

# **The Proposed Regulatory Regime for Stored Value Facilities and Retail Payment Systems in Hong Kong**

## **Consultation Conclusions**

Financial Services and the Treasury Bureau

[www.fstb.gov.hk](http://www.fstb.gov.hk)

Hong Kong Monetary Authority

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If legislation is introduced for the proposals in this paper, some terms in this paper may be replaced by terms that are more appropriate for use in a legislative context.

# **The Proposed Regulatory Regime for Stored Value Facilities and Retail Payment Systems in Hong Kong**

## **Consultation Conclusions**

### **Purpose**

This paper summarises comments received from the public consultation on the proposed regulatory regime for stored value facilities (SVF) and retail payment systems (RPS) in Hong Kong, and sets out the Administration's responses, which will form the basis of the proposed amendments to the Clearing and Settlement Systems Ordinance (Cap. 584) (CSSO).

### **Background**

2. The Financial Services and the Treasury Bureau and the Hong Kong Monetary Authority (HKMA) jointly issued a public consultation paper on 22 May 2013 to consult the public and industry stakeholders on the regulatory proposals mentioned above. The proposed regulatory framework will include a licensing regime for SVF and a designation regime for RPS. The HKMA will be given relevant supervisory and enforcement powers to implement the framework. The policy objectives are to –

- (a) ensure the safety and soundness of the operation of SVF and RPS in Hong Kong;
- (b) ensure adequate protection and no misappropriation of float of SVF;
- (c) foster innovation in retail payment products and services in Hong Kong by providing clarity in the legislation and a level playing field for market participants; and
- (d) maintain Hong Kong's status as an international financial centre, by putting the retail payment legislation on par with what other major financial centres are pursuing.

3. To allow members of the public and industry stakeholders to have access to the proposals, the consultation paper is available on our websites. Separately, we held various meetings and had discussions with industry participants and professional bodies. We also attended industry forums during and after the consultation period to listen to their views on the proposed regulatory framework.

### Outcome of consultation

4. The three-month consultation period ended on 22 August 2013. We received 41 submissions, from market players, public bodies, viz. the Consumer Council and the Independent Commission Against Corruption, and business and professional organisations, including The Hong Kong Association of Banks (HKAB), the Hong Kong Bar Association, the Hong Kong Law Society, and several information technology (IT) industry associations. A list of the respondents is at **Annex 1**.

5. Comments received indicated that there is overall support for the policy objectives and the key proposals. Most respondents generally consider that a well-regulated environment will help further develop retail payment products and services in Hong Kong, and enhance users' acceptance of and confidence in such products and services. We also note comments on specific issues, including those in connection with a level-playing field between banks' and non-banks' SVF business, the treatment of loyalty cards and bonus point schemes, the licensing requirements (including float safeguarding and management requirements), the possible exemption for certain multi-purpose SVF with a restricted usage at limited locations, the maximum value to be stored on a SVF, and the regulation of single-purpose SVF (SPSVF).

6. The following paragraphs highlight major comments received and our responses to a number of issues. Details of such comments and our responses are elaborated in **Annex 2**.

## **Major Comments Received and Our Responses**

### Level-playing field between bank and non-bank SVF issuers

7. In line with the existing multi-purpose stored value card (MPSVC) regime under the Banking Ordinance (Cap. 155) (BO), we proposed in the consultation paper that licensed banks would be deemed licensed to issue SVF under the new regime. We also proposed that SVF licensees who were licensed banks would not be required to observe the float

safeguarding requirements, while non-bank licensees would be required to separate the float from other funds and to protect at least 100% of their float by certain safeguarding measures. The rationale behind the original proposal related to the fact that licensed banks were already subject to stringent prudential requirements including liquidity and capital adequacy requirements. The size of the outstanding float of an SVF operated by a licensed bank would likely be relatively small as compared to its total deposit base. Indeed, the proposal is welcomed by HKAB as the existing SVF business of licensed banks, which forms part of the overall banking businesses, is already subject to the HKMA's on-going supervision.

8. Non-bank respondents generally consider that the proposal of not applying the licensing and float safeguarding requirements to banks provides a competitive advantage to bank SVF issuers. Some respondents take an alternative view that the disparity in float safeguarding requirements between bank and non-bank SVF issuers will give the impression that the latter are safer than the former. There are also views emphasising the importance of maintaining consistency of regulatory requirements applicable to bank and non-bank SVF issuers.

9. Having considered all the views expressed, we are inclined to maintain our proposals that SVF issuers and facilitators who are banks will continue to be deemed licensed to issue SVF as these banks have already undergone very stringent licensing requirements under the BO, and their existing SVF business, which forms part of the banking business, is and will continue to be subject to the HKMA's on-going supervision. With regard to the float safeguarding requirements, in order to provide a statutory backing for the protection of float, we propose setting out in the regulatory framework that both bank and non-bank SVF licensees are required to observe two float safeguarding principles as follows –

- (a) to have in place float protection measures that adequately protect the float; and
- (b) to keep the float separate from the issuer's other funds.

10. A SVF licensee will be required to demonstrate to the satisfaction of the HKMA that a float safeguarding measure that it uses provides adequate protection to the float. The HKMA may exercise discretion in approving specified float protection arrangements on a case-by-case basis, taking into account factors including the governance structure, financial strength, scale of business, risk management and internal control environment, etc. of each SVF scheme. We believe this latest approach will enable the HKMA to ensure that the float safeguarding measures

adopted by different SVF licensees are appropriate and proportionate to their respective business operations and risk profiles. This approach will also strike a balance between the scale of business and risk profiles of different types of SVF licensees and provide a level playing field to foster competition among them.

#### Definition of SVF and exemptions

11. We proposed in the consultation paper that the definition of SVF should include SVF schemes accepting and storing values not only in the form of “money” in the traditional sense, but also “money’s worth”. This meant that the concept of “value” would include (a) value added into an SVF by the user; (b) other funds received on the user’s SVF account; and (c) value redeemed by the SVF user including, in addition to real money, other forms of monetary considerations.

12. Some respondents comment that the proposed SVF definition is too broad and may capture typical bonus point schemes, air mileage schemes or loyalty schemes. It may also capture cash rewards programmes under which cash rewards are given by merchants (e.g. department stores or supermarkets) as a kind of gift to entice spending from customers. These schemes and programmes are not electronic money. The risks are relatively low and therefore should not be captured by the proposed SVF regulatory regime. There are also comments suggesting that the proposed definition of SVF may capture prepaid cards or coupons issued by “single online store platforms” specifically for the purchase of digital contents such as songs, movies, e-books, games, games points and apps, etc. offered on those virtual platforms where the intellectual property owners are other third parties (e.g. record companies, film producers, authors, and games and apps developers, etc.). Although such prepaid cards or coupons would by definition fall under the proposed SVF regulatory regime, they are of a relatively limited scope of usage and should therefore not be regulated as multi-purpose SVF.

13. We agree that the SVF regulatory regime needs not encompass air mileage schemes, loyalty cards, bonus point schemes, etc. which do not normally involve payment of money by users to acquire the “value” and do not pose the same kind of risks as multi-purpose SVF. We therefore propose not to make reference to “money’s worth” in the definition of SVF, so that the term will only capture those schemes which accept payment of real money. In this connection, we consider it appropriate to exclude cash reward schemes, which are only paid in by providers of goods or services or the issuer of the SVF to boost customer loyalty, from the SVF regulatory regime. Similar to loyalty cards and

bonus point schemes, cash reward schemes typically do not involve monetary consideration paid by users. The degree of risks presented is therefore lower than SVF.

14. We agree that SVF issued by a “single online store platform” should be excluded from the SVF regulatory regime because its limited use suggests a relatively low degree of “moneyness”<sup>1</sup>. We also note that as these SVF allow people to buy digital contents (e.g. digital music, digital games, etc.) that are provided by third parties through such “single online store platform”, these SVF may share certain attributes of multi-purpose SVF. However, in most cases, these digital contents when purchased with a digital or mobile device are only to be utilised on certain pre-assigned device(s). Given the high degree of specificity in both the nature of the contents that these SVF can buy (mostly digital) and the venue for utilising those products (only on certain pre-assigned digital device(s)), the “single online store platforms” have similar attributes of most SPSVF, which we do not intend to regulate under the proposed regulatory regime (see paragraph 25). In addition, we note that other major overseas markets (e.g. the UK and Singapore) do not regulate such “single online store platforms”.

15. In addition, we propose the following facilities be excluded from the SVF regulatory regime –

- (a) any scheme which is by and large a bonus or loyalty point scheme but a small portion of the points can be purchased by users in cash (e.g. certain air mileage programmes and credit card bonus schemes);
- (b) any scheme which, pursuant to a commercial agreement entered into by a SVF issuer with a limited group of goods or service providers, can only be used within one or more of the issuer’s premises (e.g. department stores) and the total float size of the SVF does not exceed HK\$1 million; and
- (c) and scheme which, pursuant to a commercial agreement entered into by a SVF issuer and a person, can only be used within the specified premises relating to the person (e.g. recreational clubs, university campuses, etc.), and the total float size of the SVF does not exceed HK\$1 million.

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<sup>1</sup> In the current context, “moneyness” refers to the extent to which an SVF can be used and accepted as a medium of exchange for goods and services in substitution for money in traditional form.

16. For (a), although the small amount of “purchase by cash” element renders these schemes falling under the definition of SVF, our intention is not to capture them under the SVF regulatory regime as they do not pose the same level of risks as multi-purpose SVF do. For (b) and (c), given that these schemes generally carry a lesser degree of “moneyness” as the number of users and amount of float involved are relatively small compared to any full-fledged multi-purpose SVF, our intention is to impose a threshold on the total amount of float held by the SVF, below which the SVF will be excluded outright from a SVF regulatory regime. If the threshold is exceeded, the HKMA may, subject to the risk implications of such schemes, consider exempting them on a case-by-case basis.

17. To reflect the above intent, the proposed definition of SVF in the legislation will comprise the following elements –

*A facility (other than one which is excluded by the definition or cash) is a SVF if it can be used for storing a sum of money paid into it and as a means for payment for goods and services or for payment to another person under an undertaking of its issuer. The undertaking of the SVF issuer is that:*

- (i) if the facility is used as a means for payment for goods and services (including money or money’s worth) provided by the issuer or by a third party procured by the issuer, the issuer or the third party will accept payment up to the amount of the stored value that is available for use under the terms and conditions of the facility; and*
- (ii) if the facility is used as a means for making payment to another person, the issuer or the third party procured by the issuer will make payment to the other person up to the amount of the stored value that is available for use under the terms and conditions of the facility.*

### Scope of SVF licences

18. We proposed in the consultation paper that separate licences would be needed for the same company for issuing SVF and for facilitating the issue of SVF. Some respondents suggest that an issuer licensee should not be required to apply for a facilitator licence to facilitate the issue of SVF. Similarly, a facilitator licensee should not be required to apply for an issuer licence if it wishes to issue SVF.

19. In view of the fact that the licensing criteria and regulatory requirements for an SVF issuer and facilitator are largely similar, we agree that an SVF issuer licensee does not need a separate licence to perform a facilitator role or vice versa. This will simplify the licensing process and minimise regulatory burden on SVF issuers and facilitators seeking to expand their operations to the respective areas. Nevertheless, a licensee who functions as both SVF issuer and facilitator will be required to have in place appropriate float safeguarding measures that are commensurable with both of its operations. All licensees will be required to discuss their business plan with, and obtain approval from, the HKMA beforehand, in order to ensure that the proposed business functions are in compliance with the licensing criteria set out in the regulatory regime, and will not cause any undesirable risk implications to their existing operations. In addition, the HKMA may attach conditions to a licence covering, among others, additional requirements or restrictions in relation to their new businesses, the maintenance and management of the float, and the maximum value which can be stored on the SVF in order to ensure the safety and soundness of the scheme.

#### Maximum value to be stored on SVF

20. Currently, the record-keeping and customer due diligence requirements under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) do not apply to a MPSVC which has a maximum stored value of not exceeding HK\$3,000. We proposed in the consultation paper that this HK\$3,000 threshold would be applied to both device-based SVF (where the value was stored in a physical device such as a card) and non-device based SVF (where the value was stored on an online account such as a network-based account) under the new SVF regulatory regime.

21. Respondents generally consider the HK\$3,000 threshold is too low for non-device based SVF given that user accounts of non-device based SVF are normally used for making as well as receiving payments for e-commerce activities, e.g. receipt of payments after sale of a second-hand smart phone. Some respondents suggest that, in line with the recommendations of the Financial Action Task Force (FATF) and practices in other major overseas jurisdictions, the HKMA should implement a risk-based approach for anti-money laundering (AML) and counter terrorist-financing (CFT) on non-device based SVF instead of imposing a one-size-fits-all threshold.

22. Taking into account respondents' comments and further to our discussions with industry participants, we propose that only device-based SVF will be subject to the HK\$3,000 threshold under the new SVF regulatory regime. This is because the use of device-based SVF is usually anonymous and therefore more vulnerable to the risks of money laundering. In the case of non-device based SVF, we propose to implement risk-based AML requirements by imposing licensing conditions on such schemes. This is because non-device based SVF accounts are usually linked to credit card or bank accounts where customer due diligence process is already conducted, and which can be leveraged to mitigate money laundering risks.

### Treatment of SPSVF

23. We proposed in the consultation paper that SPSVF would not be subject to the regulatory regime mainly because SPSVF were in essence bilateral contractual arrangements for payments between users and SVF issuers rather than electronic surrogate for coins and bank notes. Examples of SPSVF include stored value cards issued by coffee shops; prepaid coupons issued by cake shops; and other schemes the issuers of which are also the providers of the relevant goods and services.

24. A few respondents, including the Consumer Council, consider that SPSVF should be regulated under the proposed SVF regulatory regime as some may involve a substantial float received from a large number of users. Some respondents suggest that there should be some form of monitoring over SPSVF by the Government, and that a regulatory threshold should be put in place to keep such facilities in check. However, respondents, including the Hong Kong Bar Association, HKAB and an IT industry association, believe that SPSVF should not be regulated as they consider such facilities simply bilateral agreement between buyers and sellers on prepayment of goods and services. As in any advance payment, the risks of the suppliers of the goods and services defaulting are dealt with by mutually-agreed provisions in the contracts. Moreover, the imposition of regulations on SPSVF could impede commercial activities, which normally have no bearing on financial stability.

25. Having considered the views expressed, we are inclined to maintain our policy stance that SPSVF should not be regulated under the proposed SVF regulatory regime for the following reasons –

- (a) unlike e-money, SPSVF are in essence bilateral contractual arrangements between service vendors and their respective users for advance payment of specific goods and/or services;
- (b) given its bilateral nature and magnitude, the degree of “moneyness” involved in SPSVF is minimal, posing relatively insignificant risks to the payment and financial systems of Hong Kong;
- (c) to require SPSVF, such as pre-paid coupons or gift cards, to be subject to the SVF licensing regime would be over-regulating the industry and may stifle business innovation in this area;
- (d) if the licensing regime were to be imposed on SPSVF, then most smaller SPSVF businesses may have to be closed down due to regulatory burdens and costs; and
- (e) the exclusion of SPSVF from the licensing regime is in line with the existing arrangement under the BO and the practices of major overseas jurisdictions.

26. We note that the existing consumer protection legislation provides various areas of protection for consumers’ interest in the course of general trade transactions (examples of the existing consumer protection legislation are at **Annex 3**). In any event, if widely-used SPSVF evolve into multi-purpose SVF, we will bring them under our SVF regulatory regime.

#### Licensing criteria

27. We proposed in the consultation paper that a list of the licensing criteria be stipulated in the legislation. The proposed licensing criteria include, inter alia, (a) physical presence in Hong Kong, (b) that the principal business must be the issue of or facilitating the issue of SVF, and (c) a minimum on-going capital requirement of not less than HK\$25 million.

28. Some respondents suggest that SVF issuers who are subject to adequate home supervision and who can demonstrate adequate float safeguarding measures with global banks should be exempt from the local incorporation and float safeguarding requirements. We also note the views from some respondents that the proposed minimum on-going capital requirement of HK\$25 million is too high, and may pose an

unnecessary market-entry barrier given that relevant float safeguarding requirements will be imposed to protect the float.

29. We would like to point out that the intention behind the local incorporation and principal business requirements is to ensure that an SVF issuer exists as a stand-alone entity in Hong Kong to avoid possible “contamination” (or “contagion”) from other businesses of their parent companies outside Hong Kong, and to allow the HKMA to exercise its daily supervision function effectively. The minimum on-going capital requirement of HK\$25 million intends to provide a financial buffer to absorb losses arising from unexpected events during the course of business as well as any losses in the case of winding up. It should be noted that the proposed capital requirement is in line with the current arrangements for the MPSVC regime under the BO, in which case a person who intends to issue MPSVC is required to set up a special purpose vehicle and be authorized as a deposit-taking company subject to, among other things, a minimum level of share capital of HK\$25 million. We therefore consider the proposed level of minimum capital requirement appropriate. The proposed capital, local incorporation and principal business requirements complement each other in ensuring that SVF operating in Hong Kong are reasonably capitalised and locally located, so that their services are subject to effective supervision in Hong Kong. We are therefore inclined to keep the requirements as proposed.

#### Policy objectives and legislative approach

30. There is general support for the proposed regulatory framework in respect of SVF and RPS. Most respondents consider that the proposal would help ensure the general safety and efficiency of, and uphold confidence in, emerging retail payment products and services, particularly in light of rapid innovation of the global retail payment landscape and regulatory trends. However, one respondent from the credit card industry has expressed reservations over the proposal of bringing credit card scheme operators under the RPS regulatory framework, on the ground that disruptions to credit card schemes would unlikely trigger any of the three designation criteria proposed in the consultation paper, and that direct regulation of credit card schemes would undermine Hong Kong’s status as an international financial centre that foster competition, innovation and efficiency. The respondent considered that the existing self-regulation framework under the Code of Practice for Payment Card Schemes should suffice in ensuring the safety and soundness of credit card schemes, and therefore the proposed RPS regulatory regime should not cover credit card scheme operators.

31. As mentioned in the consultation paper, given the growing acceptance and sophistication of RPS in recent years in Hong Kong, we consider it timely and necessary to expand the current regulatory regime under the CSSO to cover RPS. All other card scheme operators which have responded during the public consultation share this view. The proposed regulation of RPS is also in line with international regulatory trends which cover both large value and small value payment systems. Under our proposal, RPS are subject to designation by the HKMA only if the proposed designation criteria are met. The proposed designation will take place if any disruptions to the RPS are likely to result in (a) monetary or financial instability, or the functioning of Hong Kong as an international financial centre being adversely affected, (b) public confidence in payment systems or the financial system of Hong Kong being adversely affected, or (c) day-to-day commercial activities in Hong Kong being adversely and materially affected. In this connection, it is necessary to cover any RPS, including credit card schemes, if any disruptions to their operation would result in any one or more of the mentioned criteria. Compared to overseas jurisdictions' regulatory requirements, we believe that our proposed designation approach for RPS, which takes into account the business nature and possible risk implications of credit card scheme operations, is appropriate.

32. In formulating the proposed regulatory regime, we are determined to ensure that it could meet the changing market needs and enhance market development. The HKMA will issue licensing and supervisory guidelines to assist SVF licensees and RPS operators to understand and comply with the requirements.

### **Next Step**

33. We are preparing a bill to amend the CSSO to implement the regulatory proposals, and will continue our dialogue with industry stakeholders in the process. We aim to introduce an amendment bill into the Legislative Council in the 2014-15 legislative session.

Financial Services and the Treasury Bureau  
Hong Kong Monetary Authority  
31 October 2014

**List of Respondents**

1. 99Bill.com
2. Alipay.com.Co., Ltd
3. American Express International, Inc.
4. Asia Internet Coalition
5. AsiaPay Limited
6. Autotoll Limited
7. China Construction Bank (Asia) Corporation Limited
8. China Union Pay Hong Kong Branch
9. Consumer Council
10. Deloitte Touche Tohmatsu
11. Diners Club International
12. DoDoPal Holdings Limited
13. EDENRED Hong Kong
14. Global Payments Asia Pacific Ltd
15. Hong Kong Bar Association
16. Hong Kong Computer Society
17. Hong Kong Retail Technology Industry Association
18. Information System Audit and Control Association
19. JCB International (Asia) Ltd
20. KPMG
21. MasterCard Worldwide
22. Mobexo Ltd
23. MPayMe
24. PayPal Pte. Ltd.
25. Tencent

26. The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies
27. The Hong Kong Association of Banks
28. The Independent Commission Against Corruption
29. The Law Society of Hong Kong
30. VISA Hong Kong Limited
31. World passport Holdings Ltd
32. 深圳市壹卡會科技服務有限公司
33. Individual respondent A
34. Individual respondent B
35. Individual respondent C
36. Individual respondent D
37. Individual respondent E
38. Undisclosed respondent A
39. Undisclosed respondent B
40. Undisclosed respondent C
41. Undisclosed respondent D

**The Proposed Regulatory Regime for  
Stored Value Facilities and Retail Payment Systems in Hong Kong**

**Summary of Comments and the Administration’s Responses**

Issues	Respondents’ views and comments	The Administration’s responses
<b>(A) Policy objectives of and regulatory approach</b>		
(a) Overall policy objectives of the proposed regulatory regime for SVF and RPS	<ul style="list-style-type: none"> <li>● In general, most respondents supported the policy objectives of the proposed regulatory regime for SVF and RPS.</li> <li>● One respondent suggested elaboration on the safety and efficiency requirements in relation to the financial infrastructure’s settlement and clearing processes focusing on security, usability and speed.</li> </ul>	<ul style="list-style-type: none"> <li>● Noted.</li> <li>● Noted. The HKMA will issue detailed licensing and supervisory guidelines on security and control requirements.</li> </ul>
(b) Regulatory and legislative approach	<ul style="list-style-type: none"> <li>● As SVF has become the “secondary” banknote, it should be supervised as banknote issuers. This is to protect not only the “money” or value within these SVF, but also the existing banknote issuers so that they can operate and compete fairly with SVF issuers.</li> </ul>	<ul style="list-style-type: none"> <li>● SVF is different from banknotes, which are issued under the Legal Tender Notes Issue Ordinance (Cap. 65). SVF, as a form of payment, is a commercial agreement and arrangement between the issuers and users. The issuer of SVF accepts money or legal tender to top-up the users’ SVF accounts. Also, the issuance of Hong Kong dollar banknotes needs to be backed by the US dollar under the currency board system.</li> </ul>
(c) Legislative approach	<ul style="list-style-type: none"> <li>● CSSO is not geared for regulating SVF and RPS. The reasons and explanations for incorporating the</li> </ul>	<ul style="list-style-type: none"> <li>● The rationales for amending the CSSO to give effect to the proposed new regulatory framework</li> </ul>

Issues	Respondents' views and comments	The Administration's responses
	<p>proposed regulatory regime into the CSSO should be clarified.</p>	<p>for SVF and RPS are set out in section 4 of the consultation paper. Currently, the CSSO already provides a comprehensive regulatory framework for large-value clearing and settlement systems and forms a solid foundation for the regulation of RPS. It is also considered appropriate to incorporate the regulation of SVF into the CSSO to avoid any regulatory overlap and any irrelevant regulations applying to SVF issuers. Such arrangements are in line with those in some major overseas jurisdictions.</p>
<b>(B) Stored Value Facility</b>		
<b>1. Definitions</b>		
(a) Definitions of SVF and SPSVF	<ul style="list-style-type: none"> <li>Some respondents suggested that “money's worth” in the SVF definition may capture air miles programmes, bonus points, loyalty and reward schemes, etc. Such programmes and schemes should not be considered SVF because they are bilateral contractual arrangements between the issuers and card users in which the issuers provide benefits to the users for the use of the card. Some respondents suggested that the definition of SVF should exclude coupons, vouchers, and payments for tokens which can be used for exchanging goods and services. It was also suggested that the MA may consider giving examples to facilitate better understanding of the definition of SVF.</li> </ul>	<ul style="list-style-type: none"> <li>Agreed. Taking into account comments received, we have refined the definition of SVF to remove the “money’s worth” element so that SVF will cover those facilities which only accept sums of money paid into it. We are mindful that the revised definition of SVF may capture cash reward schemes where actual cash is rewarded to users for spending. Similar to loyalty cards and bonus point schemes, such reward schemes normally do not involve money paid by users. Instead they are cash incentive provided by participating merchants to entice spending from customers. Since they do not pose the same kind of risks as SVF, we will explicitly define in the amended CSSO that such schemes are not SVF for regulatory purpose.</li> <li>We also propose to exclude four types of facilities from the definition of SVF.</li> </ul>

Please refer to

Issues	Respondents' views and comments	The Administration's responses
		<p>paragraph 14 to 15 of the paper.</p> <ul style="list-style-type: none"> <li>• The HKMA may give examples in the detailed supervisory guidelines to facilitate better understanding of the definition.</li> </ul>
<p>(b) Distinction between SPSVF and multipurpose SVF</p>	<ul style="list-style-type: none"> <li>• A few respondents expressed that the definition of issuer of SPSVF should be more restrictive to prevent a conglomerate from issuing SPSVF for use across their multiple business units for wide range of goods and services, involving a huge amount of money and a large number of users and gaining competitive advantage over the regulated multipurpose SVF.</li> <li>• There were comments suggesting that SVF which can be used only for (or on) a “single online system or platform” (which is operated by the SVF issuer) (“Closed Loop System”) should be regarded a SPSVF, where: <ul style="list-style-type: none"> <li>i) the SVF is a prepayment for digital goods or services (whose copyright may be owned by third parties) on an online (or mobile or similar) platform operated by the SVF issuer;</li> <li>ii) the SVF cannot be used to make purchases on online (or mobile or similar) platforms or in merchant stores operated by third parties; and</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• The key difference between SPSVF and multipurpose SVF is that the issuer of the former is the provider of goods or services, while for the latter, the providers of goods or services can be either the issuer or third parties procured by the issuer. SVF issued by a conglomerate for use within companies of that conglomerate would likely fall under the proposed definition of multipurpose SVF since the person who issues the SVF, e.g. the parent company of the conglomerate, procures third parties, i.e. its subsidiaries (which are separate legal entities), to provide goods or services.</li> <li>• Taking into account that the scope of the usage of SVF issued by “single online store platform” solely for the purchase of digital contents from the platform is very narrow and is confined to the single online store platform, and that the degree of “moneyness” of such SVF is lesser than a typical multipurpose SVF, we agree that SVF issued by such platform can be regarded SPSVF notwithstanding that the digital contents available therein may be provided by third parties, e.g. the intellectual property owners of the contents, instead of the platform owner itself. In this connection, we propose that an outright exclusion be given to SVF issued by “single online store</li> </ul>

Issues	Respondents' views and comments	The Administration's responses
	<p>iii) the SVF cannot be converted into money, on the ground that the SVF is in substance a SPSVF.</p> <ul style="list-style-type: none"> <li>• The definition of SPSVF should not be tied to a legal entity, but to any organisation backed by a legal business agreement.</li> </ul>	<p>platform” solely for the purpose of purchasing digital contents. We note that this arrangement is in line with that in other overseas jurisdictions. (Please refer to paragraph 14 of the paper).</p> <ul style="list-style-type: none"> <li>• We confirm that the definition of SPSVF is not tied to a legal entity.</li> </ul>
<p>(c) Definition of “facilitator”</p>	<ul style="list-style-type: none"> <li>• While the majority of respondents considered that the definitions of SVF “issuers” and “facilitators” are clear, a few respondents requested further clarification of the meaning and scope of “facilitator”.</li> <li>• Some respondents enquired whether (a) the distributor of an SVF (and as distributor alone), and (b) the processors located outside Hong Kong, are considered facilitators and need to be licensed.</li> </ul>	<ul style="list-style-type: none"> <li>• We propose to retain the concept of “facilitator” in relation to multi-purpose stored value cards (MPSVC) under section 2(11) of the BO for the purpose of the SVF licensing regime. The terms “facilitate” and “facilitator” in the proposed regulatory regime should therefore be construed accordingly.</li> <li>• The term “facilitator” was first introduced in the BO in 1997. Back then, the business models of certain MPSVC schemes involved two distinct functions, namely (a) origination of electronic value for storage in MPSVC, and (b) distribution of the MPSVC to end-users. These two functions may be performed by the same entity or different entities. For example, under the Mondex Scheme (which is no longer in operation now), Mondex was the originator of value and held the pool of funds which backed the stored value in circulation but the Mondex cards were issued and distributed by member banks.</li> <li>• “Facilitator” covers any person who provided value to an issuer of a MPSVC which determined the extent to which the issuer could provide its customers with electronic value. An originator such as Mondex, who creates electronic value and</li> </ul>

<b>Issues</b>	<b>Respondents' views and comments</b>	<b>The Administration's responses</b>
	<ul style="list-style-type: none"> <li>Some respondents proposed that SVF issuers can be deemed facilitators without having to apply separate facilitator licences. One respondent also requested that the legislation should clarify whether an SVF issuer could, without obtaining an SVF facilitator licence, facilitate the issue of a co-brand card with a bank.</li> </ul>	<p>sells the value to a SVF issuer, would be regarded as a 'facilitator' under this definition. A person who provides ancillary services which assist the issuer of the SVF, such as payment collection, telecommunication network facilities, and operational support, will not be considered a facilitator.</p> <ul style="list-style-type: none"> <li>Although the business model involving a facilitator in issuing SVF is not common in the current market, we consider it prudent to retain the definition of "facilitator" for the purpose of the new regime for SVF to ensure that the necessary supervisory powers are in place should market players revitalise such business model.</li> </ul> <p>It is not our intent to capture, under the term "facilitator", (a) distributors of SVF, and (b) processors located outside Hong Kong if they do not perform the role of a "facilitator" as defined in the amended CSSO.</p> <ul style="list-style-type: none"> <li>As the licensing criteria and regulatory requirements for SVF issuer and facilitator are largely similar, we agree that SVF issuer licensees do not need a separate licence to perform a facilitator role, and vice versa.</li> </ul>
<b>2. SVF Licencing regime</b>		
(a) Overall licensing regime	<ul style="list-style-type: none"> <li>The majority of respondents agreed to the proposed SVF licensing regime.</li> </ul>	<ul style="list-style-type: none"> <li>Noted.</li> </ul>

<b>Issues</b>	<b>Respondents' views and comments</b>	<b>The Administration's responses</b>
	<ul style="list-style-type: none"> <li>● One respondent opined that since the proposed licensing requirements seem overlapping with the existing regulatory requirements under the BO and the HKMA's supervisory policy manuals applicable to authorized institutions (AIs), licensed banks should not be subject to the proposed SVF licensing regime.</li>   <li>● One respondent suggested that banks should not be required to pay SVF licence fee as banks are already required to pay a licence fee under the BO.</li>   <li>● One respondent suggested that a two-tier licensing regime be adopted to cater for SVF schemes of different scales with the first tier providing for big SVF schemes while the second tier for small schemes operated by SMEs.</li> </ul>	<ul style="list-style-type: none"> <li>● Given that SVF business is different from conventional banking services, banks that engage in the SVF business would need to comply with rules under the new regulatory regime which are specifically tailored to the SVF business. These include float management; risk management and control measures, redemption requirements, as well as the knowledge and expertise of the SVF business, which could be highly technical. Having said that, we recognise the fact that banks are already subject to stringent prudential regulations. Therefore, the proposed regulatory regime has taken a pragmatic and balanced approach: banks would be deemed to be licensed for issuing SVF, and a number of licensing requirements would not be applied to banks.</li>   <li>● To ensure a level playing field between banks and non-banks SVF issuers, we consider that banks should be required to pay a licence fee for their SVF business.</li>   <li>● We consider that the various principle-based licensing criteria under the proposed regime are flexible enough to cater for SVF schemes of different sizes and scales. A two-tier licensing mechanism may complicate the operation of the licensing and regulatory regime.</li> </ul>
(b) Level-playing field between bank and non-bank SVF issuers	<ul style="list-style-type: none"> <li>● Some respondents considered it reasonable to treat licensed banks as deemed licensed to issue and facilitate the issue of SVF, since they have already established robust systems and therefore the proposed control measures should primarily be</li> </ul>	<ul style="list-style-type: none"> <li>● Currently, licensed banks are subject to stringent prudential requirements under the BO. We are mindful to avoid regulatory overlap with the proposed regulatory regime. Since SVF business of licensed banks usually forms only a relatively</li> </ul>

<b>Issues</b>	<b>Respondents' views and comments</b>	<b>The Administration's responses</b>
	<p>aimed at non-bank SVF issuers.</p> <ul style="list-style-type: none"> <li>● However, a number of respondents expressed concerns that the proposed arrangement will enable banks to dominate the SVF industry and create unnecessary market entry barriers. As such, bank and non-bank SVF issuers should be subject to the same regulatory requirements so as to maintain a level-playing field.</li> <li>● One respondent suggested that the issue and promotion of SVF by a licensed bank should be subject to a different regulatory regime.</li> <li>● Comments from the telecommunications and mobile payments industry think that there is a competitive advantage for the banking industry which may be detrimental to innovation.</li> <li>● Some respondents opined that subsidiaries of banks should not be subject to licensing requirements as banks are deemed to be licensed to issue or facilitate the issue of SVF.</li> </ul>	<p>small part among their business portfolio, we therefore remain of the view that licensed banks should be deemed to be licensed to issue SVF as appropriate.</p> <ul style="list-style-type: none"> <li>● As subsidiaries of licensed banks are separate legal entities, they should be subject to the licensing requirements if they are to issue SVF.</li> </ul>
(c) Treatment of existing MPSVC issuer under the BO	<ul style="list-style-type: none"> <li>● One respondent expressed that the existing MPSVC operator should also be deemed to be licensed for issuing SVF.</li> </ul>	<ul style="list-style-type: none"> <li>● Licensed banks are the only group of AIs that is deemed to be licensed to issue MPSVC under the current regime in the BO. We see the need to maintain this stringency under the new regime since licensed banks are already subject to a set of stringent prudential regulatory requirements. We therefore have no intention to expand the scope of institutions that would be deemed to be licensed for issuing SVF to include other types of companies, including existing MPSVC operators.</li> </ul>

<b>Issues</b>	<b>Respondents' views and comments</b>	<b>The Administration's responses</b>
(d) Cross-border activities	<ul style="list-style-type: none"> <li>A few respondents requested further certainty in respect of whether issuers incorporated in Hong Kong that issue SVF products overseas, but not in Hong Kong, will be regulated.</li> </ul>	<ul style="list-style-type: none"> <li>The proposed SVF regime requires any person who issues SVF in Hong Kong to be licensed by the HKMA. If the issuer is incorporated in Hong Kong but the SVF is issued overseas, the issuer will not be subject to the proposed SVF regime. In determining whether an SVF is issued in Hong Kong, we will take into account factors including, among others, whether the SVF accepts Hong Kong dollar as stored value; whether the issuer has been targeting the members of the public in Hong Kong through advertising and promotion activities; whether the issuer has engaged a local bank or financial institution to receive and settle funds; and whether the issuer has engaged other local parties, e.g. internet service provider, to facilitate its issuance of the SVF in Hong Kong, etc.</li> </ul>
<b>3. Treatment of SPSVF</b>		
(a) SPSVF not required to be licensed	<ul style="list-style-type: none"> <li>Some respondents supported that SPSVF should not be regulated under the licensing regime, as it could impede normal commercial activities.</li> <li>Some respondents considered that the proposed SVF regime should apply to SPSVF for prudential and consumer protection especially when a large amount of consumer money is kept by the SVF issuers. One respondent suggested a registration regime for SPSVF instead of a licensing regime and a risk declaration statement to be issued by the SPSVF issuers.</li> <li>Some respondents suggested that regulatory thresholds (e.g., total value of money transactions;</li> </ul>	<ul style="list-style-type: none"> <li>We maintain our view that SPSVF need not be regulated for the reasons set out in the consultation paper. SPSVF are in essence bilateral contractual arrangements between the providers of the goods and services and the users, rather than electronic surrogates for coins and banknotes.</li> <li>In any event, if a SPSVF develops to involve multi-purpose elements and falls under the definition of multi-purpose SVF, they will be required to be licensed by the HKMA and subject to regulations under the new regime.</li> <li>We are aware of the concerns about consumer</li> </ul>

Issues	Respondents' views and comments	The Administration's responses
	<p>number of users; frequency of transactions; and size of each transaction) should be used for determining whether or not a SPSVF should be subject to the licensing regime.</p> <ul style="list-style-type: none"> <li>Some respondents suggested that an on-going monitoring mechanism such as periodic self-reporting and review of SPSVF should be put in place so that the HKMA would be able to catch those SPSVF which have expanded their business and become a multipurpose SVF.</li> </ul>	<p>disputes arising from certain SPSVF. Our view is that it is more appropriate and effective to address these issues arising from SPSVF through other existing legislation and consumer protection measures, including those set out in <b>Annex 3</b>.</p>
<b>4. Licensing criteria and conditions</b>		
(a) Local incorporation requirement	<ul style="list-style-type: none"> <li>Some respondents suggested that third party payment institutions located on the Mainland which hold licenses granted by the relevant authorities should be exempt from the local incorporation requirement.</li> <li>There was also a comment suggesting that global players should be exempt from the local incorporation requirement if they can demonstrate adequate float safeguarding arrangements with global banks.</li> <li>One respondent suggested that appropriate corporate structure should be put in place in consultation with the HKMA to ensure compliance with local regulatory requirements.</li> </ul>	<ul style="list-style-type: none"> <li>This requirement seeks to ensure that the SVF issuer/facilitator exists as a stand-alone entity in Hong Kong and is ring-fenced from the risks arising from other overseas businesses to avoid any spill-over effects, so that the HKMA is able to exercise its supervision and enforcement functions effectively.</li> <li>Noted. The HKMA will issue detailed supervisory guidelines to all SVF issuers in due course.</li> </ul>
(b) Principal business requirement	<ul style="list-style-type: none"> <li>Some respondents requested clarification of the meaning of "principal business".</li> </ul>	<ul style="list-style-type: none"> <li>In general, to meet the principal business requirement, we expect that SVF licensees to engage solely in the business of SVF issuing. Issuers would be required to obtain the HKMA's</li> </ul>

<b>Issues</b>	<b>Respondents' views and comments</b>	<b>The Administration's responses</b>
	<ul style="list-style-type: none"> <li>● Some respondents considered that the principal business requirement unnecessary given the capital and float safeguarding requirements. It should be removed as it hinders innovation and creates market entry barrier and increases cost of compliance.</li>   <li>● One respondent expressed that there should be no substantial regulatory gaps on AML matters as the Guideline on Anti-Money Laundering and Counter-Terrorist Financing for money service operators (MSO) predominately replicates the Guideline issued by the HKMA.</li> </ul>	<p>consent if they intend to embark on new business operations.</p> <ul style="list-style-type: none"> <li>● The policy intent is to ensure that the major business of the SVF issuer is to issue SVF only, and thus avoiding possible spill over effects from other business, which could impact on the float.</li>   <li>● We note that some SVF schemes may involve the provision of remittance and/or money changing services as ancillary services to its SVF issuing business. Such ancillary services fall within the MSO licensing regime administered by the Customs and Excise Department under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) (AMLO) and the issuer concerned is required to apply for the relevant MSO licence under the current regime. To avoid any regulatory overlap between SVF and MSO for the purposes of the AMLO, SVF issuers who are involved in the provision of money changing and remittance services that are ancillary to their SVF businesses will only need to be licensed under the amended CSSO and not the AMLO.</li> </ul>
(c) Capital requirement	<ul style="list-style-type: none"> <li>● Some respondents considered that the HK\$25 million on-going capital requirement is too high for small companies, in particular that the float is already subject to safeguarding requirements. The capital requirement therefore unnecessarily ties up working capital of issuers and poses market entry</li> </ul>	<ul style="list-style-type: none"> <li>● In considering the capital requirement, we strive to keep the framework simple and effective. Since the float is already subject to very stringent protection requirements, we consider that the HK\$25 million on-going capital requirement is adequate and in line with the existing</li> </ul>

<b>Issues</b>	<b>Respondents' views and comments</b>	<b>The Administration's responses</b>
	<p>barrier. Two respondents suggested that global SVF issuers, which may support cross-border payment activities, should be subject to the same on-going capital requirement as the local SVF issuers, but not higher capital requirements.</p> <ul style="list-style-type: none"> <li>● A number of respondents considered that the form of capital should be expanded to include insurance, intercompany loans, and the share capital of holding company. Some suggested that the capital requirement should consist of two parts – a minimum capital requirement and additional capital requirement depending on the types of SVF that the licensee provides, while some suggested that the capital requirement should be depended on float size.</li> <li>● One respondent enquired if the HK\$25 million capital requirement includes funds being stored within their E-wallet system.</li> </ul>	<p>arrangements for the MPSVC regime under the BO. With respect to whether or not to impose a higher on-going capital requirement on an SVF issuer, the HKMA will take into account a whole range of factors such as the scale of the SVF business and the overall risk profile of the issuer in addition to the payment activities involved (e.g. cross-border payment activities). We therefore consider it an appropriate buffer for absorbing unexpected losses during the course of business as well as losses in case of winding up, taking into account the relatively simple product nature of SVF. The proposed capital requirement works hand-in-hand with the local incorporation requirement to ensure that SVF operating in Hong Kong are well capitalised and locally located for ease of day-to-day supervision. In light of the above, we are inclined to keep the proposed capital requirement arrangement.</p> <ul style="list-style-type: none"> <li>● The capital requirement should not include the float arising from SVF issuance because the float belongs to users, not the issuers.</li> </ul>
(d) Float safeguarding and management requirements	<ul style="list-style-type: none"> <li>● A few respondents opined that since SVF are already subject to the licensing criteria, including capital requirement and investment requirements, the float management requirements should be optional, otherwise it will significantly increase the cost of operations. They also suggested that for SVF the shareholders and controllers of which are subject to sufficient home supervision in their respective home countries, the applicable float safeguarding requirements should be relaxed to</li> </ul>	<ul style="list-style-type: none"> <li>● Float safeguarding and capital requirements serve different purposes. The former aims to protect money paid to the SVF accounts by users, while the latter aims to act as a buffer to absorb unexpected losses during the course of business and in case of winding up. The HKMA will take into account relevant factors in considering the float safeguarding approach to ensure that the proposed measures will provide adequate protection and are commensurate with the risk</li> </ul>

<b>Issues</b>	<b>Respondents' views and comments</b>	<b>The Administration's responses</b>
	<p>some extent.</p> <ul style="list-style-type: none"> <li>● One respondent suggested that global players should be exempt from the proposed float safeguarding and management requirements if they can demonstrate adequate float safeguarding with global banks.</li> <li>● Another respondent suggested segregating the float by putting it in a designated bank account to prevent any possible misappropriation of the fund by the issuers.</li> <li>● The HKMA should continue monitor the effectiveness of the safeguarding measures implemented by the SVF issuers.</li> </ul>	<p>profile.</p> <ul style="list-style-type: none"> <li>● The current proposal is that licensees should keep the float separate from its own funds and have in place float protection arrangements which are adequate in the HKMA's opinion. In practice the HKMA will discuss with each SVF licensee the float safeguarding approach to be adopted taking into account the licensee's risk profile. The HKMA will keep an open mind on different types of safeguarding measures so long as they can fulfil the two float safeguarding principles.</li> <li>● Noted.</li> </ul>
(e) Fit and proper requirements	<ul style="list-style-type: none"> <li>● Some respondents requested more clarity on the requirements. One respondent suggested that senior management and board members of licensees should comprise certain percentage of local residents with adequate knowledge and experience.</li> </ul>	<ul style="list-style-type: none"> <li>● The fit and proper requirements under the licensing criteria largely follow the equivalent requirements applicable to AIs stipulated under the BO and the Guide to Authorization issued by the HKMA. The HKMA will issue detailed supervisory guidelines to set out the relevant requirements in due course.</li> <li>● To cater for global players, we are not inclined to impose requirements on the number of local residents in the senior management and the board of the licensee.</li> </ul>
(f) Prudential and risk management requirements	<ul style="list-style-type: none"> <li>● Some respondents suggested that SVF licensees should be required to provide adequate and reasonably convenient access to transaction data</li> </ul>	<ul style="list-style-type: none"> <li>● The HKMA will issue supervisory guidelines to set out the relevant requirements in due course.</li> </ul>

Issues	Respondents' views and comments	The Administration's responses
	<p>over a reasonable period of time by users. Licensees should also be required to comply with relevant international industry standard to process sensitive payment data. In addition, the risk management requirements should include knowledge and experience in IT governance, IT security and audit, standards for security, systems and hardware, data availability, data on-shoring requirements, etc.</p>	
(g) Redemption requirements	<ul style="list-style-type: none"> <li>● A few respondents considered it necessary to specify whether value stored in SVF may expire. In this regard, one respondent suggested that value stored should be redeemed only after a certain use period. There were also comments suggesting that value stored should be subject to expiry date determined by the issuers.</li> <li>● Some respondents suggested that redemption in full value should not include any bonus value given. Others suggested that the HKMA should issue guidelines on expiry of stored value redemption.</li> <li>● One respondent opined that the HKMA needs to consider the treatment of remaining float when SVF contracts come to an end.</li> </ul>	<ul style="list-style-type: none"> <li>● To ensure adequate user protection, SVF issuers should allow users to redeem in full the value stored upon receiving a redemption request from a user. The terms and conditions of the contract with a user should be fair and clearly and prominently stated in the conditions of redemption, including any fees relating to the redemption if any. In this regard, the HKMA will issue detailed supervisory guidelines and requirements to facilitate compliance and ensure that users are properly protected.</li> </ul>
(h) Transfer of license	<ul style="list-style-type: none"> <li>● Respondents generally agreed with the proposal that a transfer should be subject to the transferee meeting the licensing criteria.</li> <li>● One respondent suggested that approval from the HKMA should not be compulsory and that</li> </ul>	<ul style="list-style-type: none"> <li>● Noted.</li> <li>● This requirement is similar to those under the BO regarding a transfer of authorization. We consider it an effective tool to ensure that the new</li> </ul>

Issues	Respondents' views and comments	The Administration's responses
	notification should suffice.	licence holder is sound and robust and that the transition process is smooth.
(i) Other licensing matters	<ul style="list-style-type: none"> <li>● One respondent suggested SVF issuers should not be required to display the licence number on physical SVF.</li>   <li>● One respondent suggested that non-bank SVF issuers should be subject to substantially less reporting requirements than the existing banking returns under the BO.</li> </ul>	<ul style="list-style-type: none"> <li>● The requirement for SVF licensees to display licence number on SVF aims to ensure that the public are aware of individual SVF's licensing status. Nevertheless, we are aware that in some cases, e.g. where the SVF are very small or in odd shapes, it may not be feasible for the licence numbers to be displayed on the physical SVF. In such cases, licensees would be allowed to display licence numbers on the packaging and advertising materials. In case of network-based SVF, licensees will be required to display their licence numbers on the network interfaces with their customers, e.g. on their webpages and mobile apps in addition to advertising materials.</li> <li>● Our intention is to impose the above requirements only on new SVF issued after the commencement of the new regime so as to minimise disturbances to issuers and users of physical SVF that are already in existence in the market.</li> <li>● The HKMA will develop detailed supervisory guidelines which cover the regulatory and reporting requirements. The HKMA will take into account the nature of SVF business, the overall risk profile and the latest technology developments when determining the reporting requirements.</li> </ul>
<b>5. HKMA's power to exempt certain SVF from the licensing regime</b>		

<b>Issues</b>	<b>Respondents' views and comments</b>	<b>The Administration's responses</b>
<p>(a) Provide HKMA with power to exempt certain SVF from the licensing regime</p>	<ul style="list-style-type: none"> <li>● The majority of respondents supported the proposal to empower the HKMA to exempt certain SVF from the licensing regime.</li> <li>● A number of respondents suggested that clear guidelines on exemption principles should be available.</li> <li>● One respondent opined that the HKMA should have the powers to collect information from exempted SVF to monitor their exemption status on a regular basis.</li> <li>● Some respondents commented that the HKMA should consider exemptions by thresholds (e.g. annual transaction volume; number of participants; average transaction amount, float size, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>● Noted.</li> <li>● We will issue licensing and supervisory guidelines to illustrate in detail the exemption criteria in due course.</li> <li>● In line with the existing MPSVC regime under the BO, granting of exemption to SVF is at the initiation and discretion of the HKMA. We will also set out in the amendment legislation certain classes of SVF which are to be excluded from the regulatory regime at the outset, on the ground that the risks associated with such facilities are immaterial notwithstanding that they fall into the definition of SVF. This aims to reduce administrative burdens arising from licensing application and exemption processing.</li> <li>● Agreed. Relevant powers will be included into the amendment legislation for the purpose of monitoring the risks they posed to users as well as the payment and financial systems of Hong Kong.</li> <li>● We propose that SVF schemes which are of limited usage with a float size of not exceeding HK\$1 million will be excluded from the licensing regime. The HKMA will also have the discretion to exempt SVF schemes which poses minimal risks to its users or potential users or to the payment or financial system of Hong Kong, In determining the level of risks carried by a</li> </ul>

Issues	Respondents' views and comments	The Administration's responses
	<ul style="list-style-type: none"> <li>● One respondent suggested allowing licensees to maintain a lower on-going capital if the float size or transaction volume does not exceed a certain threshold.</li> <li>● Another respondent suggested that given that the nature of online purchase is akin to an open-loop system, an SVF scheme set up for online purchases should not qualify for exemption. Also, with respect to exempted issuers, there should be a maximum float limit.</li> <li>● One respondent commented that the two types of SVF set out in paragraph 5.4.7.2 of the consultation paper are cumulative conditions for exemptions. This seems to be too narrow.</li> </ul>	<p>particular SVF, the HKMA will take into account considerations, including whether the facility is to be used only within or within a close proximity to the issuer premises; the range of goods and services for which the facility may be used as a payment; whether the scheme has adequate risk management controls; and if the issuer is financially sound. The HKMA will issue guidelines to illustrate in detail the exemption criteria and process.</p> <ul style="list-style-type: none"> <li>● The minimum on-going capital requirement aims to ensure licensees' minimum financial strength. The HKMA may increase the level of capital requirement for individual licensees to ensure that capitals maintained by them are commensurable with the scale and risk of their operations.</li> <li>● Noted. The HKMA may attach conditions to the exemption to require the issuer/facilitator to do such things as the HKMA may specify so. This also applies to the limit of float size.</li> <li>● The two types of SVF are not cumulative conditions for exemptions. Rather, they are two sets of different criteria for granting exemption to certain SVF.</li> </ul>
(b) Scope of exemption	<ul style="list-style-type: none"> <li>● There were questions on whether airline mileages programme, banks' cash dollars programme, petrol</li> </ul>	<ul style="list-style-type: none"> <li>● In considering an exemption, the HKMA will take into account, among other things, the risks posed</li> </ul>

<b>Issues</b>	<b>Respondents' views and comments</b>	<b>The Administration's responses</b>
	<p>cards, and SVF that can be used across all university campuses in Hong Kong, are eligible for exemption even though they can be used in a number of merchants.</p> <ul style="list-style-type: none"> <li>● One respondent suggested that some chain stores or restaurants are structured such that each store or each restaurant is under a separate legal entity. Gift certificates usable across the entire chain could be regarded multipurpose SVFs. Consideration should be given to exempting some multipurpose SVF or including them as SPSVFs. These exemptions/inclusions would need to be given, not upon each facility issuer or operator's application in that specific case, but as general exemptions/inclusions for the types of facilities.</li> <li>● There were comments suggesting that express provisions should be provided in the law for outright exemption for certain types of SVF to ease administrative burden.</li> <li>● A few respondents suggested that a list of exempted SVF should be made known to the public.</li> </ul>	<p>by the SVF to users or to the payment and financial systems of Hong Kong as a whole, and whether to require the issuer of the SVF to be licensed would amount to regulatory “overkill” and hinder small scale SVF from further developments. In general, the HKMA may consider granting an exemption if the SVF can satisfy with the criteria set out in paragraph 15 of this paper</p> <ul style="list-style-type: none"> <li>● Agreed. The HKMA will specify certain classes of SVF to be excluded from the regulatory regime at the outset on the ground that the risks associated with such facilities are immaterial. This aims to reduce administrative burdens arising from licensing application and exemption processing. Our current thinking is that reward schemes which reward actual cash to users for using the facilities and SVF issued by “single online store platform” solely for the purpose of purchasing digital contents from the platform would be exempted outright.</li> <li>● Agreed. The HKMA will publish a register listing out all SVF licensees as well as those exempted SVF.</li> </ul>

Issues	Respondents' views and comments	The Administration's responses
<b>6. Float safeguarding and management requirements</b>		
(a) Overall proposal	<ul style="list-style-type: none"> <li>● The majority of respondents indicated support to the proposals.</li> <li>● A number of respondents requested guidelines on float safeguarding, including how trust account and bank guarantee arrangement will work, and investment of float and handling of the interest income. There were comments stating that it would be difficult to achieve 100% float protection on a nearly real-time basis for SVF with offline operation.</li> <li>● One respondent suggested that the regulatory framework should cover all accounts that may be established by one customer under an SVF scheme.</li> </ul>	<ul style="list-style-type: none"> <li>● Noted. The HKMA will issue supervisory guidelines to set out the relevant requirements in due course.</li> </ul>
(b) Level-playing field	<ul style="list-style-type: none"> <li>● Some respondents indicated concerns that the proposal of not applying the float safeguarding requirements to banks appears to provide a clear competitive advantage to banks.</li> <li>● Some respondents considered it unfair to involve commercial banks in the execution of the safeguarding measures as they are also potential competitors to regular SVFs. In this connection, it was suggested that the HKMA should consider granting a regulated certification to non-bank SVF issuers such that banks should have no reason to refuse requests to open accounts for non-bank SVF for competition reasons.</li> <li>● One respondent welcomed that licensed banks which already are subject to liquidity and capital</li> </ul>	<ul style="list-style-type: none"> <li>● After taking into account comments received and to ensure a level playing field between SVF issuers of banks and non-banks with respect to the float safeguarding requirements, we consider it necessary to apply the same float safeguarding principles to both banks and non-banks. The HKMA will take into account the scale of the SVF business, risk profile and internal control environment of the issuer, its capital strength, etc. when reviewing the adequacy of float safeguarding arrangement proposed by the issuer before granting our approval.</li> </ul>

Issues	Respondents' views and comments	The Administration's responses
	adequacy requirements will not be subject to the segregation or safeguarding measures.	
(c) Options for float safeguarding measures	<ul style="list-style-type: none"> <li>● Some respondents suggested that in addition to the trust account and bank guarantee arrangements as proposed in the consultation paper, consideration should be given to other or a combination of possible float safeguarding arrangements such as – <ul style="list-style-type: none"> <li>(a) progressive scheme based on risk levels;</li> <li>(b) insurance schemes;</li> <li>(c) own funds;</li> <li>(d) debt certificate; and</li> <li>(e) surety bonds from bank or insurance company up to a certain percentage of the float</li> </ul> </li> <li>● There were comments suggesting that certain global players' existing safeguarding arrangements with some large international banks should also be accepted. Also, one respondent stated that the at least 100% protection of float is too harsh and suggested using a capital adequacy ratio as an option for safeguarding measures. Another respondent opined that the current MPSVC regime under the BO has already provided sufficient customer protection. If either bank guarantee or trust account is adopted, the float should not be required to be invested only in high quality and liquid assets.</li> <li>● One respondent suggested that if the issuer is already subject to sufficient supervision in their home countries, the requirements on float safeguarding measures should be relaxed to a</li> </ul>	<ul style="list-style-type: none"> <li>● The HKMA will specify the general principles for float safeguarding and investment of the float. Individual SVF issuers are required to submit their proposed float safeguarding and investment arrangements for the HKMA's consideration and approval. The HKMA will take into account a number of factors such as the scale of the SVF business, the risk profile and internal control environment of the issuer, its capital strength, etc. when determining the appropriateness of the safeguarding and investment arrangements on a case by case basis.</li> </ul>

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	<p>certain extent. Also, bank guarantee may not be a feasible option as the float may increase rapidly and the issuer may have to negotiate the terms with banks from time to time.</p>	
<b>7. Limit on maximum amount stored on a SVF</b>		
(a) Overall limit	<ul style="list-style-type: none"> <li>● Some respondents expressed that the limit for each individual SVF should be set according to the level of risk and the size of the issuers' operations. In particular, one respondent suggested setting the limit to HK\$2,000 for device-based SVF to reduce the risk of financial loss when the device is misplaced or lost.</li> <li>● Other factors for consideration may include whether the device is anonymous; whether the issuer is a bank; the number and type of users; average daily transaction volume; average transaction value; currencies involved; business model; risk management; company profile; and a workable matrix for defining maximum limits, etc.. A number of respondents considered it helpful if the HKMA would issue clear guidance on these matters.</li> <li>● However, some respondents suggested that no limit should be set.</li> </ul>	<ul style="list-style-type: none"> <li>● We do not intend to set a fixed limit for all SVF. Instead the limit will be determined during the licensing process taking into account factors as set out in section 5.6 of the consultation paper.</li> <li>● The HKMA will take into account the other comments, where appropriate, when formulating the detailed licensing and supervisory guidelines.</li> </ul>
(b) Anti-money laundering and counter-terrorists financing	<ul style="list-style-type: none"> <li>● A number of respondents did not agree to the proposal in the consultation in relation to maximum stored value for non-device based SVF on the following grounds – <ul style="list-style-type: none"> <li>(a) imposing the requirement regardless of</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Taking into account comments received, we propose that only device-based SVF will be subject to the HK\$3,000 threshold on the ground that device-based SVF are usually vulnerable to money laundering than non-device based SVF because the majority of existing device-based</li> </ul>

Issues	Respondents' views and comments	The Administration's responses
	<p>issuers' risk profile is onerous and disruptive and would jeopardize the commercial viability;</p> <p>(b) an one-size-fits-all threshold of HK\$3,000 limit is too low for internet transactions. There should be no limit on non-device based SVFs;</p> <p>(c) buyer transactions for Hong Kong customers are predominantly funded by linked credit cards which have already undergone customer due diligence (CDD) and on-going transaction monitoring processes by their issuing banks;</p> <p>(d) internal risk-based model for AML is sufficient given the low-risk nature of internet based payment service as recognized by FATF;</p> <p>(e) to be in line with other overseas jurisdictions, HKMA should implement risk-based approach for AML on network-based SVF.</p> <ul style="list-style-type: none"> <li>One respondent suggested reducing the stored value limit of device-based SVF from HK\$3,000 to HK\$1,000 and requiring users to present his/her HKID card or passport for CDD purpose when purchasing a stored value card.</li> </ul>	<p>SVF (e.g. stored value cards) are anonymous.</p> <ul style="list-style-type: none"> <li>With respect of non-device based SVF, we will adopt a risk-based AML approach through the use of licensing conditions to regulate AML issues in relation the SVF schemes. This is based on the ground that non-device based SVF are usually registered and linked to credit card/bank account, and are therefore less susceptible to money laundering. This is in line with the relevant international standards.</li> </ul> <ul style="list-style-type: none"> <li>We consider the proposed requirement for device-based SVF appropriate, as it has been used under the AMLO effectively. We therefore have no plan to reduce the limit.</li> </ul>
<b>(C) Retail Payment System</b>		
(a) Proposed designation regime for RPS	<ul style="list-style-type: none"> <li>The majority of respondents expressed support to</li> </ul>	<ul style="list-style-type: none"> <li>Given the growing acceptance and sophistication</li> </ul>

<b>Issues</b>	<b>Respondents' views and comments</b>	<b>The Administration's responses</b>
	<p>the proposed designation regime for RPS.</p> <ul style="list-style-type: none"> <li>● Nevertheless, a number of respondents considered the designation criteria in relation to public confidence in payment systems appeared to be subjective and difficult to be measured.</li> <li>● One respondent objected to the proposal and commented that – <ul style="list-style-type: none"> <li>(a) introducing an RPS regime in Hong Kong that may result in direct regulation of credit card schemes which will undermine Hong Kong's status as an international financial centre and put Hong Kong in a small minority of countries in which RPS are regulated;</li> <li>(b) international best practices established by the BIS call for government oversight only of systemically important payment systems, not RPS;</li> <li>(c) disruption of credit card schemes would not result in the three situations mentioned</li> </ul> </li> </ul>	<p>of RPS in recent years in Hong Kong, we consider it timely and necessary to expand the current regulatory regime under the CSSO to cover RPS.</p> <ul style="list-style-type: none"> <li>● We do not agree with this. The HKMA is the regulator of both the large value and small value payment systems. It is important to ensure that any disruption of a payment system will not have any spillover effect on other important payment systems as well as the public confidence in using other important payment systems. For example, disruption to a payment system may not cause any monetary and financial instability issue or affect the day-to-day commercial activities, but its interface with other important payment systems may cause a public confidence issue.</li> <li>● The proposed regulation of RPS is in line with international regulatory trends in formalising the supervision of retail payment products and services. For example, in Europe, the National Bank of Belgium exercises oversight on certain credit card schemes pursuant to standards set by the European Central Bank. In the United States, the Federal Financial Institutions Examination Council, the Office of Foreign Assets Control and the Federal Trade Commission supervise retail payment products and services covering credit card schemes on different respects including data security and integrity as well as privacy issues. In Australia, the Reserve Bank of Australia has designated a number of credit card schemes for regulations.</li> <li>● RPS will only be designated and subject to the HKMA's regulation on the condition that the</li> </ul>

<b>Issues</b>	<b>Respondents' views and comments</b>	<b>The Administration's responses</b>
	<p>designation criteria; and</p> <p>(d) the current Code of Practice for Payment Card Schemes is sufficient. Definition of RPS should not include payment card schemes.</p>	<p>designation criteria are met.</p>
<p>(b) Definition of RPS, coverage and applications</p>	<ul style="list-style-type: none"> <li>● Some respondents considered that there should be no regulatory overlap for SVF and RPS.</li>   <li>● A few respondents commented that it is not clear whether banks' bill and online banking payment services; shared ATM networks; and point-of-sales (POS) service providers will be captured by the definition of RPS.</li> </ul>	<ul style="list-style-type: none"> <li>● We do not intend to designate a clearing and settlement system (i.e. the RPS) which is operated by a SVF licensee to support its own SVF schemes. It is because the company issuing the SVF, the entire SVF schemes and all related systems, including the clearing and settlement system, should be already subject to a holistic SVF regulatory framework. However, if the RPS operated by the SVF issuers also supports SVF schemes operated by other issuers, the HKMA may designate such RPS if it meets the designation criteria.</li>   <li>● We do not intend to designate RPS operated by an AI, e.g. internet and mobile banking payment services, electronic fund transfer services, ATM networks etc., for serving their own customers because such RPS are already subject to the HKMA's prudential supervision of the AI as a whole. However, if an AI provides RPS services to other payment service providers, such RPS may be subject to designation if it falls within the proposed designation criteria.</li>   <li>● Point-of-sale (POS) service providers generally do not fall within the definition of RPS as they are merely service providers of POS hardware</li> </ul>

Issues	Respondents' views and comments	The Administration's responses
	<ul style="list-style-type: none"> <li>● One respondent suggested that the designation regime should cover merchant acquiring business given its fast growing nature.</li> <li>● Some respondents raised concerns about possible catching of systems and infrastructures provided by the telecommunication and retail industries as such systems and infrastructures are often heavily integrated with RPS. One of the respondents suggested specifically that the infrastructure of the TSM of NFC mobile payment services be excluded from the definition of RPS because TSM is primarily a computer system and not a payment system. Also, further clarification is required.</li> </ul>	<p>equipment.</p> <ul style="list-style-type: none"> <li>● Noted. The proposed designation regime intends to cover major merchant acquiring business.</li> <li>● We do not intend to designate telecommunication systems and network infrastructures. However, in view of the growing acceptance of mobile payment services, it is important to ensure the reliability and safety of critical infrastructures which support mobile payment services. We therefore expect the operators of the RPS to ensure the reliability and safety of such infrastructures.</li> </ul>
(c) Definitions of “system operators” (SO) and “settlement institution” (SI)	<ul style="list-style-type: none"> <li>● While a majority of respondents did not express any views in this respect, some agreed that the definitions of SO and SI are clear, some respondents, however, commented that the definitions need further clarification as they seem to be overlapping since both of them involve in the provision of settlement functions.</li> <li>● One respondent suggested that the meaning of SO within the meaning of RPS should not refer to the system's operating rules.</li> </ul>	<ul style="list-style-type: none"> <li>● Noted. The definitions of SO and SI are largely based on the existing definitions under the CSSO with appropriate expansion to cover SO and SI or RPS. We will take into account the comment when preparing the bill.</li> <li>● The operating rules are the essential elements for determining the person who is the SO of the RPS.</li> </ul>
(d) Designation criteria and process	<ul style="list-style-type: none"> <li>● Respondents generally expressed support to the proposals.</li> <li>● Some respondents requested detailed guidelines on</li> </ul>	<ul style="list-style-type: none"> <li>● Noted.</li> <li>● Noted. The HKMA will develop detailed</li> </ul>

<b>Issues</b>	<b>Respondents' views and comments</b>	<b>The Administration's responses</b>
	<p>the designation criteria and process be made available.</p> <ul style="list-style-type: none"> <li>● Some respondents suggested a number of quantitative factors for designation, including – <ul style="list-style-type: none"> <li>(a) the aggregate value of orders processed by a designated RPS (e.g. over HK\$5 million per day) and the number of participants or users (e.g. over 10,000 per day);</li> <li>(b) the frequency of transactions being processed through the RPS, number of participants or users, etc; and</li> <li>(c) a particular level/size of turnover.</li> </ul> </li> </ul>	<p>supervisory guidelines in relation the designation criteria and process.</p> <ul style="list-style-type: none"> <li>● Noted. The HKMA will take into account the comments, where appropriate, when formulating the detailed supervisory policy.</li> </ul>
(e) Requirements on designated systems	<ul style="list-style-type: none"> <li>● Respondents generally expressed support to the proposals.</li> <li>● One respondent considered that the requirement of a payment system to comply with the requirements of the AMLO may be problematic.</li> <li>● One respondent suggested adopting more stringent requirements on the designated systems such as capital requirements of HK\$ 5 million; effective risk management; knowledge and experience; and integrity of controllers and directors, etc.</li> </ul>	<ul style="list-style-type: none"> <li>● In general, we would expect SO and SI of RPS such as credit card and debit card schemes to rely on their participants, which are mainly banks and financial institutions, to fulfil relevant regulatory requirements under the AMLO. With regard to other RPS, their SO and SI are required to comply with the relevant AMLO requirements to the extent applicable to them.</li> <li>● In line with the existing requirements under the CSSO, designated RPS will be required to operate in a safe and efficient manner calculated to minimise the likelihood of any disruption to the system. In this respect, designated systems will be required to have in place appropriate operating rules; adequate risk management and control procedures; adequate financial resources, etc, to</li> </ul>

Issues	Respondents' views and comments	The Administration's responses
		<p>ensure the overall safety and efficiency of the system. The HKMA will take into account factors including the fitness and propriety of the management of the designated system when determining whether it is in compliance with the safety and efficiency requirements. As regards the suggestion to impose capital requirements on the designated systems, we do not consider it necessary at this point in time given that RPS do not hold funds of users and they are purely providing an infrastructure or arrangements for retail payment activities.</p>
<b>(D) Powers of the HKMA, sanctions and penalties, and transitional arrangements</b>		
<p>(a) Supervisory powers of the HKMA on SVF and RPS</p>	<ul style="list-style-type: none"> <li>● Respondents generally expressed support to the proposal. One respondent suggested that sufficient time be given to the RPS operators for complying with the HKMA's requirements if system changes are required.</li> <li>● A few respondents considered the proposed supervisory powers of the HKMA appear to be broad and far reaching, in particular with respect to the appointment of chief executives and directors. Further consideration should be given to a simplified approval regime particularly in relation to approval of shareholders, chief executives and directors.</li> </ul>	<ul style="list-style-type: none"> <li>● Noted.</li> <li>● To ensure that SVF licensees and designated RPS will continuously meet the statutory requirements, it is necessary that the HKMA be vested with the appropriate prudential supervisory powers to perform its supervisory functions under the new regulatory framework.</li> <li>● The proposed supervisory powers are consistent with the relevant provisions of the BO, and hence, they may be incorporated into the amendment legislation so that the HKMA can exercise supervisory functions over SVF licensees and designated RPS. We therefore consider these</li> </ul>

<b>Issues</b>	<b>Respondents' views and comments</b>	<b>The Administration's responses</b>
	<ul style="list-style-type: none"> <li>● There was a comment advising that the HKMA should avoid using its new powers to intervene pricing or other commercial arrangements of payment systems which are intended to impose notions of efficiency.</li> <li>● One respondent considered the requirement to seek HKMA's approval for amalgamation may violate Companies Ordinance and Articles of Association which shall allow changes in ownership upon passing of directors' resolutions.</li> </ul>	<p>powers reasonable and essential for the implementation of the proposed regulatory regime.</p> <ul style="list-style-type: none"> <li>● We do not consider it appropriate to be involved in the commercial arrangements between users and issuers of SVF.</li> <li>● The proposed requirement is in line with the current arrangements applicable to AIs, including MPSVC issuers under the BO. It is also in line with most overseas jurisdictions where changes in the ownership structure of a SVF issuer will usually need approval from its regulator.</li> </ul>
(b) Investigation powers of the HKMA on SVF and RPS	<ul style="list-style-type: none"> <li>● Respondents generally expressed support to the proposals. One respondent suggested including requirements for recording and retention of SVF and RPS transactions in order to facilitate more effective investigation.</li> <li>● The HKMA should disclose the annual audit result of SVF issuers and RPS operators.</li> </ul>	<ul style="list-style-type: none"> <li>● Noted. We will include the requirements on recording and retention of SVF and RPS transactions in the HKMA's supervisory guidelines.</li> <li>● The regulatory regime should adequately empower the HKMA to obtain the information necessary for the supervisory purposes. We do not intend to impose new information disclosure requirements.</li> </ul>
(c) Offence and sanctions provisions	<ul style="list-style-type: none"> <li>● Respondents generally expressed support to the proposals.</li> </ul>	<ul style="list-style-type: none"> <li>● Noted.</li> </ul>

<b>Issues</b>	<b>Respondents' views and comments</b>	<b>The Administration's responses</b>
	<ul style="list-style-type: none"> <li>• A respondent found the disciplinary penalty up to HKD\$10 million is too excessive and will discourage the current and upcoming RPS, given there are potentially a great variety of RPS in market of various sizes relying on mostly thin margin of service and transaction fees.</li> </ul>	<ul style="list-style-type: none"> <li>• The proposed disciplinary penalty is in line with that of section 194 of the Securities and Futures Ordinance (Cap. 571). It should be noted that the proposed penalty level is the maximum that may be imposed and the actual penalty imposed will depend on the severity of the relevant contravention.</li> </ul>
(d)Transitional arrangements	<ul style="list-style-type: none"> <li>• Some respondents expressed that the transitional period for individual SVF licensees should be reviewed on a case-by-case basis with a flexible approach adopted as a starting point, with a grace period of 12 – 18 months after Gazettal of the new Ordinance taking into account time need for system development and AML compliance matters.</li> <li>• One respondent suggested that a two-stage approach be adopted. When the bill is enacted, there would be provisions allowing applications to be made for licences and the HKMA to approve and issue licences (say 18 months). Then, after a suitable period (possibly also 18 months) the substantive provisions could be brought into effect.</li> <li>• Some respondents considered that the provisions pertaining to designated RPS should apply to a designated RPS only on or after a grace period, say 12 months, after the designation.</li> </ul>	<ul style="list-style-type: none"> <li>• Noted. Appropriate transitional arrangements will be applied to both the existing and prospective issuers taking into account their respective needs in order to ensure a smooth transition to the new regime. In addition, the HKMA will discuss with individual applicants and may, on a case-by-case basis, allow a phased migration of SVF accounts of existing issuers if the migration involves a very large number of customers.</li> <li>• Noted. We will take this into account when finalising the transitional arrangements.</li> <li>• Noted. We will discuss with all potential designated RPS taking into account their practical needs when implementing the regulatory requirements on them.</li> </ul>

**Consumer Protection Legislation**

**Sale of Goods Ordinance (Cap. 26)**

This Ordinance governs the contractual relationships between sellers and buyers as regards sale of goods and their respective rights and obligations. The Ordinance specifically requires that the goods supplied under a contract of sales should be of merchantable quality.

**Trade Descriptions Ordinance (Cap. 362)**

This Ordinance prohibits anyone from applying false trade descriptions during trade transactions or in advertisements, false trademarks and mis-statements in respect of goods provided in the course of trade.

**Control of Exemption Clauses Ordinance (Cap. 71)**

This Ordinance seeks to limit the extent to which civil liability for breach of contract, or for negligence or other breach of duty, can be avoided by means of contract terms.

**Supply of Services (Implied Terms) Ordinance (Cap. 457)**

This Ordinance codifies the common law principles governing supply of services to enhance clarity and over consistency.

**Unconscionable Contracts Ordinance (Cap. 458)**

This Ordinance empowers the court to rewrite or strike down unconscionable terms found in consumer contracts.