

The Hong Kong Chartered Governance Institute

Submission

Financial Services and the Treasury Bureau (FSTB)

Public Consultation on Regulation of Crowdfunding Activities

The Hong Kong Chartered Governance Institute 香港公司治理公會

(Incorporated in Hong Kong with limited liability by guarantee)

3/F, Hong Kong Diamond Exchange Building, 8 Duddell Street, Central, Hong Kong

Tel: (852) 2881 6177 E: ask@hkcg.org.hk W: hkcg.org.hk

20 March 2023

By email only: cf-consult@fstb.gov.hk

Financial Services and the Treasury Bureau
Division 6, Financial Services Branch,
15/F, Queensway Government Offices
66 Queensway
Hong Kong

Dear Sirs,

Public Consultation Paper on Regulation of Crowdfunding Activities

(Terms and expressions used in this submission are as defined under the Consultation Paper)

About HKCGI

The Hong Kong Chartered Governance Institute (HKCGI), formerly known as The Hong Kong Institute of Chartered Secretaries, is the only qualifying institution in Hong Kong and the Mainland of China for the internationally recognised Chartered Secretary and Chartered Governance Professional qualifications.

With over 70 years of history and as the Hong Kong/China Division of The Chartered Governance Institute (CGI), the Institute's reach and professional recognition extend to all of CGI's nine divisions, with more than 40,000 members and students worldwide. The Institute is one of the fastest growing divisions of CGI, with a current membership of over 7,000, 300 graduates and 2,600 students with significant representations within listed companies and other cross industry governance functions.

Believing that better governance leads to a better future, HKCGI's mission is to promote good governance in an increasingly complex world and to advance leadership in the effective governance and efficient administration of commerce, industry and public affairs. As recognised thought leaders in our field, the Institute educates and advocates for the highest standards in governance and promotes an expansive approach which takes account of the interests of all stakeholders.

Support for proposals

From the public governance perspective, we support the various proposals for improving the openness and accountability of crowdfunding activities, including the principal requirement that all future campaigns submit an application and secure approval before launch and the need for adequate public disclosure before, during, and after campaigns. We also concur with the proposal to establish a Crowdfunding Affairs Office (CAO) to handle all regulatory and

administrative issues on crowdfunding activities in one location. We agree that the market's commercial fundraising activities, which are already well-regulated by financial regulators under existing law are exempt from the new regulatory structure.

We specifically support the following key elements of the regulatory framework for crowdfunding that is proposed in the Consultation Paper, including:

- all fundraising activities, online or offline, that raise funds publicly from individuals or entities of Hong Kong or individuals or entities located in Hong Kong are required to apply in advance to the newly proposed CAO, regardless of their purpose or location
- when processing applications, the CAO will consider factors including the applicant's honesty, reputation and reliability; proportionality of the purpose of the crowdfunding activity to its scale; and risks brought about by the activity to public interests, public safety and national security
- the CAO will coordinate with relevant government departments to streamline procedures for fundraising activities which are subject to existing regulation, such as donation activities held physically in public places or lottery sales
- the new regulatory regime will not apply to commercial fundraising activities in the market, which are already well-regulated by financial regulators under existing legislation
- exemptions and facilitation measures to facilitate a smooth operation and timely commencement of crowdfunding activities, which are widely recognised by society and charitable crowdfunding projects which address sudden and urgent needs
- fundraisers are required to disclose the objectives and arrangements of their crowdfunding activities, use a local bank account and keep proper records of fund movements
- consideration is given to setting up a registration system for online crowdfunding platforms, and
- empowerment of law enforcement agencies to cease unlawful crowdfunding activities and prosecute offenders.

The CAO

We agree that crowdfunding brings challenges, especially with digital online platforms. There is a need to consider the impact of the activities in Hong Kong wherever funds are raised. Also, no dedicated legislation, government department or regulatory authority deals with crowdfunding activities. From the public governance perspective, the Government of the HKSAR should seek

to regulate crowdfunding activities. There is a need to develop a modern and clear regulatory framework to incorporate transparency and accountability into the crowdfunding process. Also:

- as identified under paragraphs 1.14 and 1.15 of the Consultation Paper, the problematic areas are donation-based crowdfunding and reward/pre-sale crowdfunding. Perhaps Hong Kong has seen more issues with donation-based crowdfunding, and
- as set out under paragraph 1.17 of the Consultation Paper there are platform risks, especially with online platforms, as well as information asymmetry, purpose mismatch, and legal risks.

We agree with the establishment of the CAO to regulate these and other risk areas over unregulated public fund appeals. We also agree with the major proposed CAO responsibilities set out under paragraph 2.7 of the Consultation Paper, namely:

- receiving all the applications submitted for crowdfunding activities through a designated government platform
- referring applications to relevant regulatory authorities and government departments by the types of crowdfunding activities
- processing crowdfunding applications not covered by existing legislation
- coordinating the approval process of a crowdfunding application, including seeking views of relevant government departments and law enforcement agencies
- acting as the central authority to register approved crowdfunding activities and building a database for easy public inspection
- issuing guidelines on crowdfunding activities to ensure that the personal information and funds involved are properly handled, and
- collecting the completion records of crowdfunding activities and publishing these records for public inspection as appropriate.

We also have no issue with the requirements concerning the fundraiser to be submitted to CAO as set out under paragraph 2.5 of the Consultation Paper, namely:

- personal data and contact details of the applicant
- background information on the establishment of the fundraising organisation (if applicable), such as articles of association or registration records
- information of local bank account designated for crowdfunding purposes

- 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
- the estimated start date and completion date of the activity
- the target fund size
- the target beneficiaries of the crowdfunding activity and the use of the funds raised (if applicable)
- 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.

Other Matters

While paragraph 2.8 of the Consultation Paper relates to referrals to SWD, Home and Youth Affairs Bureau, FEHD or HAD etc., for processing donation-based crowdfunding, it is perhaps more efficient for the CAO to be the centralised or delegated authority with resources to deal with all donation-based applications. We also have no issue with simplified procedures from the risk-based approach for:

- fundraisers that have obtained permits issued by relevant government departments to conduct fundraising activities
- second applications similar to ones previously approved by the CAO and completed without any records of contravening any regulations and laws, and
- fundraising with the 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 to protect lives and property from threats.

We also agree with paragraph 2.10 that there should be specific exclusions for the following:

- 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
- activities that recognised associations solicit funds from members to promote the welfare and needs of respective trade members

- 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
- commercial activities on online media and the like that involve income from subscriptions or online rewards.

As identified in the provision of the paragraph, these would be subject to overriding public safety or national security concerns. Under a risk-based approach, the government could consider creating a safelist to allow the public to search about donation type crowdfunding and/or voluntary filing system as with suspicious transaction monitoring.

Institute's technical and research support

We agree that there should be guidelines, especially with online crowdfunding. Our Institute will be delighted to support the CAO concerning the governance aspects and to run joint seminars, researches and guidance for the public on areas of best practices, as appropriate.

If there are any questions, please feel free to reach out to Ellie Pang FCG HKFCG(PE), Chief Executive, HKCGI or Mohan Datwani FCG HKFCG(PE), Deputy Chief Executive, HKCGI at 2881 6177 or research@hkcgi.org.hk.

Yours sincerely,

For and on behalf of
The Hong Kong Chartered Governance Institute



Ernest Lee FCG HKFCG(PE)
President