

SFC regulatory framework for virtual asset services providers in Hong Kong – Are you ready?

June 2023

Introduction

The virtual asset sector in Hong Kong is experiencing rapid development, buoyed by the government's supportive stance in fostering a vibrant ecosystem for virtual assets within the city. In response to several collapses and market shocks as well as an increasing number of traditional financial institutions entering the digital assets space, there has been a flight to quality among market participants. With the Hong Kong Financial Services and Treasury Bureau Policy Statement and regulatory updates, Hong Kong continues to position itself as a hub for digital assets, even as certain other jurisdictions appear to be taking a step back from embracing the same. The Hong Kong market is poised to become more mature with more sophisticated players and a better regulatory environment.

The Securities and Futures Commission ("SFC") has introduced a number of different regulatory rules and guidelines for different types of virtual asset services providers. These include provisions that will allow retail investors to access SFC-regulated services providers (e.g. Virtual Asset Trading Platforms) for a limited range of virtual assets - thereby creating numerous business opportunities and stimulating continuous market growth in the virtual asset sector. For this publication, we have excluded Virtual Asset Futures Exchange Traded Funds used for accessing exposure to Bitcoin ("BTC") and Ethereum ("ETH").

For companies interested in venturing into the virtual asset space, there are several options that may be considered under the SFC regulatory regime:

- Virtual Asset "Broker / Distributor" ("**VA Dealing**")
- Virtual Asset "Trading Platform" ("**VATP**")
- Virtual Asset "Management" ("**VA Management**")
- Virtual Asset Advisory ("**VA Advisory**")

In this publication, we provide a summary of the virtual asset regulations in Hong Kong and outline how we can support you throughout your journey in the virtual asset sector. As a starting point, it is important to note that with the exception of the licences for operating a VATP (which are compulsory regardless of whether the exchange will only allow for trading pure VA or securities VA), the licensing regime for VA Dealing and VA Advisory/Management are "opt-in" regimes, meaning that:

- If an applicant is only handling/dealing with pure VA that are not "securities" (as defined under the SFO), they may carry out this activity in Hong Kong without needing a licence, subject to tax considerations); and
- If an applicant is already licensed/regulated by the SFC, then it must obtain an uplift to its existing licence if it also wants to deal with VA (regardless of whether they are securities) (in certain cases, for example, asset management – subject to a de minimis threshold of 10% of a portfolio).

Our expertise and experience can help you navigate the regulatory landscape, ensuring compliance with the local regulatory requirements whilst seizing the emerging opportunities in this dynamic and evolving industry.

Summary of the SFC virtual asset regulations

Depending on the nature of the virtual asset businesses, a company and related individual may apply for one or more regulated activities (“RA”) licence(s) to conduct the proposed regulated activities as summarised below.

	VA Dealing	VATP	VA Management	VA Advisory
License Type	SFC Type 1 (Dealing in Securities) (with a Virtual Asset Licence uplift)	<ul style="list-style-type: none"> SFC Type 1 (Dealing in Securities) and Type 7 (Providing Automated Trading Services) (both with Virtual Asset Licence uplifts) Licence for VATP under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (“AMLO”), effective from 1 June 2023 Trust and Company Service Provider (“TCSP”) Licence (for its associated entity for virtual asset custody) 	SFC Type 9 (Asset Management) (with a Virtual Asset Licence uplift)	SFC Type 4 (Advising on Securities) (with a Virtual Asset Licence uplift)
Business Model	<ul style="list-style-type: none"> Company partners with SFC-licensed VATP for provision of virtual asset dealing services, either by the way of introducing client to the platform for direct trading; or establishing omnibus account with the VATP. 	<p>Centralised virtual asset trading platforms conducting virtual asset exchange business in Hong Kong will need to be licensed and regulated by the SFC after June 2023.</p> <p>A 12-month non-contravention period will be granted to existing VATPs operating in Hong Kong before 1 June 2023.</p> <p>VATPs can provide services to non-professional investors (“PI”) (e.g., retail investors) after June 2023. Each token listed on the VATP will require approval from the SFC.</p>	Company which manages a fund (or portion of a fund) that invests in virtual assets but invests only up to a de minimis threshold does not need to apply for an uplift. If the level of virtual assets exceeds the de minimis threshold, the asset fund manager needs to apply to the SFC for a Type 9 (Asset Management) Licence uplift.	Company markets / advises on virtual assets / virtual asset-related investment products.

News Flash

<p>Specific Virtual Asset-Related Regulation</p>	<ul style="list-style-type: none"> • HKMA and SFC Joint Circular on Intermediaries' Virtual asset-related Activities (28 January 2022) • SFC Licensing or Registration Conditions and Terms and Conditions for Licensed Corporations or Registered Institutions Providing Virtual Asset Dealing Services and Virtual Asset Advisory Services (January 2022) • HKMA Circular on Regulatory Approaches to Authorised Institutions' Interface with Virtual Assets and Virtual Asset Service Providers (28 January 2022) 	<ul style="list-style-type: none"> • SFC Licensing Handbook for Virtual Asset Trading Platform Operators (1 June 2023) • SFC Scope of External Assessment Reports (June 2023) • SFC Circular on Implementation of New Licensing Regime for Virtual Asset Trading Platforms (31 May 2023) • SFC Circular on Transitional Arrangements of the New Licensing Regime for Virtual Asset Trading Platforms (31 May 2023) • SFC Proforma Terms and Conditions for Licensed Corporations which Manage Portfolios that Invest in Virtual Assets (October 2019) 	<p>SFC Proforma Terms and Conditions for Licensed Corporations which Manage Portfolios that Invest in Virtual Assets (October 2019)</p>	<ul style="list-style-type: none"> • HKMA and SFC Joint Circular on Intermediaries' Virtual asset-related Activities (28 January 2022) • SFC Licensing or Registration Conditions and Terms and Conditions for Licensed Corporations or Registered Institutions Providing Virtual Asset Dealing Services and Virtual Asset Advisory Services (January 2022) • HKMA Circular on Regulatory Approaches to Authorised Institutions' Interface with Virtual Assets and Virtual Asset Service Providers (28 January 2022)
<p>Key Control Areas to be Considered</p>	<ul style="list-style-type: none"> • Governance and Staffing (including the appoint of qualified Responsible Officers and Manager-in-Charge) • KYC • AML / CFT • Suitability • Market Surveillance • Risk Management • Client Information Disclosure • IT & Cyber Security 			
	<ul style="list-style-type: none"> • Trade Operation 	<ul style="list-style-type: none"> • Token Admission • Custody of Virtual Asset 	<ul style="list-style-type: none"> • Fund Portfolio Valuation • Custody of Virtual Asset 	

How PwC and Tiang & Partners can help you?

Strategy

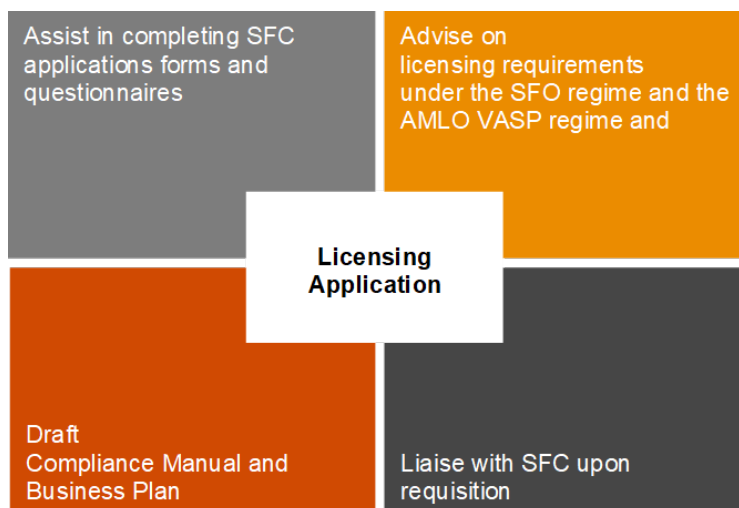
- Marketplace competitor scan
- Business model considerations

Market Entry

- Acquisition or funding strategy
- Lead advisory & fundraising
- Partnership and JBR advisory

SFC Licensing Application Support

- Together with Tiang & Partners*, PwC would provide legal and compliance services for the licensing application as follows:



Policies & Procedures, Internal Controls, and Systems

- Prepare platform, systems, and processes to satisfy business and/or SFC licensing requirements
- Design vendor/outsourcing models and support the selection of vendors

External Assessment / Compliance Reviews

- Assess platform, systems, and processes in regard to SFC licensing requirements
- Perform external assessments and/or compliance reviews to be submitted with licensing application or to demonstrate licensing compliance to SFC / HKMA

Let's talk

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

PwC Hong Kong



Duncan Fitzgerald
Mainland China and Hong Kong Digital
Trust & Risk – Financial Services Risk and
Crypto Leader
PwC Hong Kong
+852 2289 1190
duncan.fitzgerald@hk.pwc.com

Tiang & Partners



Gaven Cheong
Partner
Tiang & Partners
+ 852 2833 4993
gaven.cheong@tiangandpartners.com



Lei Wang
Partner, Risk Assurance
PwC Hong Kong
+852 2289 1921
lei.l.wang@hk.pwc.com



Esther Lee
Registered Foreign Lawyer (Counsel
equivalent)
Tiang & Partners
+852 2833 4950
esther.yt.lee@tiangandpartners.com



Winnie Cheung
Senior Manager
PwC Hong Kong
+852 2289 6216
winnie.we.cheung@hk.pwc.com



James Tao
Senior Manager
PwC Hong Kong
+852 2289 2610
james.y.tao@hk.pwc.com

www.pwc.com

www.tiangandpartners.com

The information contained in this document is of a general nature only. It is not meant to be comprehensive and does not constitute the rendering of legal, tax or other professional advice or service by PricewaterhouseCoopers ('PwC') and Tiang & Partners. PwC and Tiang & Partners have no obligation to update the information as law and practices change. The application and impact of laws can vary widely based on the specific facts involved. Before taking any action, please ensure that you obtain advice specific to your circumstances from your usual PwC client service team, law firm contact or your other advisers.

The materials contained in this document were assembled in February 2023 and were based on the law enforceable and information available at that time.

© 2023 PwC. All rights reserved. PwC refers to the China member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details.

© 2023 Tiang & Partners. All rights reserved. Tiang & Partners is an independent Hong Kong law firm.

