

## Discussion on licensing of stored value facility and rewards programs

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Hit by the pandemic, malls have been rolling out different promotions and discounts to spur local consumption as the Hong Kong Government has gradually relaxed the social-distancing rules amid signs that the spread of COVID-19 is easing locally.

One of the promotions with great success was spending campaign whereby every spending of a certain amount at any retail store or restaurant in the malls could be exchanged for coupon rewards for use in such malls. This however may raise speculation as to the need to obtain a licence from the Hong Kong Monetary Authority (“HKMA”) under the Payment Systems and Stored Value Facilities Ordinance (Chapter 584 of the Laws of Hong Kong) (the “SVF Ordinance”). This article discusses the licensing of stored value facilities and its applicability to rewards programs in Hong Kong.

### Stored value facilities under the SVF Ordinance

Under section 2A(1) of the SVF Ordinance, a facility is an SVF if:

- a) it may be used for storing the value of an amount of money that -
  - (i) is paid into the facility from time to time; and

- (ii) may be stored on the facility under the rules of the facility; and

- b) it may be used for either or both of the following purposes -

- (i) as a means of making payments for goods or services under an undertaking (whether express or implied) given by an issuer;

- (ii) as a means of making payments to another person (other than payments mentioned in sub-paragraph (i) above) under an undertaking (whether express or implied) given by the issuer.

Pursuant to section 2A(2) of the SVF Ordinance, the undertaking referred in section 2A(1)(b)(i) means an undertaking that, if the facility is used as a means of making payments for goods or services, the issuer, or a person procured by the issuer to accept such payments, will accept the payments up to the amount of the stored value that is available for use under the rules of the facility.

A typical example of a stored value facilities is contactless smart card for making payment when taking public transport whereby an amount of money is stored into such card with the understanding that certain stores (with the option of such payment) will accept payments up to the amount of the value in the card.

It follows that a licence is required for issuing or facilitating the issue of such stored value facilities under section 8B of the SVF Ordinance. Failure of which constitutes an offence and may be subject to a fine of HK\$1 million and imprisonment for a maximum of 5 years.

### **Relevant exemptions and their applicability to spending campaigns**

Back in 2020 when spending campaign was first launched in several malls in Hong Kong, there has been report to HKMA that such program might be in contravention of section 8B of the SVF Ordinance and a licence should have been obtained. We set out below some grounds in which spending campaign may exempt from the licensing requirements.

#### 1. Stored value facilities used within certain premises under paragraph 5 of Schedule 8 to the SVF Ordinance

Stored value facilities issued under an agreement between issuer and another person that can only be used as a means of making payments only for goods or services within a premise occupied by that other person will be exempt from the licensing requirement. A typical example would be membership cards used in staff canteens or restaurants in an organization.

This exemption is subject to the limitation that the total amount of the float of the facility shall not exceed HK\$1 million. In cases where the issuer issues more than

one facility, the same limitation applies to the aggregate amount of the float of these facilities.

The spending campaigns launched by different malls in Hong Kong are largely similar in nature and cross-spending is usually not allowed. The cash coupons are also only acceptable for payment in certain shops and restaurants that have reached certain consensus with the issuer. One concern is that for most of the spending campaigns, their total issue amount exceeded HK\$1 million which potentially render them unfit for such exemption. There might be legal risks for issuer that intends to rely on such outright exemption without making a formal application for exemption (as explained below) if the total amount of the float of its facilities is way beyond the limit.

#### 2. Stored value facilities used for certain cash rewards under paragraph 1 of Schedule 8 to the SVF Ordinance

Stored value facilities storing a sum of money paid by the issuer or a person under an agreement with the issuer and used for making payments for goods or services provided by the issuer or such person under the terms and condition of the facility will also be exempt. A typical example would be loyalty program provided by shops which offers cash rewards for customer loyalty.

Such rewards schemes usually do not involve money paid by the user (i.e. no money is stored in advance) and are merely incentives to entice spending. The level of risk, especially of misappropriation of the float of the stored value facilities, is minimal in comparison with the risk posed by the typical stored value facilities. Therefore, it has always been the legislation intention to exclude such cash rewards schemes from the scope of regulation.

Spending campaigns fall within this exemption in the sense that the value of the facilities was not endowed by the user but the issuer (i.e. the malls themselves). No advance payment from the user is required for the coupons to have values for future spending. It is therefore likely that the issuer can enjoy outright exemption under this provision on the assumption that the relevant coupons will not be for sale under any circumstances and can only be exchanged.

### 3. HKMA's discretion

HKMA has the discretion, under section 8ZZZD of the SVF Ordinance, to exempt a stored value facility from being required to obtain a licence if the risks posed by it to the user or potential user are immaterial. Such exemption may be subject to any conditions that HKMA considers appropriate (e.g. a limit on the size of the float).

Factors that HKMA may take into account when deciding the grant of exemption include (but not limited to), among others, 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.

Unlike the grounds aforementioned being outright exemptions provided in Schedule 8 to the SVF Ordinance, an application for exemption must be made to HKMA. Indeed, HKMA has historically granted exemption to a cash coupon system provided by a mall in Hong Kong. In other words, in the event where any spending campaign falls outside the realm of any outright exemption under the SVF Ordinance, provided that the issuer can satisfy HKMA that it is financially sound with adequate risk management controls in place, it is likely that such spending campaign would be exempt from the licensing requirement.

### Key takeaway

Issuers of spending coupons for use in their malls are reminded to ensure that their schemes remain qualified for the exemption aforementioned, failure of which may not only lead to the exercise of HKMA's discretion to request the issuer to make an application for a stored value facility licence but also potential criminal liability for contravening the licensing requirements under the SVF Ordinance.

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