising from the influence of the controller on the company.
14. Thirdly, prospective majority (and, if appropriate, minority) shareholder controllers will be required to submit clear and detailed indications of their intentions or plans for the company concerned, so that the suitability of those plans and the capacity of the applicant to fulfil them can be considered, having regard to its track record in holding similar or other relevant positions and its financial capacity to undertake such plans. This may involve an evaluation of the proposed future plans for the company and a detailed analysis of the business concerned. Applicant proposing plans which are not conducive to the long term stability and healthy development of the companies concerned cannot be regarded as fit and proper.
15. Fourthly, the MA will consider whether the financial position, reputation or conduct of the controller could damage the company through “contagion” which undermines confidence in it. For example, if the holding company, or a major shareholder, or a company connected to that shareholder were

to suffer financial problems, it could lead to difficulties in raising new equity from other shareholders or potential shareholders. Generally, if the shareholder encounters financial difficulties, the higher his shareholding, the greater the risk of “contagion”. The risk of contagion is not confined to financial weakness - publicity about illegal or unethical conduct by the holding company or another member of the group or a company connected to the company in some other way could also damage confidence in the licensee.

Part Two

16. In addition to the chief executive, the directors and the controllers of an applicant, its senior executives also have a key role to play in maintaining the safety and soundness of the applicant. Therefore there is a need to ensure the fitness and propriety of the senior executives of the applicant, who are referred to as “managers” in the Ordinance.

Adequate systems of control for appointment of managers

17. Under section 8A, a “manager” means any individual (other than a director or chief executive) appointed by the licensee, or by a person acting for or on behalf of or by arrangement with the licensee, to be principally responsible, either alone or jointly with others, for the conduct of any one or more of its affairs or business specified in Schedule 6.
18. In determining whether an applicant satisfies the requirement, generally speaking, the MA will take into account the following factors –
- (a) whether the responsibilities of, and the skills, knowledge and experience required for, individual managerial positions are clearly defined and supported by up-to-date job descriptions, organisation charts and levels of authority;
 - (b) whether the applicant has a set of proper procedures for selecting and appointing managers and for satisfying itself about the fitness and propriety of candidates for managerial positions at the time of appointment or recruitment. In assessing the fitness and

propriety of a manager or a prospective manager, the applicant should take into consideration the factors set out in paragraph 7 above, with due regard to the precise position that the person holds or is to hold;

- (c) whether there are effective and clearly defined systems for appraising the performance of managers. Such systems should not give undue weight to financial performance (e.g. achievement of profitability or market share) but should also have regard to other factors such as compliance with internal guidelines (e.g. on control of risk) and regulatory requirements;
- (d) whether the applicant has clearly defined policies and procedures for investigating apparent breaches of internal guidelines or regulatory requirements by managers or complaints about the conduct of managers and for taking disciplinary action where this is appropriate;
- (e) whether there are clearly defined systems for taking action in respect of, and if necessary replacing, managers whose performance is assessed as unsatisfactory;
- (f) whether managerial vacancies are filled promptly and there are clearly defined arrangements to provide cover in the case of temporary vacancies;
- (g) whether adequate training is provided to managers; and
- (h) whether the systems of control in relation to the appointment of managers are subject to periodic review by the internal audit function.

19. Related to this, licensees are required under section 8ZZY to notify the MA and the appointees of, among other things:

- (a) the date of appointment;

- (b) particulars of the affairs or business of the licensee in relation to which the person has been appointed as a manager; and
- (c) any subsequent changes.

Such notification must be made within 14 days after the date on which a person became a manager of the licensee or ceased to be a manager of the licensee or any changes associated with such appointments.

Annex B

List of documents to be submitted in an application

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 (i) corporate governance and risk management; (ii) float management; (iii) anti-money laundering and counter-terrorist financing (AML/CFT) systems; (iv) technology risk management; (v) payment security management; and (vi) 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):
 - i. Certificate of incorporation
 - ii. Return of allotments
 - iii. Incorporation Form (Company Limited by Shares) (Form NC1 or NNC1 - Company Registry specified form)
 - iv. Business registration certificate