



## Hong Kong Legislative Council delays the Implementation Timetable of the Hong Kong Virtual Asset Service Provider Regime and the Hong Kong Securities and Futures Commission Statement on Virtual Assets

## Hong Kong Legislative Council delays the Implementation Timetable of the Hong Kong Virtual Asset Service Provider Regime under the Anti- Money Laundering and Counter- Terrorist Financing (Amendment) Bill 2022

On 7 December 2022, the Hong Kong Legislative Council (HK Legco) published its [“Report of the Bills Committee on Anti-Money Laundering and Counter-Terrorist Financing \(Amendment\) Bill 2022 \(the HK AML/CTF \(Amendment\) Bill 2022\)”](#) and stated its intention to postpone the commencement of the HK AML/CTF (Amendment) Bill 2022 to allow the Administration and the SFC more time “to work out the implementation details of the new regime”<sup>1</sup>, including time for the SFC to conduct market and public consultation on Hong Kong Virtual Asset Service Provider (HK VASPs) regulatory requirements<sup>2</sup>.

The new commencement date of the HK AML/CTF Bill 2022 will be 1 April 2023 rather than 1 January 2023, while the commencement date for provisions on:

- the restrictions on a business of providing virtual asset service;<sup>3</sup>
- the transitional arrangements for the licensing requirements of HK VASPs<sup>4</sup>; and
- “Politically Exposed Persons (PEPs), former PEPs and “beneficial owners in relation to trusts” etc”; will be 1 June 2023 rather than 1 March 2023.

Existing HK VASPs may continue to operate without a VASP licence for up to 12 months from the commencement date of the relevant provisions, meaning until the 31 May 2024 (the **HK VASP Transitional Period**). In order to qualify as a deemed licensee or be granted deemed approval beyond the expiration of the HK VASP Transitional Period, an existing HK VASP must submit its licence application to the Hong Kong Securities and Futures Commission (the **SFC**) by no later than 29 February 2024, after which their status as a deemed licensee or granting of deemed approval will continue until the earlier of:(i) the SFC’s grant or refusal of its licence; or (ii) the withdrawal of the licence application. (Note for the deemed licence or approval status of the existing HK VASP to be successfully conferred it must have received an application confirmation receipt in writing from the SFC)<sup>5</sup>.

## SFC Statement on Virtual Asset Arrangements Claiming to Offer Returns to Investors in Hong Kong

On 13 December 2022, the SFC issued a [Statement on Virtual Asset Arrangements claiming to offer Returns to Investors](#) (the **SFC Virtual Assets Statement**), regarding the risks associated with Hong Kong virtual asset platforms offering “virtual asset “deposits”, “savings”, “earnings” or “staking” services (**VA Arrangements**)<sup>6</sup> in light of their continued prevalence [...] and recent events in the virtual asset industry”<sup>7</sup> (the collapse of FTX, Terraform Labs and Celsius Network, among others).

The significant investor risks highlighted by the SFC in the SFC Virtual Asset Statement include:

- no investor protections in terms of VA Arrangements in Hong Kong marketed or labelled as “deposits” or “saving” products as they are “not regulated and are not the same as bank deposits”;
- virtual asset platforms’ lack of transparency in terms of their operations and the fact that their fitness and properness, inclusive of their financial soundness and competence, are not subject to any regulation, including prudential regulation. In particular, where the investors’ virtual assets under VA Arrangements are on-lend, investors may lose the entirety of their investment held on a platform with no hope of recuperation in the event the relevant virtual asset platform or the counterparty the investors’ virtual assets are on-lend to ceases operation, collapses, or is hacked or exposed to fraud;
- virtual assets’ heightened risks relating to “insufficient liquidity, high price volatility, opaque pricing, potential market manipulation, hacking and fraud” meaning a virtual asset could lose all value; and
- VA Arrangements potentially being an unauthorised Collective Investment Scheme (**CIS**) in Hong Kong and thus highly risky as the VA Arrangements will not have been vetted by the SFC, nor will their offer and marketing materials have been reviewed by the SFC. Investors will also have no protection under the SFO.

The SFC also cautioned investors that if investors are unable to fully understand the VA Arrangements they are investing in or cannot bear the potential significant or total losses, “they should not make an investment”.

Parties engaging in VA Arrangements in Hong Kong, including virtual asset platforms, were also reminded that those VA Arrangements could amount to a CIS in Hong Kong and that it is an offence under the HK SFO for any person “to issue an advertisement, invitation or document which is or contains an invitation to the Hong Kong public to acquire an interest in or participate in the CIS”<sup>8</sup> unless authorised or exempted, and “to carry on a business of marketing or distributing interests in a CIS in Hong Kong or targeting Hong Kong investors without an SFC licence”<sup>9</sup> unless exempted.

The SFC also expressed its commitment to “take robust enforcement action promptly to safeguard investors’ interests” and advised both investors and parties engaging in VA Arrangements in Hong Kong to seek professional advice if they are in doubt about their VA Arrangements’ nature and/or regulatory status in Hong Kong.

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[1] All quotations taken from this section are from the Report

[2] For details of the [VASP requirements please see Hong Kong Licensing Regime for Virtual Asset Exchanges to Take Effect on 1 March 2023](#)

[3] See the proposed Sections 53ZRD to 53ZRG of the HK AML/CTF (Amendment) Bill 2022

[4] See the proposed Sections 53ZTX and Schedule 3G of the HK AML/CTF (Amendment) Bill 2022

[5] See the proposed Schedule 3G, Part 3(2) of the HK AML/CTF (Amendment) Bill 2022

[6] In particular those offering high interest rates or a “daily generation of additional virtual assets at a guaranteed fixed rate” where deposits are subsequently put on-lend to third parties for use in investments or other activities.

[7] All quotations are taken from the SFC Statement

[8] Section 103(1)(b) of the HK SFO

[9] Section 114 of the HK SFO

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