

**Consumer Council's submission
on Clearing and Settlement Systems (Amendment) Bill 2015**

Consumer Council (the Council) is pleased to have the opportunity to give views to the Bills Committee on the captioned Bill, which seeks to establish a regulatory regime for stored value facilities (SVF) and retail payment systems in Hong Kong.

1. From the perspective of consumer protection, the Council will concentrate and give views and comments on the issues relating to SVF.
2. The Council notes that the current regulatory framework under the Banking Ordinance for SVF is confined to card-based stored value products for multi-purpose only. It does not regulate other emerging SVFs such as those in electronic form "stored" in computer or mobile network and server etc., which have become prevalent in recent years with the benefit of technological advancement. The Council shares the view that the scope of the current regulatory framework should be expanded so as to ensure users of such SVFs including consumers would be adequately protected.
3. In general, the Council supports the policy objective of, amongst others, ensuring the safety and soundness of the operation and protecting users including consumers from possible failure of such products and services relating to SVFs.
4. To ensure proper protection and management of the users' float maintained by the SVF issuers, in general the Council agrees to the establishment of a mandatory licensing regime for SVF by way of legislative amendment of the Clearing and Settlement Systems Ordinance (Cap. 584) in accordance with the Bill.
5. According to section 8B and section 8E under clause 17 of the Bill, only a company incorporated in Hong Kong holding a licence granted by the Hong Kong Monetary Authority (HKMA) may issue SVFs in Hong Kong. The Council supports this requirement as it may allow the HKMA to have a handle on network-based SVF issuers who provide services from outside Hong Kong through, for example, the internet.
6. As regards the licensing criteria and conditions under clause 17 of the Bill, the Council suggests that provisions should be made to provide for a sufficient level of consumer protection and ensure fairness in the contract between the SVF issuers and SVF users. For instance, redemption of outstanding stored

value should not be subject to any unfair and inconvenient conditions, and instead should be promptly made by the SVF issuer/facilitator once requested by the users. In addition, users should be allowed to have access to their payment/transaction record and stored value record, which should be made available instantly over the internet, or provided in writing within a reasonable time upon request, subject to nominal charges.

7. The Council is of the view that the proposed licensing regime should be built on clearly defined and fair rights and obligations of all the stakeholders of the SVF. Such rights and obligations should also be adequately disclosed in a clear, lucid and unambiguous manner.
8. In addition, such a regime should facilitate fair competition and innovation in the SVF market meeting consumers' needs.
9. On the other hand, the Council notes that the issue of single-purpose cards does not require approval by the HKMA. Single-purpose SVF is not regulated under the current regulatory framework, and would not be required to be licensed under the proposed licensing regime under the Bill. In other words, users of single-purpose SVFs will remain unprotected under both the existing regulatory framework and the proposed licensing regime under the Bill.
10. As the Council understands, the primary regulatory concern of the HKMA on SVF stems from the protection of users' float maintained by the SVF issuers. In so far as protection of users of SVFs in such respect is concerned, the Council is of the view that users of single-purpose and multi-purpose SVFs shall be provided with the same level or extent of protection and there is no reason to treat them differently.
11. As a matter of fact, the protection currently available to prepaid consumers using single purpose SVF e.g. pre-paid coupons and stored value membership cards is extremely limited. For instance, in the case of insolvency, prepaid consumers as unsecured creditors in the liquidation process will only be entitled to dividends from the realization of the traders/suppliers' assets after all the preferential payments have been made. The chance of recovery by prepaid consumers is often very slim. The protection to consumers under existing consumer protection mechanisms and legislation are far from adequate, and below the standard in other developed countries.
12. Further, the distinction between multi-purpose SVF and single-purpose SVF is not so clear and could evolve quickly. By its nature, a single-purpose SVF is also a deposit-taking facility. Whether regulation is necessary would depend on its scale and potential risks. The Council has no intention to unnecessarily interfere with business operation and pre-payment does have its advantages to both traders and consumers. However, when an SVF involves a large

amount of money, there is a need for regulation for the purpose of consumer protection. The Council suggests that perhaps the Bills Committee may consider whether a maximum should be set for the amount of money involved by a single-purpose SVF. Once the maximum is exceeded, regulation should be imposed.

13. The Council had expressed the views as stated above to the HKMA during the consultation stage, and would like to reiterate its position and appeal to the Bills Committee that the Bill, as a payment-related legislation, should address the said issue. The Council urges that consumers under the arrangement of single-purpose SVF should be given the same degree or level of protection as those under multi-purpose SVF as proposed under the Bill.
14. The Council hopes that the Bills Committee, the Administration and other relevant public authorities will pay heed to the potential risks borne by consumers in using single-purpose SVF as mentioned above, and seek to ensure that consumers under the proposed licensing regime for SVF under the Bill would be properly and sufficiently protected.

Consumer Council
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