

**Re: Proposed Regulatory Regime for Stored Value Facilities
and Retail Payment Systems**

Submission of the Hong Kong Bar Association

1. Summary

1.1 The Hong Kong Bar Association (the “**HKBA**”) supports the policy proposals of the Financial Services and the Treasury Bureau (the “**FSTB**”) and the Hong Kong Monetary Authority (the “**HKMA**”) to:

- (1) Expand the present regime regulating Multi-purpose Stored Value Cards (“**MPSVC**”), e.g., the Octopus cards, to cover Multi-purpose Stored Value Facilities (“**MPSVF**”) regardless of whether such a facility may involve physical cards or exists as a virtual facility, e.g., in the form of an internet account; and
- (2) Provide that the regulatory regime would not cover Single-purpose Stored Value Facilities (“**SPSVF**”), which are usually more private contracts than clearing or settlement systems in nature.

1.2 The HKBA also makes some suggestions for avoiding the regime becoming a trap for the unwary.

1.3 The HKBA does not presently express any views on the proposals related to retail payment systems (“**RPS**”).

2. Multi-Purpose Stored Value Facilities

2.1 As the Consultation paper points out, rapid technological development and every-day usage of the internet has opened many possibilities for stored value facilities

to be created and operated in forms not involving physical cards, e.g., the Octopus cards, but existing only “virtually” as, e.g., internet accounts.

2.2 The increasing popularity of internet commerce, especially in retail shopping, is no doubt adding further to the potential for stored value facilities.

2.3 Such facilities involve users pre-paying money into, i.e., storing on, their cards or accounts for future spending. The users are essentially entrusting their money to the facility for convenient payment to third parties. In this way, the facility issuer or provider can accumulate a substantial pool of money, i.e., the “float”, which it should of course handle with care.

2.4 Where the facility is catered for payment for multiple different purposes, i.e., to multiple third parties, viz., it is a MPSVF, the value stored on the facility is akin to cash and the facility issuer or operator acting as a holder of the users’ cash.

2.5 The HKBA therefore agrees with the policy proposals that:

(1) MPSVFs should have to be licensed. They constitute a type of financial intermediaries; and

(2) MPSVFs should be required to keep safe the float, e.g., by opening special trust accounts or by obtaining full bank guarantees.

3. Single-Purpose Stored Value Facilities

3.1 There are, however, countless types of activities which involve some form of pre-payment. Most are not generally thought of as entrusting money to a facility for future spending. Care must be taken to ensure that the regulatory regime does not cover such activities.

- 3.2 For example, it is common for stores and shops to sell gift certificates, or to give discount if a customer commits to by prepaying a certain amount of spending – sometimes marketed as “plans”. Few people would think of the customer in such a situation as entrusting money to the store or shop. Indeed, the very commercial purpose of a store or shop selling gift certificates or marketing “plans” is to obtain advanced payment.
- 3.3 There is potential for problem with any advanced payment. Goods and services may be unavailable; they may be different from that promised; the store or shop may even close. Such risks are inherent in contracts.
- 3.4 These arrangements are SPSVFs (single-purpose stored value facilities). To the extent that one can think of value being “stored”, it is so for a single purpose, viz., spending with the issuer or operator.
- 3.5 SPSVFs are not like MPSVFs. They cannot be regarded as entrustment of money for future payment to third parties. To subject SPSVFs to licensing etc. would be counterintuitive. Moreover, it could impede normal commercial activities.
- 3.6 The HKBA therefore supports the policy proposal expressly to exclude SPSVFs from the regulatory regime.

4. Avoiding a Trap for the Unwary

- 4.1 For the same reasons, the HKBA urges caution with stored value facilities which are SPSVFs in practice but may be MPSVFs because of definitional technicalities.
- 4.2 For instance, a university may operate a facility for its students and staff whereby they can put value onto their university accounts for spending at multiple outlets such as canteens and bookshops or even libraries within the university. Under the present proposals of the FSTB and the HKMA, such a facility might be regarded as a MPSVF because it involves, technically, multiple avenues of spending.

- 4.3 Similarly, 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 as MPSVFs.
- 4.4 Surely it is unlikely to occur to a university's administration or a usual chain store that they need a license from the HKMA; and if they would not have thought of the need for a license, they would not know to apply for any specific exemption.
- 4.5 A regulatory regime should not operate as or contain any trap for the unwary. The HKBA suggests that consideration be given to exempting some MPSVFs 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.

5. Retail Payment Systems

- 5.1 The Consultation Paper refers to an RPS as "a system for the transfer, clearing or settlement of payment obligations which are related to retail activities involving purchases or payments ... and includes any instrument and procedures that relate to the system."
- 5.2 The present proposal is to empower the HKMA to designate any RPS that is, in its view, "of importance to the general public and financial stability of Hong Kong" for its oversight.
- 5.3 Examples of RPSs include: credit or debit card schemes, large merchant acquirers, payment gateways, and mobile payment infrastructures. There is, however, little public information available on these RPSs and/or their activities. It is difficult to assess from the outside what/ which might be "of importance to the general public and financial stability of Hong Kong".

- 5.4 The HKBA appreciates the importance of proper oversight of our payment infrastructure. Clearing and settlement systems involve highly technical matters. The present proposal points out a direction. No doubt the FSTB and HKMA will have more in-depth discussions with RPS operators.
- 5.5 In the circumstances, the HKBA would not presently express any views on those proposals for the regulation of RPSs.

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Hong Kong Bar Association