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New virtual asset service provider regime to take effect on 1 March 2023



Introduction

The Hong Kong Government has gazetted the [Anti-Money Laundering and Counter-Terrorist Financing \(Amendment\) Bill 2022](#) (the "**Bill**") on 24 June 2022, which generally speaking follows what was set out in the Consultation Conclusions for the Public Consultation on Legislative Proposals to Enhance Anti-Money Laundering and Counter-Terrorist Financing Regulation in Hong Kong (the "**Conclusions**") issued by the Financial Services and the Treasury Bureau on 21 May 2021 (see our previous [client alert for details](#)).

The Bill introduces, amongst other things, a new licensing regime for virtual asset service providers ("**VASPs**"). Whilst the Bill itself is expected to come into effect on 1 January 2023, the VASP licensing regime is expected to come into effect on 1 March 2023 (sections 1(2) and 1(3) of the Bill).

Scope of the VASP licensing regime

The Bill requires persons seeking to carry on the business of providing a virtual asset ("**VA**") service (which currently only includes the operation of a VA exchange) to apply for a VASP licence from the Securities and Futures Commission ("**SFC**"). The operation of a VA exchange is defined as providing services through means of electronic facilities (paragraph 1 to part 1 of Schedule 3B to the Bill):-

(a) whereby-

- (i) offers to sell or purchase VAs are regularly made or accepted in a way that forms or results in a binding transaction; or
 - (ii) persons are regularly introduced, or identified to other persons in order that they may negotiate or conclude, or with the reasonable expectation that they will negotiate or conclude sales or purchases of VAs in a way that forms or results in a binding transaction; and
- (b) where client money or client VAs comes into direct or indirect possession of the person providing such service.

Notably, this definition is broader than the definition originally proposed under the Conclusions. Whilst the definition in the Conclusions explicitly excluded peer-to-peer trading platforms, some peer-to-peer trading platforms may fall under the scope of limb (a)(ii) of the new definition.

The Bill defines the term "VA" to mean (section 53ZRA of the Bill):

- (a) a cryptographically secured digital representation of value that –
 - (i) is expressed as a unit of account or a store of economic value;
 - (ii) either:
 - (A) is used, or is intended to be used, as a medium of exchange accepted by the public, for any one or more of the following purposes: (I) payment for goods or services; (II) discharge of a debt; (III) investment; or
 - (B) provides rights, eligibility or access to vote on the management, administration or governance of the affairs in connection with, or to vote on any change of the terms of any arrangement application to, any cryptographically secured digital representation of value;
 - (iii) can be transferred, stored or traded electronically; and
 - (iv) satisfies other characteristics prescribed by the SFC by notice published in the Gazette; or
- (b) a digital representation of value prescribed as a VA by notice published in the Gazette, but expressly excludes a digital representation of value that (1) is issued by a central bank (or any entity that performs the functions of a central bank or by an entity authorised by a central bank on its behalf) or a government of a jurisdiction (or by an entity authorised by the government of a jurisdiction) and acting pursuant to an authority to issue currency in a jurisdiction, (2) is a limited purpose digital token; (3) constitutes a securities or futures contract; (4) constitutes any float or SVF deposit under the Payment Systems and Stored Value Facilities Ordinance (Cap. 584); (5) satisfies other characteristics prescribed by the SFC by notice published in the Gazette; or (6) the SFC has prescribed not to be a VA by notice published in the Gazette.

Regulatory requirements

To protect investors, licensed VASPs are required to abide by a robust set of regulatory requirements which will be imposed by way of licensing conditions, requiring (among other things) that the VASP have adequate financial resources, knowledge and expertise, risk management and procedures, VA listing and trading policies, proper financial reporting and disclosure, as well as mechanisms to prevent market manipulation and abusive activities and conflicts of interest.

Perhaps somewhat disappointingly, though not unexpected, licensed VASPs will only be allowed to offer their services to "professional investors", although the imposition of this requirement by way of a licence condition (as opposed to statute) gives the SFC the flexibility to later allow VA exchanges to serve retail investors.

Licensed VASPs will also need to appoint at least two responsible officers (section 53ZRO of the Bill), approved by the SFC, who will oversee the operation of the licensed VASP and ensure compliance with anti-money laundering / counter-terrorist financing obligations and other regulatory requirements. Such responsible officers are to be held personally accountable in case of non-compliance. This is in line with the current licensing regime under the Securities and Futures Ordinance.

Offences

Operating a VA exchange without a licence in Hong Kong will be an offence, punishable (on indictment) by a fine of HK\$5,000,000 and imprisonment for seven years, and in the case of a continuing offence, a further fine of HK\$100,000 for every day during which the offence continues (section 53ZRD of the Bill). Providing a false or misleading statement in connection with a licence application is punishable (on indictment) by a fine of up to HK\$1,000,000 and imprisonment of up to 2 years (section 53ZTN of the Bill), while fraudulent or reckless misrepresentation for the purpose of inducing another person to acquire or dispose of a VA is punishable (on indictment) by a fine of up to HK\$1,000,000 and imprisonment for up to seven years (section 53ZRG of the Bill).

Exemption and Transitional Period

The Bill will take effect on 1 January 2023, although the licensing regime for VASPs will not come into effect until 1 March 2023.

An existing operator carrying on the business of operating a VA exchange will be permitted to continue operating without a VASP licence during the first 12 months after the commencement of the relevant provisions of the licensing regime (i.e., until 29 February 2024) (section 2 of part 2 of Schedule 3G to the Bill). Further, an existing operator that (1) files an application with the SFC within the first nine months after the commencement of the relevant provisions on the licensing regime (i.e. on or before 30 November 2023), (2) confirms that it will comply with the regulatory requirements set by the SFC, and (3) confirms that it will have arrangements in place to ensure compliance with the applicable regulatory requirements, may be deemed to be licensed until the SFC has made a decision on its licence application (section 3 of part 3 of Schedule 3G to the Bill). We recommend VA exchanges that wish to operate in Hong Kong prepare and file such an application as soon as practicable.

How we can help

We advise a number of our clients on Hong Kong's evolving VA regulatory landscape. We have also drafted a range of VA-related documents, and have represented our clients in their discussions with the SFC in connection with VA-related businesses. Please get in touch if you are interested in any of the above.

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