STEPHENSON HARWOOD
Wei Tu China Association
罗夏信-伟途 联营

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VA DEALERS AND CUSTODIANS

BACKGROUND

On 27 June 2025, the Financial Services & the Treasury Bureau and the Securities and Futures Commission ("**SFC**") issued two joint consultation papers to introduce new licensing regimes for virtual assets ("**VA**") related activities:

+ dealing in virtual assets ("**VA Dealing Regime**"); and
+ providing VA Custodian Services ("**VA Custodian Regime**").

The joint consultations on the above proposed regimes follows the previous consultation of the proposed VA over-the-counter ("**OTC**") trading service licensing regime launched in February 2024, which we have covered in an earlier client alert, and both regimes are proposed to be regulated by the SFC.

Both consultations will close on 29 August 2025. This client alert summarises the content of the consultation papers.

	VA Dealing Regime	**VA Custodian Regime**
What activity would be regulated	The scope of the activity specified in the consultation paper: *Any person by way of business, making or offering to make an agreement with another person, or inducing or attempting to induce another person to enter into or to offer to enter into an agreement in respect of the following would require a licence granted by or registration with the SFC:* *(a) for or with a view to acquiring, disposing of, subscribing for or underwriting VAs; and* *(b) the purpose or pretended purpose of which is to secure a profit to any*	The scope of the activity specified in the consultation paper: *By way of business, the safekeeping of (a) VAs on behalf of clients or (b) instruments enabling transfer of VAs of clients (including but not limited to private keys) on behalf of clients.* "Instruments enabling transfer of VAs" would include the safeguarding of private keys (or similar instruments such as smartcards, authentication credentials for accessing the private keys) which would enable the transfer of client VAs.

	VA Dealing Regime	VA Custodian Regime
	of the parties from the yield of VAs *or by reference to fluctuations in the value of* VA. This is similar to the definition of "dealing in securities" under the Securities and Futures Ordinance ("**SFO**"). More specifically, the SFC specified that the above scope will include: + simple dealing services, including typically smaller scale VA-VA and VA-fiat (and vice versa) conversion; + more complex dealing services such as brokerage activities, block trading activities and other relevant activities of advisors or asset managers; and + irrespective of whether the services are to be provided through a physical outlet and/or other platforms. Although the definition would cover spot trading of VAs, it will not cover peer-to-peer trading of VAs between individuals where no intermediary is involved. Unlike the existing regulatory regime applicable to an SFC-Type 1 licensed corporation who is permitted to provide VA dealing services, a licensed VA dealer would be able to provide services through a non-SFC-licensed virtual asset trading platform ("**VATP**"), but must have sufficient investor protection measures in place.	The above scope would also cover functions that are part and parcel of the VA services, such as deposit and withdrawal of client VAs and carrying out settlement instructions of licensed intermediaries for VA trading services, but not self-custody of one's own VAs. There is no restriction on the type of VAs that a licensee can provide custodian services for, provided that product due diligence is done. Ancillary services (such as staking) may also be allowed, but subject to regulatory approval on a case-by-case basis.
Who is regulated	The following people will need to be licensed under the VA Dealing Regime: + Any person who carries out the abovementioned activities (i.e. unregulated VA dealing operators and VA fund managers). + Any person who actively markets to the Hong Kong public of its VA dealing services, or hold itself out as providing the services in Hong Kong, will also need to be licensed.	The following people will need to be licensed under the VA Custodian Regime: + Any person who carries out the abovementioned activities. + Any person who actively markets to the Hong Kong public of its VA custodian services, or hold itself out as providing the services in Hong Kong, will also need to be licensed.

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	+ Existing intermediaries licensed or registered with the SFC for providing VA dealing services. + SFC-licensed VATP, and including if the activities are carried out off-platform. + HKMA-licensed banks if they wish to provide services of dealing in any VAs in Hong Kong. + Stored value facility ("**SVF**") licensees if they wish to provide services of dealing in any VAs in Hong Kong. Exemption: Licensed stablecoin issuers who conduct offering or redemption of the stablecoins that they issue. It is proposed that the applicant must be: + a locally incorporated company with a permanent place of business in Hong Kong, or + a company incorporated elsewhere but registered in Hong Kong under the Companies Ordinance.	+ Existing intermediaries licensed or registered with the SFC that carry out the abovementioned activities that carry out the abovementioned activities by safekeeping the private keys. + A depositary of an SFC-authorised fund with VAs in the fund's portfolio that carry out the abovementioned activities by safekeeping the private keys. + An associated entity of an SFC-licensed VATP. + Banks, subsidiaries of locally incorporated banks and SVFs that carry out the abovementioned activities by safekeeping the private keys. + Licensed or registered fund managers if they provide self-custody to the funds under their management by safekeeping the private keys. Incidental exemption: + Intermediaries licensed or registered with the SFC, or HKMA-regulated entities, are exempted if the safekeeping of the client VAs is wholly incidental to the principal business of providing VA services or the regulated activity that the entity is licensed for and there is no safekeeping of the private keys. + Licensed stablecoin issuers in respect of custody of stablecoins they issue (even if safekeeping private keys). It is also proposed that the following businesses will be exempted:

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		+ bank security vaults storing encrypted/de-activated back-up of private keys, or a part thereof; + security companies storing encrypted/de-activated back-up of private keys, or a part thereof; + technical service providers that support the provision of VA custodian services but do not safekeep private keys themselves such as the service of providing communication or information technology networks. It is proposed that the applicant must be: + a locally incorporated company with a permanent place of business in Hong Kong, or + a company incorporated elsewhere but registered in Hong Kong under the Companies Ordinance. The following individuals must also be licensed as a licensed representative or relevant individual accredited to the licensed VA custodian: + who are responsible for the VA custodian services; + who provides business function directly related to the VA custodian; and + who carries out oversight duties over the performance of custody functions (i.e., approving instructions or transactions, approving asset transfers). But not individuals who: + perform clerical functions only (but where the individual will be signing or authorising transactions, even clerical only, must be licensed); and + perform internal corporate functions.

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When will the regime take effect	Licence will be an open-ended licence (i.e. remain valid until revoked by the SFC). No transition period will be granted but existing businesses should reach out to the SFC before the commencement of the regime. SFC will keep the public informed of the proposed effective date of the regime.	Licence will be an open-ended licence (i.e., remain valid until revoked by the SFC). No transition period will be granted but the SFC will facilitate existing businesses in transitioning into the new licensing regime.
How to meet license requirements	Proposed requirements include: + Must identify suitable premises for the storage of books and records. + Must satisfy fit-and-proper tests. + Must have at least 2 SFC-approved responsible officers. + Professional investor restriction: similar to the requirements for VATPs (i.e., only high liquidity tokens or stablecoins from licensed issuer can be offered to retail investors). + Full compliance with the applicable AML/CFT-related standards with regards to deposits/withdrawals of clients VA. + Must carry out risk-based transactions monitoring procedures. + Must only hold client VAs with a licensed VA custodian. + Minimum paid-up share capital of HK$5 million. Minimum liquid capital of up to HK$3 million. Excess liquid capital equivalent to at least 12 months of operating expenses (but not applicable to banks). + Proper corporate governance structure staffed by personnel with necessary knowledge and experience.	Proposed requirements include: + Must engage an external assessor to perform external assessment of all relevant systems and controls after deployment. The SFC must be a party to such assessment process. + Must identify suitable premises for the storage of books and records. + Must satisfy fit-and-proper tests. + Must have at least 2 SFC-approved responsible officers. + There must be segregation of client VAs. For safekeeping of private keys, the licensee must adhere to robust regulatory requirements. + Minimum paid-up share capital of HK$10 million. Minimum liquid capital of up to HK$3 million. But it is still under consideration whether the excess operating expenses requirement would be imposed. + Proper corporate governance structure staffed by personnel with necessary knowledge and experience. + Duty to act honestly, fairly, with due skill, care and diligence, in the best interests of clients and the integrity of the market. + Full compliance with the applicable AML/CFT-related standards. + Observe record keeping requirements.

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	+ Observe prescribed auditing and disclosure requirements (but not applicable to banks). + Duty to act honestly, fairly, with due skill, care and diligence, in the best interests of clients and the integrity of the market. + Observe record keeping requirements. + Implement client VA protection measures. + Other investor protection safeguards.	+ Observe financial reporting and disclosure requirements.

OTHER NOTABLE ISSUES

Generally, the SFC will be empowered to impose licensing/registration conditions, enter licensees' business premises for inspections and investigations, and to impose disciplinary sanctions. However, in respect of banks and SVFs, the HKMA will be empowered to carry out inspections and investigations instead.

The consultation papers also set out a list of proposed sanctions for various offences or contraventions, including the following:

+ If a person carries on the regulated activity without the relevant licence, he will be liable, on conviction on indictment, to a fine of HK$5million and to imprisonment for 7 years.
+ If a person knowingly advertises an unlicensed person's business activities, he will be liable to a fine at level 5 (currently at HK$50,000) and to imprisonment of 6 months.
+ Non-compliance with the AML/CFT requirements, liable on conviction on indictment to a fine of HK$1million and to imprisonment for 2 years.
+ Engaging in fraudulent or deceptive behaviour, liable on conviction on indictment to a fine of HK$10million and to imprisonment for 10 years.
+ Making fraudulent or reckless misrepresentations, liable on conviction on indictment to a fine of HK$1million and to imprisonment for 7 years.
+ Other misconduct or fitness-and-properness issues, may be subject to suspension or revocation of licence, reprimand, remedial order and/or pecuniary penalty.

It is also proposed that decisions of the SFC/HKMA can be appealed to the Anti-Money Laundering and Countering-Terrorist Financing Review Tribunal.

CONCLUSION

Since the launch of the public consultation on the VA OTC regime in February 2024, we have witnessed great interests from the market in relation to the proposed licensing regime. The new two new regimes will likely impact many existing businesses with exposures to VAs.

We regularly advise clients with businesses relating to VAs, including trust and company service provider licensees who have been providing custodian services to VA under its licence. Should you be interested in knowing more about the upcoming regimes, please feel free to reach out to us.

CONTACT US

KATHERINE LIU

Partner

+852 2533 2717
katherine.liu
@stephensonharwood.com

ALAN WONG

Associate

+852 2533 2719
alan.wong
@stephensonharwood.com