


# SFC-HKMA Joint Circular on intermediaries' virtual asset-related activities


November 2023

## Introduction



Due to the increased interest in virtual asset (VA)-related products from intermediaries, the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) released an updated [Joint circular on intermediaries' virtual asset-related activities](#) on 20 October 2023, superseding the circular released on 28 January 2022. In the updated circular, the overarching “professional investors only” (PIs) restriction on various types of activity has been lifted, allowing licensed corporations to offer regulated activities to a broader base of customers, subject to having the appropriate risk mitigation in place. As the VA landscape in Hong Kong continues to evolve, especially with the focus on real world assets, this is a welcome move that further develops Hong Kong as an international hub for virtual assets.

## Key updates of the joint circular




Given the recent changes in the industry as well as requests from market participants to broaden customer reach through additional distribution channels, the SFC and HKMA have revised their guidance concerning:

- A. Distribution of VA-related products;
- B. Provision of VA dealing services;
- C. Provision of asset management services in respect of VAs; and
- D. Provision of VA advisory services.

The key revisions aim to align the previous guidance with this shift in regulatory approach. Specifically, **the circular updates the recommendations around dealing and advisory services to account for retail customers.** The modifications incorporate:

- allowing direct retail access with suitable investor protections, such as limiting trades to less complex VA products;
- guidance to intermediaries to be consistent with the new regulatory framework governing SFC-licensed trading platforms; and
- updated terms and conditions under the SFC's regulatory framework.

## Implementation deadlines

- 
- Intermediaries which are **already providing VA dealing services** to non-qualified corporate PIs and individual PIs, and wish to continue to provide such services, have a **three-month transition period** to adhere to the Circular, such as updating their systems, policies procedures and controls.
  - Intermediaries that **plan to engage in VA dealing services** to non-qualified corporate PIs, individual PIs, and retail investors should ensure that they comply with the requirements in the Circular **before introducing such services** (Refer to section E).

# Key aspects of the joint circular

## A. Distribution of VA-related product

VA-related products encompass investment products that: have a principal investment goal or strategy to invest into VAs; acquire their value mainly from the value and characteristics of VAs; or replicate or track investment outcomes or returns that closely match or relate to VAs.

### Additional investor protection measures

Considering the additional counterparty risks for VA-related products, and PI protection issues due to lack of pricing and transparency, and potential for market manipulation, the SFC and the HKMA introduced additional investor protection measures on the distribution of VA-related products:

- **Selling restrictions:** VA-related products which are considered complex products should only be offered to PIs. In effect, individual investors will mainly have access to a narrow range of VA-linked exchange-traded derivative products that have been permitted for public sale by the SFC and listed on the Hong Kong stock exchange. This includes futures-based VA exchange-traded funds.
- **Virtual asset knowledge test:** Intermediaries are required to assess the client's knowledge of investing in VAs or VA-related products prior to effecting a transaction in VA-related products on their behalf. If the client does not possess such knowledge, adequate training should be provided to the client. [Appendix 1](#) of the Circular lists out non-exhaustive criteria for the assessment. (This does not apply to clients that are qualified corporate PIs or institutional PIs.)
- **Sufficient net worth:** Intermediaries are also responsible for ensuring that clients have sufficient net worth to be able to assume the risks to bear the potential losses of trading VA-related products.

### Other existing investor protection measures

- **Selling restrictions:** Intermediaries should ensure adherence to the selling restrictions when providing VA-related products services such as the provisions in Part IV of the Securities and Futures Ordinance (SFO) that prohibit the offering to the Hong Kong public of investments which have not been authorised by the SFC.
- **Suitability:** Intermediaries should observe suitability obligations, including:
  - Ensuring recommendations or solicitations made are suitable for clients in all circumstances, for instance the nature and features of the VA-related product, and the client's risk tolerance and financial situation. [Appendix 4](#) to the Circular sets out additional due diligence requirements for unauthorised VA funds.
  - Ensuring compliance with paragraphs 5.1A and 5.3 of the [Code of Conduct for VA-related product](#) which is a derivative product. Examples of statements are set out in [Appendix 5](#)
- **Financial capacity:** Given the high-risk nature of VAs, intermediaries should ensure the client has the financial capacity to meet the obligations arising from leveraged or margin trading in VA-related products, including in a worst-case scenario.
- **Disclosures:** Intermediaries should share information and warning statements to clients in a clear and easily comprehensible manner. (Such disclosures are not required for qualified corporate PIs and institutional PIs.)

## B. Provision of VA dealing services

### Partner with SFC-licensed VA trading platforms only

Intermediaries are required to partner only with SFC-licensed VA trading platforms for the provision of VA dealing services, whether by introducing the platforms to clients or the establishment of an omnibus account with the platforms.

Comply with regulatory requirements set out by SFC and HKMA: VA dealing services to be provided only to the intermediaries' clients to which they provide services in Type 1 (securities dealing) regulated activity.

### Conduct requirements for intermediaries' provision of VA dealing services under an omnibus account arrangement

One of the conditions requires intermediaries to comply with the prescribed terms and conditions, highlighted as below. For the rest please refer to [Appendix 6](#) in the circular.

## Intermediaries, before providing VA dealing services to retail clients should:

- Assess retail client's knowledge of VAs and risk tolerance level;
- Set a limit for each retail client to ensure the reasonableness of the client's exposure to VAs, in consideration of the client's financial situation (including net worth) and personal circumstances;
- Ensure the VA dealing activities are conducted through an SFC-licensed platform which is not subject to the licensing condition that it can only serve PIs; and
- implement adequate controls to ensure the retail clients can only trade in those VAs that are made available by the SFC-licensed platform for trading by retail investors

## Intermediaries, which allow clients to deposit or withdraw VAs from their accounts, should only receive or withdraw such client VAs through the segregated account(s) established and maintained with:

- their partnered SFC-licensed platforms; or
  - authorised financial institutions (or subsidiaries of locally incorporated authorised financial institutions) which meet the expected standards of VA custody issued by the HKMA from time to time
- Intermediaries should also comply with the requirements under Chapter 12 of the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (for licensed corporations and SFC-licensed VASP) when handling these VA deposits and withdrawals.

### Conduct requirements for intermediaries' provision of VA dealing services as introducing agents

Type 1 intermediaries which provide VA dealing services as an introducing agent are not allowed to relay any orders on behalf of the clients to SFC-licensed platforms or hold any client assets, including fiat currencies and client VAs for the introducing services.

### Conduct requirements for intermediaries' provision of VA dealing services in tokenised securities

Intermediaries which provide dealing services in tokenised securities should comply with the existing requirements governing dealing in securities and the two recently issued circulars from the SFC on tokenised securities-related activities.

## C. Provision of asset management services in respect of virtual assets

Intermediaries registered or licensed for Type 9 regulated activities can provide VA-related asset management services, subject to the de minimis threshold of 10%. When above 10%, intermediaries are subject to RA9 Terms and conditions in [Appendix 7](#) of the Circular.

A Type 1 intermediary which is authorised by its clients to provide VA dealing services on a discretionary basis as an ancillary service should only invest less than 10% of the gross asset value of the client's portfolio in VAs for discretionary account management services..

## D. Provision of VA advisory services

Intermediaries should comply with all the regulatory requirements imposed by the SFC and the HKMA when providing advisory services, irrespective of the nature of the VAs. Such services are only allowed to be provided to clients to which the intermediaries provide services in Type 1 or Type 4 regulated activity.

Intermediaries which provide VA-advisory services are required to comply with the conduct requirements set out in the prescribed T&Cs in the [Appendix 6](#) of the Circular, and adhere to the suitability obligations.

Intermediaries are required to take all reasonable steps when providing VAs recommendations to retail clients, including to ensure the VA is of high liquidity, an eligible large-cap virtual asset, and is made available by SFC-licensed platforms for trading by retail investors.

## E. Notification to the SFC

Financial intermediaries should inform the SFC and HKMA beforehand if they plan to:

- engage in any activities involving tokenised securities and VAs, such as the provision of dealing and advisory services in VA-related products, tokenised securities and VAs
- engage in VA asset management services
- make any changes to the activities conducted (including changes in the type of clientele served)

# How KPMG can help

KPMG is a market leader in supporting licensed corporations and virtual assets companies in various capacities including audit and advisory. A team of seasoned experts with deep knowledge of the VA space is ready to support you on the new SFC requirements.



## Pre-Implementation

- Understanding the rules and managing rule ownership assignment
- Perform a gap analysis and readiness assessment of your controls and processes against requirements and industry practices
- Assist you to perform the due diligence requirements as set out by the SFC on your partnered VA platforms and vendors



## Implementation Support

- Support firms in implementing the SFC requirements in light of the regulated activity or activities you wish to carry out
- Perform regular assessments and health checks to ensure continued compliance with regulatory requirements, including cybersecurity and technology assessment, AML assessment and custody assessment



## Business Support

- Business roadmap support and target operating model support under the new VA related activities framework
- Product and capabilities review and assessment against business objectives
- Notification and licensing support to the SFC
- IT and cybersecurity services in relation to VA business
- AML and KYC services

## Contact us



### Tom Jenkins

Partner, Governance, Risk and Compliance Services  
KPMG China

T: +852 2143 8570

E: [tom.jenkins@kpmg.com](mailto:tom.jenkins@kpmg.com)



### Robert Zhan

Director,  
Financial Risk Management  
KPMG China

T: +852 3927 5731

E: [robert.zhan@kpmg.com](mailto:robert.zhan@kpmg.com)



### Lilian Sin

Partner, Forensics  
KPMG China

T: +852 2826 7174

E: [lilian.sin@kpmg.com](mailto:lilian.sin@kpmg.com)



### Lanis Lam

Partner, Technology Consulting  
KPMG China

T: +852 2143 8803

E: [lanis.lam@kpmg.com](mailto:lanis.lam@kpmg.com)



### Angela Wong

Director, Governance, Risk and  
Compliance Services  
KPMG China

T: +85239275783

E: [angela.c.wong@kpmg.com](mailto:angela.c.wong@kpmg.com)



### Sachin Kerpal

Financial Risk Advisory  
KPMG China

T: +852 6746 4795

E: [sachin.kerpal@kpmg.com](mailto:sachin.kerpal@kpmg.com)



[kpmg.com/cn/socialmedia](https://kpmg.com/cn/socialmedia)

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2023 KPMG, a Hong Kong (SAR) partnership and a member firm of the KPMG global organisation of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. Printed in Hong Kong (SAR).

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organisation.