



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

29 August 2025

Our Ref.: C/CFC, M141414

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 Dealing in 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 Dealing in Virtual Assets (“VAs”) (“CP”).

We note that the CP is a development from the consultation on an earlier legislative proposal in 2024 of a licensing regime for providers of over-the-counter trading services of VAs. As the Institute submitted in that consultation, the CFC supports the initiative of the Government to widen the regulation of VA activities for the better protection of investors in Hong Kong. The CP is a logical step forward by proposing a refined legislative framework for regulating the dealing of VAs with reference to views expressed on the 2024 legislative proposal.

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 (including, e.g., avoiding the risk, highlighted by some market participants, of nullifying the benefits provided by the unique attributes of blockchain technology, namely, traceability and decentralization).

We set out below our comments on the specific questions.

Q1: Do you agree with the proposed definition and scope of VA dealing services? Are there any potential exemptions which you consider appropriate?

We agree with the proposed definition and scope, and do not propose any exemptions.

Q2: Do you have any comments on the proposed scope of allowed activities?

We consider the proposed scope of allowed activities to be appropriate.

Q3: If licensees or registrants providing VA dealing services are allowed to acquire or dispose of VAs for clients via non-SFC licensed VATPs or liquidity providers, what are your comments on the safeguards that should be put in place?

We consider the overriding principle should be that the standard of safeguards for non-SFC licensed VATPs should be comparable with the standard of safeguards for SFC-licensed VATPs. This would mean that non-SFC licensed VATPs should be subject to requirements concerning AML/CFT and other risk controls that are on a par with those mentioned in 2.24 and 2.25 of the consultation paper (in relation to SFC-licensed VATPs) and, in principle, confirmation of this should be obtained.

At the same time, we note that the diverging and evolving approaches towards virtual assets in different jurisdictions, and the uncertainties associated with the relevant regulations, means it may be difficult and/or costly to ascertain whether a non-SFC-registered VATP satisfies the requirement of being “subject to regulation in other jurisdictions”. Two examples are:

- i. In the United States (“US”), it is less than certain whether VAs should be subject to *Howey* test of whether they are securities and, should it be applicable, its application is asset-by-asset, inherently complex, and subject to judgement. Since these drive the applicable regulatory frameworks governing VATPs in the US, the licensees could have a daunting task to determine whether a US-based VATP is “subject to regulation” and by which regulator. If such a rule were to be implemented strictly, it could require asset-by-asset analysis in the context of the US law.
- ii. In many jurisdictions, VATPs are regulated by more than one regulator. For instance, in the US, VATPs are required to register with Financial Crimes Enforcement Network (“FinCEN”), which regulates AML, but registrations with other regulators are potentially necessary (e.g., Commodity Futures Trading Commission (“CFTC” and/or the Securities and Exchange Commission (“SEC”), depending on VAs offered). It would need to be made clear what level of due diligence and counterparty regulation would be considered adequate in such circumstances, and whether, for example, a VATP registered with FinCEN, but not with CFTC nor with SEC, or with only one of them, would provide an adequate safeguard. These matters should be explored further in the separate consultation referred to in paragraph 2.2 of the CP.

While further consultation with the legal community and market practitioners/operators is recommended, it would appear that the industry will benefit from more detailed guidance in this regard.

Q4: If licensees or registrants providing VA dealing services are required to hold client VAs via regulated VA custodians, what are your comments on a commercially viable and AML compliant operational flow to conduct VA dealing activities?

As regards AML compliance, this will be enforced by the SFC or the Hong Kong Monetary Authority, as appropriate, on the SFC-licensed/ registered dealers and custodians in Hong Kong, and Hong Kong licensed/ registered VA dealers should be required to confirm that any non-SFC licensed VATPs or liquidity providers that they deal with are regulated for AML compliance by an appropriate regulator in the host jurisdiction. As regards commercial viability, market practitioners/ operators will be in better position to comment.



Q5: Do you think the regulatory requirements proposed suffice in addressing potential ML/TF risks and offering adequate investor protection?

In order to better protect the investing public, we suggest that when licensees/registrants market new products to their clients, they should also be required to disclose whether they are receiving a commission and from whom.

Q6: Do you agree with the proposed transitional arrangement?

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. In addition, we suggest adequate transitional support be given by the 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).

Q7: Do you agree with the expedited licensing or registration arrangement?

We agree with the arrangement, in principle, but suggest a check (e.g., by way of a questionnaire) should be done to confirm that the conditions required to be met for the previous licensing/ registration of the regulated entity are still being complied with in full.

Q8: Based on the “user-pays” principle, do you have any comments on aligning the licensing application fee and annual fee for a licensee or registrant providing VA dealing services with those for Type 1 regulated activity under the SFO?

We consider it appropriate to adopt the “user-pays” principle and align the subject fees with those for Type 1 regulated activity.

Q9: 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 dealing 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 dealer, and whether they are permitted to actively market the VA services of the licensee/ registrant.

Q10: Do you agree that the SFC and the HKMA should be provided with the proposed powers?

Yes.

Q11: Do you agree with the proposed sanctions, which are comparable to those under the existing regulatory regimes for VATPs?

Yes, and, as indicated in the response to Q9 above, we suggest clarifying the position of unlicensed/ unregistered entities controlled by, or associated with, a licensed/



registered VA dealer, such as whether the prohibitions apply to those entities, 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.

Q12: 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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Hong Kong Institute of
Certified Public Accountants
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