

**RESPONSE PAPER TO THE FINANCIAL SERVICES AND THE
TREASURY BUREAU'S PUBLIC CONSULTATION ON
REGULATION OF CROWDFUNDING ACTIVITIES**

by

Dr. Julius YAM
Centre for Comparative and Public Law
Faculty of Law
The University of Hong Kong

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Centre for Comparative and Public Law
Faculty of Law, The University of Hong Kong
Pokfulam Road
HONG KONG
Tel: (852) 3917 2951
Fax: (852) 2549 8495
Email: ccpl@hku.hk

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**Response Paper to the Financial Services and the Treasury Bureau's Public
Consultation on Regulation of Crowdfunding Activities****February 2023*****Executive Summary**

The adoption of new technologies like crowdfunding in commerce and for social and political purposes has created new opportunities as well as risks. Crowdfunding fosters innovation, but can also be used for unlawful or illegitimate purposes.

This paper responds to the Financial Services and the Treasury Bureau's ("FSTB") public consultation on regulation of crowdfunding activities, and considers whether it is necessary to introduce a new regulatory regime for crowdfunding. It argues that existing laws are capable of addressing most — if not all — of the risks that crowdfunding activities pose. Even if the government decides that regulatory intervention is necessary, this paper suggests that its approach should be guided by principles of regulatory certainty, minimizing user inconvenience and administrative feasibility. This enables the benefits crowdfunding offers to be maintained.

The paper identifies issues raised by the FSTB's proposal for regulating crowdfunding ("the proposal") that need to be addressed. It makes six broad recommendations which are summarized as follows:

1. Identifying the specific risks posed by non-investment-based crowdfunding in Hong Kong and developing solutions that mitigate those risks [paras 14-16].
2. Narrowing the scope of the proposal, including, for example, by [paras 24-26]:
 - a. Covering only fundraisers that have Hong Kong bank accounts or are companies or other entities registered in Hong Kong.
 - b. Targeting campaigns that are expected to raise over a certain amount.
 - c. Broadly interpreting the exceptions proposed.
3. Clarifying the definition, the scope of responsibility and consequences of online crowdfunding platforms under the proposal [paras 31-33].
4. Streamlining the approval system's procedures [para 44], for example, by:
 - a. Simplifying application processes.
 - b. Making assistance from regulators readily available.
 - c. Creating reasonable time frames for the application process.
5. Providing sector-specific agencies with regulatory powers instead of setting up a centralized approval system [paras 45-46].
6. Setting aside the issue of crowdfunding for litigation purposes [para 50].

We hope that this paper provides a constructive platform for all stakeholders involved to formulate an approach that best meets the interests of Hong Kong as an international financial center.

*For ease of reference, relevant paragraph numbers of the Consultation Report are in parentheses (), while relevant paragraphs of this response paper are square bracketed [].

I. Introduction

1. Crowdfunding can be divided broadly into two types: investment-based crowdfunding and non-investment-based crowdfunding. The former includes lending-based and equity-based crowdfunding. In this scenario, contributors are akin to investors in that they expect a financial return. This differs from non-investment-based crowdfunding, where contributors expect only a non-monetary return (reward-based crowdfunding) or no return at all (donation-based crowdfunding).
2. The proposal is primarily concerned with *non-investment-based crowdfunding*.
3. The rise of non-investment-based crowdfunding has particularly benefited small and medium enterprises (SMEs), charities and individuals in Hong Kong and elsewhere. Crowdfunding, according to research, fosters innovation by supporting projects that would have found it challenging to raise funds through traditional sources, as well as through feedback and information provided by the “crowd” during the crowdfunding process.¹ Fundraisers may use crowdfunding to “suss out market demand”, for instance, before deciding whether or not to proceed with manufacturing and production.² In a globalized and digitalized age, some fundraisers have leveraged crowdfunding to reach larger and more internationalized markets.³
4. The adoption of new technologies like crowdfunding in commerce and for social and political purposes also engenders new risks. Accordingly, in December 2022, the FSTB launched a three-month consultation on its proposal to regulate crowdfunding activities. With the aim of “increas[ing] the transparency and accountability” of such activities, the FSTB proposes to establish a Crowdfunding Affairs Office (“CAO”) to “centrally process and co-ordinate regulatory and administrative matters related to crowdfunding activities, and monitor the conduct of such activities” (2.1).
5. This paper considers whether there is a need to introduce a new regulatory regime for non-investment-based crowdfunding, identifies issues that need to be clarified if the proposal is to be implemented, and suggests possible ways forward.

II. Background and Comparative Context

6. Like many other jurisdictions, laws dedicated to non-investment-based crowdfunding do not currently exist in Hong Kong.
7. The proposal references places such as the United Kingdom, the United States, Australia and Singapore to suggest that an approval system similar to the CAO, in the

¹ Ethan Mollick and Alicia Robb, “Democratizing Innovation and Capital Access: The role of crowdfunding” (2016) 58 *California Management Review* 72; Fabrice Hervé and Armin Schwiendbacher, “Crowdfunding and Innovation” (2018) 32 *Journal of Economic Surveys* 1514.

² Hannah Chang et al., “Leveraging reward-based crowdfunding during Covid-19” *The Business Times* (9 December 2021). The authors, based on their findings in Singapore, also argue that “[t]he onset of the pandemic didn’t seem to affect interest in and contributions to crowdfunding campaigns”, suggesting that non-investment-based crowdfunding offers a “viable option even amid economic uncertainty”.

³ Ciro Troise et al., “How Can SMEs Use Crowdfunding Platforms to Internationalize? The Role of Equity and Reward Crowdfunding” (2022) *Management International Review*.

form of a Commissioner of Charity, exists to regulate non-investment-based crowdfunding in those countries (1.14).

8. Those laws, however, are limited specifically to fundraising activities for *charitable* purposes or by *charitable* organizations. Their scope is therefore far more circumscribed than the proposal, as they only affect charitable crowdfunding activities.
9. To the best of the author's knowledge, a single law covering *all types* of non-investment-based crowdfunding is extremely rare. Jurisdictions including the United Kingdom, Singapore, Australia and the United States do not have laws dedicated to non-investment-based crowdfunding, and they only target investment-based crowdfunding and crowdfunding related to charities or charitable purposes.
10. In this regard, the FSTB's proposal may be considered a pioneering effort, especially when compared to other international financial centers in common law jurisdictions. Because of the proposal's novelty and reach, one needs to be especially cautious when considering whether enhanced regulation is necessary, and, if so, how it should be approached.

III. Is More Legislation Necessary?

11. The proposal is partly motivated by the fact that there are no laws in Hong Kong dedicated to non-investment-based crowdfunding (see e.g. 1.1, 1.14 – 1.15), and partly because of the alleged risks attached to such activities, such as fraud, money-laundering and crowdfunding for unlawful purposes (1.17).
12. Research conducted in other jurisdictions shows that the percentage of non-investment-based crowdfunding cases which are fraudulent is generally low,⁴ and the "crowd" and crowdfunding platforms are generally capable of detecting fraudulent projects.⁵ Established platforms, many of which are popular among Hong Kong users, also have policies explicitly prohibiting unlawful and immoral projects.
13. Furthermore, the fact that dedicated laws do not exist in Hong Kong does not mean there is a regulatory lacuna. Existing laws in Hong Kong, including anti money-laundering laws, laws against fraud, charity laws such as section 4(17) of the Summary Offence Ordinance and the National Security Law are capable of addressing the risks the proposal identifies.⁶ The proposal does not explain why there is a need for enhanced regulation when there are already laws regulating non-investment-based crowdfunding activities. Enhanced regulation should only be considered when existing laws are *proven* to be inadequate.

⁴ Ethan Mollick, "The Dynamics of Crowdfunding: An exploratory study" (2014) 29 *Journal of Business Venturing* 1.

⁵ Douglas Cumming et al., "Disentangling Crowdfunding from Fraudfunding" (2021) *Journal of Business Ethics* 1.

⁶ Joseph Tse SC makes a similar argument. See: Tse's presentation at Hong Kong Legal Week 2021 (https://webcast.info.gov.hk/revamp/eng/video/0000001363_mp4.html), and Kahon Chan, "Must Hong Kong regulate crowdfunding? Experts do not think it is necessary, as start-ups worry they will suffer" (*South China Morning Post*, 23 Jan 2023) <https://www.scmp.com/news/hong-kong/law-and-crime/article/3207727/must-hong-kong-regulate-crowdfunding-experts-do-not-think-it-necessary-start-ups-worry-they-will>.

14. This paper recommends that further research on the specific risks posed by non-investment-based crowdfunding *in* Hong Kong be conducted before deciding whether or not to introduce greater regulatory control. For instance, how prevalent are fraudulent crowdfunding activities or crowdfunding for unlawful purposes relative to the total market size of non-investment-based crowdfunding in Hong Kong? Are these problems peculiar to certain *sectors* in which non-investment-based crowdfunding activities take place, e.g. in the creative, philanthropic, political or technology sectors? How much money is usually involved in these cases? In addressing the problems that arise from non-investment-based crowdfunding activities, how exactly are existing laws insufficient? Is the collapse of crowdfunding platforms common in Hong Kong (see 1.17(a))?
15. While answering these preliminary questions takes time, it will help properly establish whether there is truly a need for greater regulatory control, enable us to design solutions tailored to the needs of Hong Kong and also provide a sound, informed basis for further regulatory intervention. Overregulation risks reducing the space for lawful crowdfunding activities, increasing regulatory costs for individuals and businesses, and stifling social and business innovation – which is key to Hong Kong’s status as an international financial center.
16. Whether more regulation should be introduced in this area is a decision that also has implications on rights.⁷ While the Hong Kong Basic Law and the Bill of Rights Ordinance (Cap. 383) do not protect a right to crowdfunding *per se*, the ability to raise funds can implicate the ability to effectively enjoy certain rights, such as the right to equality⁸ (e.g. restrictions on non-investment based crowdfunding may harm the poor more than the rich) and the right to artistic and literary creation and cultural activities,⁹ as well as the freedom to conduct business.¹⁰ Any restriction on non-investment based crowdfunding activities should therefore be no more than necessary.

Recommendation 1

The FSTB or other government agency should identify the specific risks posed by non-investment-based crowdfunding in Hong Kong, so that regulation can be developed to address those risks.

IV. Scope of the Proposal

17. Even if the government concludes that there is a need to legislate, there are several issues that need to be addressed if the proposal is to be implemented successfully. The first relates to the scope of the proposed laws.
18. The proposal requires that those “conducting a crowdfunding activity that raises funds from individuals or entities **of** Hong Kong, or individuals or entities **located in** Hong Kong” must apply for approval from the CAO (2.2).
19. This is elaborated in full as follows (2.2):

⁷ The author thanks Cora Chan for this point.

⁸ Article 25 of the Basic Law.

⁹ Article 34 of the Basic Law.

¹⁰ E.g. Articles 109 to 118 of the Basic Law.

- a. “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... or online... 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 Kong or not...**”
20. The scope of the proposal is principally defined by whether the crowdfunding activity in question “appeals publicly for funds” from individuals or entities of or in Hong Kong, but it is unclear how the CAO will determine whether a campaign meets this definition.
21. At present, it appears that the “declared purpose” and “location” of a campaign are irrelevant (2.2), and that the CAO will take into account the “actual operation” of the campaign (2.2) and the fundraiser’s “intention” (2.5). These are broad considerations which grant the CAO tremendous discretion, and it is not obvious what standards will be followed when applying these considerations.
22. For example, it is rather uncommon for crowdfunding campaigns to specify that contributors must come from a particular jurisdiction or must be of a particular nationality. They typically appeal to a global audience or anyone with Internet access. How, then, are we to ascertain the “intention” of a typical campaign or fundraiser? Will a campaign’s global appeal be considered broad enough to fall within the scope of the proposal?
23. To take another example: will an overseas campaign, which appears to have nothing to do with Hong Kong or those in Hong Kong, but happens to attract some publicity or backers in Hong Kong, fall within the proposal’s scope? If so, this implies that its scope is so expansive that it covers countless campaigns around the world, exceeding the acceptable boundaries of extraterritoriality. Is this, then, an instance where “the actual operation” needs to be taken into consideration? If so, does this mean that campaigns initially deemed to lack the required intention but which subsequently attract backers in or of Hong Kong need to retrospectively apply for approval from the CAO?
24. This paper recommends clarifying the scope of the proposal and its procedural implications. The definition offered raises a host of questions regarding its precise boundaries. Concrete and transparent guidelines will offer certainty to all stakeholders, including fundraisers, contributors, the public and crowdfunding platforms. The boundaries of the regulatory regime could be clarified with more specific criteria, such as whether the fundraiser is using a Hong Kong bank account for crowdfunding; or if the fundraiser is a company, whether it is registered in Hong Kong. Defining the scope too broadly will lead to concerns about whether the proposed measures can be

implemented consistently, and whether it is feasible for the CAO to monitor numerous campaigns around the world.

25. Another approach to narrowing the scope of the proposal is to add to the proposed exclusion list (2.4 and 2.10) so that campaigns below a certain monetary value are excluded. Currently, investment-based crowdfunding activities already subject to securities regulation and non-investment-based crowdfunding activities for religious purposes are explicitly excluded from the proposal. Another possibility may be to only target campaigns which are expected to raise over a certain amount (e.g. 1 million HKD).¹¹ Campaigns with a high monetary value tend to warrant a higher degree of contributor protection, accountability and transparency, all of which are declared goals of the Consultation Document (1.2). Disclosure requirements (e.g. publishing financial statements or accounting for how the funds collected through crowdfunding were spent) may also be imposed on high-worth for-profit crowdfunded campaigns, alongside or in lieu of the proposed approval system. This approach is consistent with the de minimis rule. It follows that non-investment-based crowdfunding activities involving smaller sums should be exempted from regulation.
26. Two other exceptions under the proposal are “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” (2.10 (c)) and “commercial activities on **online media and the like** that involve income from subscriptions or online rewards” (2.10 (d)). Depending on how these two exceptions are interpreted, they potentially overlap with many kinds of reward-based crowdfunding activities, which involves fundraisers offering something to backers in exchange for their contribution. Broadly interpreting this exception further limits the scope of the proposal. Relatedly, the meanings of “goods or services readily available in the market” (2.10 (c)) and “online media and the like” (2.10 (d)) should be clarified. For instance, do made-to-order or custom-made products count as “readily available”? And, are social media platforms like Twitter and Facebook or crowdfunding platforms with interactive functions like Patreon considered “online media” under the proposal? These outstanding issues will directly impact the scope and operation of the proposal.

Recommendation 2

The scope of the regulatory regime should be clarified and narrowed. For example, by:

- a) Limiting the regulatory regime to fundraisers using a Hong Kong bank account for crowdfunding, or fundraisers registered in Hong Kong (in the case of companies).
- b) Excluding campaigns below a specified monetary value (e.g. 1 million HKD) from the regulatory regime.
- c) Clarifying the exceptions for buying and selling readily available goods and services and the commercial activities of online media platforms, thereby narrowing the scope of the regulatory regime.

V. The Responsibility of Crowdfunding Platforms

¹¹ To use the actual contribution received as the benchmark would create administrative difficulties for fundraisers, as it may require campaigns that achieve unexpected success to retroactively apply for approval and subject themselves to regulatory oversight.

27. Online crowdfunding platforms play an important role in the non-investment-based crowdfunding ecosystem. Platforms popular in Hong Kong, such as Kickstarter and Patreon, operate globally.
28. The proposal suggests that “online platforms specifically designed for crowdfunding purpose should be suitably regulated to protect the rights of crowdfunding participants and public interest”, and it proposes to do so by requiring these platforms to register with the CAO if they wish to raise funds “from individuals or organizations of or in Hong Kong...” (2.19).
29. The proposal, however, falls short of explaining what will be required of these platforms. The proposal only mentions two kinds of information a platform is required to provide for registration: “background information of the company” and the details of at least one representative “with a physical address in Hong Kong” (2.19). According to the proposal, the CAO will publish a list of registered crowdfunding platforms and “follow up” with the registered representative when “necessary” (2.19).
30. Online crowdfunding platforms, especially reputable ones, already shoulder an informal regulatory responsibility by limiting, through their own policies, what their users can do on their platforms, and by having their teams monitor and enforce these policies. As mentioned, there is evidence from other jurisdictions that these platforms are reasonably effective in screening out unlawful or socially harmful projects. Similar research should be conducted locally to check the extent to which these platforms are effective in regulating non-investment-based crowdfunding in Hong Kong. The recommendations in the proposal may overlap with the due diligence already performed by some of these platforms.
31. In any event, it is unclear what “follow up” here entails (2.19), and what the consequences for failing to comply with the law or the CAO’s requests will be. What is the extent of a platform’s duty to disclose? Will the platform be obliged to disclose the personal data of fundraisers and/or contributors?¹² Under what circumstances will such an obligation be triggered? Also, is liability for failure to comply attached individually to the registered representative of the platform, to the company, or to both? These issues will directly affect online crowdfunding platforms’ willingness to maintain their market presence in Hong Kong.
32. There is also a related question about how an “online crowdfunding platform” is defined under the proposal. Some companies such as Kickstarter, Indiegogo and GoFundMe function primarily as a crowdfunding platform. Others, such as YouTube and Facebook are social media platforms by nature, but have secondary features which facilitate money donations and commercial transactions.
33. This paper recommends that the definition of and scope of legal responsibility of online crowdfunding platforms under the proposal be clarified. As the proposal rightly notes, issues of “operational practicality” may arise with regards to setting up and implementing the proposed registration system (2.20), especially when many of these

¹² The proposal suggests that “fundraisers whose applications are approved should be obliged to obtain information on the identities of persons donating funds from any crowdfunding platforms...” (2.14). This implies that crowdfunding platforms have an obligation to disclose personal data upon request by the authorities under the proposal.

online platforms operate across multiple jurisdictions and handle countless campaigns every day. Platforms exist to facilitate non-investment-crowdfunding. Too much regulation will drive these companies away and limit the space for non-investment-based crowdfunding.

Recommendation 3

The definition and scope of the legal responsibilities of online crowdfunding platforms need to be clarified and limited. Excessive regulation will make it cost-inefficient for these platforms to operate in Hong Kong.

VI. Administrative Feasibility

34. The workability of the entire proposal depends on the CAO. The CAO's responsibilities include receiving and approving applications to conduct crowdfunding activities, monitoring crowdfunding activities, following up with online crowdfunding platforms, referring problematic cases to law enforcement agencies, coordinating with other departments and agencies during the approval process, and issuing guidelines (see generally 2.6).
35. As argued above, while there are some similarities between the CAO and Commissioners of Charity elsewhere, the proposed CAO will take on much wider responsibilities because the scope of the proposal is not limited to charitable activities.
36. Considering how central the CAO is to the proposal, it is curious that the proposal makes no mention of how the CAO is to be formed, its membership or its governance structure.¹³ As such, it is doubtful whether the CAO will possess the necessary *capacity* and *expertise* to administer the proposed regulatory regime.
37. For example, it is noted in the proposal that whether approval is given is “not directly related to whether the outcome... of the activity is successful or is able to achieve the desired effect”; other “major” factors to be considered are whether the crowdfunding activity complies with “appropriate and sound procedures”, whether those involved are “reliable”, and the risks of the campaign giving rise to unlawful activities (2.13). It is also noted that the CAO will adopt “simplified procedures” for approval if the fundraiser is “widely recognised by the community” or “possess[es] extensive crowdfunding experience with good track record” (2.9).
38. Some of the outlined criteria of approval are objective (e.g. whether the fundraiser is procedurally compliant or not), but others involve evaluative judgments (e.g. whether the fundraiser is reliable or widely recognized by the community). The standards for making evaluative judgments are not specified. Concrete and transparent guidelines regarding the approval process should be provided.
39. There is also the question of whether the CAO will have the necessary knowledge and expertise to conduct these assessments. The assessments require people who are

¹³ It is also unclear whether the CAO will possess compulsory powers such as search and seizure powers, as the proposal only discusses what powers “the relevant law enforcement agencies” should have, without clearly specifying what these agencies are (2.23; 2.27-2.30). An example given in the proposal is the Police.

familiar with how non-investment-based crowdfunding works and its ecosystem in general, and also those with knowledge of the specific context or sector the crowdfunding activity in question relates to. For instance, what is considered a “good track record” for art-related crowdfunding activities will be completely different to that of technology-related crowdfunding activities.

40. The CAO refers to the “proportionality principle” as one of the main tools it will use when reviewing a crowdfunding application (2.11). For instance, “[t]he larger the fund size of a crowdfunding activity and the greater the number of fund contributors involved”, the proposal writes, “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” (2.11). Assessments using the proportionality principle still require knowledge of the background to and context of the campaign under consideration. The proposal seeks to cover all non-investment-based crowdfunding activities, which involve projects across wide-ranging contexts. This raises questions about whether, under the current proposal, the CAO is capable of making accurate judgments.
41. Furthermore, to process cases efficiently, the CAO not only needs the right kind of human resources, but also an abundance of it, especially given the proposal’s breadth. Time is of the essence for many crowdfunding projects; it would be hugely unfortunate if a project failed because of the CAO’s inability to make decisions in a reasonable time.
42. It appears that the CAO will be assisted by the information provided by the fundraiser (2.5). The fundraiser will need to convince the CAO that it satisfies the prescribed requirements. Many who engage in non-investment-based crowdfunding are, however, SMEs and individuals with limited resources and experience. Too onerous of an application process may increase the time and operation costs of these campaigns, deterring fundraisers even if their projects are not unlawful or illegitimate in nature.
43. Narrowing the scope of the proposal, as recommended above [paras 24-26], will address some of these feasibility issues.
44. This paper also recommends that the proposal should minimize inconvenience caused to users by streamlining the approval process as much as practically possible. This would cater to the needs of fundraisers with limited resources pursuing legitimate goals. This could be done, for example, by requiring mainly factual details from applicants and short responses with strict word limits for items that require further explanation. Regulators should also be made readily available to fundraisers to provide guidance to them on navigating the regulatory regime. The government should also pledge to the public that it will make decisions in a timely manner (e.g. within one week), as fundraisers need the certainty to make plans for their businesses or projects.

Recommendation 4

Efforts should be made to streamline procedures for seeking and giving approval. For example, by ensuring:

1. Simple application procedures.
2. Readily available assistance from regulators.
3. Reasonable time frames for the application process.

45. Instead of establishing a central approval system administered by the proposed CAO, an alternative approach which is decentralized and incremental would achieve similar goals. This would involve empowering specific agencies to regulate sector-specific non-investment-based crowdfunding activities.¹⁴ Under this recommendation, agencies with sector-specific knowledge could be empowered to create and enforce regulations against certain kinds of non-investment-based crowdfunding activities. The government may set short- or medium-term objectives for these agencies to guide their activities. For example, the Productivity Council or Science Park may be authorized to regulate technology-related non-investment-based crowdfunding activities; the Arts Development Council to regulate arts-related projects; and the Social Welfare Department to regulate crowdfunding for charitable and social purposes.
46. Aside from avoiding the administrative burdens of a centralized approach, this recommendation is advantageous in several ways. First, these agencies possess the necessary expertise to make the assessments the proposal suggests. Second, compared to FSTB's proposal, this recommendation offers much-needed flexibility to address sector-specific risks. Crowdfunding backers from different sectors may have unique attributes that warrant, for instance, different levels of backer protection. Agencies acting as regulators may study their sectors and iteratively adjust their approach, incorporating their own observations and user feedback. Third, as mentioned, it is rare to find laws dedicated to non-investment-based crowdfunding activities in other jurisdictions, and the government should be cautious in its approach. The recommendation here allows the government to start small (e.g. by focusing only on crowdfunding for social purposes) and minimize unintended consequences generated by too revolutionary an approach. Different agencies may also develop different approaches, enabling them to learn from one another and eventually converge on best practices. Finally, this recommendation signals openness to innovation on the government's part, as this approach is premised on stakeholder feedback.

Recommendation 5

Serious consideration should be given to an alternative, more specialized and incremental approach to regulation, in which sector-specific agencies are given regulatory powers in lieu of setting up a centralized approval system.

VII. Crowdfunding and Litigation

47. Non-investment-based crowdfunding has been used to support litigation in Hong Kong and elsewhere. As things stand, these activities will fall under the scope of the current proposal.
48. Third-party funding of litigation is generally prohibited in Hong Kong under the offences of champerty and maintenance. However, because of their lack of financial return and elements of public interest, it might be argued that third-party funded

¹⁴ This recommendation takes inspiration from the idea of a regulatory sandbox. See Radostina Parenti, "Regulatory Sandboxes and Innovation Hubs for FinTech" *European Parliament* (September 2020); Ross P Buckley et al., "Building Fintech Ecosystems: Regulatory Sandboxes, Innovation Hubs and Beyond" (2020) 61 *Journal of Law & Policy* 55. The author thanks Paul Lejot for the introduction to the relevant literature.

criminal defense and public interest litigation such as judicial review will not fall under maintenance or champerty,¹⁵ though these specific issues have not been directly addressed by Hong Kong courts.¹⁶

49. A cautious tone in relation to third-party funding rules was recently struck by Ng J in *Re A*,¹⁷ where the court noted that the issue of third party litigation finance is a complicated one which should be addressed by legislative means in the future, instead of having courts decide on a case by case basis.
50. This paper recommends explicitly excluding crowdfunding campaigns for litigation purposes from the proposal, leaving this issue for future public discussion. This is because this issue raises distinctive legal issues and access to justice questions, and involves a more fundamental examination of how Hong Kong ought to approach third party litigation funding rules. This deserves another round of public consultation and is beyond the scope of the current consultation.

Recommendation 6

Crowdfunding for the purposes of litigation should be expressly excluded from this proposal, so that it can be considered separately alongside the related issue of litigation funding.

VIII. Conclusion

51. This paper outlined a range of issues relating to the proposal, and aims to facilitate greater discussion on whether, and if so how, non-investment-based crowdfunding should be regulated in Hong Kong. It has also recommended ways to move forward.
52. As an international financial center, Hong Kong needs to signal to the international community that it cares about business and social innovation. Technological advances like crowdfunding foster innovation, unlock new growth and maximize what civil society has to offer. These uncontroversial gains benefit everyone. Like any activity, it carries risks of unlawful or improper conduct, but these risks can be managed under existing laws. Even if the government decides that greater regulatory intervention is necessary, its approach should be guided by principles of regulatory certainty, minimizing user inconvenience and administrative feasibility in order to maintain the benefits crowdfunding offers.
53. We hope that this paper provides a constructive platform for all stakeholders involved to formulate an approach that best fits the interests of Hong Kong.

¹⁵ Julius Yam, “Political Crowdfunding of Rights” (2020) 50 *Hong Kong Law Journal* 398, 414-8.

¹⁶ High-profile judicial review and interim injunction cases were supported by crowdfunding, but the judges and parties involved did not raise issues about the method through which these cases were financed. See e.g. *ibid* 415-6.

¹⁷[2020] HKFLR 4, paras 247-9.

Prepared by:

Dr. Julius Yam

yamj@hku.hk

Assistant Professor, Faculty of Law

Board Member, Centre for Comparative and Public Law

University of Hong Kong

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