

# Public Consultation on Legislative Proposals to Regulate Over-the-Counter Trading of Virtual Assets

March 2024



In 2023, a number of fraud cases associated with alleged virtual asset trading platforms (VATP) have brought heightened public concerns over the risks of such virtual asset (VA) activities. While the activities of VATPs fall under the regulatory remit of the relevant regime, the cases have unveiled the involvement of VA over-the-counter (OTC) shops.

In particular, some VA OTC shops have served as one of the main avenues for channeling retail investors' funds to the suspected fraudulent schemes. Under such circumstances, the Hong Kong Government sees a need to bring VA OTC services within the statutory regulatory remit through legislative amendments, with a view to ensuring that the "same activity, same risks, same regulation" principle is observed and sufficient investor protection is provided for.

On 8 February, the Financial Services and the Treasury Bureau (FSTB) issued a [public consultation on legislative proposals to introduce a licensing regime for providers of over-the-counter \(OTC\) trading services of virtual assets \(VA\)](#).

In this brief, KPMG outlines the proposal, and key expectations set by the regulator for VA OTC shops in Hong Kong. The FSTB invites written feedback on the proposal or before 12 April 2024.

## Key takeaways from the proposed consultation

- **A six-months transitional period upon the legislation, any person providing service of spot trade of any VA should be licensed except VATPs, licensed corporations and authorized institutions. The company should also be a Hong Kong incorporated company or company registered in Hong Kong under the Companies Ordinance (Cap. 622).**
- **Licensees can perform spot trade of any VA for any money, or vice versa but not VA-to-VA. Other activities will require other licenses.**
- **FSTB will post certain regulatory requirements on the licensees, including the following areas: (a) Appointment of a competent Compliance Officer and a Money Laundering Reporting Officer, (b) Competence/knowledge and experience, (c) Soundness of business, (d) Conduct, (e) Risk management and (f) Record keeping**
- **VA OTC shops with a physical presence will be required to identify suitable premises for its operation. As regards to digital VA OTC operators, they will be required to provide information on the address of the local management office, the correspondence address and the place for local storage of books and records.**
- **Proposing that each license will last for two years and is renewable for two years upon application and to the satisfaction of Commissioner of Customs and Excise (CCE).**



### Licensing Regime – Eligibility

Under the proposed licensing regime, license applicants must be

- (i) a locally incorporated company with a permanent place of business in Hong Kong, or
- (ii) a company incorporated elsewhere but registered in Hong Kong under the Companies Ordinance (Cap. 622).

# Key updates from the consultation

## Licensing Regime - Scope

Under the proposed regime, any person operating **VA OTC business in Hong Kong**, or actively **marketing** the provision of VA OTC services to the Hong Kong public, should obtain a license issued by the CCE, subject to meeting a fit and proper test and other regulatory requirements. The above requirement does not apply to VATPs, licensed corporations, authorized institutions and in the future licensed stablecoin issuers who are already subjected to other VA-related regulations.

VA OTC business will be defined as –

- (a) by way of business, provision of service of **spot trade of any VA** (*this will not cover peer-to-peer trading of VA between individuals unless the trade forms the business activity of either party*);
- (b) irrespective of whether the service is provided through a physical outlet (i.e. including ATMs) or other (e.g. digital) platforms; and
- (c) explicitly excluding the operation of a VATP as already covered under the VATP licensing regime.

Operators of VA trading services may also provide **temporary custody/escrow service** for client’s VA as part of the transaction process. Considering that the provision of such temporary custody/escrow service could involve **operational risks and investor protection concerns**, FSTB is considering whether it should be covered by the proposed regulatory regime, and whether there should be dedicated regulatory requirements for such temporary custody/escrow service.

## Licensing Regime – Activities allowed under this licensing regime

- licensees can perform **spot trade of any VA for any money**, or vice versa, in their course of business. **VA-to-VA conversion is not allowed** under this licensing regime. Service providers providing VA-to-VA trading services would require a VATP license.
- VA OTC licensees are **only** allowed to offer services in respect of **tokens** that may be **accessed by retail investors on at least one SFC-licensed VATP and stablecoins issued by issuers licensed** by the Hong Kong Monetary Authority (“HKMA”) upon implementation of the proposed licensing regime for stablecoin issuers.
- To provide services on **remittance of fiat money**, licensees will need to apply for a **money service operators license**.
- Under the current proposal, **direct or indirect custody/escrow service** of client’s VA by licensees will **not be permitted unless** the custody/escrow service for client’s VA is **temporary** in nature and is an indispensable part of the transaction process.
- As regards **transfer of VA after sale** to clients, licensees will only be allowed to transfer the VA concerned from their registered wallets to a **client wallet** in respect of which the clients can provide **proof of ownership and/or control**.
- Provision of other services, including any form of **VA advisory or referral services, offering of VA derivatives or other financial products** (including but not limited to staking, lending and margin trading), will **not be permitted**.

## Licensing Regime – Location

VA OTC shops with a physical presence will be required to identify suitable premises for its operation. As regards to digital VA OTC operators, they will be required to provide information on the address of the local management office, the correspondence address and the place for local storage of books and records.

# Key updates from the consultation



## Licensing Regime – Regulatory Requirements

- (a) **Appointment of a competent Compliance Officer and a Money Laundering Reporting Officer** – it is necessary to ensure that fit and proper personnel of a licensee will be held responsible for satisfying the relevant requirements pertaining to the granting of a license;
- (b) **Competence/knowledge and experience** – a licensee is required to have a proper corporate governance structure staffed by personnel with the necessary knowledge of and experience with VA to enable the effective discharge of responsibilities;
- (c) **Soundness of business** – a licensee is required to operate its business prudently and soundly, and ensure that clients and public interests will not be adversely affected;
- (d) **Conduct** – a licensee is required to act honestly, fairly, with due skill, care and diligence, in the best interests of its clients and the integrity of the market, as well as comply with all statutory and regulatory requirements applicable to the conduct of its business activities;
- (e) **Risk management** – a licensee is required to have in place appropriate risk management policies and procedures for managing ML/TF, cybersecurity and other risks arising from its activities that are commensurate with the scale and complexity of its business; and
- (f) **Record keeping** – a licensee is required to maintain proper records of transactions and fund flows, which will be accessible to CCE as and when CCE considers necessary.



## Transitional Arrangement

FTSB proposed two options for the transitional arrangement:

**Option 1 – No Deeming Arrangement:** A transitional period of six months. During the transitional period, pre-existing VA OTC service providers will be allowed to continue their operations until the end of the six-month period, on condition that they have to submit within the first three months a license application to CCE. Upon the end of the transitional period, all VA OTC service providers have to be licensed to carry out any regulated activity. Pre-existing VA OTC service providers that do not submit a license application to CCE within the first three months of the commencement of the transitional period will need to close down their business in an orderly manner by the end of the fourth month of the commencement of the transitional period.

**Option 2 – With Deeming Arrangement:** Similar to option 1, pre-existing VA OTC service providers will be allowed to continue their operations until the end of a six-month transitional period, on condition that they have to submit within the first three months a license application to CCE. For those applicants that are able to meet the requirements specified by CCE, a “deemed license” will be granted in the interim for them to continue their operations beyond the transitional period and until a final determination of the license applications is made by CCE. Powers will be provided to CCE to revoke or amend the “deemed license” as CCE considers appropriate.




## Licensing Regime – Others

- Licensees will need to make an application with CCE on the full list of wallets to be used in their operations and register the list with CCE, as well as ensure that the list is up-to-date.
- A successful applicant will be granted a license of **two years**, renewable for two years upon application and to the satisfaction of CCE.
- Licensees will be required to observe the AML/CTF requirements stipulated in Schedule 2 to the AMLO relating to CDD and record-keeping.


# How KPMG can help

KPMG is a market leader in supporting Licensed Corporations and Virtual Assets Companies in various capacities from Audit to Advisory. A team of seasoned experts with deep knowledge of the VA space is ready to support you on the proposed HKMA 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
- Provide enhancement suggestions on the existing policies and procedures



**Implementation Support**

- Support firms in implementing the FSTB requirements listed in the proposed licensing regime
- Perform regular assessments and health checks to ensure continued compliance with licensing criteria, including risk management and record keeping



**Business Support**

- Business roadmap support and target operating model support under the VA OTC activities
- Notification and licensing support to the CCE
- IT and cybersecurity services in relation to VA OTC business

## 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)



**Lillian Sin**  
 Partner, Forensics  
 KPMG China  
 T: +852 2826 7174  
 E: [lillian.sin@kpmg.com](mailto:lillian.sin@kpmg.com)



**Lanis Lam**  
 Partner, Technology Consulting  
 KPMG China  
 T: +852 2143 8803  
 E: [lanis.lam@kpmg.com](mailto:lanis.lam@kpmg.com)



**Lancer Hui**  
 Manager, Financial Risk Management  
 KPMG China  
 T: +852 2826 7104  
 E: [lancer.hui@kpmg.com](mailto:lancer.hui@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.

© 2024 KPMG Advisory (Hong Kong) Limited, a Hong Kong (SAR) limited liability company 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.