

CHARLTONS

**OVERVIEW OF HONG KONG
VASP LICENSING
REQUIREMENTS
AND ONGOING OBLIGATIONS
OF LICENSED VASPS**

12 JULY 2023
5.00 TO 6.00 PM



A hand in a white shirt cuff points towards a glowing digital interface. The background is dark blue with intricate white and light blue circuit patterns. A central glowing square contains a grid of small white dots, resembling a microchip or data matrix.

VIRTUAL ASSET TRADING PLATFORM OPERATORS: 2 LICENSING REGIMES

- Securities and Futures Ordinance (**SFO**): – Existing licensing regime for entities carrying on business in “regulated activities” including “dealing in securities” and “providing automated trading services”
- Part 5B of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (the **AMLO**): New licensing regime for virtual asset trading platform (**VATP**) operators – took effect on 1 June 2023
- SFO regime requires licensing for regulated activities Type 1 (dealing in securities) + Type 7 (providing automated trading services) for trading **security tokens** = virtual assets that are securities (as defined in the SFO: Part 1 of Schedule 1)
- AMLO regime: requires licensing of VATPs as virtual asset service providers (**VASPs**) for trading **non-security tokens** = virtual assets that are not “securities”
- SFC recommends AMLO/SFO dual-licensing in case of VA classification changing from security tokens -> non-security tokens (+ vice versa)

FINANCIAL ACTION TASK FORCE (FATF) REQUIREMENTS

OCTOBER 2018:

FATF Recommendation 15 update extended anti-money laundering (AML) + counter-terrorist financing (CTF) requirements to VAs and VASPs

JUNE 2019:

Interpretative Note to Recommendation 15 issued - member countries need to adopt a regulatory framework for a competent authority to license/register VASPs + regulate, supervise + monitor them

OCTOBER 2021:

Updated FATF Recommendation 16 - the Travel Rule - to apply to virtual asset transfers the information transfer requirements that apply to wire transfers

LICENSING UNDER THE AMLO

- An entity carrying on a business of providing a virtual asset service (VA service) in Hong Kong, or holding itself out as doing so, must be licensed as a virtual asset service provider (AMLO s. 53ZRD)
- Prohibition on “actively marketing” (from in or outside HK) any VA service provided offshore to the Hong Kong public without a VASP licence (AMLO s. 53ZRB(3))

Offences carry maximum penalty of:

- a HK\$5 million fine
- 7 years’ imprisonment
- a daily fine of HK\$100,000 for each day the offence continues



PROVIDING A VA SERVICE

- Currently defined as operating a VA exchange
- Secretary for Financial Services and the Treasury can amend by notice in the Gazette

Providing a VA service = providing services through means of electronic facilities whereby:

- offers to sell or purchase VA are regularly made or accepted to form or result in a binding transaction or
- persons are regularly introduced, or identified to other persons, in order that they may negotiate or conclude, or with the reasonable expectation that they will negotiate or conclude, sales or purchases of VA forming or resulting in a binding transaction (**AMLO Schedule 3B**)

VASP licensing regime applies to **centralised** platforms:

- providing VA trading services to clients using an automated trading engine which matches client orders and
- provide custody services as an ancillary service to the trading service

VA services provided without an automated trading engine & ancillary custody services (e.g. OTC VA trading activities & VA brokerage activities) don't need a licence

VIRTUAL ASSETS

DEFINITION

Virtual assets definition = a cryptographically secured digital representation of value that:

- is expressed as a unit of account or a store of economic value

either:

- is used, or intended to be used, as a medium of exchange accepted by the public for payment for goods or services, for the discharge of a debt and/or for investment; or
- provides rights, eligibility or access to vote on the management, administration or governance of the affairs in connection with, or to vote on any change of the terms of any arrangement applicable to, any cryptographically secured digital representation of value: and
- can be transferred, stored or traded electronically” (AMLO s. 53ZRA(1))

VA include Bitcoin, altcoins, governance tokens + stablecoins, but note that stablecoins should not be admitted for trading by retail investors until they are regulated in Hong Kong



EXCLUSIONS FROM VIRTUAL ASSET DEFINITION

- Digital representations of fiat currencies
- Central bank digital currencies
- Financial assets already regulated under the SFO (e.g. securities & futures contracts)
- Stored value facilities regulated under the Payment Systems and Stored Value Facilities Ordinance and
- “limited purpose digital tokens” including non-transferable, non-exchangeable & non-fungible closed-loop, limited purpose items (e.g. air miles, credit card rewards, gift cards, customer loyalty programmes & gaming coins)

SFO LICENSING

An entity carrying on a business of dealing in VA that are securities & providing automated traded services in those VA (or holding itself out as doing so) must be licensed for regulated activities Type 1 (dealing in securities) & Type 7 (providing automated trading services)

Licensing is required only for centralised virtual asset trading platforms, i.e. trading platforms providing VA trading, clearing & settlement services & having control of clients' assets

No licensing needed for platforms providing peer-to-peer VA trading where the trades occur off-exchange & clients retain custody of VA

Regulatory requirements for licensed VATP operators set out in:

- the AMLO
- the SFO
- the SFC's Guidelines for Virtual Asset Trading Platform Operators (**VATP Guidelines**)
- the SFC Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers)
- SFC's FAQs on licensing matters and conduct-related matters

Applying for a VA Trading Platform Operator Licence

Given the possibility of virtual assets' regulatory classification changing from non-security tokens to security tokens + vice versa, the SFC is encouraging VA trading platforms + their staff conducting regulated activities to become licensed under both Ordinances. Dual licensing applicants can submit a single consolidated application online indicating that they are applying for both licences.





ELIGIBILITY FOR LICENSING UNDER AMLO & SFO

Entities eligible for VASP licensing are:

- HK incorporated companies having a permanent place of business in HK
- overseas companies registered in HK under the Companies Ordinance

Businesses without a separate legal personality (e.g. partnerships & sole traders), individuals & overseas companies not registered in HK are **not** eligible for HK VASP licensing

PLATFORM OPERATORS' FITNESS & PROPERNESS

Platform operator cannot:



- be subject to any receivership, administration, liquidation or similar proceedings



- have failed to meet any judgment debt



- be unable to meet any applicable financial or capital requirements

LICENSED VASP: FINANCIAL RESOURCES REQUIREMENT

Licensed platform operators must:

- maintain paid-up share capital of \geq HK\$ 5 mln
- maintain liquid capital of the higher of HK\$ 3 mln & the basic amount as defined in Division 4 of Part 4 of the Financial Resources Rules
- beneficially own assets that are sufficiently liquid (e.g. cash, deposits, treasury bills and certificates of deposit (but not virtual assets)) equivalent to at least 12 months of their actual operating expenses calculated on a rolling basis (VATP Guidelines at paragraphs 6.1-6.3)



PLATFORM OPERATORS' COMPETENCY

Licensing applicants need:

- a clear business model, detailing their modus operandi + target clientele
- written policies + procedures to ensure continuous compliance with legal/ regulatory requirements
- to demonstrate a proper business structure, good internal control systems + qualified personnel to ensure proper risk management

RESPONSIBLE OFFICER REQUIREMENTS

- >2 two responsible officers (ROs) to supervise the conduct of each SFO regulated activity / the business of the VA service for which they are licensed (AMLO s.53ZRO(1) & SFO s.125(1))
- At least one RO must be an executive director of the company
- If company has more than one executive director, all must be appointed as ROs
- At least one RO must be ordinarily resident in HK
- At least one RO must be available at all times to supervise each SFO regulated activity / the business of the VA service
- Dual-licensed platforms need 2 (not 4) dual-licensed ROs to meet minimum statutory requirement

- SFC will only license overseas residents if they will come to HK to conduct regulated activities
- Individuals only conducting business outside HK are not eligible for licensing
- SFC will impose a non-sole condition on the licence of ROs based offshore who occasionally visit HK to conduct regulated activities
- A non-sole condition means that an RO who actively participates in or directly supervises the licensed business must do so under the advice of an RO not subject to a “non-sole” condition
- Itinerant professionals who only spend short periods in HK from time to time cannot be ROs as need to supervise the regulated activity in HK

See SFC FAQs “Conducting business outside Hong Kong”

RESPONSIBLE OFFICERS' FITNESS AND PROPERNESS

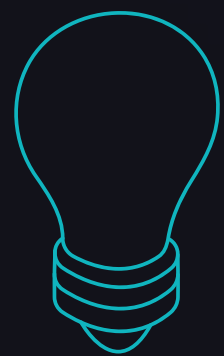
Relevant factors include individuals':



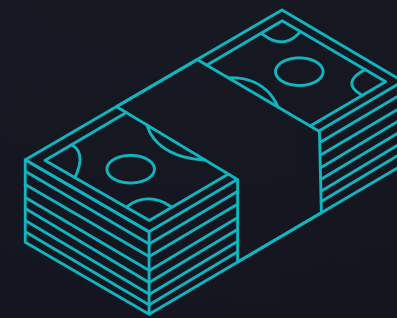
- financial status and solvency



- ability to carry on regulated activities competently, honestly and fairly



- educational or other qualifications & experience



- reputation, character, reliability & financial integrity.

RESPONSIBLE OFFICERS' EDUCATIONAL QUALIFICATIONS OR EXPERIENCE

3 routes to satisfying three requirements

	Option A	Option B	Option C
Academic or professional qualifications	<ul style="list-style-type: none"> degree* in the designated fields (accounting, business administration, economics, finance or law); or other degree* (with passes in at least 2 courses in the designated fields); or internationally recognised professional qualifications in law, accounting or finance (recognised finance qualifications include CFA, CIIA or CFP) <p>* the SFC will take into account a post-graduate diploma or certificate if the applicant is a degree-holder and has attained a post-graduate diploma/certificate which is (a) issued by a university or other similar tertiary institution in Hong Kong or elsewhere; or (b) recognised as Level 6 or above under the Qualifications Framework in Hong Kong</p>	<p>Other degree, without passes in 2 courses in the designated fields (accounting, business administration, economics, finance or law)</p>	<ul style="list-style-type: none"> attained Level 2 in either English or Chinese + in Mathematics in the HKDSE or equivalent; or attained grade E or above in either English or Chinese + in Mathematics in the HKCEE; or attained passes in either English or Chinese + in Mathematics in other high school public examinations (such as university entry examinations) in Hong Kong or elsewhere equivalent to the HKDSE

Relevant industry experience		At least 3 years over the past 6 years	At least 5 years over the past 8 years
<p>Recognised Industry Qualification (RIQ) or 5 hours of Continuous Professional Training (Extra CPT) taken in the 6 months preceding the licensing application</p>	<p>Obtained RIQ (HKSI LE Papers 7 & 8)* or completed relevant Extra CPT</p> <p>* the industry qualifications listed in Appendix C of the previous Guidelines on Competence (2011) are also accepted</p> <p>Extra CPT: the individual must complete five CPT hours for each regulated activity applied for</p>	<p>Obtained relevant RIQ:</p> <ul style="list-style-type: none"> Type 1 (dealing in securities) activity: HKSI LE Papers 7 & 8* <p>* the industry qualifications listed in Appendix C of the previous Guidelines on Competence (2011) are also accepted</p>	<p>Completed relevant Extra CPT: the individual must complete 5 CPT hours for each regulated activity applied for</p>
Management experience		2 years	
Local regulatory framework paper		Pass: HKSI LE Papers 1 & 2	

A hand is shown dropping several gold coins into another hand held below it. The background is dark with a blue and purple gradient.

RESPONSIBLE OFFICERS' INDUSTRY EXPERIENCE

One RO must have ≥ 3 years' direct industry experience operating a VA trading platform or providing automated trading services (as defined in SFO Schedule 5)

Where an RO applicant's industry experience largely relates to non-security tokens + the person has no experience of dealing in securities (or vice versa), the SFC will consider:

- industry experience dealing in non-security tokens as industry experience relevant to RA Type 1 (dealing in securities) – subject to a licensing condition that the person can only provide Type 1 regulated activity services for an SFC-licensed VASP
- industry experience of RA Type 1 (dealing in securities) as industry experience relevant to the provision of a VA service under the AMLO, subject to imposition of a “non-sole” condition

The latter provision is a temporary measure whose applicability will be subject to SFC review

LICENSED REPRESENTATIVES



Individuals (including ROs) must be licensed representatives accredited to a VASP to conduct regulated activities on its behalf

On ceasing to act for their principal, the principal must notify the SFC through WINGS-LIC within 7 business days

The licensed representative can apply to transfer their accreditation to another platform operator within 180 days

LICENSED REPRESENTATIVES REQUIRED

EDUCATIONAL QUALIFICATIONS & EXPERIENCE

	Option A	Option B	Option C
Academic or professional qualifications	<ul style="list-style-type: none"> • degree* in the designated fields (accounting, business administration, economics, finance or law); or • other degree* (with passes in at least 2 courses in the designated fields); or • internationally recognised professional qualifications in law, accounting or finance (recognised finance qualifications include CFA, CIIA or CFP) <p>* the SFC will take into account a post-graduate diploma or certificate if the applicant is a degree-holder and has attained a post-graduate diploma/certificate which is (a) issued by a university or other similar tertiary institution in Hong Kong or elsewhere; or (b) recognised as Level 6 or above under the Qualifications Framework in Hong Kong</p>	<p>Other degree, without passes in 2 courses in the designated fields (accounting, business administration, economics, finance or law)</p>	<ul style="list-style-type: none"> • attained Level 2 in either English or Chinese and in Mathematics in the HKDSE or equivalent; or • attained grade E or above in either English or Chinese and in Mathematics in the HKCEE; or • attained passes in either English or Chinese and in Mathematics in other high school public examinations (such as university entry examinations) in Hong Kong or elsewhere equivalent to the HKDSE

Relevant industry experience				At least 2 years over the past 5 years	At least 2 years over the past 5 years
Recognised industry qualifications (RIQ) or Extra Continuous Professional Training (CPT) taken in the 6 months preceding the licensing application			<p>Obtained relevant RIQ or completed relevant Extra CPT</p> <p>Relevant RIQ:</p> <ul style="list-style-type: none"> • HKSI LE Papers 7 & 8* <p>* the industry qualifications listed in Appendix C of the previous Guidelines on Competence (2011) will also be accepted</p> <p>Extra CPT: the individual must complete five CPT hours for each regulated activity he/she applied</p>	Completed relevant Extra CPT: the individual must complete 5 CPT hours for each regulated activity applied for	<p>Obtained relevant RIQ:</p> <ul style="list-style-type: none"> • HKSI LE Papers 7 & 8* <p>* the industry qualifications listed in Appendix C of the previous Guidelines on Competence (2011) are also accepted</p>
			Local regulatory framework paper		

SUBSTANTIAL SHAREHOLDERS AND ULTIMATE OWNERS

A VA trading platform operator's substantial shareholders & ultimate owners must be:

- fit and proper
- approved in writing by the SFC

A “**substantial shareholder**” = a person


- with an interest of $\geq 10\%$ in the platform operator's issued shares
- with an interest in the platform operator's shares entitling them (alone or with associates) to control the exercise (directly or indirectly) of $\geq 10\%$ of the voting power at its general meetings or
- holding shares in another company entitling them (alone or with associates) to control the exercise of $\geq 35\%$ of the voting power at general meetings of that company (or of a further company) which can exercise (alone or with its associates) 10% of the voting power at general meetings of the platform operator

(s. 6 of Part 1 of Schedule 1 to the SFO)

An “**ultimate owner**” = an individual who:

- owns or controls (directly or indirectly) $> 25\%$ of the trading platform operator's issued shares
- controls $> 25\%$ of the voting rights at the platform operator's general meetings or
- controls the platform operator's management

(Section 53ZRJ of the AMLO)



SFC's "fit and proper" assessment will include: financial status/solvency; educational or other qualifications & experience; competence, honesty & financial integrity; conviction for a ML or TF offence or other offence involving dishonesty

SFC APPROVAL OF A VASP'S ULTIMATE OWNER

- A licensed VASP's ultimate owner must obtain the SFC's prior written approval
- SFC must be satisfied that the VASP will continue to be fit & proper after the ultimate owner's approval
- SFC can impose conditions on the licensed VASP or ultimate owner
- Offence for a person to become a VASP's ultimate owner without prior SFC approval with penalties of a HK\$1 mln fine, 2 years' imprisonment and a daily HK\$5,000 fine for every day the offence continues

MANAGERS-IN-CHARGE OF CORE FUNCTIONS (MICS)

- A Managers-In-Charge of Core Functions regime applies to licensed VATPs
- Details are set out in the SFC's FAQs on Measures for Augmenting Senior Management Accountability in Platform Operators
- VA trading platform operators need to appoint one or more MICs as individuals principally responsible, alone or with others, for managing each of the Platform Operator's "Core Functions":
- MICs of Overall Management Oversight & Key Business Line functions expected to be ROs
- Platform operator's board needs to ensure each MIC acknowledges their appointment as MIC & the Core Function(s) for which they are responsible

VASP COMPLAINTS OFFICER & EMERGENCY CONTACT PERSON

VATP operators need to appoint:

- a **Complaints Officer** to deal with complaints (VATP Guidelines, para 3(b) of Part 1 of Schedule 4)
- an **Emergency Contact Person** to be contacted by the SFC in case of market emergency (VATP Guidelines at paragraph 3(a) of Part 1 of Schedule 4)

SFC APPROVAL OF PREMISES

- VATP operator applicants need SFC approval of their premises for keeping records or documents
- Premises must be non-domestic + suitable for document & record storage

VASP LICENSING

APPLICATION PROCESS

Corporations that are not already licensed need to submit:

- Form 1 (Corporation's Application for Licence);
- Form 5 (New Licence Application for Licensed Representatives and Responsible Officers) for at least 2 proposed ROs;
- Questionnaire 1 (General Business Profile and Internal Controls Summary);
- Questionnaire 2 (VA Trading Platform Operator);
- External assessment report; and
- Application Fee

Application forms, supplements & questionnaires should be submitted to the SFC through WINGS-LIC

External Assessment Reports

VATP licence applicants have to engage an External Assessor to assess their business and submit 2 assessor's reports

External assessor's "Phase 1 Report" must:

- be submitted with the licence application:
- cover the design effectiveness of the VA trading platform's proposed structure, governance, operations, systems and controls, with a focus on key areas (e.g. governance & staffing, token admission, virtual asset custody, KYC, AML/CTF, market surveillance, risk management & cybersecurity)
- External assessor's "Phase 2 Report" must:
- be submitted after the SFC grants approval-in-principle of the licence
- assess the effectiveness & implementation of the adopted policies, procedures, systems & controls
- Deviation from the planned policies/ procedures must be clearly set out & explained

SFC will only grant its final licensing approval when satisfied with the Phase 2 Report

SUBMISSION OF PLATFORM OPERATORS' BANK ACCOUNT INFORMATION

- VASP operators need to submit their bank account details to the SFC before approval of their licensing applications
- The Hong Kong Monetary Authority issued a Circular to banks – “Access to banking services for corporate customers” in April 2023 encouraging them to provide banking services to SFC-licensed VASPs

SFC REGULATORY SANDBOX

- Licensed VASPs will initially enter the SFC's Regulatory Sandbox
- SFC will assess & monitor VASPs' delivery of services & internal controls systems
- Aims to facilitate dialogue between the SFC and VASPs & enable them to identify & address any risks
- Additional licensing conditions may apply to VASPs in the Sandbox – e.g. requiring periodic SFC supervisory audits
- VASPs can ask for removal of some / all licensing conditions on leaving the Sandbox
- SFC will revoke licences of platform operators not meeting the regulatory requirements

VASP LICENSING CONDITIONS

VASP licences will be granted subject to **conditions** including that they must:

- comply with the VATP Guidelines;
- immediately notify the SFC and cease operating a VATP if they become aware that they cannot maintain (or ascertain whether they maintain) the required liquid and paid-up share capital;
- provide the SFC with monthly reports on their business activities within 2 weeks of each calendar month-end;
- engage an independent professional firm acceptable to the SFC to conduct annual reviews of their activities & operations, & prepare a report confirming compliance with the licensing conditions + all legal & regulatory requirements
- 1st report must be submitted within 18 months of the VASP licence approval
- subsequent reports must be submitted within 4 months of each financial year-end
- The SFC's prior written approval is needed for introducing / offering a new or incidental service or activity, or making a material change to an existing service or activity (including long suspension or termination of an existing service or activity)

VASP licences will restrict platform operators to:

- operating a centralised online platform for trading VA
- carrying on off-platform VA trading + incidental services +
- activities relating to their off-platform business



TOKEN ADMISSION AND REVIEW COMMITTEE REQUIREMENTS

- SFC-licensed VASPs must set up a **Token Admission and Review Committee**
- Composition: senior management members principally responsible for managing the key business line, compliance, risk management and information technology functions (members “principally responsible” include VASPs’ MICs for relevant functions)

Responsibilities include:

- establishing, implementing & enforcing criteria for admitting, suspending & withdrawing VA for or from trading & rules setting out VA issuers’ obligations & restrictions
- making final decision on admitting, suspending or withdrawing VA to/ from trading
- regularly reviewing criteria for admitting, suspending & withdrawing VA and the rules governing VA issuers’ obligations & restrictions
- reporting at least monthly to the VASPs’ board of directors (reports must include (at a minimum), details of VA made available for retail trading)



VASP OBLIGATIONS

- VASPs need to monitor each VA traded and consider whether to allow its continued trading
- If the Token Admission & Review Committee suspends or withdraws a VA from trading, the VASP must notify clients as soon as practicable, inform clients holding that VA of the available options, & ensure clients are fairly treated

RESPONSIBILITY FOR CONDUCT & ADHERENCE TO PROCEDURAL REQUIREMENTS

- VASPs' senior management are responsible for ensuring appropriate standards of conduct and adherence to proper procedures
- "Senior management" comprises VASPs' directors, ROs & MICs

VIRTUAL ASSET DUE DILIGENCE AND ADMISSION CRITERIA

General Token Admission Criteria

- VASPs must perform reasonable due diligence on all virtual assets (whether available for retail trading or not) before admitting them for trading to ensure they meet the token admission criteria set by platforms' Token Admission and Review Committee

Factors that VASPs must consider (at a minimum) include:

- the background of the virtual asset's management or development team or any of its known key members
- the virtual asset's regulatory status in Hong Kong and whether it would affect the VASP's regulatory obligations
- the virtual asset's supply, demand, maturity and liquidity, including its track record period which for non-security tokens must be at least 12 months
- the virtual asset's development, technical aspects, market and governance risks
- the legal risks associated with the virtual asset & its issuer
- whether the virtual asset's offered utility, novel use case, innovation or administrative control "clearly appears" to be fraudulent or illegal, or whether its continued viability depends on attracting continuous inflow into the virtual asset;
- the enforceability of rights extrinsic to the virtual asset (e.g. rights to any underlying assets)
- the potential impact of trading activity in the virtual asset on the underlying markets; and
- the ML & TF risks associated with the virtual asset

(Paragraph 7.6 of the VATP Guidelines)

Specific Token Admission Criteria for Retail Traded VA

- Licensed VASPs making VA available for retail trading must ensure the VA meet the specific token admission criteria in VATP Guidelines paras 7.7 & 7.8
- “**Retail investors**” = investors other than professional investors (as defined in section 1 of Part 1 of Schedule 1 to the SFO (Professional Investors)) (VATP Guidelines para 7.6)
- Key requirement for VA to be traded by retail investors = the VA must be “highly liquid”
- To be “highly liquid”, a VA must be an “**eligible large-cap virtual asset**” – i.e. a VA included in a minimum of 2 acceptable indices issued by at least 2 independent index providers
- An “**acceptable index**” = an index with a clearly defined objective of measuring the performance of the largest virtual assets in the global market (e.g. an index measuring the top 10 largest virtual assets)
- The 2 index providers must be independent of each other, the VASP + the VA issuer
- At least one index provider must comply with IOSCO’s Principles for Financial Benchmarks + have experience of publishing indices for the conventional securities market
- Inclusion in 2 acceptable indices is a minimum (not the sole) criterion for retail trading. VASPs must conduct additional due diligence to ensure that eligible large-cap virtual assets are **in fact** highly liquid

SFC’s prior written approval is required for the admission of any VA for retail trading + the suspension of trading or removal of such VA

SFC’s Consultation Conclusions said that stablecoins should **not** be admitted for retail trading until they are regulated in Hong Kong. The Hong Kong Monetary Authority proposed a new regulatory regime for various activities relating to stablecoins in its January 2023 [Conclusion of its Discussion Paper on Crypto-assets and Stablecoins](#), which is expected to come into effect some time in 2024.

PROVIDING VA TRADING SERVICES TO RETAIL INVESTORS

- Providing services to retail investors requires compliance with investor protection measures covering client onboarding, platform governance, disclosure + token due diligence & admission
- VASPs must implement additional measures when serving investors other than **institutional professional investors** (as defined in paragraphs (a) to (i) of the definition of Professional Investors) + **qualified corporate professional investors**

Qualified corporate professional investors = corporate professional investors (i.e. trust corporations, corporations or partnerships meeting the thresholds under ss 4, 6 or 7 of the Securities and Futures (Professional Investor) Rules), which the VASP has assessed to meet **3** criteria:

- that the corporate professional investor (**CPI**) has the appropriate corporate structure + investment process & controls (i.e. as to how investment decisions are made, including whether the corporation has a specialised treasury or other function responsible for making investment decisions)
- that the person(s) responsible for making investment decisions on behalf of the CPI have a sufficient investment background (which includes the individuals' investment experience) +
- that the CPI is aware of the risks involved (which is considered in terms of the person(s) responsible for making investment decisions)
- VASPs' assessment of whether an investor is a Qualified CPI must be in writing + records of relevant information/ documents must be kept to demonstrate the basis of assessment
- If a CPI ceases to trade in VA for > 2 years, the VASP must conduct a new assessment
- VASPs must apply the requirements applicable to **retail investors** to **individual professional investors** (as defined in s5 of the Securities and Futures (Professional Investor) Rules)

PROHIBITION ON TRADING VIRTUAL ASSET DERIVATIVES AND OTHER RESTRICTED ACTIVITIES

- Licensed VASPs cannot offer, trade or deal in VA futures contracts or related derivatives
- VASPs & their group companies are prohibited from providing financial accommodation for clients to acquire VAs
- VASPs cannot enter into arrangements with clients to use clients' VAs to generate returns, preventing them from providing services such as earning, deposit-taking, lending + borrowing
- VASPs are prohibited from posting adverts for specific VAs + cannot provide algorithmic trading services to clients
- VASPs are prohibited from engaging in proprietary trading for their own account or any account in which they have an interest, except for off-platform back-to-back transactions where no market risk is taken by the platform operator
- VASPs cannot engage in market making activities on a proprietary basis
- VASPs' group companies are prohibited from conducting proprietary trading in VA through the VASP on or off-platform
- The opening of multiple accounts for a single client is forbidden, unless the accounts are sub-accounts
- No gifts can be offered to clients (other than a discount to fees or charges) for trading a specific VA

PROTECTIONS FOR RETAIL INVESTORS

- The SFC's written approval is required for including any VA for trading by retail clients and suspending trading of or removing any VA available to retail clients

RETAIL CLIENTS' KNOWLEDGE OF VA

- Before opening an account for investors other than institutional professional investors and qualified corporate professional investors, VASPs need to assess the investor's knowledge of VA and the risks of investing in them (VATP Guidelines para 9.4)
- VASPs can only provide services to retail investors lacking knowledge of VA if they have provided adequate training to the investor

Example criteria for assessing whether a Retail Investor has knowledge of virtual assets:

- has the investor undergone training or attended courses on VA
- has the investor got current or previous VA work experience or
- has the investor got prior trading experience in VA

CLIENTS' SUITABILITY FOR TRADING VIRTUAL ASSETS

VASPs offering retail trading need to ensure the suitability of their services for the particular client + are required to:

- obtain from their retail clients information on their financial situation + investment experience + objectives and
- assess the client's risk tolerance level, determine the client's risk profile + assess whether they are suitable to participate in VA trading

VIRTUAL ASSET EXPOSURE LIMITS FOR VA RETAIL CLIENTS

VASPs need to:

- set a limit on each retail client's exposure to VA to ensure that it is "reasonable" given the client's financial situation (including its net worth) + personal circumstances
- notify retail clients of the limit assigned to them +
- regularly review clients' exposure limits to ensure they remain appropriate

SUITABILITY OBLIGATIONS

- When making a recommendation or solicitation with respect to VAs, VASPs must (except when dealing with institutional and qualified corporate professional investors) ensure the suitability of the recommendation or solicitation for the client is reasonable, having regard to information about the client of which the VASP is or should be aware through the conduct of due diligence
- VASPs need to establish a mechanism for assessing VAs' suitability for clients
- The suitability assessment should be made on a holistic basis (taking into account clients' personal circumstances + concentration risk) + the risk return profile of the recommended VA should match clients' personal circumstances

VIRTUAL ASSET DUE DILIGENCE AND ADMISSION CRITERIA

- Except when dealing with institutional or qualified professional investors, VASPs must ensure that transactions in VAs that are “complex product” are suitable for the relevant client (even if there has been **no** recommendation or solicitation)
- A **complex product** = a VA whose terms, features and risks are not likely to be understood by a retail investor because of its complex structure

Factors relevant to the determination of whether a VA is a complex product include:

- whether the VA is a derivative product
- whether a secondary market is available for the VA at publicly available prices
- whether there is adequate and transparent information about the VA available to retail investors
- whether there is a risk of losing more than the amount invested
- whether any of the VA’s features or terms could fundamentally alter the nature or risk of the investment or pay-out profile, or include multiple variables or complicated formulas to determine the return (e.g. where the investment carries the right for the issuer to convert it into a different investment) and
- whether the VA’s features might render the investment illiquid, difficult to value or both

VASPs need to provide prominent and clear warnings about complex products before and reasonably proximate to the point of sale of, or advice regarding, complex products

VASPS' DISCLOSURE OBLIGATIONS

Risk Disclosure Statements

Except when dealing with institutional and qualified corporate professional investors, VASPs must take all reasonable steps to prominently disclose:

- the nature of virtual assets and
- the risks clients may be exposed to in trading VA on the trading platform
- disclosure must include the risk disclosure statements specified in Schedule 2 to the VATP Guidelines

VASPs' Website Disclosure Obligations

VASPs must disclose information on their websites including:

- information about the platform's business, the services offered to clients + their contact details
- their trading + operational rules, token admission + removal rules + criteria (including the criteria for admitting, suspending + withdrawing a VA for/from trading and "acceptable indices" referenced for admitting VAs for retail trading)
- their admission & trading fees & charges
- services that are only available to professional investors
- the rights & obligations of the VASP & the client under the client agreement required to be entered into with clients other than institutional + qualified corporate professional investors
- the client's liability for unauthorised VA transactions
- circumstances in which the VASP can disclose the client's personal information to 3rd parties (including regulators & auditors)
- dispute resolution mechanisms, including the complaints procedures

DISCLOSURE OF INFORMATION FOR EACH **VIRTUAL ASSET TRADED**

VASPs need to post information about each VA traded on their platforms including:

- the VA's price and trading volume on the platform, e.g. in the last 24 hours + since its admission for trading on the platform
- background information about the VA's management or development team or any of its known key members
- the VA's issue date + material terms + features
- the VASP's affiliation with the issuer + its management or development team (or any of its known key members)
- a link to the VA's official website + Whitepaper (if any)
- a link to the VA's smart contract audit report + other bug reports (if any) +
- if the VA has voting rights, how the VASP will handle those voting rights

VASPs need to take all reasonable steps to ensure that product-specific + other information posted on their platforms is not false, misleading or deceptive

VASPS' OBLIGATIONS RE. HANDLING CLIENT VIRTUAL ASSETS

- VASPs must hold client assets (client VA & money) through an associated entity, i.e. a Hong Kong-incorporated wholly-owned subsidiary of the VASP licensed as a trust or service company provider under the AMLO, that has notified the SFC that it is an associated entity of the VASP under AMLO s.53ZRW and/or SFO s. 165

Client virtual assets must be:

- held in wallet address(es) established by the VASP's associated entity +
- segregated from the assets of the VASP + its associated entity
- >98% of client VA must be held in cold storage (except in limited circumstances allowed by the SFC on a case-by-case basis to minimise losses resulting from the platform being hacked or compromised)

VASP INSURANCE AND COMPENSATION PROVISION



VASPs must establish a compensation arrangement approved by the SFC to cover potential losses (arising from, among others, hacking incidents on the platform or default on the VASP's part) of:

- 50% of client VA held in **cold** storage and
- 100% of client VA held in **hot** and **other** storages

Compensation arrangements can include any or a combination of:

- third-party insurance
- funds (held in the form of a demand deposit or time deposit maturing within 6 months) of the VASP or any of its group companies, which are set aside on trust and designated for that purpose +
- a bank guarantee provided by a Hong Kong authorised financial institution

VASPs must monitor the total value of client VA under their custody daily

- On becoming aware that the total value of client VA under custody exceeds the amount covered under the approved compensation arrangement, the VASP must inform the SFC if it expects the situation to continue, + take prompt remedial action to re-comply with the VATP Guidelines

ANTI-MONEY LAUNDERING & COUNTER-TERRORIST FINANCING OBLIGATIONS

- VASPs are subject to the AMLO's AML + CTF requirements, including the customer due diligence & record-keeping requirements of Schedule 2 to the AMLO
- In the event of non-compliance with the statutory AML and CTF obligations, the VASP + its responsible officers will commit an offence carrying maximum penalties of a HK\$1 million fine + 2 years' imprisonment (or 7 years' imprisonment if the non-compliance is committed with intent to defraud)
- VASPs must also comply with VA-specific AML/CTF requirements in new Chapter 12 of renamed [Guideline on Anti-Money Laundering and Counter-Financing of Terrorism \(For Licensed Corporations and SFC-licensed Virtual Asset Service Providers\)](#)
- The revised and renamed [Prevention of Money Laundering and Terrorist Financing Guideline](#) issued by the Securities and Futures Commission for Associated Entities of Licensed Corporations and SFC-licensed Virtual Asset Service Providers requires VASPs' [associated entities](#) to comply with the [Guideline on Anti-Money Laundering and Counter-Financing of Terrorism \(For Licensed Corporations and SFC-licensed Virtual Asset Service Providers\)](#)

APPLICATION OF THE TRAVEL RULE TO VA TRANSFERS

- Financial institutions – defined in the AMLO to include VASPs licensed under the AMLO and/or SFO – must comply with s. 13A of Schedule 2 to the AMLO which applies the requirements for wire transfers under FATF Recommendation 16 (the Travel Rule) to transfers of virtual assets

Ch. 12 of the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) requires that:

- when acting as an **ordering institution** of VA transfers, a VASP must obtain, record and submit the required information of the originator and recipient to the beneficiary institution immediately and securely
- when acting as a **beneficiary institution**, a VASP must obtain & record the required information submitted by the ordering institution or intermediary institution
- Licensed VASPs also have to **conduct due diligence** on **VA transfer counterparties** (i.e. the ordering institution, intermediary institution or beneficiary institution involved in a VA transfer) to identify & assess the associated ML/TF risks so as to apply risk-based AML/CTF measures
- Ch. 12 also sets out requirements relating to identifying suspicious transactions + conducting sanctions screening of all relevant parties involved in a VA transfer

AUDITOR APPOINTMENT AND SUBMISSION OF AUDITED ACCOUNTS/ FINANCIAL RESOURCES RETURNS

Licensed VASPs + their associated entities (i.e. their Hong Kong incorporated wholly-owned subsidiaries that receive or hold client assets) must:

- appoint an auditor within **1 month** of the grant of the VASP licence and
- file audited financial statements with the SFC within **4 months of their financial year-end**
- submit **monthly** financial resources returns to the SFC

LICENSED VASPS' ONGOING REPORTING & NOTIFICATION OBLIGATIONS

- Notifications, regulatory filings & annual returns should be submitted through the [WINGS website](#)

CHANGES TO VASP LICENCES REQUIRING PRIOR SFC APPROVAL

- Prior SFC approval is required for various changes to VASP licences
- Application for approval is made on Form VA2, except for approval of changes to a VASP's substantial shareholders + ultimate owners, for which Form VA4 is used

Type of change/event	Statute	Notification requirement	Applicable to
Change or waiver of licensing condition	s.134 SFO		VA trading platform operator
Change of financial year and/or adoption of period exceeding 12 months as financial year	s.155(3) SFO +/or s.53ZSB(5) AMLO		VA trading platform operator + its associated entity
Extension of deadline for submission of audited accounts where there are special reasons for doing so	156(4) SFO +/or s.53ZSC(4) AMLO	If the platform operator or its associated entity anticipates that it will need to apply for an extension, it should submit its extension application at least 1 month before the relevant deadline	VA trading platform operator + its associated entity

Type of change/event	Statute	Notification requirement	Applicable to
<p>New premises to be used for keeping records or documents</p>	<p>s.130 SFO +/- or s.53ZRR AMLO</p>	<p>See SFC FAQs Premises for business or record keeping address</p>	
<p>Cessation of business</p>	<p>s.195(1)(d) SFO +/- or s.53ZSQ(2)(d) AMLO</p>	<p>At least 7 business days before the intended cessation of business</p>	<p>VA trading platform operator + licensed representatives</p>
<p>Becoming / continuing to be a substantial shareholder +/- or an ultimate owner of a VA trading platform operator</p>	<p>s.195(1)(d) SFO +/- or s.53ZSQ(2)(d)</p>	<p>SFC's approval must be obtained before a person (who may be a corporation) becomes a substantial shareholder or an ultimate owner of a VA trading platform operator. Approval is conditional on the person being "fit and proper"</p>	


CHANGES AND EVENTS REQUIRING NOTIFICATION TO THE SFC

Types of change/events	Notice Period	Applicable to
Ceasing to act as a licensed representative	Within 7 business days	Licensed representative
Ceasing to act as a responsible officer	Within 7 business days	Responsible officer
Change in name	Within 7 business days	VASP, substantial shareholder + ultimate owner
	Within 7 business days	Associated entity
Change in business address	At least 7 business days before the intended change in business address	VASP + its associated entity

Types of change/events	Notice Period	Applicable to
Change in director or his/her particulars	Within 7 business days	VASP + its associated entity
Change in complaints officer or his/her particulars	Within 7 business days	VASP
Change in emergency contact person or his/her particulars	Within 7 business days	VASP
Change in share capital or shareholding structure	Within 7 business days	VASP, its substantial shareholder(s) + associated entity
Change in contact information	Within 7 business days	VASP, licensed representatives, substantial shareholders, ultimate owner + associated entity
Significant changes in nature of business carried on + types of services provided	Within 7 business days	VASP

Types of change/events	Notice Period	Applicable to
Significant changes in business plan	Within 7 business days	VASP
Inclusion of any virtual asset for trading by professional investors only, or suspension of trading in, or removal of, any such virtual asset		VASP
Changes in Managers-In-Charge of Core Functions (MICs)	Within 7 business days	VASP
Changes in certain particulars of MICs	Within 7 business days	VASP
Change in bank accounts	Within 7 business days	VASP + its associated entity
Change in associated entity or its particulars	Within 7 business days	VASP + its associated entity

Types of change/events	Notice Period	Applicable to
Change in auditor's name	Within 7 business days	VASP
Give notice of a motion to change auditor in a general meeting, etc. under s.154 SFO and/or s.53ZSE AMLO	Within 1 business day	VASP
Change in executive officer or his/her particulars	Within 7 business days	Associated entity
Change in status of any authorisation to carry on any regulated activity by authority or regulatory organisation in Hong Kong or elsewhere	Within 7 business days	VASP + licensed representatives
Change in particulars in relation to wallet addresses	Within 7 business days	VASP + its associated entity



CONTINUOUS PROFESSIONAL TRAINING REQUIREMENTS FOR LICENSED INDIVIDUALS

- SFC-licensed VASPs are responsible for planning + implementing a continuous education programme appropriate to the training needs of their licensed employees
- Licensed VASPs need to assess their training programmes annually to determine whether any adjustments are necessary
- Responsible officers need to complete 12 CPT hours per calendar year, of which 2 CPT hours should cover regulatory compliance topics
- Licensed representatives need to complete 10 CPT hours per calendar year



MARKET MISCONDUCT REGIME FOR ACTIVITIES INVOLVING VIRTUAL ASSETS

AMLO's Market Misconduct Regime

- AMLO creates offences in relation to activities in VA that are non-security tokens

Fraudulently or Recklessly Inducing others to Invest in VA

- Making a fraudulent or reckless misrepresentation to induce an acquisition or disposal of a VA is an offence, whether the transaction takes place on a licensed VASP or not (AMLO s. 53ZRG)
- The offence carries maximum penalties of a HK\$1 mln fine and 7years' imprisonment

MARKET MISCONDUCT REGIME FOR ACTIVITIES INVOLVING VIRTUAL ASSETS (CONT'D)

Offence involving Fraudulent or Deceptive Devices etc. in Transactions in VA

- In a transaction involving VA, it is an offence for a person to employ any device, scheme or artifice with intent to defraud or deceive or engage in any fraudulent or deceptive act, practice or business (AMLO s. 53ZRF)
- Offence carries maximum penalties of a HK\$10 mln fine & 10 years' imprisonment

Offence to Issue Advertisements relating to an Unlicensed Person's Provision of a VA Service

- It is an offence for an unlicensed person to issue, or possess for the purpose of issue, an advertisement which holds the person out as prepared to provide a VA service (s. 53ZRE AMLO)
- Offence carries sanctions of a HK\$50,000 fine + 6 months' imprisonment

THE SFO'S MARKET MISCONDUCT REGIME

- Comparable offences under the SFO relate to the same conduct in VA that are securities within the statutory definition

Offence to Fraudulently or Recklessly Induce others to Invest Money

- Offence under s. 107 of the SFO to make any fraudulent or reckless misrepresentation to induce another person (among others) to deal in securities (including acquiring, disposing, subscribing for or underwriting securities)
- Maximum penalties include a HK\$1 mln fine & up to 7 years' imprisonment

Offence Involving Fraudulent or Deceptive Devices

- S. 300 of the SFO makes it an offence for a person in a transaction involving securities (including an offer or invitation) to employ any device, scheme or artifice with intent to defraud or deceive or engage in any act or practice which is fraudulent or deceptive
- Offence under s. 300 is punishable by a fine of up to HK\$10 mln and imprisonment for up to 10 years

OFFENCE TO ISSUE ADVERTISEMENTS TO THE HK PUBLIC TO ACQUIRE, DISPOSE OF, SUBSCRIBE FOR OR UNDERWRITE SECURITIES

- Offence under s. 103 of the SFO for a person to issue, in Hong Kong or elsewhere, a document containing an invitation to the Hong Kong public to enter into, or offer to enter into, an agreement to acquire, dispose of, subscribe for or underwrite securities, unless the document's issue has been authorised by the SFC under section 105(1) of the SFO or an exemption applies

Exemptions most commonly relied on are those for invitations with respect to securities that are or are intended to be disposed of:

- only to professional investors or
- only to persons outside Hong Kong



SFC POWERS WITH RESPECT TO LICENSED VASPS

SFC has broad powers under the SFO + AMLO to:

- enter the business premises of licensed VASPs and their associated entities to conduct routine inspections
- request production of documents and records
- investigate breaches +
- sanction licensed persons involved in the breaches

Possible sanctions include a reprimand, an order for remedial action, a fine + suspension or revocation of a person's licence

SFC can also appoint an auditor to conduct an investigation into the affairs of a licensed VASP + its associated entity if it has reason to believe that there has been a breach of the AMLO or any code or guideline published under it

SFC has intervention powers to impose restrictions + prohibitions on the operations of a licensed VASP + its associated entity in certain circumstances, e.g. where it is necessary to protect client assets.



TRANSITIONAL ARRANGEMENTS FOR VA EXCHANGES OPERATING IN HK BEFORE 1 JUNE 2023

- AMLO licensing regime for VASPs trading non-security tokens commenced on 1 June 2023
- AMLO's transitional arrangements allow VASPs trading non-security tokens which operated + had a meaningful + substantial presence in HK before 1 June 2023 to continue operating in HK without a licence until 31 May 2024

When considering whether a VASP has a “meaningful and substantial presence in Hong Kong”, SFC will consider, (among others):

- whether it is incorporated in Hong Kong
- whether it has a physical office in Hong Kong
- whether its central management + control + key personnel are based in Hong Kong
- whether the trading platform is live with a considerable number of clients + volume of trading activities in Hong Kong

Operators of pre-existing trading platforms which apply online for a licence between 1 June 2023 + 29 February 2024 will be deemed to be licensed from 1 June 2024 until the earlier of the approval, withdrawal or refusal of their licence application



TRANSITIONAL ARRANGEMENTS FOR VA EXCHANGES OPERATING IN HK BEFORE 1 JUNE 2023 (CONT'D)

- Licence applicants must confirm + demonstrate that they operated a virtual asset trading platform in Hong Kong immediately before 1 June 2023 + that, on being deemed to be licensed, they will comply with, + have arrangements in place to ensure compliance with, the regulatory requirements for licensed VASPs
- If a licence applicant does not meet the necessary conditions, or does not have a reasonable prospect of showing that it is capable of complying with the relevant legal + regulatory requirements, the SFC will notify the trading platform that the deeming provision will not apply to it
- The VA trading platform must then close down its business by 31 May 2024 or within 3 months of the date of the SFC notice, whichever is later
- Similar provisions apply to individuals performing regulated functions for a VA trading platform operating in Hong Kong before 1 June 2023. They can continue to perform regulated functions without a licence + will be subject to a deeming arrangement from 1 June 2024

TRANSITIONAL ARRANGEMENTS FOR VA EXCHANGES OPERATING IN HK BEFORE 1 JUNE 2023 (CONT'D)

- To be eligible for the deeming arrangement, individuals applying to be **responsible officers** of a pre-existing VA trading platform must have been performing the relevant regulated function for a VA trading platform (operating in or outside Hong Kong) immediately before 1 June 2023 +, at the time of application, must be performing a regulated function in Hong Kong for the pre-existing VA trading platform
- To be eligible for the deeming arrangement, **licensed representatives** of a pre-existing VA trading platform must be performing a relevant regulated function in Hong Kong at the time of application
- The transitional arrangements under the AMLO licensing regime apply only to the trading of non-security tokens by VA trading platforms
- There are **no transitional arrangements** under the SFO. Virtual asset trading platforms intending to offer trading in security tokens need to be separately licensed under the SFO for Type 1 (dealing in securities) and Type 7 (providing automated trading services) regulated activities before commencing operations in Hong Kong