



# HONG KONG MONETARY AUTHORITY

## 香港金融管理局

Our Ref.: B10/21C

19 October 2018

The Chief Executive  
All Stored Value Facility Licensees

Dear Sir/Madam,

### **Policy and Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism**

I am writing to set out the Hong Kong Monetary Authority (HKMA)'s overall policy and supervisory approach on stored value facility (SVF) licensees for managing money laundering and terrorist financing (ML/TF) risks. This follows the publication of "Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report" by the Government in April 2018, which includes a policy statement of Hong Kong's anti-money laundering and counter-financing of terrorism (AML/CFT) regime.

The HKMA always adopts a risk-based approach in its supervision of SVF licensees' policies, procedures and controls in addressing the ML/TF risks in an effective and efficient manner. Details of the HKMA's AML/CFT policy and supervisory approach are set out in the Annex, which should be read in conjunction with the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Stored Value Facility Licensees). This circular aims to articulate the HKMA's supervisory approach, for greater policy transparency, and it is not intended to introduce any new requirements for SVF licensees.

If you have any questions regarding this circular, please approach your usual supervisory contact at the HKMA.

Yours faithfully,

Carmen Chu  
Executive Director (Enforcement and AML)

Encl.

## **Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism (For Stored Value Facility Licensees)**

### **1. HKMA's AML/CFT Policy**

#### **1.1 AML/CFT**

- 1.1.1 As set out in the *Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report*<sup>1</sup>, the Government is committed to upholding a robust anti-money laundering and counter-financing of terrorism (AML/CFT) regime that:
- (a) fulfils the international AML/CFT standards;
  - (b) deters and detects illicit fund flows in and out of the territory, through the financial system or otherwise;
  - (c) combats money laundering and terrorist financing (ML/TF) and restrains and confiscates illicit proceeds effectively;
  - (d) reduces ML/TF vulnerabilities of both financial and non-financial sectors in Hong Kong;
  - (e) adopts a risk-based approach (RBA) in applying compliance obligations to businesses and individuals;
  - (f) fosters strong external and international collaboration to disrupt global ML/TF threats; and
  - (g) promotes the awareness and builds the capacity of private sector stakeholders in combatting ML/TF risks through engagements in AML/CFT efforts.

- 1.1.2 The Hong Kong Monetary Authority (HKMA)'s AML/CFT policy (see paragraph 1.1.4), which flows from the Government's policy, is founded on an RBA. The policy objective is to address the ML/TF risks in Hong Kong's stored value facility (SVF) sector by, through appropriate preventive measures, deterring abuse of the sector as a conduit for illicit funds, and detecting and disrupting ML/TF activities through identification and reporting of such activities by SVF licensees on the basis of a fully collaborative relationship with the Joint Financial Intelligence Unit (JFIU) and law enforcement agencies. Under this policy, the HKMA supervises and monitors SVF licensees in their effective assessment and

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<sup>1</sup> Published by the Hong Kong Special Administrative Region Government from time to time.

management of ML/TF risks and compliance with AML/CFT requirements.

- 1.1.3 Such policy recognises the important role which SVF licensees play in Hong Kong's AML/CFT regime, given growing public acceptance and increasing use of SVF and innovative retail payment products and services. It also recognises the need to provide guidance and assistance to SVF licensees to focus their resources and effort as effectively and efficiently as possible on areas of real ML/TF risks as well as to reduce unnecessary compliance burden on SVF licensees and bona fide businesses and individuals.
- 1.1.4 Being part of Hong Kong's AML/CFT regime, the HKMA seeks to:
  - (a) meet international standards, in particular those set by the Financial Action Task Force (FATF);
  - (b) embed the RBA through targeted support to deliver a stronger territory-wide response;
  - (c) support Government and law enforcement efforts to combat ML/TF activities, and the restraint and confiscation of proceeds of illicit activities;
  - (d) dovetail with the AML/CFT efforts of other agencies, both in Hong Kong and internationally, through cooperation with other financial regulators and law enforcement agencies as well as active participation in the FATF, the Asia/Pacific Group on Money Laundering (APG) and other international bodies; and
  - (e) raise awareness and build AML/CFT capacity in the SVF sector by providing guidance and promoting training and good practices.

## 1.2 Sanctions Compliance

- 1.2.1 While sanctions evasion, particularly evasion of sanctions related to financing of terrorism and weapons of mass destruction proliferation may share certain characteristics with other forms of ML, it also displays unique characteristics which should be considered when devising strategies to counter these threats.
- 1.2.2 Sanctions in force in Hong Kong are generally those imposed by the Security Council of the United Nations and implemented locally under the United Nations Sanctions Ordinance (Cap.537) or the United Nations (Anti-Terrorism Measures) Ordinance (Cap.575).

1.2.3 Sanctions which are not applied under Hong Kong law have no legal status or effect in Hong Kong. However, such overseas sanctions regimes may be relevant to, and pose risks for, the businesses of SVF licensees, especially where such business is international in nature, for example in relation to cross-border payments. The HKMA therefore expects SVF licensees to be aware of such regimes and any risks they may pose for their businesses and to take appropriate measures to mitigate such risks.

## **2. Roles of SVF licensees and HKMA in Hong Kong's AML/CFT Regime**

- 2.1 Hong Kong's AML/CFT regime comprises a robust legal framework, effective law enforcement, rigorous preventive measures, international cooperation as well as education and publicity. Hong Kong's overall AML/CFT policy is set by a Central Coordinating Committee on AML/CFT (CCC) chaired by the Financial Secretary and consisting of the relevant government bureaux and departments, law enforcement agencies and financial regulators. In addition to SVF licensees, the key stakeholders in Hong Kong's AML/CFT regime also include other financial institutions, designated non-financial businesses and professions, and their regulatory or self-regulatory bodies.
- 2.2 ML and TF are crimes and the responsibility for investigation and prosecution rests with law enforcement agencies including the Hong Kong Police Force, the Customs and Excise Department and the Independent Commission Against Corruption. Financial institutions, including SVF licensees, play an important role in supporting jurisdiction-wide AML/CFT efforts by implementing anti-money laundering and counter-financing of terrorism policies, procedures and controls (hereafter collectively referred to as "AML/CFT Systems") that help prevent criminals and terrorists exploiting the financial system; keeping records of business relationships and transactions that may facilitate financial investigation of suspected ML/TF activities; and collaborating with law enforcement agencies through the filing of suspicious transaction reports to the JFIU and information sharing to detect, prevent and disrupt crime.
- 2.3 The HKMA's role is to supervise SVF licensees in their roles as key stakeholders under Hong Kong's AML/CFT regime, complying with legal and regulatory requirements, and effectively focusing on areas of higher ML/TF risk.

### **3. Supervisory Approach**

#### **3.1 Risk-Based Supervision**

3.1.1 The HKMA adopts an RBA in its AML/CFT supervision of SVF licensees. The general principle of risk-based supervision is that supervisory engagement (whether through on-site examination, off-site reviews or otherwise) is graduated according to the ML/TF risks presented by different segments of the SVF sector and by individual SVF licensees. Supervisory attention and resources of the HKMA are focused on SVF licensees that are subject to higher ML/TF risks, while maintaining adequate and appropriate levels of engagement with SVF licensees that present lower ML/TF risks. It is essential to recognise that the risks which SVF licensees are exposed to are not static, but likely to change over time as threats evolve; SVF licensees' business models change; businesses expand to cover new products, services and customer segments; and in response to technological changes.

#### **3.2 Understanding the ML/TF Risk of the SVF Sector**

3.2.1 Effective risk-based supervision requires a thorough understanding of the risks presented by the SVF sector, specific segments and individual SVF licensees. The HKMA draws upon a variety of sources in this process, including the Hong Kong ML/TF Risk Assessment, domestic and international typologies and supervisory experience. The HKMA contributes to the assessment of the SVF sector in the overall Hong Kong ML/TF Risk Assessment, which is carried out periodically. The current assessment identifies the SVF sector as medium risk. The assessment was prepared based on the HKMA's supervisory engagement with the SVF sector and statistics on SVF licensees' business operations since late 2016, and is in line with the risks presented by SVF sector internationally.

3.2.2 Within the SVF sector, fraud is identified as by far the most prevalent predicate offence for ML. Given the increasing acceptance of SVF products as means of payment, the inherent threat of SVF products being used as a vehicle for ML should not be underestimated. The functionality and geographic reach of certain SVF products, such as cash withdrawal or cross-border fund transfers, could increase the vulnerability to ML.

### 3.3 Understanding the ML/TF Risk of Individual SVF Licensees

- 3.3.1 To understand the risks presented by individual SVF licensees, the HKMA undertakes periodic risk profiling<sup>2</sup> on all SVF licensees. The exercise combines a risk rating of each SVF licensee, with an impact rating reflecting its importance to Hong Kong's financial and payment system to determine the extent and distribution of ML/TF risks across the sector and thus the intensity of supervisory engagement with individual SVF licensees. Each SVF licensee is required to submit information for the risk-profiling exercise, including its most recent institutional ML/TF risk assessment. The results of this exercise are used by the HKMA in planning its supervisory activities and allocating resources. The exercise is conducted periodically because ML/TF risks are not static, but change in response to factors including developments in ML/TF typologies and changes to SVF licensees' business models and scope.
- 3.3.2 The periodic nature of both the overall Hong Kong ML/TF Risk Assessment and the risk-profiling exercise on SVF licensees means that risks are reassessed from time to time to ensure that the HKMA's understanding of ML/TF risk levels is kept up-to-date. Review of an SVF licensee's risk profile may take place between the periodic exercises in response to specific events or developments, for example: changes in or expansion of its business, corporate events such as merger or acquisition, or the introduction of new technology to its services or delivery channels.

### 3.4 Supervisory Process

- 3.4.1 The HKMA employs a range of approaches in its supervisory work, including risk profiling on all SVF licensees; off-site reviews; on-site examinations; self-assessments; meetings with SVF licensees' senior management and boards; and review meetings in cases where specific problems are identified.
- 3.4.2 On-site examinations include both risk-focused and thematic examinations. Risk-focused examinations take place more frequently for SVF licensees identified as having higher ML/TF risks in the risk-profiling exercise during which the AML/CFT Systems of individual SVF licensees will be examined across the board and in depth. For SVF licensees with lower ML/TF risks, risk-focused examinations will take place less frequently and focus on specific areas of the

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<sup>2</sup> In general, the HKMA conducts risk-profiling exercise on all SVF licensees every two years, subject to possible interim reviews of individual SVF licensees when circumstances warrant.

business regarded as of higher risk, or where information is less readily available, for example areas of business that are new or have expanded significantly since the last examination or review. Frequency of on-site examinations may change in response to specific trigger events, such as merger or acquisition and changes to business model or scope that may affect SVF licensees' risk profiles.

- 3.4.3 Thematic examinations focus on specific areas of business or operations that may present particular ML/TF risks, such as cross-border payments and sanctions compliance. They cover groups of SVF licensees engaged in these areas or subject to similar risks and are designed to gather information not just on individual SVF licensees but also on common issues facing the industry. Information on risks, ML/TF typologies, common problems and best practices identified during on-site examinations is shared with the industry via circulars, guidance papers and the regular AML seminars.
- 3.4.4 Heads of compliance and money laundering reporting officers (MLROs) are expected to attend the regular AML/CFT seminars organised by the HKMA and will be sent all AML/CFT-related circulars, updates of the *Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Stored Value Facility Licensees)* (AML/CFT Guideline), sanctions alerts and other information and relevant Government and HKMA consultation papers.

### 3.5 Supervisory and Enforcement Measures

- 3.5.1 The HKMA is empowered to deploy a range of supervisory and enforcement measures under the Payment Systems and Stored Value Facilities Ordinance (PSSVFO) (Cap.584) against any SVF licensee that fails to comply with relevant legal and regulatory requirements. Such measures can be applied to the SVF licensees and/or their controllers, directors, chief executives, managers, employees, as appropriate. Supervisory and enforcement measures are not mutually exclusive, and can be used in combination, depending on the facts and circumstances of a particular case.
- 3.5.2 In applying supervisory measures, the HKMA's aim is to bring about prompt remedial actions to address the identified deficiencies in AML/CFT Systems and to prevent recurrence. Where deficiencies in an individual SVF licensee's AML/CFT Systems are identified, the HKMA will write to the SVF licensee's Chief Executive, and its Board of Directors where appropriate, to ensure that the SVF licensee understands what the deficiencies are, the remedial actions which must be undertaken, and the timeframe within which those actions

must be completed. The HKMA will follow up with the SVF licensee concerned on the timely implementation of remedial actions, and that the identified deficiencies are effectively addressed. Where appropriate, the HKMA will require the SVF licensee to provide independent validation of the completion and effectiveness of the remedial actions taken. Such validation may be provided by the SVF licensee's internal audit function or by an independent external adviser under section 12B of the PSSVFO, depending on the circumstances of each case.

**3.5.3** Supervisory measures on SVF licensees may be statutory or non-statutory. Non-statutory measures may include, singly or in combination:

- (a) issuing letters to SVF licensee's management and on-site examination reports setting out AML/CFT deficiencies and requiring rectification within a set period;
- (b) requiring the SVF licensee concerned to take actions such as replacing management or staff with inadequate AML/CFT expertise;
- (c) requiring the SVF licensee concerned to submit detailed investigation reports on specific accounts, transactions or matters suspected of being associated with ML/TF;
- (d) communication with SVF licensee's board of directors, overseas head office, and/or home supervisor with regard to areas of supervisory concerns; and
- (e) restricting or putting on hold SVF licensee's new business or branch expansion plans until matters of supervisory concerns are addressed to the HKMA's satisfaction.

**3.5.4** Statutory measures on SVF licensees under the PSSVFO may include:

- (a) requiring the preparation and submission to the HKMA of reports by an auditor;
- (b) attaching conditions to SVF licensee's licence;
- (c) withdrawal of consent for persons to act as directors or chief executives of SVF licensee; and
- (d) in extreme cases, temporary suspending, suspending or revoking SVF licensee's licence.

- 3.5.5 Enforcement tools are used when this is proportionate to the seriousness of the concerns identified. If there is reasonable cause to believe that an offence under the PSSVFO may have been committed; a requirement imposed under the PSSVFO may have been contravened; or a condition attached to a licence, consent or any other instrument granted or given by the HKMA under the PSSVFO may have been contravened, an investigation may be commenced by the HKMA. If contraventions of the PSSVFO are identified, enforcement actions will be taken that are commensurate with, and proportionate to, the deficiencies found. The principal objectives of enforcement actions are to deter abuse of the SVF system for ML/TF activities, drive changes and reinforce the important message that SVF licensees must have AML/CFT Systems that are commensurate with the risks presented. The more serious the findings, the greater the need to use enforcement tools that have a greater deterrent effect both on the SVF licensee concerned and the industry.
- 3.5.6 Under section 33Q of the PSSVFO<sup>3</sup>, the HKMA may impose sanctions, including pecuniary penalties, cautions, warnings, reprimands, prohibition orders and remedial orders, on an SVF licensee or an officer of an SVF licensee if the HKMA is satisfied that the SVF licensee or the officer of the SVF licensee has contravened a provision of, a requirement imposed, or a condition attached to the licence, consent or any other instrument granted or given by the HKMA under the PSSVFO. In less serious cases, where SVF licensees are not fully compliant but the impact of the deficiencies on risk management is less serious, compliance advice letters may be issued to SVF licensees as an enforcement tool to bring the areas of weakness to the attention of management and/or board of directors so that they can be properly addressed. Repeat failures and failures to act on compliance advice are likely to raise more serious concerns about management and the adequacy of controls and may result in disciplinary or other actions.
- 3.5.7 In exercising the power to impose a pecuniary penalty under the PSSVFO, the Monetary Authority (MA) will have regard to the *Guideline on Exercising Power to Order a Pecuniary Penalty* issued by the MA under section 54(1E) of the PSSVFO. Cooperation is one of the factors that may be taken into consideration. The HKMA has also issued a *Guidance Note on Cooperation with the HKMA in*

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<sup>3</sup> If Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) (Cap.615) applies in relation to the issue of a SVF by virtue of section 5(4) of the AMLO, the enforcement tools under the AMLO may be applied which include prosecution of offences under section 5 of the AMLO.

*Investigations and Enforcement Proceedings*, which elaborates on the HKMA's policy with regard to cooperation including the mutual benefits of cooperation, examples of how to cooperate, the factors taken into account in assessing the degree of cooperation and the extent to which the MA may recognise the cooperation. While cooperation does not preclude enforcement action, the MA takes cooperation into consideration when determining the outcome of enforcement action and may reduce proposed sanctions when this is appropriate in all the circumstances of the case. The Guidance Note does not apply in criminal cases.

## **4. Feedback, Sharing and Capacity Building**

- 4.1 The HKMA shares its supervisory feedback, including good practices as well as areas of concern, to facilitate learning and capacity building in AML/CFT work of individual SVF licensees and the SVF sector as a whole. This includes but is not limited to:
- (a) sharing of observations and findings from on-site AML/CFT examinations with individual SVF licensees to inform areas for improvement;
  - (b) regular meetings with SVF licensees, to conduct fact finding and provide direct support on particular issues as appropriate;
  - (c) collation of good practices and common issues observed during AML/CFT examinations and thematic reviews as well as feedback from the JFIU for sharing with the industry in the regular AML seminars, and also in the form of circulars and guidance papers;
  - (d) giving direction on key risks and thematic areas as well as clarifying regulatory expectations and interpretation of key controls, in the form of circulars and guidance papers, making reference to international standards and best practices and guidance issued by international organisations; and
  - (e) regular meetings and forums with the industry to discuss topical issues on AML/CFT.
- 4.2 All guidance and outreach materials, including presentation materials and public releases regarding disciplinary actions resulting from HKMA investigations, are available in the dedicated AML/CFT session of the HKMA's website.

## **5. Domestic and International Cooperation**

- 5.1 AML/CFT policy in Hong Kong is set by the CCC, chaired by the Financial Secretary, of which the HKMA is a member, together with relevant Government bureaux, financial regulators and law enforcement agencies. The HKMA also cooperates closely with the Securities and Futures Commission, Insurance Authority and the Commissioner for Customs and Excise in the drafting and revision of the AML/CFT Guideline for financial institutions and in discussions of matters on common interest, including cross-sector ML/TF risks. The HKMA and the other relevant authorities also meet regularly in forums led by the Financial Services and the Treasury Bureau.
- 5.2 The HKMA also participates in regular discussions with relevant Government bureaux and departments and law enforcement agencies on areas such as the implementation of United Nations sanctions in Hong Kong and suspicious transaction reporting by SVF licensees.
- 5.3 The HKMA is committed to promote effective sharing of information and intelligence between the HKMA, SVF licensees and law enforcement agencies.
- 5.4 Internationally, the HKMA participates in the FATF and the APG. It also cooperates with authorities in other jurisdictions, including the Mainland and Macau.

## **6. Other Related Areas**

- 6.1 Financial Inclusion
- 6.1.1 While it is important for SVF licensees to ensure that AML/CFT Systems are sufficiently robust and in compliance with all relevant legal and regulatory requirements, the HKMA expects SVF licensees to adopt an RBA and refrain from adopting practices that would result in financial exclusion, particularly in respect of the need for bona fide businesses and individuals to have access to SVF products and services. The principles of an RBA in relation to customer due diligence (CDD) are:
- (a) Risk differentiation – The risk assessment processes should be able to differentiate the risks of individual customers within a particular segment or grouping through the application of a range of factors, including country risk, business risk, product/service risk and delivery/distribution channel risk. It is inappropriate for SVF licensees to adopt a one-size-fits-all approach.

- (b) Proportionality – Based on the likely risk level of a customer, SVF licensees should apply appropriate CDD and risk mitigating measures commensurate with the risk level of the customer, thus avoiding undue burden on the customer and the SVF licensee concerned.
- (c) Not a “Zero Failure” regime – While SVF licensees should take all reasonable measures to identify ML/TF risks at the account opening stage and, for existing customers, on an ongoing basis, it is unrealistic to expect that no ML/TF activities would ever occur through the SVF sector. SVF licensees are not required to implement overly stringent CDD processes with a view to eliminating, ex-ante, all risks, since such an approach may result in a large number of bona fide businesses and individuals not being able to open or maintain accounts. CDD is only one part of an effective AML/CFT regime. SVF licensees are also required to implement a system that can monitor, detect, and where appropriate report suspicious transactions, and take the necessary mitigating measures, such as enhanced due diligence. The HKMA’s supervisory stance is aimed at the effective implementation of AML/CFT Systems by SVF licensees and ensuring that there are no material failings in those systems, rather than aiming for nil ML/TF activities in the SVF sector.

## 6.2 Use of Technology

- 6.2.1 The HKMA supports innovative means by which SVF licensees implement AML/CFT Systems effectively as well as exploring the greater use of technology and analytical tools in supervisory work. The HKMA expects SVF licensees, before introducing any new product, service or technology, to conduct adequate risk assessments and ensure that any identified risks are effectively managed or mitigated.