



By email ([vaotc-consult@fstb.gov.hk](mailto:vaotc-consult@fstb.gov.hk))

12 April 2024

Our Ref.: C/CFC, M139423

Division 5, Financial Services Branch  
Financial Services and the Treasury Bureau  
24/F, Central Government Offices  
Tim Mei Avenue  
Tamar Central  
Hong Kong

Dear Sirs,

**[Re: Public Consultation on Legislative Proposals to Regulate Over-the-Counter Trading of Virtual Assets](#)**

The Corporate Finance Committee (“CFC”) of the Hong Kong Institute of Certified Public Accountants (“Institute”) has considered the Consultation Paper on Legislative Proposals to Regulate Over-the-Counter (“OTC”) Trading of Virtual Assets (“VAs”)(“CP”).

CFC members, in principle, support the Financial Services and the Treasury Bureau (“FSTB”)’s proposal to widen the regulation of VA activities to cover OTC trading of VAs to better protect investors in Hong Kong. In this regard we note that, as explained in paragraph 1.6 of the CP, a number of fraud cases have been associated with alleged VA trading platforms (“VATPs”) and that these have revealed the involvement of VA OTC shops, some of which have served as avenues for channelling retail investors’ funds to suspected fraudulent schemes. The increase in the number of fraud-related activities and scams in Hong Kong and elsewhere has been well reported. In short, we need to be vigilant and to safeguard the integrity and reputation of Hong Kong’s financial system against fraud and money laundering. These proposals are a further step in the right direction.

While CFC members broadly agree with the thrust of FSTB’s proposals in the CP, we have comments on some of the specific questions, as set out below.

***Q1 - Do you agree that the regulation of VA activities should be widened to cover OTC trading of VA?***

***Q2 - Do you agree that we should observe the “same activity, same risks, same regulation” principle in drawing up a new regulatory framework for VA OTC services, incorporating AML/CTF requirements in accordance with international standards while ensuring sufficient investor protection?***

We generally agree with these proposals and the need to bring VA OTC services within the scope of international anti-money laundering and counter-terrorist financing (“AML/CTF”) regulations, as already applied to financial institutions and designated non-financial businesses and professions (“DNFBPs”) in Hong Kong.



**Q3 - Do you agree with the proposed scope and format of VA OTC services to be regulated and that operators of VA OTC services who provide temporary custody/escrow service as part of the transaction process should be brought within the regulatory remit?**

**Q4 - Do you agree that a licence applicant must have a local nexus and suitable premises/relevant local addresses for CCE's effective supervision and monitoring?**

We generally agree with these proposals. When determining whether an applicant is fit and proper, we note from paragraph 2.11 of the CP, that the Commissioner of Customs and Excise ("CCE") "will consider all relevant matters, including, among others, whether the applicant (or its any directors or ultimate owners) has been convicted in Hong Kong or elsewhere of a ML/TF [money laundering/ terrorist financing] offence or a serious offence; has been convicted in Hong Kong or elsewhere of an offence in which the person is found to have acted fraudulently, corruptly or dishonestly; has been the subject of any bankruptcy or liquidation proceedings; or has failed or may fail to observe the AML/CTF and other applicable requirements."

While we would not disagree that, whether an applicant has been the subject of any bankruptcy or liquidation proceedings should be a factor for consideration, this should not automatically be treated on a par with, e.g., a criminal conviction for fraud or dishonesty or a failure to observe AML/CTF requirements, as may be implied by the CP, without looking at the causes of those proceedings.

**Q5 - Do you agree that VA OTC licensees should only be allowed to provide VA-fiat (and vice versa) spot trading services, and subsequent remittance of exchange proceeds on specified conditions?**

Regarding paragraph 2.12 of the CP, there needs to be clarity in terms of the definition and scope of the respective licensing and regulatory regimes for VATPs and VA OTC services. It is not immediately clear, for example, why it is proposed that VA OTC licensees will be restricted to VA-fiat spot trading and should be required to obtain a VATP licence for VA-VA spot trading services.

**Q7 - Should other regulatory requirements be added to mitigate the potential ML/TF and fraud risks of VA OTC services?**

We note, from paragraph 2.18 of the CP that the proposed regulatory regime for VA OTC services licensees will cover, inter alia:

*"(a) Appointment of a competent Compliance Officer and a Money Laundering Reporting Officer – it is necessary to ensure that fit and proper personnel of a licensee will be held responsible for satisfying the relevant requirements pertaining to the granting of a licence;*

*(b) Competence/knowledge and experience – a licensee is required to have a proper corporate governance structure staffed by personnel with the necessary knowledge of and experience with VA to enable the effective discharge of responsibilities".*



Given this, and as the Institute suggested in the case of licensed VATP operators, in our submission of 31 March 2023, in response to the Consultation Paper on the Proposed Regulatory Requirements for Virtual Asset Trading Platform Operators licensed by the Securities and Futures Commission, consideration should be given to requiring that the board or senior management team of licensed VA OTC service provider should include a full-time qualified accountant. As “accounting professionals” are regulated as DNFBPs under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (“AMLO”), most accountants will be familiar with the requirements of Schedule 2 of AMLO, which will apply to VA OTC licensees. By way of comparison, a “responsible person” under the Limited Partnership Fund Ordinance (Cap. 637) who, under section 33 of that ordinance, is responsible for carrying out the measures set out in Schedule 2 of AMLO, is required to be a person regulated under AMLO.

In addition, a senior qualified accountant will be able to ensure proper financial accounting and management in respect of a VA OTC service provider and help to improve its risk management and internal controls, and to mitigate the company’s potential ML/ TF and fraud risk.

We believe that such an appointment would also increase the corporate governance safeguards of a licensed VA OTC service provider and, hence, provide greater protection to investors.

***Q9 - In respect of the transitional arrangement, do you prefer Option 1 or Option 2, and why?***

CFC members agree with the FSTB’s proposal to provide a transitional period for VA OTC service providers immediately before the commencement of the new licensing regime, to facilitate existing providers to move into the new regime.

To strike an appropriate balance between maximising investor protection and ensuring sufficient time for different stakeholders, including CCE and VA OTC service providers, to prepare for the commencement of the new regime (e.g., for CCE to process what could be a large number of applications), CFC members would prefer Option 2.

CFC members are in favour of granting a “deemed licence” in the interim for existing VA OTC service providers to continue their operations, provided that they have submitted an application to CCE and have met the requirements specified by CCE.

In contrast, it would appear that, under Option 1, CCE may have not much more than three months in which to process a potentially large number of licence applications, particularly where applicants submit their applications towards the end of the designated period. If CCE were not able to process all applications by the end of the transitional period, then pre-existing VA OTC service providers whose licence applications had not been processed would, it seems, be compelled to stop operating, even if their applications were still pending determination. This would not be equitable.



**Q10 - Do you agree with the exemption arrangement?**

We generally agree with this proposal, given that VATPs, licensed corporations and authorised institutions are already subject to robust regulatory regimes under their respective ordinances. However, it needs to be confirmed that, in practice, the relevant regulatory authorities will monitor and regulate this aspect of their regulatees' business, which may be ancillary to their principal business, and that this area will not fall through the regulatory net, or in the gap between the spheres of different regulators. This was one of the concerns that emerged from the "minibonds" saga in Hong Kong, a number of years ago.

**Q12 - Do you agree that CCE should be provided with the proposed powers?**

We agree in principle, but the broad scope of the licensing conditions that CCE will be empowered to impose should be made clear.

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If you have any questions on this submission, please feel free to contact me at the Institute by telephone on 2287 7084 or email <[peter@hki CPA.org.hk](mailto:peter@hki CPA.org.hk)>.

Yours faithfully,

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