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Government attitude and definition

Government attitude

Over the course of the last three years, Hong Kong's regulators have been expanding their jurisdiction and remit over activities in relation to cryptocurrencies with a view to not only offering better investor protection, but also building a harmonised regulatory framework across the entire ecosystem such that Hong Kong becomes a hub for cryptocurrency activity in the region.

In 2018, the Securities and Futures Commission (the "**SFC**") (Hong Kong's securities regulator) introduced a compulsory licensing regime for the management of portfolios of virtual assets ("**VAs**") in circumstances where managers that were already licensed for traditional securities management propose to include VAs in their portfolio in excess of 10% or more of the gross value of their assets under management ("**AUM**").

At the same time, recognising that the limit of its jurisdictional reach only extended to assets that are defined as "securities" under the Securities and Futures Ordinance (Cap. 571) (the "**SFO**") (and that many VAs do not fall into this category but are, instead, more likely to be "utility tokens"), the SFC also introduced an "opt-in" regime for managers not previously licensed for traditional asset management, who now want to become VA managers and regulated by the SFC.

In 2019, the SFC further launched an opt-in licensing regime (the "**Opt-in Regime**") for virtual asset service providers ("**VASPs**") looking to operate VA exchanges in Hong Kong. And, most recently in June 2022, the SFC announced a mandatory licensing regime for VASPs who seek to (a) hold client assets, and (b) provide services (by electronic means) whereby (i) offers to sell or purchase VAs are regularly made or accepted, or (ii) persons are regularly introduced to each other for the purpose of negotiating or concluding sales or purchases of VAs (in each case in the manner that results in a binding transaction). Such mandatory licensing regime is expected to come into force in 2023 upon the passing of the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022 (the "**Amendment Bill**").

In line with the expanding net of regulations over cryptocurrency activity and services, there has been an increasing number of participants (managers, traders, exchanges, etc.) applying for and receiving licences from the SFC. To date, the SFC has issued seven Type 9 VA licences (for management of a portfolio of 100% VAs), and at least one hybrid licence for a Type 9 asset manager to manage a fund of crypto funds.

In January 2022, the SFC and the Hong Kong Monetary Authority ("**HKMA**") (Hong Kong's central banking institution) issued a joint circular (the "**Joint Circular**") expanding the reach

of regulation to various other types of regulated activity involving VAs, including distribution activities, dealing services and advisory services, and requiring these service providers to comply with additional requirements, such as ensuring suitability, providing risk-related disclosures and conducting proper due diligence when providing services in relation to VAs.

From all of the above, it is fair to say that government attitude in Hong Kong to cryptocurrency activity is certainly welcoming and inclusive, although it should be noted, at this stage, that across all the different types of regulatory licences that have been issued so far (and in respect of all the different regimes), the provision of services is restricted only to "professional investors".[1] Importantly, regulated participants are not allowed to provide cryptocurrency-related services in (or into) Hong Kong to the retail public, and to date there are no retail products that have been approved for retail consumption. We expect this trend to continue at least in the short to medium term.

Definition

Under Hong Kong law, cryptocurrencies are not legal tender regulated by the HKMA and do not qualify as money. There is currently no cryptocurrency that is backed by the Hong Kong government. In the Joint Circular, the SFC and the HKMA adopted the definition in the SFC's Position Paper published on 6 November 2019, referring broadly to "VAs" as digital representations of value that may be in the form of:

(i) digital tokens (such as utility tokens, stablecoins or security- or asset-backed tokens); or
(ii) any other virtual commodities, crypto assets or other assets of essentially the same nature,

irrespective of whether or not they amount to "securities" or "futures contracts" as defined under the SFO. However, digital representations of fiat currencies issued by central banks were expressly excluded from the definition of "VAs".

In the Amendment Bill, "VA" is defined in more detail as a digital representation of value that:

(a) is expressed as a unit of account or a store of economic value;
(b) (i) functions (or is intended to function) as a medium of exchange accepted by the public (1) as payment for goods or services, (2) for the discharge of a debt, or (3) for investment purposes, or (ii) provides rights, eligibility or access to vote on the management, administration or governance of any cryptographically secured digital representation of value; and
(c) can be transferred, stored or traded electronically (e.g. Bitcoin or other stablecoins).

Such definition is consistent with the one adopted by the Financial Action Task Force (the "**FATF**") and will include cryptocurrencies.

The Amendment Bill has also explicitly carved out, from the definition of VA, a digital representation of value that (i) is issued by central banks, (ii) constitutes securities or a futures contract that are already regulated under the SFO, (iii) constitutes a stored value facility, or (iv) is a limited purpose digital token ("**LPDT**"). In the Financial Services and the Treasury Bureau's (the "**FSTB**") Consultation Conclusions, LPDTs are defined as assets that are non-transferable, non-exchangeable and non-fungible in nature. In line with the FSTB's interpretation, the Amendment Bill further provides that LPDTs include (i) customer loyalty or reward points, (ii) in-game assets, and (iii) tokens similar to (i) and (ii) that are not intended to be convertible into money or another medium of exchange accepted by the public.

Importantly, in a circular[2] issued on 1 November 2018, the SFC drew the distinction between utility and security tokens (see further below).

Stablecoins

Stablecoins are generally considered a subset of VAs, and are also currently not legal tender in Hong Kong.

In the Discussion Paper on Crypto-assets and Stablecoins[3] published in January 2022, the HKMA expressed the need for stablecoins to be appropriately regulated before they are marketed to the public in Hong Kong, as their "pegging" characteristics may create the perception to investors that they have higher potential for being incorporated into the mainstream financial system. The HKMA intended to focus initially on activities related to payment-related stablecoins, particularly asset-linked stablecoins (e.g. to a single fiat currency). As such, certain stablecoin-related activities carried out by an entity incorporated in Hong Kong (e.g. facilitating the redemption of stablecoins and executing transactions in stablecoins) are likely to be considered regulated activities and may require a licence granted by the HKMA.

Cryptocurrency regulation

In Hong Kong, cryptocurrencies are considered a form of VA that are generally categorised either as security tokens or non-security tokens (e.g. utility tokens). Currently, only security tokens are regulated in Hong Kong by the SFC.

Security tokens

Security tokens are also known as "tokenised securities". Depending on the extent and type of activities, activities in relation to these security tokens may be considered "regulated activities" that can only be carried out with the relevant licence(s) issued by the SFC (e.g. dealing in and advising on security tokens).

Cryptocurrencies will be deemed security tokens if they fall within the definition of "securities" under the SFO. In its Statement on initial coin offerings (5 September 2017),[4] the SFC further clarified that digital tokens (including any cryptocurrencies) may be considered "securities" if they:

- represent equity or ownership interests in a corporation;
- create or acknowledge a debt or liability owed by the issuer;
- pay regular returns to investors that amount to dividend or interest; or
- give their holders rights akin to that of a creditor or a shareholder (e.g. voting rights or the right to participate in the distribution of the corporation's surplus assets upon winding up).

Therefore, most stablecoins and cryptocurrencies (e.g. Bitcoin and Ether) in the market are not regarded as securities by the definition under the SFO.

Non-security tokens

In contrast, cryptocurrencies other than security tokens are considered "non-security tokens" or "virtual commodities" and are currently unregulated.

Opt-in Regime for VA trading platforms

In spite of this, the SFC does offer the Opt-in Regime for centralised VA trading platforms trading at least one security token to apply for Type 1 and Type 7 licences. This Opt-in Regime is voluntary, with the idea that participants who choose to submit themselves to SFC oversight can then say they are regulated by a reputable regulator in the APAC region. However, the Opt-in Regime is quite restrictive as, among other things, participants need to find at least one security token to list, and can only offer their services to "professional investors" as defined under the SFO.

Upcoming Mandatory VASP Licensing Regime

On 24 June 2022, the Hong Kong government published the Amendment Bill in the Gazette, which proposed a mandatory licensing regime for VA exchanges (the "**Mandatory VASP**

Licensing Regime"). Under the Mandatory VASP Licensing Regime, a person operating a VA exchange in (a) Hong Kong, or (b) elsewhere but actively markets to the Hong Kong public, will be regarded as carrying out a "regulated activity" for which a licence from the SFC is required.

Unlike the Opt-in Regime, which only regulates trading platforms trading security tokens, the Mandatory VASP Licensing Regime expands the SFC's jurisdiction to cover the trading of non-security tokens. Under the Mandatory VASP Licensing Regime, a licence must be obtained insofar as it involves the trading of VAs (as defined above) even if they are non-security tokens.

Moreover, licensed VASPs can only provide services to "professional investors" and not retail investors. According to the Securities and Futures (Professional Investor) Rules, VA holdings do not count towards the portfolio required for individual investors to qualify as a "professional investor". Therefore, licensed VASPs are prohibited from offering services to investors who only hold VAs in the equivalent amount that meet the portfolio threshold for "professional investors". Nevertheless, the regulators have emphasised that they will continue to review their position on the service offering restriction on retail investors as the market becomes more mature.

In line with the existing licensing regime for carrying out regulated activity under the SFO, the Mandatory VASP Licensing Regime also imposes certain baseline requirements on potential applicants. For instance, applicants must: (1) have sufficient presence in Hong Kong; (2) appoint at least two responsible officers ("**ROs**") to ensure compliance with the anti-money laundering ("**AML**") and counter-terrorist financing ("**CTF**") requirements under Hong Kong's Anti-Money Laundering and Counter-Terrorist Financing Ordinance (the "**AMLO**"), and appoint at least one of the ROs as an executive director of the applicant; and (3) meet the fit-and-proper test.

On granting a VASP licence, the SFC may impose any conditions on the licence, including but not limited to (a) financial resources, (b) knowledge and experience, (c) risk management policies and procedures, (d) AML/CTF policies and procedures, (e) management of client assets, (f) soundness of business, (g) financial reporting and disclosure, (h) VA listing and trading policies, (i) prevention of market manipulation and abusive activities, (j) avoidance of conflicts of interests, (k) keeping of records and accounts, and (l) cybersecurity.

Upon passing of the Amendment Bill, the Mandatory VASP Licensing Regime will take effect on 1 March 2023 (the "**Effective Date**") with transitional arrangements available.

VA management

In October 2019, the SFC introduced a new licensing regime for businesses directly managing a portfolio of VAs (the "**Type 9 VA Licensing Regime**").

Under the Type 9 VA Licensing Regime, managers who currently hold a regular Type 9 (Asset Management) licence ("**Type 9 Licence**") ("**Type 9 Managers**"), and who seek to directly manage a portfolio of VAs that account for 10% or more of the portfolio's gross asset value ("**GAV**"), must expand their licences to a Type 9 VA licence with additional terms and conditions[5] (the "***Pro Forma* T&Cs**") imposed on their existing Type 9 Licences. The *Pro Forma* T&Cs provide for, among other things, general principles relating to VA fund management, organisation and management structure of VA fund managers, management rules (e.g. best execution, prohibition on market misconduct, order allocation, participation in initial offerings, cross trades, risk management, leverage, liquidity management), custody of portfolio assets and client monies, record keeping, audits, portfolio valuation, marketing activities, fees and expenses, and reporting obligations to the SFC.

However, Type 9 Managers managing a portfolio of VAs that account for less than 10% of the portfolio's GAV will only need to notify the SFC that they intend to manage such VAs (without requiring the SFC's consent).

New managers who wish to manage a portfolio of pure VAs (regardless of whether their portfolios consist of any "securities") may also choose, but are not required, to apply for a Type 9 VA licence and subject themselves to the jurisdiction of the SFC.

Managers with a Type 9 VA licence ("**Type 9 VA Managers**") are subject to different restrictions imposed by the SFC. For instance, Type 9 VA Managers can only manage VA portfolios for "professional investors". There is also a minimum liquid capital requirement of HK$3 million and minimum paid-up capital requirement of HK$5 million for Type 9 VA Managers. Following the Effective Date of the Amendment Bill, Type 9 VA Managers are expected to choose licensed VASPs if they wish to trade VAs through trading platforms.

In addition, Type 1 (Dealing in Securities) licensed corporations ("**Type 1 Intermediaries**") who manage funds solely investing in VAs that are not "securities" or "futures contracts" and distribute the same in Hong Kong must also adhere to the *Pro Forma* T&Cs[6] on their licences.

Crypto fund of funds

For new managers who wish to manage a crypto fund of funds, the SFC has a "halfway house" regime, which does not require the incorporation of *Pro Forma* T&Cs but imposes requirements in addition to that of a regular Type 9 Licence, such as restricting the provision of services to "professional investors" only and prohibiting managers from holding "client assets" as defined under the SFO.

Sales regulation

Please refer to "Cryptocurrency regulation" above for the current and future regulatory framework on trading cryptocurrencies on exchanges and the licensing regime for management of funds in relation to VAs.

Distribution of VAs

In the Joint Circular, the SFC and the HKMA confirmed that VA products are likely to be considered "complex products" under the SFO. As such, distribution of any VA products must comply with the SFC's guidelines, such as (a) ensuring suitability, (b) providing specific risk-related disclosures, and (c) conducting proper due diligence on the product (including their risks and features, the investor target and the regulatory status). When distributing VA products, intermediaries must ensure their clients have sufficient net worth to be able to assume the risks and bear the potential losses of trading VA products (the "**Sufficient Net Worth Requirement**"), and where VA products are offered on online platforms, there are appropriate access rights and controls to ensure compliance with selling restrictions.

For VA derivatives, intermediaries must comply with the additional requirements under paragraphs 5.1A and 5.3 of the Code of Conduct for Persons Licensed by or Registered with the SFC (such as the Sufficient Net Worth Requirement and the client's knowledge requirement, both in relation to "derivatives" specifically).

Overseas VA non-derivative exchange traded funds ("**ETFs**") or other ETFs that invest directly in VAs are also considered complex products in the Joint Circular and must only be offered to "professional investors" subject to suitability requirements. However, a limited number of overseas VA-related derivative products that are traded on SFC-specified exchanges and have been approved for retail distribution by their relevant home regulators may be distributed to retail investors without the need for complying with the suitability requirements.

Nevertheless, when intermediaries distribute VA products that are complex products to individual "professional investors", they must (a) ensure that the clients have sufficient knowledge about VA investments ("**VA Knowledge Test**"), and if the client does not, (b) proceed only (i) when it is in the client's best interests, and (ii) when the intermediary has provided relevant training to the client.

Finally, where an intermediary is providing financial accommodation in relation to VA products, it must ensure that the client has the financial capacity to meet obligations arising from leveraged or margin trading in such VA products.

Dealing in VAs

Dealing services in relation to VAs that are "securities" can only be provided by Type 1 Intermediaries. However, the SFC has stated that the services of dealing in non-security VAs fall outside the SFC's jurisdiction, implying that such services may be provided by non-intermediaries.

When providing VA dealing services, Type 1 Intermediaries must only partner with SFC-licensed VA trading platforms and must not allow clients to withdraw or deposit fiat currencies from their accounts held by the intermediaries. Type 1 Intermediaries must also only provide VA dealing services to "professional investors" who are existing clients to whom the Type 1 Intermediary is providing Type 1 dealing services. When they act as introducing agents to SFC-licensed platforms, Type 1 Intermediaries should only introduce "professional investors" and cannot relay order or hold client assets.

In addition, Type 1 Intermediaries must comply with Part I of the terms and conditions set out in Appendix 6 to the Joint Circular,[7] which impose some general requirements (such as record keeping, audit, AML/CTF and ongoing reporting obligations) and some specific requirements in relation to VAs, which require intermediaries to:

(i) maintain excess liquid capital equal to 12 months of their actual operating expenses calculated on a rolling basis;
(ii) establish omnibus accounts for clients designated as trust or client accounts on SFC-licensed VA platforms;
(iii) have client agreement with specific disclaimers and disclosures in place;
(iv) hold VAs on trust in segregated accounts on SFC-licensed platforms; and
(v) hold client money in segregated bank accounts.

Taxation

Hong Kong adopts a territorial principle of taxation, where only a person carrying on a business in Hong Kong and deriving profits sourced in Hong Kong from that business are liable to Hong Kong profits tax (at a tax rate of 15% for unincorporated businesses and 16.5% for corporations). It is characterised by key features such as no turnover tax (e.g. value-added tax, goods and services tax), no capital gains tax, generally no tax on dividend income, and no withholding tax on dividends and interest. From 1 January 2023, four types of offshore passive income, namely dividends, interest, disposal gains in relation to shares or equity interest, and income from intellectual property ("**IP**"), received in Hong Kong will continue to be non-taxable only if certain conditions (e.g. economic substance requirement for non-IP income, nexus approach for IP income) are met.

Taxation of cryptocurrencies

While no specific laws are in place on the taxation of cryptocurrencies, the Inland Revenue Department (the "**IRD**") issued the revised Departmental Interpretation and Practice Notes

No. 39 ("**DIPN 39**") in March 2020, which provides guidance on the digital economy, electronic commerce and digital assets. The following are highlights of the section on the taxation of digital assets:

- The profits tax treatment of digital assets depends on their categorisation (payment token, security token or utility token).
- The proceeds of an initial coin offering are taxed by following the attributes of the token that is issued. If security tokens are issued, proceeds would generally be considered capital in nature. If utility tokens are issued, proceeds would generally be taxable if found to be sourced in Hong Kong.
- Digital assets held for long-term investment purposes may be considered capital in nature, in which case their disposal would result in capital gains (which are not taxable in Hong Kong). Whether digital assets are held for long-term investment purposes or as trading stock depends on the facts and circumstances with reference to well-established principles such as the "badges of trade", and the intention at the time of acquisition is always relevant.
- New cryptocurrencies received in the course of a cryptocurrency business (e.g. airdrops and blockchain forks) are to be regarded as receipts of the business and assessed accordingly.
- Cryptocurrency received by an employee as employment income should be reported at its market value and subject to the same salaries tax treatment as regular remuneration.

As the revised DIPN 39 was issued in 2020, it does not cover issues arising from more recent developments such as decentralised finance ("**DeFi**"), staking and non-fungible tokens ("**NFTs**"). As it generally takes longer for the IRD to update a DIPN, future guidelines may potentially be provided in the form of frequently asked questions ("**FAQs**") on the IRD's website.

VA funds and the Unified Fund Exemption

The list of qualifying assets included in the Unified Fund Exemption regime includes securities and other types of financial products. As most digital assets are not considered securities, these would not be qualifying assets for purposes of the exemption.

VA borrowing and lending

DIPN 39 does not address VA borrowing and lending. As cryptocurrency is generally not "stock", relief for stock borrowing and lending is not applicable. Also, as cryptocurrency is not "money", provisions in relation to "interest" that make reference to money are not applicable.

Money transmission laws and anti-money laundering requirements

Money transmission laws

There is currently no specific legislation in Hong Kong on the transfer of cryptocurrencies between private parties. However, if the transmission of cryptocurrencies includes the conversion into fiat currencies in substance, such transmission may be deemed a money remittance transaction, which will be subject to the AMLO. According to Section 3(1) Schedule 2 of the AMLO, a financial institution must carry out customer due diligence ("**CDD**") measures in relation to a customer for a wire transfer equal to or exceeding an aggregate value of HK$8,000, whether carried out in a single operation or several operations that appear to the financial institution to be linked. Records relating to CDD and transactions should be kept for at least five years from the date of transaction.

Anti-money laundering requirements

The AMLO in Hong Kong applies to financial institutions (including HKMA-authorised institutions (i.e. banks), SFC-licensed corporations, licensed insurance companies, stored

value facility issuers and money service operators) and designated non-financial businesses and professions (for example, lawyers, certified public accountants, licensed estate agents, and trust and company services agents). Thus, all SFC-licensed entities conducting regulated activities are subject to the AML/CTF obligations of the AMLO, which also include licensed VASPs under the new regime as mentioned above. The regulated bodies should also ensure compliance with the FATF's latest recommendation.

On the other hand, fund managers that manage funds investing only in cryptocurrencies that are not securities or futures contracts will not require a Type 9 Licence because this will not be considered a regulated activity. Since they are not licensed entities, they will not be subject to AMLO requirements. This is also reinforced by the Statement[8] in relation to "Bitcoin" and Money Service Operator Licence issued by the Money Service Supervision Bureau of the Customs and Excise Department (the "**CED**") in April 2014, in which the CED stated that, for the purposes of the AMLO, Bitcoin or other similar virtual commodities are not "money" and fall outside its jurisdiction.

Promotion and testing

On 29 September 2017, the SFC issued a circular[9] to announce the establishment of the SFC Regulatory Sandbox (the "**Sandbox**"). The aim of the Sandbox was to provide licensed corporations and startup firms with a confined regulatory environment in which to operate regulated activities under the SFO before any financial technology ("**Fintech**") is used on a fuller scale.

Initially, the SFC invited interested VASPs that had already obtained a Type 1 (Dealing in Securities) licence together with a Type 7 (Automatic Trading Services) licence to participate in the Sandbox. The SFC then closely monitored the performance of the qualified platform operator for a minimum of 12 months, after which they could apply to leave the Sandbox so as to be regulated in the same way as other licensed providers of automated trading services operating outside of the Sandbox. During the 12-month period, the VASP also had to list at least one VA token that had features of a "security" as defined under the SFO (that is, a "security token"). OSL Digital Securities Limited became the first participant to successfully take part in this sandbox regime and became the first SFC-licensed VA exchange in Hong Kong.

Similarly, the HKMA launched the Fintech Supervisory Sandbox on 6 September 2016 to facilitate the pilot trials of Fintech and other technology initiatives of authorised institutions before they are launched on a fuller scale.

Ownership and licensing requirements

Currently, there is no restriction on businesses or individuals simply owning cryptocurrencies, for investment or otherwise. Of note is that cryptocurrency ownership is subject to the laws and regulations in relation to digital assets in force in Hong Kong as set out above – and this is especially so where VAs also amount to "securities" as defined under the SFO (please see above).

Mining

There is currently no regulation on the mining of cryptocurrencies in Hong Kong. However, due to the scarcity of land in Hong Kong, there are certain restrictions on land use when leasing industrial buildings for the set-up of data centres or cryptocurrency mining centres

(depending on the scale of the operation). Miners may be required to apply for a lease modification or a temporary waiver if such proposed use is not yet permitted. Moreover, since mining activity is typically conducted by computers running continuously and will require an intensive electric power supply, miners should ensure that the building in which they are operating is in compliance with the Buildings Energy Efficiency Ordinance (Cap. 610). Considering the relatively high operating cost in Hong Kong, it will be more cost effective for crypto-mining operations to be held in environmentally friendly mining sites in North America and Asia.

Border restrictions and declaration

There is no obligation to declare cryptocurrency holdings when passing through Hong Kong Customs. According to the Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance (Cap. 629), for any person arriving in Hong Kong at a specified control point and in possession of a large quantity of currency and bearer negotiable instruments ("**CBNIs**") of a total value of more than HK$120,000, a written declaration must be made to a Customs officer. However, since cryptocurrency is not considered a note or coin that is legal tender in Hong Kong, nor is it a negotiable instrument that is (1) in bearer form, (2) endorsed without any restriction, (3) made out to a fictitious payee, (4) in a form under which the title of it passes on delivery, or (5) signed but does not state a payee's name under the definition of "CBNI", it would appear unlikely to be mandatory to declare cross-border cryptocurrency holdings.

Reporting requirements

There is no reporting requirement for cryptocurrency payments in Hong Kong.

The CDD measures as required under the AMLO will only be triggered if there is an exchange of fiat currency of an amount equal to or above HK$8,000. As mentioned in "Money transmission laws" above, financial institutions should retain records relating to CDD and transactions for at least five years from the date of transaction and report any suspicious transactions.

Estate planning and testamentary succession

Under Hong Kong law, all of a deceased's property will pass to the beneficiaries according to a valid will made pursuant to the Wills Ordinance (Cap. 30) or, in the absence of a will, be distributed in accordance with the Intestates' Estates Ordinance (Cap. 73). Inheritance tax was abolished in 2006.

In general, property can be categorised as (i) movable, (ii) immovable, (iii) tangible, or (iv) intangible property. The rules of determining the governing law of succession will differ depending on the category in which the relevant property falls.

The Hong Kong courts have recognised cryptocurrency as a form of property since proprietary remedies were granted in a fraud case involving cryptocurrency.[10] As such, the treatment of cryptocurrency upon an owner's death is likely to follow the general succession rule in Hong Kong applicable to all other property as discussed above.

In line with the other common law jurisdictions, cryptocurrency, as a type of VA, is likely to be treated as intangible property due to its nature of being "an identifiable thing of value",[11] such that the law of the jurisdiction in which the cryptocurrency is located would not apply (in contrast with immovable property).

Nevertheless, thorough estate planning should be carried out to ensure that the value of cryptocurrency can be transferred upon the user's death (since funds in the crypto wallet may be irrevocably lost when hard drives are misplaced or private keys not safely kept).

* * *

Endnotes

1. According to Part 1 of Schedule 1 to the SFO and the Securities and Futures (Professional Investor) Rules, "professional investors" include classes of persons that can be broadly categorised into (1) institutional professional investors (including SFC-licensed or SFC-registered institutions, funds, financial institutions, insurance companies and recognised exchange companies), (2) corporate professional investors (including (i) corporations and partnerships with a portfolio of at least HK$8 million or total assets of at least HK$40 million, (ii) investment holding subsidiaries of "professional investors", and (iii) trust corporations), and (3) individual professional investors who have a portfolio of at least HK$8 million.
2. SFO/IS/061/2018.
3. https://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2022/20220112e3a1.pdf.
4. https://www.sfc.hk/en/News-and-announcements/Policy-statements-and-announcements/Statement-on-initial-coin-offerings.
5. *Pro Forma* terms and conditions for licensed corporations that manage portfolios that invest in VAs, published by the SFC in October 2019.
6. Please refer to the "Cryptocurrency regulation – VA management" section above for a summary of the *Pro Forma* T&Cs.
7. "Licensing or registration conditions and terms and conditions for licensed corporations or registered institutions providing virtual asset dealing services and virtual asset advisory services" published by the SFC in January 2022.
8. https://www.msoa.hk/docs/circulars/20140426/Statement%20on%20Bitcoin%20&%20MSO%20Licence%20(English).pdf.
9. https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=17EC63.
10. *Nico Constantijn Antonius Samara v Stive Jean Paul Dan* [2022] HKCFI 1254.
11. *B2C2 Ltd v Quoine Ptd Ltd* [2019] SGHC (I) 03.

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Gaven is Head of Investment Funds at Tiang & Partners, an independent Hong Kong law firm that closely collaborates with the global PwC network.

In addition to working on a large number of traditional hedge and PE fund launches, Gaven is a pioneer in the crypto fund formation and regulatory advice space, having acted for the VSFG group (Arrano Capital) in getting Hong Kong's first Type 9 VA licence, and before that, Diginex in obtaining Hong Kong's first Type 9 (Asset Management) licence for managing a fund of crypto funds. In addition to his regulatory work, Gaven has also acted as lead international counsel for a large number of managers in setting up crypto funds, including clients such as the Spartan group, Moonvault, Anduril and IDEG.

Gaven is listed as an "Up and Coming" lawyer in "Investment Funds" by *Chambers Asia-Pacific*, and a recommended individual in "Investment Funds" by *The Legal 500 Asia Pacific* and "Private Funds – Formation" by *Who's Who Legal*.

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Peter is a Partner in PwC Hong Kong and has been working as part of PwC's core crypto advisory team since 2017. He is a keen believer that recent developments in NFTs, blockchain technology and AR/VR will remake the internet and open up game-changing value for participants. He has significant experience of advising companies in the blockchain and digital assets sector and has a particular interest in the regulatory and taxation challenges that arise from this new technology.

Peter's clients include a number of major crypto spot and derivative exchanges, custodians, token issuers, crypto borrowing and lending providers and crypto funds, as well as NFT marketplaces, play-to-earn games and NFT creators. More recently, Peter was a key driver of PwC HK's acquisition of virtual land in the Sandbox, and has used the experience to learn for himself the issues that companies face when entering the open metaverse.

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Adrian is an Associate Director in the PwC crypto team based in Hong Kong. He has five years of experience in the digital assets space, acting as the first legal counsel of Eqonex and then helping set up the crypto regulatory function at Worldpay by FIS. Prior to that, Adrian was a finance and private equity lawyer in international law firms in Hong Kong and New York, where he is a member of the NY Bar.

During his career, he has advised numerous institutions on a wide range of legal and regulatory matters. He also advises governments on their regulatory frameworks and digital assets initiatives.

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GLI GLOBAL LEGAL INSIGHTS