

The FSTB issued the Policy Statement on Development of Virtual Assets in Hong Kong

November 2022

Introduction

On 31 October 2022, the Financial Services and the Treasury Bureau (“**FSTB**”) published a [Policy Statement](#) on Development of Virtual Assets (“**VA**”) in Hong Kong (the “**Policy Statement**”) setting out its vision, approach and future steps to facilitate a “sustainable and responsible” development of the VA sector in Hong Kong. Below are some key takeaways for participants in the VA sector in Hong Kong to note.

1. Recognising VA is here to stay

The FSTB has emphasised that it recognises the potentials of VA (especially digital ledger technologies (“**DLT**”), Web3.0 and the Metaverse), and is prepared to adjust the regulatory regime to create a vibrant ecosystem for VA in Hong Kong.

2. “Same activity, same risks, same regulation” principle

The Government will continue to adopt the “same activity, same risks, same regulation” principle to mitigate VA-related risks on financial stability, consumer protection and AML/CFT financing in line with international standards.

3. VA-related products for retail investors

The Securities and Futures Commission (“**SFC**”) will conduct a public consultation on how retail investors may be given a suitable degree of access to VA under the current VA service providers licensing regime (the “**VASP Licensing Regime**”). While this is a welcome and material change to the existing regime (which allows access to Professional Investors only), we expect that the “universe” of permissible VA to be quite restrictive (at least to begin with). We also expect that the criteria for admission will depend on factors such as liquidity and market capitalisation (among others).

In addition, and as foreshadowed in the Policy Statement, the SFC published a [circular](#) on the possibility of authorising exchange traded funds that obtain exposure to VA primarily through futures contracts (“**VA Futures ETFs**”) in Hong Kong on the same day. We will be publishing a more detailed paper on this circular shortly, but the salient points to note include:

- The SFC is prepared to accept applications for authorisation of VA Futures ETFs.
- VA Futures ETFs seeking SFC authorisation must meet applicable requirements in the Overarching Principles Section and Code of Unit Trust and Mutual Funds in the SFC Handbook.
- VA Futures ETFs must also comply with additional authorisation requirements which include the following:
 - (a) the management company must have (i) a good track record of regulatory compliance and (ii) at least three years’ proven track record in managing ETFs;

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- (b) VA Futures must be traded on conventional regulated exchanges, however, only Bitcoin futures and Ether futures traded on Chicago Mercantile Exchange will be accepted initially;
- (c) the management company will need to adopt an active investment strategy;
- (d) the net derivative exposure of a VA Futures ETF cannot exceed 100% of the ETF's total net asset value;
- (e) the key facts statements must contain disclosure of the investment objective and key risks associated with investment in VA futures;
- (f) intermediaries providing services with respect to VA Futures ETFs are subject to the Code of Conduct for Persons Licensed by or Registered with the SFC and its related guidelines;
- (g) the management company is expected to carry out extensive investor education before launching the VA Futures ETF; and
- (h) other additional requirements the SFC may add as deemed appropriate.

4. Property rights of tokenised assets

The Government is open to reviewing the property rights attached to tokenised assets, as well as the legal enforceability of smart contracts.

5. Stablecoins

Following the issuance of the Discussion Paper on Crypto-assets and Stablecoins in January 2022, the Hong Kong Monetary Authority (the “**HKMA**”) will announce (i) the consultation outcome in relation to the proposed risk-based and proportionate regime for payment-related stablecoins and (ii) its next steps in due course.

6. Pilot projects

The Government is conducting the following pilot projects:

NFT issuance for HKFTW 2022	In the Hong Kong Fintech Week (“ HKFTW ”) in 2022, the FSTB and its investment promotion department, InvestHK, launched the pilot project to use non-fungible token (“ NFT ”) as a proof of attendance for attendees of the HKFTW.
Green bond tokenisation	The HKMA is working on a pilot project to tokenise the government green bond issuance for subscription by institutional investors.
e-HKD	The HKMA will prepare the ground for the launch of a retail Central Bank Digital Currency in Hong Kong – e-HKD, via a “three rail approach”, exploring by phases (i) the technology and legal foundations, (ii) use cases and designs, and (iii) the timeline for launching e-HKD.

7. VASP Licensing Regime

Lastly, the FSTB has explained how the latest VASP Licensing Regime can help licensed VA exchanges to access a wider net of investors in Hong Kong, namely by offering additional status and credibility and opportunities to partner with financial institutions to offer VA dealing services to clients.

Conclusion

It is clear from the tenor of the Policy Statement that Hong Kong is very much “open for business” when it comes to VA. Hong Kong is already ahead of the competition when it comes to the sophistication and coverage of its VA regulatory framework. The various initiatives announced recently signal a significant expansion and harmonisation of that framework across the entire ecosystem. And, if implemented well, these initiatives will put Hong Kong in the hot seat as a regional crypto hub. We are very excited about how this will all play out over the course of the next year or so.

Let's talk

For a deeper discussion of how this impacts your business, please contact us.

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