



By email (vacustody-consult@fstb.gov.hk)

29 August 2025

Our Ref.: C/CFC, M141410

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 Proposal to Regulate Virtual Asset Custodian Services

The Corporate Finance Committee ("CFC") of the Hong Kong Institute of Certified Public Accountants ("Institute") has considered the consultation document *Public Consultation on Legislative Proposal to Regulate Virtual Asset Custodian Services* ("CP").

The legislative proposal is one of two limbs of proposed legislation formulated to enhance the development of virtual assets ("VAs") in Hong Kong in accordance with the relevant Government Policy Statements. As custody of VAs is an integral part of the VA ecosystem, the CFC supports the proposition that, on the principle of "same activity, same risks, same regulation", custodians of VAs, like custodians of other liquid monetary assets in the market, should be subject to appropriate regulatory oversight, with a view to ensuring investor protection and market integrity.

CFC members broadly agree with the proposals in the CP, which we hope will be able to balance the need to protect the investing public and the potential benefits of facilitating orderly market development.

We set out below our comments on the specific questions.

Q1: Do you have any comments on the proposed definition and scope (e.g. too narrow or too wide) of VA custodian services to be regulated?

The proposed definition of the "provision of VA custodian service" refers to: "*the safekeeping of (i) VAs on behalf of clients; or (ii) instruments enabling transfer of VAs of clients (including but not limited to private keys) on behalf of clients*" [underlining added]. However, as the clients may, at least in some cases, be the clients of the VA dealers or other VA service providers, rather the direct clients of the VA custodians, the definition may need to be clearer on this point.

We suggest that some further clarification may also be helpful as regards the scope. Paragraph 2.19 of the CP proposes that, where a regulated entity does not safekeep private keys or other instruments enabling transfers of VAs on behalf of clients, but provides other forms of VA custodian service, the entity will be exempted from licensing/ registration, if the VA custodian service it provides is "wholly incidental" to

its principal business of providing the VA services. How "wholly incidental" is to be defined and the practices of the market will be important. If, for example, a VA dealer holds large volumes of VAs for clients for significant periods of time and is not subject to the regulatory requirements imposed on custodians, this could result in regulatory gaps. We are aware that the same term "wholly incidental" is used when referring to the exemption regime applicable to traditional regulated activities, hence it will provide greater certainty if it can be made clear the two refer to the same concept and what kind of criteria will be applied in this case.

We note that it is proposed that a stablecoin issuer licensed by the Hong Kong Monetary Authority that performs custody only in relation to the stablecoins it issues for its clients will also be exempted, notwithstanding that the stablecoin issuer safekeeps private keys. We are unclear why stablecoin issuers should be exempted altogether from having to comply with the requirements of custodians, unless, for example, they are licensed banks. Again, this would appear to create potential regulatory gaps. See also our comments on Q5 below.

Q2: For entities which do not safekeep private keys but arrange a third party to custody the client VAs or otherwise safekeep the private keys (such as a private fund trustee of a VA fund that delegates the safekeeping of private keys to a sub-custodian), should they be required to obtain a VA custodian service provider licence? Please explain your comments.

The question is not entirely clear. In the case of an entity that does not safekeep private keys but has custody of client VAs, this would appear to require the entity to obtain a VA custodian service provider licence or registration (unless, as discussed in Q1, the VA custodian service it provides is "wholly incidental" to its principal business of providing VA services), because it would already be caught by the definition in paragraph 2.13 of the CP. If an entity arranges for third party to have custody of client VAs or safekeep the private keys, then presumably that third party would require a licence or registration. If, on the other hand, the question is whether it should be necessary for a service provider to obtain a licence or registration, if that service provider does not have custody of private keys or similar instruments (assuming its custodian services are not merely incidental to other VA services) and, therefore, whether the definition in paragraph 2.13 should be further refined, our view is that it would still be necessary for the entity to have proper safeguards in place against the potential risk of loss of clients' VAs, caused by fraud or operational failures (such as system breakdowns, which could be due to, e.g., ransomware incidents, or other catastrophic losses of data, etc.). The entity should also be required to comply with requirements relating to AML/CFT and being "fit and proper". This would seem to suggest that such a service provider should be subject to a similar licensing or registration type of regime.

Finally, if the question is whether an entity that simply arranges for a third party to carry out all custodian-related services on behalf of clients should be required to obtain a licence or to be registered, assuming it is not marketing itself as a custodian and makes the extent of its intermediary role clear, then it should not be necessary for such an entity to obtain a licence. However, as indicated above, the third party service provider should be required to obtain a licence, if the imperative of investor protection is to be fulfilled.

Q3: Are there any entities which should be licensed or registered for providing VA custodian services but are not caught by the proposed definition? Please explain your comments.

Please see our responses to Q1 & Q2 above. In addition, while we agree with the CP's proposed scope and are not aware of additional entity types requiring licensing, we suggest clarifying that the definition covers the full lifecycle management of instruments enabling transfer of client VAs (e.g., wallet creation, backup, recovery, destruction upon end of service). We also recommend setting out principles to determine licensing obligations for distributed custody arrangements (e.g., Multi-Signature Protocol and Multi Party Computation), to aid consistent self-assessment by market participants.

Q4: For an entity ("Entity A") within a corporate group that safekeeps private keys whereby personnel from different group entities ("Group Entities") may also be involved in safekeeping the private key and/or signing a VA transaction:

(i) Should the Group Entities be required or not be required to obtain VA custodian service provider licences? Please explain your comments.

No, we consider the Group Entities should not be required to be licensed as VA custodian service providers, on the assumption that, in this case, Entity A would be a licensed VA custodian and should be responsible for the actions of other parties from Group Entities that may be involved (see our response to (iii) below). On the other hand, if more than one group entity is required to be licensed, we suggest consolidating the licence applications into a single submission to simplify the process while maintaining effective oversight.

(ii) If the answer to (i) is yes, please provide your comments on the types of personnel within the Group Entities which should obtain an individual licence ("Relevant Personnel"). What steps of the transactions should trigger this licensing requirement?

Not applicable

(iii) If the answer to (i) is no, please provide your comments on whether the Relevant Personnel of the Group Entities should be required to be accredited to Entity A (assuming Entity A will obtain a VA custodian service provider licence) and also obtain an individual licence. Please explain your comments.

Yes, we consider the Relevant Personnel should be accredited to Entity A and obtain an individual licence, because, in effect, these individuals will be authorised persons of Entity A to perform VA custody functions. In this regard, we suggest persons falling within the scope of Relevant Personnel should be those performing oversight duties (i.e., having more than a "clerical role") in the VA custodian workflow. Those oversight duties would include direct supervision and approving instructions, transactions and/or asset transfers (cf. paragraph 2.31 of the CP).

Q5: What are your comments on the proposed exemptions? Would there be other exemptions that are necessary?

As noted above, in paragraph 2.19 of the CP, it is proposed that, where a regulated entity does not safekeep instruments enabling transfers of VAs, but provides other forms of VA custodian service, the entity will be exempted from licensing/ registration, if the VA custodian service it provides is "wholly incidental" to its principal business of providing VA service. From an enforcement perspective, we suggest quantitative yardsticks/ limits be set to help determine whether the VA custodian service is wholly incidental, e.g., frequency of occurrence, proportion of VAs in custody to total VAs transacted, average duration of VAs held in custody, etc. See also our response to Q1.

Q6: Do you have any comments on the proposed scope of allowed activities?

No specific comments on this question, but, as regards, the eligibility requirements, it is stated in paragraph 2.26 of the CP that *"an applicant will have to appoint at least two responsible officers approved by the SFC (or two executive officers approved by the HKMA as the case may be) to assume the general responsibility of ensuring compliance with AML/CFT requirements and other regulatory requirements, and be held personally accountable in case of contravention or non-compliance of the requirements."* The paragraph then goes to state: *"All executive directors of a licensed VA custodian service provider must be made responsible officers upon approval by the SFC"*. Where a licensed VA custodian has a number of executive directors, in practice, is it expected that they will all assume the general responsibility of ensuring compliance with AML/CFT requirements, etc.? In the event of a breach, is it intended that they will all be held jointly and severally liable, or that it will be necessary to investigate the specific actions of each and every executive director in relation to the breach?

Q7: Do you have any comments on the types of VAs that a VA custodian service provider should not provide custodian services for?

No specific comments.

Q8: Do you have any comments on the scope of individual licence and engagement as relevant individuals for providing VA custodian service?

No. We consider the proposed scope is appropriate.

Q9: Should individuals with authority to approve or sign VA transactions be required to obtain a licence or be engaged as relevant individuals? If yes, what steps of the transactions should trigger this requirement?

Yes, we consider that such individuals should be required to be licensed or engaged as relevant individuals. We consider that receipt of any VAs (including private keys, etc.) into the VA repository (or "wallets") and withdrawal of any VAs from the VA repository should have the prior approval of licensed individuals or relevant individuals.

Q10: Do you think that licensed VA custodian service providers should be subject to the similar financial requirements as licensed corporations carrying on Type 13 regulated activity of providing depositary services for a relevant CIS? Do you think additional resources calibrated with scale of business or operations are required?

Yes, we consider that, for investor protection, it is appropriate to impose financial resources requirements on VA custodian service providers, and that the baseline requirement could follow that for a Type 13 regulated activity, which embodies characteristics similar to those of a VA custodian service.

Q11: Should other regulatory requirements be added to mitigate the risks of VA custodian services?

No specific comments.

Q12: What are your comments on the proposed transitional arrangement for the licensing regime for VA custodian service providers?

While we have no strong objection to the proposal for an open-ended licence or registration for a VA custodian service provider, given that these are “uncharted waters”, we suggest quality control procedures be implemented, e.g., mandating that a licensee or registrant be subject to a review of performance after, say, the first five years of operations and, for more effective investor protection, that a compliance review should be carried out on a cyclical basis after that. Given the crucial role of private keys and similar instruments in the safe custody of VAs, we agree with the proposed imposition of additional requirements on VA custodians holding private keys or similar instruments, as mentioned in paragraph 2.42 of the CP.

We have no strong view on the non-provision of a deeming arrangement to pre-existing VA custodian service providers, but, if this approach is adopted, we would suggest the need for adequate transitional support to be given by SFC to pre-existing service providers (e.g., providing a designated helpline for enquiries, and allowing sufficient time for them to effect any necessary changes in group structures, human resources and work processes).

Q13: Based on the “user-pays” principle, do you have any comments on requiring higher licensing application fees and annual fees for a VA custodian service provider licensed by or registered with the SFC (such as requiring fees in the same amounts as those for Type 3 regulated activity under the SFO or other higher amounts)?

Adopting the “user-pays” principle would seem to be a reasonable approach.

Q14: Do you agree that, for the purpose of protecting the investing public, persons not licensed by or registered with the SFC should not be allowed to actively market VA custodian services to the public of Hong Kong?

Yes, we agree with this proposal, but we suggest clarifying the position of unlicensed/ unregistered entities controlled by, or associated with, a licensed/ registered VA custodian, and whether, e.g., they are permitted to actively market the VA services of the licensee/ registrant.



Q15: Do you agree that the SFC and the HKMA should be provided with the proposed powers?

Yes, we agree with this proposal.

Q16: Do you agree with the proposed sanctions, which are comparable to those under the existing regulatory regimes for VATPs?

We agree with the proposed sanctions. In addition, as indicated in the response to Q14, above, we suggest clarifying the position of unlicensed/ unregistered entities controlled by, or associated with, a licensed/ registered VA custodian, such as whether the prohibitions apply to them and whether they would be liable for breaches of the requirements were they, for example, to actively market the VA services of a related licensee/ registrant, etc.

Q17: Do you agree that a review tribunal mechanism should be put in place to handle appeals against the decisions to be made by the SFC or the HKMA in implementing the licensing regime?

Yes, and we suggest that there should be one review tribunal for appeals against all VA-related licensing decisions.

Yours faithfully,

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