



**CONSULTATION PAPER ON  
THE PROPOSED REGULATORY REGIME FOR STORED VALUE  
FACILITIES AND RETAIL PAYMENT SYSTEMS IN HONG KONG**

**The Law Society's Submissions**

*Question 1: Do you agree with these policy objectives in respect of regulating SVF and RPS in light of rapid innovation of the global retail payment landscape and regulatory trends?*

**Law Society's response:**

Yes.

*Question 2: Do the proposed definitions cover all SVF products prevailing in the market that should be subject to the proposed regulatory regime?*

**Law Society's response:**

Yes.

*Question 3: Are there any other elements that you think would be practical and relevant to determine whether a SVF is multi-purpose or single-purpose?*

**Law Society's response:**

No.

*Question 4: Do you have any comments on the proposed licensing regime for SVF?*

**Law Society's response:**

No.

*Question 5: Are the meanings of “issuer” and “facilitator” clear? Are there any examples of the role or functions of “issuer” or “facilitator” not reflected in the definition?*

**Law Society’s response:**

Yes, the meanings are clear.

*Question 6: Do you have any comments regarding licensed banks being deemed to be licensed for issuing and/or facilitating the issue of SVF?*

**Law Society’s response:**

No.

*Question 7: Do you have any comments on the proposed treatments for single-purpose SVF?*

**Law Society’s response:**

No.

*Question 8: Do you have any comments on any of the proposed licensing criteria and conditions as set out above?*

**Law Society’s response:**

The meaning of ‘principal’ should be clarified as to whether this refers to the main business or a substantive business. Under the listing rules, issuers may have a number of principal businesses disclosed in their financial statements.

*Question 9: Do you agree that the HKMA’s prior approval is required for transferring a SVF licence? If not, why not? Please give your reasons.*

**Law Society’s response:**

Yes.

*Question 10: Do you have any comments in relation to the HKMA’s power to exempt certain SVF from the licensing regime?*

**Law Society’s response:**

The power to exempt is a sensible mechanism. In order to give clarity, the HKMA should publish guidelines setting out its policy on how it will exercise its power to exempt.

*Question 11: Do you have any comment on the proposed principles in relation to float safeguarding such as segregation of float from other funds and 100% float protection by safeguarding measures for non-bank issuers?*

**Law Society's response:**

No comment. In order to avoid over-regulation, we agree with the approach of not safeguarding the float of single-purpose SVFs

*Question 12: Are there any other suggestions on float safeguarding arrangements other than the proposed guarantee or trust account?*

**Law Society's response:**

No other suggestions.

*Question 13: Do you have any other comments on the proposed measures for the float protection requirement?*

**Law Society's response:**

None.

*Question 14: Do you have any comments on the proposed regulatory arrangements on the limit that can be set for individual SVFs?*

**Law Society's response:**

For multi-purpose SVFs, in order to give clarity the HKMA should publish guidelines setting out its policy on how it will exercise its power to set limits.

For single-purpose SVFs, we suggest that the HKMA be given the power to set limits by issuing a written notice to the relevant SVF provider.

*Question 15: Do you have any suggestions on factors that need to be taken into account when determining the maximum limits during the licensing process?*

**Law Society's response:**

Although this will be driven by a number of considerations, factors to consider may include:

- (i) a set multiple of the weighted average daily amount spent on a particular type of individual SVF; and

- (ii) a set multiple of the weighted average amount spent per transaction using a particular type of individual SVF

*Question 16: Do you have any comments on the proposed meaning and coverage of RPS?*

**Law Society's response:**

No.

*Question 17: Do you have any comments on the proposed criteria for designating RPS?*

**Law Society's response:**

We suggest the HKMA has the power to designate all or any particular part or procedure of an RPS (or, alternatively, to so exclude). Large merchant acquirers may be involved in a number of RPSs, meaning that they should be designated, although the corporate payment gateway for a particular RPS (to which a merchant acquirer makes payment, for onward payment (post commission) to sellers) may be insignificant from a systemic risk perspective.

*Question 18: Do you have any comments on the proposed factors to be considered for qualifying the designation criteria?*

**Law Society's response:**

Designated RPSs will be those retail payment systems that may create systemic risk etc. If an SVF licensee runs such a designed RPS it seems appropriate for the RPS to be designated, so that there is a clear indication of all the RPSs which the HKMA regards as possibly creating systemic risk.

To avoid regulatory overlap, the rules of the stricter regime should then be applied to the exclusion of the other regime.

*Question 19: Do you have any comments on the proposed meanings of the terms "SO" and "SI" in relation to RPS?*

**Law Society's response:**

No.

*Question 20: Do you have any comments on the requirements to be imposed on designated RPS?*

**Law Society's response:**

No, subject to the comment made in the response to Question 17.

*Question 21: Do you have any comments on the proposed supervisory powers of the HKMA on SVF and RPS?*

**Law Society's response:**

No.

*Question 22: Do you have any comments on the proposed investigation powers of the HKMA on SVF and RPS?*

**Law Society's response:**

No.

*Question 23: Do you have any comments on the proposed offences and sanctions provisions, in particular the minor sanctions and pecuniary penalty proposed, as well as the checks and balances?*

**Law Society's response:**

No.

*Question 24: Do you have any comments on the proposed transitional arrangement?*

**Law Society's response:**

Although not so much a transitional arrangement, it would be sensible to include a grace period (at least, for the more onerous provisions) between the time of designation by the HKMA of a system as an RPS and the application of the RPS rules to that system. A period of time will be required for a newly designated RPS to comply with its obligations under the regime.

**The Law Society of Hong Kong  
Investment Products and Financial Services Committee  
28 August 2013**

