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黃汝瑛, JP
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By email cf-consult@fstb.gov.hk

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

15 March 2023

Dear Sir/Madam,

Public Consultation on Regulation of Crowdfunding Activities (“Consultation Paper”)

We refer to the Consultation Paper and the proposals relating to enhancing regulation of crowdfunding activities. In response to the Financial Services and the Treasury Bureau (“FSTB”)’s invitation for comments, members of the Hong Kong Women Professionals & Entrepreneurs Association (“HKWPEA”) have set up a Task Force to consider the Consultation Paper.

As a non-profit organization representing local women professionals and entrepreneurs, HKWPEA has, over 27 years, aimed to make timely responses to consultation by the HKSAR government and regulators. Accordingly, please find attached our response to the Consultation for your kind perusal. The views expressed in this submission are those of HKWPEA, based on consultation with our members, which include women professionals, business executives and entrepreneurs. These views are in line with HKWPEA’s position on the relevant issues (though not necessarily that of each and every member).

Our response is set out below.

Should you have any questions, please feel free to contact Julianne Doe, Co-Chair, Public Affairs Committee at 6198 4602.

Yours Faithfully,



Helen Kan
President
Hong Kong Women Professionals & Entrepreneurs Association

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Public Consultation on Regulation of Crowdfunding Activities

Crowdfunding is an important activity based on which entrepreneurial activities have the potential to thrive. In the "Hong Kong Innovation and Technology Development Blueprint" released by the HKSAR government, clear targets have been set as regards the number of start-ups, incubators and accelerators, as well as number of unicorn enterprises envisioned for Hong Kong.

In designing a crowdfunding regulatory framework, it is critical that the various stakeholders and interests affected, and the impact of regulations on such interests, are taken into account.

A. Initial Observations

With regard to the above, we make three initial observations:

- 1) Hong Kong strives to be a centre of innovation in aligning with China's 14th Five-Year Plan which earmarks Hong Kong as an international innovation and technology hub. The critical factors for businesses to choose Hong Kong as their base for development will be the efficiency of the operating environment and certainty of its laws and regulations.
- 2) Crowdfunding is an activity that essentially crosses jurisdictions. Providing an environment which maintains the right balance between allowing entrepreneurial activities to develop their potential and protecting investors can only be achieved by looking beyond a singular jurisdiction and measuring how we compare against international approaches, so that we may remain competitive and attractive.
- 3) Measures for investor protection in online crowdfunding should be comparable to those for traditional fundraising.

B. Specific observations

1) Enforcement practicality

The proposals state that the proposed mandate of the Crowdfunding Affairs Office (CAO) is to centrally process and coordinate regulatory and administrative matters relating to, and monitor the conduct of, crowdfunding activities, with prior CAO consent being required to conduct a crowdfunding activity.

We note that the proposed regulation would cover activities wherever carried out by persons or entities whether or not they have a presence in Hong Kong, so long as there is an appeal for public funds from persons who are Hong Kong permanent residents or person located in Hong Kong or entities incorporated, registered, or located in Hong Kong. However, for crowdfunding activities taking place outside of Hong Kong, such as where there is a crowdfunding platform located outside of Hong Kong, or where bank accounts for receiving donation funds are located outside of Hong Kong, enforcement may be problematic, and a failure to enforce may be shortcoming of the legislation.

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2) Disclosure to potential investors

We agree that guidelines are necessary relating not only with respect to the additional requirements referred to in para 2.14, but also to the disclosure which the fundraiser must make on the fundraising platform in order for contributors to make a decision as to whether or not to invest. In other words, national security considerations as well as investor protection considerations should both be taken into account, and balanced against the need for crowdfunding to continue to be active.

3) Procedural efficiency

We suggest that response times be specified as a performance pledge of the CAO.

4) Peer to peer lending

For peer to peer lending, we note your reference to the existing regulations under the Money Lenders Ordinance (MLO) and regulations under the SFO for collective investment schemes. We would suggest that the MLO is not directly related to crowdfunding regulation in that it only regulates the acts of lending, and was not initially enacted with crowdfunding as its purpose.

Peer to peer lending crowdfunding platforms can be misleading if they represent themselves as equivalent to holding money on deposit. For the regulations relating to CIS's, we would suggest that it be made clear that these would include peer to peer lending. In the UK, a new regulated activity of "*operating an electronic platform in relation to lending*" was introduced to the Financial Services and Markets Act (Regulated Activities Order) 2001 (the RAO). Similar considerations could be given to CIS's in Hong Kong.

5) Charities with Inland Revenue Ordinance section 88 status

We suggest that such organisations, which have already undergone vetting, should be able to continue online or offline crowdfunding pending CAO authorization.

6) Other Safeguards

- a) Possible limits to be placed on amounts to be raised from the general public so as to lower the risk of the loss of funds.
- b) Requirement for a minimum capital to operate a P2P platform.
- c) Cooling off periods where investors can withdraw from the deal.
- d) We would suggest the development of a self regulatory crowdfunding association which upholds standards and requires members to agree to a code of conduct, similar to the UK Crowdfunding Association (UKCFA), which focuses mainly on protecting investors. For charitable fundraising, reference can be made to the development in Singapore of Code of Practice for Online Charitable Fund-raising Appeals by its Ministry of Culture, Community, and Youth.