

Public Consultation on Regulation of Crowdfunding Activities

FOREWORD

1. This consultation document is issued by the Financial Services and the Treasury Bureau (“FSTB”) for seeking views on proposals relating to enhancing regulation of crowdfunding activities.
2. FSTB welcomes written comments on or before 20 March 2023 through any of the following channels –

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Regulation of Crowdfunding Activities

Consultation Document

- 1.1 In recent years, crowdfunding activities of diverse purposes and nature have emerged in Hong Kong. Unlike traditional fundraising events, many of these newly emerging crowdfunding activities are held by using communications technology or online platforms for a wide range of fundraising purposes and objectives. While we have certain regulatory measures in place for fundraising activities conducted in the community and for those on charitable purposes, we do not have a dedicated legislation or government department or regulatory authority in Hong Kong to deal specifically with various types of crowdfunding activities, in particular those conducted online.
- 1.2 In this connection, we consider there is a need to review whether the current regulatory regime for fundraising is sufficient for handling crowdfunding activities. We aim at developing a modern and clear regulatory framework for crowdfunding activities, with a view to enabling participants of crowdfunding activities to obtain reasonable protection, and increasing the transparency and accountability of such activities, thereby preventing unlawful acts and safeguarding public interests. As for customary financial activities that are within the remit of financial regulators, the existing laws and regulations continue to apply and it is not the purpose of the present exercise to impose any additional considerations or requirements to these activities.
- 1.3 This document explains the Government's key considerations in enhancing crowdfunding regulation, and our proposed reform recommendations. We very much welcome stakeholders and various sectors of the community to give us feedback to assist our further work to develop a specific legislative proposal.

Background

- 1.4 Generally speaking, crowdfunding activities refer to those conducted by an individual, a group or an organisation for openly appealing to a large number of individuals or organisations to each contribute usually a small amount of money for a specific fundraising purpose, so that the fundraiser may have sufficient funding to carry out a project, a business or meet the needs in

respect of that purpose. Depending on the specific purpose of individual crowdfunding activities, some fund contributors may expect to receive certain benefits or returns upon the successful completion of a crowdfunding activity, while some may not expect any personal returns as they support the purpose of the activity and care only about the pursuit of that purpose.

- 1.5 Crowdfunding serves as an alternative means to obtain funds for individuals or entities to further their causes, business or other purposes, on top of traditional fundraising means such as using their own or business partners' resources, securing funds or loans from public agencies or financial institutions, or seeking funds from investors. The rise of crowdfunding activities in recent years has mainly been catalyzed by the widespread use of communications technology and online platforms, which have made it easier for individuals or entities to raise funds conveniently and at lower costs, and to make appeals to a large number of potential fund contributors in a flexible manner.

Existing regulation of fundraising activities conducted in public places

- 1.6 Currently, there are certain regulatory measures over fundraising activities that invite contribution of funds from the general public (including those taking place in public places). Depending on the actual mode of operation of the fundraising activities, fundraisers are required to obtain a permit or licence. According to section 4(17) of the Summary Offences Ordinance (Cap. 228), the Director of Social Welfare issues permits for charitable fundraising activities, while the Secretary for Home and Youth Affairs issues permits for non-charitable fundraising activities conducting in public places. Regarding the sale of goods in public places for the purpose of fundraising, a temporary hawker licence (fundraising activity) is required from the Director of Food and Environmental Hygiene under the Hawker Regulation (Cap. 132AI). With regard to lottery fundraising activities, the Office of the Licensing Authority ("OLA") under the Home Affairs Department ("HAD") has been authorised by the Secretary for Home and Youth Affairs to issue lottery licenses under the Gambling Ordinance (Cap. 148) to charitable or non-profit making organisations which plan to sell lottery tickets to support charitable activities or raise funds for organisations (regardless of whether the relevant activities involve sale of lottery tickets in public places). Among them, fundraisers who plan to sell lottery tickets in public streets shall make applications to the OLA separately.

1.7 The Government has also introduced a series of administrative measures to, among others, enhance the transparency of charitable fundraising activities, safeguard the interests of donors and facilitate the conduct of charitable fundraising activities. The measures include:

- (a) uploading all audited accounts submitted by organisations, which file applications on or after 1 August 2018 and obtain approval to organise charitable fundraising activities from the Social Welfare Department (“SWD”) or charitable lottery events from the HAD, to the fundraising activities page of GovHK for reference by the public;
- (b) setting up a dedicated hotline (tel: 3142 2678) for handling enquiries or complaints in relation to charitable fundraising activities held by organisations in public places;
- (c) the SWD, the HAD and the Food and Environmental Hygiene Department (“FEHD”) have jointly issued the ‘Good Practice Guide on Charitable Fund-raising’ (“the Guide”) to replace the ‘Reference Guide on Best Practices for Charitable Fund-raising Activities’ previously promulgated by the SWD, and encouraged the adoption of the Guide by charitable organisations. The Guide has been uploaded to the fundraising activities page of GovHK to facilitate the public to make reference and evaluate the performance of charitable organisations in organising fundraising activities and to help donors understand their rights;
- (d) providing a one-stop service for charitable fundraising activities organised on government land to obviate the need for charitable organisations to separately apply to the Lands Department (“LandsD”) for temporary occupation of government land when applying for permits or licences for different kinds of fundraising activities. The permit or licence approval authority will consult the LandsD and notify the charitable organisations directly the application results;
- (e) enabling organisations to make application for Public Subscription Permit (“PSP”) and waiver of Temporary Hawker Licence involving charity sale fundraising activities in public place by providing a one-stop service. The SWD will forward the relevant information with regard to charity sale submitted via the PSP application form to the FEHD for processing the waiver application and the organisation does

not need to submit separate application to the FEHD. The FEHD will notify the organisation directly the application results;

- (f) allowing individuals holding lottery licenses to apply to the OLA for selling lottery tickets on public streets by providing a one-stop service. The OLA will consult relevant government departments (such as the Hong Kong Police Force, LandsD, Transport Department and Highways Department), and provide a consolidated reply to the applicants on the various departments' approval and comments; and
- (g) introducing a unified logo for charitable fundraising activities for display by holders of licences and permits in relation to charitable fundraising during charitable fundraising activities for identification by members of the public.

1.8 The above regulatory measures do not apply to fundraising activities conducted in non-public places, save for regulation applicable to lottery fundraising activities. For example, fundraisers may place donation boxes in schools or offices, soliciting funds to support the living and medical expenses of certain people in need, among other things. Such activities mainly raise funds from individuals related to the entities or groups, such as members of the associations, students or employees, without appealing to the general public for donations. However, some individuals had in the past raised funds from their affiliated groups through the above means, claiming that they would use the funds raised to help people in need, but they turned out to be using the funds for purposes which were unlawful and jeopardised public interests, public safety, as well as national security. Such circumstances were also found in fundraising activities conducted on social media platforms accessible only to individuals having registered as “members” of specific account or their “friends”.

Existing regulation of online fundraising activities

General

1.9 At present, a person or organisation making use of a fundraising activity to engage in unlawful acts (such as money laundering, fraud, theft, acts and activities endangering national security, or inciting, aiding, abetting or providing pecuniary or other financial assistance or property for other persons to commit offences that endanger national security) is subject to the

regulation of relevant criminal laws in Hong Kong, and is liable for prosecution. The above requirements apply regardless of whether the unlawful acts are committed online or offline.

Crowdfunding

1.10 The major common types of crowdfunding activities conducted in recent years can be categorized as follows:

- (a) Equity or debt crowdfunding: Fund contributors (investors) invest in a specific project or business, usually a start-up, in return for equities or debts issued by a company, or profits or income of a collective investment scheme (“CIS”);
- (b) Peer-to-peer lending (“P2P lending”): Fund contributors (investors) provide unsecured loans to individuals or projects through online platforms that match them with borrowers, from which interests are earned;
- (c) Donation-based crowdfunding: Fund contributors make donations to charitable activities or non-charitable causes (such as political campaigns or activities, or some personal or social values) they support so as to help realise such causes without getting any specific returns; and
- (d) Reward/pre-sale crowdfunding: Fund contributors give funds to fundraisers to help them develop or produce specific physical goods or services, while receiving in some form the goods or services in return for the funds given.

1.11 On equity or debt crowdfunding, according to the Securities and Futures Ordinance (Cap. 571) (“SFO”), a person (including a crowdfunding platform or a fundraiser) must, unless being exempted¹, obtain authorisation from the Securities and Futures Commission (“SFC”) for the issue of an online or offline advertisement or document which contains an invitation to the public to acquire or sell securities, or acquire an interest in or participate

¹ The conditions for exemption include – (a) the offer is made to professional investors; (b) the offer is made to not more than 50 persons within a period of 12 months; **or** (c) total consideration payable for the shares or debentures does not exceed HK\$5 million within a period of 12 months.

in a CIS. Besides, the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (“C(WUMP)O”) provides that a person (including a crowdfunding platform and a fundraiser) must, unless being exempted (e.g. making the offer to professional investors only, or to not more than 50 persons within a period of 12 months), comply with the content requirements of the C(WUMP)O and the requirements for authorisation and registration with the SFC and the Registrar of Companies if he/she sells shares or debentures of a company to the public and issues prospectus, advertisements or other documents for that purpose.

- 1.12 Moreover, a crowdfunding activity conducted by a crowdfunding platform operator or a person using the platform to raise funds may fall within the scope of automated trading services or stock or futures exchanges under the SFO, and is subject to approval under the SFO. Meanwhile, if the business of a crowdfunding platform operator and/or a fundraiser constitutes a “regulated activity” as defined under the SFO, the platform operator and/or the fundraiser must seek approval for the business.
- 1.13 For P2P lending, if the making of or offer of loans to borrowers via an online lending platform amounts to an operation of “money-lending business”, the person carrying on such business will be subject to the regulation of the Money Lenders Ordinance (Cap. 163) (“MLO”) including the requirement of applying to the Registrar of Money Lenders for a licence to be granted by the licensing court. Besides, if a P2P online lending platform manages or pools client money or issues securities (including notes or debentures), or where part of the loans the lenders participate in is regarded as interests in a CIS or other types of “securities” as defined under the SFO, the platform will also be subject to the regulation of the SFC.
- 1.14 As for donation-based crowdfunding, those activities entirely conducted online are not subject to the existing regulatory controls that apply only to fundraising activities conducted in public places. Governments of many overseas places (including the United Kingdom, the United States, Australia and Singapore) have created such post as the Commissioner of Charity to deal with crowdfunding activities that are completely donation-based. Charities in these places are generally required to register before being allowed to conduct activities (including fundraising activities), and disclose relevant documents, activity records, accounts and statements to the authorities concerned. Nevertheless, even these regulatory controls may

not be able to handle all non-charitable crowdfunding activities that are donation-based.

- 1.15 Reward/pre-sale crowdfunding is adopted by people starting a business or engaging in an innovative project. Under this model, fundraisers will give the prototypes of their products or services to fund contributors, who will provide the funds required before the products go into production. In other words, fund contributors provide the above people with the capital required for developing a specific product. Currently, we do not have specific regulatory measures over these activities. Overseas experience shows that one of the determining factors in deciding if the rights of fund contributors are protected is whether a valid purchase-and-sale contractual relationship instead of a one-sided gift relationship has been established between a fund contributor and a fundraiser in individual crowdfunding cases.

Risks

- 1.16 As seen from the above, our existing regime designed for the regulation of fundraising activities also applies to corresponding online activities in certain aspects. However, given the widespread use of technology as well as the diverse nature and contexts of application involved in crowdfunding nowadays, many of the aspects of these crowdfunding activities are not covered by the existing regulatory regime.
- 1.17 Online crowdfunding activities may allow fundraisers to conceal their identity and cover up the arrangements and purposes of crowdfunding, and hence fund contributors may not really understand the nature of the activities and the risks involved. Crowdfunding activities without registration or adequate supervision are more prone to various kinds of risks². The risks include:
- (a) **Risks of crowdfunding platforms:** As far as a fundraising activity is concerned, if a crowdfunding platform is used to match a fundraiser with a fund contributor for raising and disbursing funds, the fundraiser and fund contributor may not be able to recover their funds if the platform suddenly ceases operation due to various reasons (e.g.

² Earlier studies of the Financial Action Task Force (“FATF”) also pointed out that while there are legitimate crowdfunding activities, globally there have been incidents showing that crowdfunding activities have also been exploited for different types of illegal activities. The FATF plans to conduct a study on “crowdfunding for terrorism financing” in 2023.

insolvency). In the process of crowdfunding, fundraisers and fund contributors may need to submit to the platforms various kinds of personal and financial data, which may be misused if there is no sufficient regulation.

- (b) **Risks of information asymmetry:** Fund contributors have to rely on the information (e.g. project purpose, use of funds, financial data and goods or service descriptions) provided by fundraisers in making decisions on contributions. If the information and descriptions provided are inaccurate, the discrepancies therein may result in losses to the fund contributors who are not adequately protected. For fund contributors expecting a return, if the project concerned is delayed or unsuccessful, they may not be able to exercise their rights in the absence of a valid contractual relationship in individual crowdfunding cases and hence suffer losses as a result.
- (c) **Risks of fundraising outcome not in line with fundraising purpose:** A crowdfunding activity does not necessarily have to undergo due diligence and continuous supervision by a credible body or by the crowdfunding platform. The funds so raised may eventually be used for purposes other than those committed by the fundraisers, and the fund contributors may not be able to hold anyone accountable.
- (d) **Risks of breaching the law:** In the absence of regulation, crowdfunding may be used as a means to raise funds or launder money for various types of illegal activities, including those unlawful acts endangering national security or supporting terrorist activities. Not only may it endanger national security and public safety, contributors may also have to bear the criminal liability.

1.18 We are of the view that a regulatory framework should be established that can sufficiently address online and offline fundraising activities. The aim is to increase the transparency and accountability of these activities, so as to prevent unlawful acts and safeguard the interests of all those involved.

Specific Proposals on the Regulation of Crowdfunding Activities

Crowdfunding Affairs Office

- 2.1 To increase the transparency and accountability of fundraising activities and to provide clear procedures to facilitate those involved in various types of crowdfunding activities, we propose the establishment of a one-stop crowdfunding approval, registration and administrative framework, namely a Crowdfunding Affairs Office (“CAO”), to centrally process and coordinate regulatory and administrative matters related to crowdfunding activities, and monitor the conduct of such activities.
- 2.2 We propose that in-principle a person must make an application to the CAO before conducting a crowdfunding **activity that raises funds from individuals or entities of Hong Kong, or individuals or entities located in Hong Kong.** A crowdfunding activity **raising funds from individuals or entities of Hong Kong, or individuals or entities located in Hong Kong** refers to an activity that, in respect of the publicity used or the actual operation, appeals **publicly** for funds from any Hong Kong permanent residents, or individuals located in Hong Kong; or any body corporates incorporated or registered in Hong Kong, or located in Hong Kong; or any organisations having place of business in Hong Kong or located in Hong Kong, regardless of whether they are body corporates, for a declared purpose, whether or not the crowdfunding activity is conducted in Hong Kong. The crowdfunding activity may be publicised offline (e.g. by distributing leaflets or making announcements on newspaper) or online (e.g. by using a crowdfunding platform, social media or a bulk sending function to publish an electronic message). The location of publicizing such activities can be any places, including Hong Kong or other places; and with declared purposes that are related to Hong Kong³ or not, including charitable causes, or for other purposes with or without returns in any form.
- 2.3 As an international financial center, many fundraising activities in Hong Kong are currently subject to regulation by the SFC under the SFO. The relevant fundraising activities or related offering documents may be authorised or exempt under the SFO depending on the nature of the fundraising projects. The existing system is effective, and operates

³ Crowdfunding activities with purposes related to Hong Kong cover, amongst others, political, economic, social, technological, environmental and legal aspects.

smoothly. Therefore, we consider that for any fundraising via issuance of equity or debt “securities”, P2P lending business involving “collective investment schemes”, or any fundraising activities which amount to “regulated activities” (the above terms in quotations as defined in the SFO), which falls under the statutory regulatory functions of the SFC regardless of whether it is conducted online or offline, the relevant activities shall continue to be subject to the existing laws and regulations, and the proposed regime in this document, including the requirement for prior application to the CAO will not apply. Private fundraising activities commonly seen in the financial market generally involve raising funds from professional investors or investment institutions, rather than from the general public, so it should not be necessary to subject them to the proposed regime in this document, including the requirement for prior applications to the CAO.

- 2.4 Similarly, and for similar reasons, banking activities such as deposit-taking and the making of loans and advances (including syndicated loan arrangements) undertaken by banks should likewise be excluded from the proposed crowdfunding regulatory regime. Banks and the conduct of banking business in Hong Kong are already closely regulated by the Monetary Authority under the Banking Ordinance (Cap. 155) and the purpose of the proposed crowdfunding regulation is not to impose additional requirements on the conduct of banks’ business. Furthermore, at present, there is no money lending business operated in crowdfunding mode in Hong Kong. If the making of or offer of loans to borrowers amounts to an operation of “money-lending business”, the person carrying on such business is subject to licensing requirement and regulation under the MLO. The Government will review the relevant legislation in due course, if emerging crowdfunding lending business is found posing new risk not sufficiently addressed by existing regulation.
- 2.5 For crowdfunding projects falling under the CAO’s purview, if a fundraiser intends to publicise a crowdfunding activity that raises funds from individuals or entities of Hong Kong, or individuals or entities located in Hong Kong, he must, irrespective of whether he is in Hong Kong or not (or whether the fundraiser is an entity established in Hong Kong or not), make an application to the CAO before conducting the activity and must submit the following information:
 - (a) personal data and contact details of the applicant;

- (b) background information of the establishment of the fundraising organisation (if applicable), such as articles of association or registration records;
- (c) information of local bank account designated for crowdfunding purpose;
- (d) description of the crowdfunding purpose, and fill in a statement indicating that the crowdfunding activities will not involve any activities that would jeopardise national security or any unlawful activities;
- (e) the estimated start date and completion date of the activity;
- (f) the target fund size;
- (g) the target beneficiaries of the crowdfunding activity and the use of the funds raised (if applicable);
- (h) the way and the platform (if applicable) of conducting the crowdfunding activity;

and other information as required by the CAO having regard to the cases. The crowdfunding activity can only be publicised upon the approval of the CAO.

2.6 If a person starts to conduct a crowdfunding activity before making an application in accordance with the established procedures or before obtaining prior consent, the relevant law enforcement agencies will be authorised to issue a prohibition order to discontinue the activity and may, as the case requires, impose a fine on or take prosecution action against the fundraiser. We suggest that the functions and powers of the CAO include monitoring the conduct of crowdfunding activities; and if any non-compliance is identified, referring it to law enforcement agencies for prosecution. We will also consider whether the CAO should be given enforcement powers to prosecute on its own against any non-compliance identified.

2.7 The major responsibilities of the proposed CAO are as follows:

- (a) receiving all the applications submitted for conducting crowdfunding activities through a designated government platform;
- (b) referring the applications to relevant regulatory authorities and government departments by the types of crowdfunding activities;

- (c) processing crowdfunding applications not covered by existing legislation;
- (d) co-ordinating the approval process of a crowdfunding application, including seeking views of relevant government departments and law enforcement agencies;
- (e) acting as the central authority to register approved crowdfunding activities and building a database for easy public inspection;
- (f) issuing guidelines on the conduct of crowdfunding activities to ensure that the personal information and funds involved in crowdfunding are properly handled; and
- (g) collecting the completion records of crowdfunding activities and publishing these records for public inspection as appropriate.

2.8 As some of the crowdfunding activities are already subject to the regulation of various authorities and existing legislation, to avoid duplication of efforts, the CAO should make appropriate arrangements to segregate duties and to streamline work process and exemption arrangements. If an application falls within the scope of donation-based crowdfunding (including direct donation, lottery sales⁴ or fundraising activities involving sale of goods) and involves only an offline activity conducted in a public place, the CAO may refer the application to the SWD, the Home and Youth Affairs Bureau, the FEHD or the HAD for processing in accordance with the relevant provisions under the Summary Offences Ordinance (Cap. 228), the Hawker Regulation (Cap. 132AI), the Gambling Ordinance (Cap. 148), etc. If the CAO considers it necessary, it may also advise on the purposes of the activity under application and the fitness of the applicant to be a fundraiser, and may refer the advice to the above departments for consideration. If the application is related to an online fundraising activity or a public fundraising activity conducted in a non-public place, the CAO will process the application in accordance with the power conferred to it.

2.9 We suggest that for fundraisers widely recognised by the community, or those possessing extensive crowdfunding experience with good track record, the CAO should adopt simplified procedures (such as allowing a fundraiser to launch an online fundraising activity upon the registration of

⁴ In order to avoid creating a multi-layered structure and causing confusion to organizers of lottery fundraising activities, we suggest that the CAO to coordinate the application for licenses for all lottery sale activities, regardless of whether the activities involve sale of lottery tickets in public places.

activity details by the CAO), so as to enhance administrative efficiency and reduce the burden on fundraisers⁵. The circumstances that the simplified procedures will apply include:

- (a) the fundraiser has obtained permits issued by relevant government departments to conduct fundraising activities;
- (b) the fundraiser applies to conduct for the second time a crowdfunding activity that is similar to the one that has been previously approved by the CAO and completed, without any records of contravening any regulations and laws; and
- (c) the fundraising objective is to respond to what is reasonably believed to be involving a sudden natural disaster, an accident, etc, that requires urgent charitable funds to support the victims expeditiously in order to protect lives and property from threats.

Even in the circumstances where the simplified procedures apply, the CAO may, on reasonable grounds, for example, having regard to the background of individual fundraisers and other relevant considerations, require the above categories of fundraisers to apply for the conduct of the crowdfunding activities in accordance with the normal procedures. The CAO may also direct that a crowdfunding activity to stop or to proceed only after making required necessary changes. The CAO shall also be given corresponding powers to enable it to follow up with fundraising activities held in the name of responding to sudden natural disaster and accident, so as to prevent such activities from being appropriated for personal interest.

2.10 There are also quite a lot of fundraising or financing activities going on in the community that are substantially different in nature from the crowdfunding activities which we intend to subject to enhanced regulation. In formulating the approval and registration system for crowdfunding activities, we should exclude these activities of different nature so as not to

⁵ Unless exempted under relevant laws, funds raised through crowdfunding activities in Hong Kong may be subject to tax, if the crowdfunding activities amount to, or are part of, the carrying on of a trade, profession or business in Hong Kong and the relevant profits are arising in or derived from Hong Kong. For revenue protection purposes, we suggest that the CAO may pass the relevant information to the Inland Revenue Department (“IRD”) to facilitate the IRD to review and investigate whether the fundraisers and other persons connected with the crowdfunding activities have properly declared their tax position with a view to stamping out tax evasion.

cause confusion to the community. The activities to be excluded are, inter alia:

- (a) calls that religious bodies make to their followers for donations on religious grounds, such as the calls for making regular donations and contributing to festive activities held on the ground of religious doctrines;
- (b) activities that recognized associations solicit funds from members, with a view to promoting the welfare and needs of respective trade members;
- (c) buying and selling of goods or services readily available in the market, even though the buying and selling may be conducted online and may involve recruiting people to buy as a group; and
- (d) commercial activities on online media and the like that involve income from subscriptions or online rewards.

Even if the fundraiser falls under the above exemption categories, the CAO will, having regard to the purposes of the crowdfunding activities and the background of the fundraisers (such as whether the responsible person(s) or the executive(s) of the organisation have committed any offence jeopardising public safety or national security before), reserve right to direct them to apply for the conduct of such activities following the normal procedures. In addition, with reference to the Trade Unions Ordinance (Cap. 332)⁶, the funds collected from the above crowdfunding activities exempted from application requirements cannot be applied for any Hong Kong's political purpose. The exclusion of these activities from the crowdfunding approval and registration system also does not mean that these activities will not be regulated. If it is found that these activities involve fraud or dishonest use of funds, or that the content of the activities would jeopardise public safety and order and national security, the law enforcement agencies will follow up on the matter under other applicable legislation in force.

⁶ Section 34 of the Trade Unions Ordinance (Cap. 332) stipulates that except as permitted under sections 33A and 33B, the funds of a registered trade union shall not, whether in Hong Kong or elsewhere — (a) be applied either directly or indirectly for any political purpose; or (b) be paid or transferred to any person or body of persons in furtherance of any political purpose.

Principles to be considered when determining a crowdfunding application

- 2.11 We suggest that in determining a crowdfunding application, the CAO should take into account the proportionality principle and the risk management factor of public interests. The larger the fund size of a crowdfunding activity and the greater the number of fund contributors involved, the stricter the requirements on the ability to manage the funds, and the CAO will also place more emphasis on the honesty, reputation and reliability of the applicant. Besides, the CAO will assess whether the purpose of a crowdfunding activity is proportionate to the fundraising scale, as well as whether the nature of the activity and the use of funds would jeopardise public interests and public safety as well as be contrary to the interests of national security. The CAO may, if necessary, require the applicant to provide additional information.
- 2.12 For fundraisers who would like to apply for holding a crowdfunding activity, but have previously committed offences like fraud (or other offences related to dishonesty), money laundering, jeopardising public safety and national security, etc, even if they have obtained approval from the CAO, the CAO will consider imposing additional conditions to ensure they will not commit nor fund any acts or activities that may endanger public security and national security again. For example, the CAO may require them to submit information on its requests regularly to report the progress and purpose of the funds raised to strengthen supervision; to require any person or institution (including financial institution) assisting in handling activities and funds in question to pay attention as to whether such fundraisers have committed or funded any act or activity that endangers public security and national security again, and report it to the CAO immediately if necessary. We propose introducing penalties holding any person violating the above requirements liable.
- 2.13 Nevertheless, the CAO's approval of a crowdfunding activity is not directly related to whether the outcome, product or innovation of the activity is successful or is able to achieve the desired effect. The major factors to be considered when giving approval include whether the crowdfunding activity is conducted according to appropriate and sound procedures, whether the individuals involved are reliable, and the risks of the activity giving rise to illegal conducts or endangering public interests, public safety and national security, etc. For those contributing funds to a crowdfunding activity, they

should carefully examine the credibility and success rate of the activity to be supported to avoid unnecessary losses.

Requirements on people conducting fundraising activities

- 2.14 We suggest that the CAO be authorised to publish guidelines that apply to general crowdfunding activities and to impose additional requirements for some activities, so as to ensure adequate transparency in the disclosure of activity details by fundraisers. For example, if the applicant plans to use bank account to collect funds from crowdfunding activities, the CAO may mandate fundraisers raising funds above a specific amount to require fund contributors to make donations in their real name, and to require crowdfunding activities which have reached certain scale to have their financial documents audited by accounting professionals, in order to mitigate the risk of money laundering. On getting the approval for the activity, the applicant must publish the approval number on all documents or advertisements related to the crowdfunding activity for easy public inspection. In addition, fundraisers whose applications are approved should be obliged to obtain information on the identities of persons donating funds from any crowdfunding platforms, financial institutions or payment service providers they cooperate with. Such information should be retained for a specified period and, where there is a need to do so, made available to the CAO or law enforcement agencies, who should be empowered to require it from the fundraisers.
- 2.15 In general, the target fund size to be raised in a crowdfunding activity can be divided into two categories – “fixed target amount” and “non-fixed target amount”. For the former, it refers to a crowdfunding activity that can be launched only after a basic amount has been raised. In other words, if the basic amount cannot be raised upon the expiry of the crowdfunding period, the activity is deemed to have failed and the funds raised will be returned to the contributors. Such a restriction however does not apply to the latter category where the fundraising activity may proceed, albeit in a smaller scale, even though the amount raised does not meet the target. Moreover, crowdfunding activities that meet the target fundraising amount can be classified into two types. The first type is that the fundraiser will, upon raising the amount required, immediately notify potential fund contributors, stop receiving further money and refund the surplus amount to contributors. For the second type, such restrictions do not apply as the fundraiser may continue to receive money until the expiry of the specified fundraising

period. In any case, funds raised by crowdfunding shall not be used for purposes other than that originally stated. When a crowdfunding project cannot proceed, or the project is completed with unused funds, the fundraiser shall have the responsibility of handling the unused funds in a reasonable way, including returning the relevant funds to the fund contributors, or donating the funds to recognized charitable organisations.

- 2.16 Therefore, in making an application to conduct a crowdfunding activity, the applicant must, based on the purpose and nature of the fundraising activity, state clearly the set-up and arrangement of the activity; keep proper records of fund movements and disclose the use of funds raised; and provide relevant records and other information related to the crowdfunding activities upon the requests made by the CAO and relevant law enforcement agencies.
- 2.17 In addition, in order to enhance the transparency and accountability of fundraising activities, the CAO would require the applicant to actively consult and seek assistance from the relevant financial institutions in regard to the practical operation of the requirement for fund contributors making donations in their real name, so as to implement such restrictions smoothly.

Use of crowdfunding platforms and online media

- 2.18 Quite some crowdfunding activities found online are conducted by using online platforms specifically designed for crowdfunding purpose. While some of the crowdfunding platforms are established and operated in Hong Kong, many are established overseas for services not restricted by geographical boundaries and face individuals or organisations in Hong Kong as fundraising targets. Crowdfunding activity rules are generally set out on crowdfunding platforms, informing platform users such details as the arrangements of starting and closing an activity and the fundraising progress. Some of the platforms may also be used as intermediaries to collect funds for fundraisers and will, depending on the nature and success of the crowdfunding activity, disburse funds to fundraisers or make refunds to contributors.
- 2.19 We consider that online platforms specifically designed for crowdfunding purpose should be suitably regulated to protect the rights of crowdfunding participants and public interest. We suggest that we should consider whether to establish a registration system for crowdfunding platforms to register with the CAO if they accept crowdfunding activities which raise

funds from individuals or organisations of or in Hong Kong, irrespective of whether they are domiciled in and outside Hong Kong. We expect the registration system to perform the following functions –

- (a) providing adequate background information of the company, organisation or individual operating the platform for reference by crowdfunding participants;
- (b) at least one person with a physical address in Hong Kong will be designated as the representative of the company, organisation or individual operating the platform in Hong Kong; and
- (c) the CAO can follow up with the company, organisation or individual operating the platform for information which is necessary to regulate the crowdfunding activities in Hong Kong.

The CAO will release the list of registered crowdfunding platforms for reference by crowdfunding fundraisers and the general public, for enhanced transparency. When considering individual crowdfunding application, the CAO may also take into consideration of whether that activity is going to be held on a registered crowdfunding platform.

2.20 As the operations of online crowdfunding platforms vary greatly, and many are set up outside Hong Kong, we need to evaluate carefully the coverage and operational practicality in considering establishing a registration system. We welcome members of the public and the relevant trade to provide views for our consideration.

Unlawful crowdfunding activities

2.21 In principle, a person has to apply to the CAO and obtain prior approval for conducting a crowdfunding activity that raises funds from individuals or entities of Hong Kong, or individuals or entities located in Hong Kong. Correspondingly, we will take law enforcement action against crowdfunding activities that fail to comply with the above requirements. To tackle the irregularities and other possible crowdfunding activities that may affect the interests of Hong Kong, we must give the law enforcement agencies adequate power to regulate the various aspects of crowdfunding, including fundraisers, contributors, crowdfunding platforms and media, as well as the financial institutions involved.

2.22 An “unlawful crowdfunding activity” refers to a crowdfunding activity –

- (a) that has been publicised and conducted without making a prior application to the CAO;
- (b) that, in respect of an application that has been made to the CAO, has been publicised and conducted without a consent notice and to which the simplified procedures of the CAO do not apply;
- (c) that continues despite being subject to a prohibition order;
- (d) that continues despite the refusal of the application by the CAO;
- (e) conducted in Hong Kong that the CAO and relevant law enforcement agencies have reasons to believe that the continued conduct of the activity will jeopardise public interests, public safety or national security, regardless of whether a consent notice has been issued by the CAO, or whether an application to the CAO has been made;
- (f) conducted outside Hong Kong that the relevant law enforcement agencies have reasons to believe that it would jeopardise public interests, public safety or national security in Hong Kong; and
- (g) without reasonable grounds, the purpose of conducting the crowdfunding activity originally declared by the fundraiser is obviously inconsistent with how the funds raised are actually used.

2.23 We suggest that relevant law enforcement agencies may take the following action against unlawful crowdfunding activities –

- (a) issue an order to stop the activity, including specifying inter alia in the order how the funds already raised shall be handled;
- (b) suspend the processing work of the application made to the CAO until the CAO is reasonably satisfied that the work may resume;

- (c) take prosecution against the person responsible for the activity⁷;
- (d) direct the removal of the message concerning the activity from the crowdfunding platform, social media and other communications technology media that publish the message;
- (e) direct relevant financial institution to discontinue or stop the fund movements related to the activity, and conduct investigation against the person and bank account involved; and
- (f) specify by notice that an activity is an unlawful crowdfunding activity, and warn that prosecution action may be taken against people providing funds to the activity, dealing with the funds and assisting in the conduct of the activity.

For those who do not intend to follow the order/direction and advice of the law enforcement agencies, they will have to bear the legal consequence. The CAO will monitor the conduct of crowdfunding activities, and refer any non-compliance incidents to law enforcement agencies for prosecution. We will also consider whether the CAO should be given enforcement powers to prosecute on its own against certain non-compliance cases.

Responsibilities of financial institutions

2.24 As crowdfunding necessarily involves the pooling and transfer of funds, we propose that it should be a requirement for funds collected in this way in Hong Kong to be paid into a designated account with a local bank. This would bring the funds within the ambit of laws, including the Organized and Serious Crimes Ordinance (Cap. 455), the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) and the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615), which impose

⁷ It is proposed that penalties should be stipulated for convictions on indictment and summary conviction respectively. The Department of Justice will determine whether to prosecute on indictment or summary proceedings having regard to the facts of the relevant cases (for example the seriousness of the relevant acts, such as whether the omission of making application to the CAO for the crowdfunding activities conducted is due to negligence). In stipulating the penalties for indictable offences or summary offences above, it is proposed that the offence relating to omission of making application to the CAO for the conduct of crowdfunding activities due to negligence to be penalized with a fine; for unlawful crowdfunding activities of a serious nature, the maximum penalty should be imprisonment, thereby posing deterring effect. At the same time, it is proposed subjecting individuals making fund contributions to unlawful crowdfunding activities to criminal liability.

requirements on banks and their staff relating to matters such as dealing in property known or suspected to be proceeds of crime, reporting suspicious transactions, conducting due diligence on customers and record keeping.

- 2.25 The existing requirements under section 5 of Schedule 3 to the Implementation Rules for Article 43 of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“the Implementation Rules”)⁸ are also applicable to funding activities involved in crowdfunding.
- 2.26 In addition, we notice that some crowdfunding platforms accept funds through emerging payment services, for example through merchant acquirers. In order to effectively regulate different risks entailed in crowdfunding activities, we will pay attention to the development of the use of emerging payment services in crowdfunding, and review whether additional regulatory measures are required, in particular with regard to merchant acquirers.

Law enforcement powers

- 2.27 The United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575), Schedule 3 to the Implementation Rules, etc, stipulate relevant enforcement powers and disclosure duty in respect of investigation, freezing and confiscation of proceeds of crime, property of terrorists and property related to offences endangering national security (see Footnote 8 above), for example, an injunction order on the property issued by the court, or the Secretary for Security may direct by written notice that a person must not deal with the property in question. Moreover, if a person knows or suspects that any property to be proceeds of indictable offence, property of terrorists, or property related to offences endangering national security, he

⁸ According to section 5 of Schedule 3 to the Implementation Rules for Article 43 of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“the Implementation Rules”), where a person knows or suspects that any property is offence related property [Note: Pursuant to section 1(1) of Schedule 3 to the Implementation Rules, “offence related property” means : (a) the property of a person who commits, attempts to commit, participates in or facilitates the commission of an offence endangering national security; or (b) any property that is intended to be used or was used to finance or otherwise assist the commission of an offence endangering national security], then the person must disclose to a police officer the information or other matter on which the knowledge or suspicion is based, and as soon as is reasonably practicable after that information or other matter comes to the person’s attention. And where a person knows or suspects that a disclosure has been made, the person must not disclose to another person any information or other matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.

must disclose the matter to the law enforcement authority as soon as is reasonably practicable and must not disclose to another person any information related to the investigation.

- 2.28 According to Schedule 4 of the Implementation Rules, if the Commissioner of Police has reasonable grounds to suspect that an electronic message published on an electronic platform is likely to constitute an offence endangering national security, or is likely to cause the occurrence of an offence endangering national security, he may, subject to the approval of the Secretary for Security, authorise a designated police officer to require the person publishing the message, the platform service provider, the hosting service provider and/or the network service provider to remove that message, restrict or cease access by any person to the message, or restrict or cease access by any person to the platform or to the relevant part of the platform. However, a service provider has an excuse for failing to comply with a requirement if the technology necessary for compliance is not reasonably available to the service provider, or there is a risk of incurring substantial loss to, or substantially prejudicing the right of, a third party. If the person publishing the message fails to comply with a requirement for removal of that message, and it is necessary to remove the message from the platform to safeguard national security, a law enforcement officer may apply to a magistrate for a warrant to seize the electronic device of the person, and to take any reasonably necessary action to remove the message. The officer may also apply to the magistrate for a warrant in specified circumstances and authorise a law enforcement officer to require the service provider to provide the identification record or decryption assistance (as the case requires).
- 2.29 In addition to the existing laws mentioned above that only target activities jeopardising national security, we also suggest providing law enforcement agencies with specific powers to deal with crimes related to crowdfunding activities, including the following powers to be provided to the Police –
- (a) with reference to section 67 of the current Police Force Ordinance (Cap. 232), empowering the Police to request the financial institutions receiving and transferring funds to provide fund records of the crowdfunding activities, and information of their clients⁹, in

⁹ Including transaction record of fund transfers through payment platforms.

circumstances not limiting to suspicion of any person having committed an indictable offence;

- (b) entering and searching any place suspected of being connected with unlawful crowdfunding activities, and seizing relevant documents and property;
- (c) cutting off or ceasing any electronic messages related to unlawful crowdfunding activities;
- (d) obtaining relevant authorisation (such as the written consent of the Secretary for Security) to temporarily detain any property (including digital currency and non-fungible tokens) arising from unlawful crowdfunding activities within a specified period (such as 90 days); and
- (e) applying to the court to return, restrict or confiscate property arising from unlawful crowdfunding activities.

2.30 For unlawful crowdfunding activities, law enforcement agencies can exercise relevant powers to cease them; take effective measures to investigate and prosecute offenders; and when any online crowdfunding platform is found obviously involving in any unlawful activities, request the local host service provider or network service provider to take restrictive actions against the platform in question, and prohibit anyone from accessing it. In order to combat unlawful crowdfunding activities more effectively, we also suggest that law enforcement agencies be given the statutory power to confiscate funds related to unlawful crowdfunding activities, thereby giving a deterrent effect. Furthermore, in dealing with unlawful crowdfunding activities, we also suggest that the crime of organizing unlawful crowdfunding activities be included as an indictable offence, thereby allowing law enforcement agencies to make use of section 25 (1) of the Organized and Serious Crimes Ordinance (Cap. 455) to prosecute persons who illegally transfer and use unlawful crowdfunding funds.

Your Views are Welcomed

- 3.1 Outlined above is our initial proposal on how regulation of crowdfunding activities can be stepped up. Crowdfunding involves a host of activities of diverse nature and evolves with technological development, and which may have far-reaching consequences to the community. We see the need to set down the normative and regulatory framework for this emerging form of financing, thereby allowing crowdfunding to serve legitimate social and personal purposes while putting in place risk-management to safeguard public interests and safety.

- 3.2 You are welcomed to give your views on or before 20 March 2023. Meanwhile, we will reach out to various stakeholders to solicit their comments. We will continue to develop our legislative proposals after having taken due consideration of the views of the community.

**Financial Services Branch
Financial Services and the Treasury Bureau
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