

31 May 2023

## **Circular on transitional arrangements of the new licensing regime for virtual asset trading platforms**

1. The new licensing regime for centralised virtual asset trading platforms (VATPs) under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap 615) (AMLO) will come into effect on 1 June 2023. Under the new regime, all VATPs carrying on a business of operating a virtual asset exchange (VA service)<sup>1</sup> in Hong Kong or actively marketing their services to Hong Kong investors will need to be licensed by the Securities and Futures Commission (SFC)<sup>2</sup>.
2. The SFC issues this circular to set out the transitional arrangements of the new licensing regime under the AMLO.
3. The transitional arrangements discussed in this circular apply only to VATPs providing trading services in non-security tokens. There is no transitional arrangement for compliance with the Securities and Futures Ordinance (SFO). VATPs which intend to provide trading services in security tokens will be subject to the securities laws of Hong Kong and should commence their businesses in providing trading in security tokens only upon obtaining the relevant licence under the SFO.

### **Eligibility for transitional arrangements**

4. The transitional arrangements (ie, a non-contravention arrangement and a deeming arrangement) aim to provide reasonably sufficient time for VATPs which are providing a VA service in Hong Kong before 1 June 2023 and which are prepared to comply with the SFC's standards to apply for a licence and to review and revise their systems and controls to comply with the applicable legal and regulatory requirements.
5. Those who do not plan to apply for a licence should proceed to an orderly closure. The SFC expects them to cease any active marketing of their services to Hong Kong investors.

### *VATPs operating in Hong Kong before 1 June 2023*

6. VATPs which are providing a VA service with meaningful and substantial presence (ie, carrying on a genuine business with genuine presence) in Hong Kong before 1 June 2023 (pre-existing VATPs) may continue to provide the VA service in Hong Kong from 1 June 2023 to 31 May 2024 (ie, within the first 12 months from 1 June 2023) without being

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<sup>1</sup> As defined under section 53ZR and Schedule 3B to the AMLO.

<sup>2</sup> Under section 53ZRD of the AMLO, any person who carries on a business of providing a VA service, or holds itself, himself or herself out as carrying on such a business, is required to apply for a licence from the SFC. Under section 53ZRB of the AMLO, any person who actively markets to the public any services that the person provides and which would constitute a VA service if provided in Hong Kong, is regarded as providing a VA service. For VATPs intending to provide trading services in security tokens, they will require a licence for Types 1 and 7 regulated activities under the SFO.

in breach of the licensing requirements under the AMLO by virtue of the non-contravention arrangement<sup>3</sup>.

7. To be eligible for the transitional arrangements, a VATP must have already been providing a VA service in Hong Kong before 1 June 2023<sup>4</sup>. The factors that the SFC will consider in assessing whether a VATP is operating and carrying on a genuine business with a genuine presence in Hong Kong before 1 June 2023 include the following:
  - a) whether it is incorporated in Hong Kong;
  - b) whether it has a physical office in Hong Kong;
  - c) whether its Hong Kong staff exercises central management and control over the VATP;
  - d) whether its key personnel (eg, those responsible for the operation of the trading system) are based in Hong Kong;
  - e) whether the VATP's operation is live with independent clients and genuine trading volume in Hong Kong; and
  - f) whether there are other factors (eg, in relation to the VATP's trading system set-up, trading arrangements and organisational structure) which can support that the VATP is operating in Hong Kong before 1 June 2023.
8. The mere setting up of a company in Hong Kong or only having "shell" operations in Hong Kong would not suffice.

*Individuals performing a regulated function for pre-existing VATPs*

9. Individuals may perform a regulated function in Hong Kong for pre-existing VATPs from 1 June 2023 to 31 May 2024 (ie, within the first 12 months from 1 June 2023) without being in breach of the licensing requirements under the AMLO by virtue of the non-contravention arrangement<sup>5</sup>.

*VATPs not operating in Hong Kong before 1 June 2023*

10. VATPs which were not operating in Hong Kong before 1 June 2023 are not eligible for the transitional arrangements. They should not commence any VATP business activities in Hong Kong, or actively market any VA service to Hong Kong investors, until they are licensed by the SFC. The carrying on of any unlicensed activity is a criminal offence.

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<sup>3</sup> See section 2(1) of Schedule 3G to the AMLO.

<sup>4</sup> See section 3(1)(a) of Schedule 3G to the AMLO.

<sup>5</sup> See section 2(2) of Schedule 3G to the AMLO.

*Individuals performing a regulated function for VATPs which were not operating in Hong Kong before 1 June 2023*

11. Individuals who perform, or hold themselves out as performing, a regulated function for a VATP which was not operating in Hong Kong before 1 June 2023 are not eligible for the non-contravention arrangement. In addition to taking enforcement action against the VATP for carrying on unlicensed activities, individuals performing, or holding themselves out as performing, a regulated function for the VATP would also be carrying on unlicensed activities, which is a criminal offence.

**Deeming arrangement**

*Pre-existing VATPs*

12. A pre-existing VATP may be qualified for the deeming arrangement under the AMLO and can be deemed to be licensed from 1 June 2024 to conduct a business of providing a VA service pending the final determination of its licence application<sup>6</sup> if it can meet the following deeming conditions:

- a) It submits a fully completed online licence application<sup>7</sup> to the SFC via WINGS between 1 June 2023 and 29 February 2024 (ie, within the first nine months from 1 June 2023)<sup>8</sup>;
- b) It confirms in the licence application that<sup>9</sup>:
  - i. it has been providing a VA service in Hong Kong immediately before 1 June 2023<sup>10</sup>;
  - ii. it will, on being deemed to be licensed on 1 June 2024, comply with the regulatory requirements<sup>11</sup> applicable to a licensed VATP<sup>12</sup>; and
  - iii. it will, on being deemed to be licensed on 1 June 2024, have arrangements in place to ensure it complies with the regulatory requirements applicable to a licensed VATP<sup>13</sup>;
- c) It could prove in its licence application to the SFC's satisfaction that:
  - i. it has been providing a VA service in Hong Kong immediately before 1 June 2023<sup>14</sup>; and

<sup>6</sup> See section 4 of Schedule 3G to the AMLO.

<sup>7</sup> In accordance with section 53ZRK of the AMLO.

<sup>8</sup> See section 3(1)(b)(i) of Schedule 3G to the AMLO.

<sup>9</sup> Under section 53ZTO(1) of the AMLO, a person commits an offence if he or she makes a representation that is false or misleading in a material particular for a licence application, and he knows that, or is reckless as to whether, the representation is false or misleading in a material particular.

<sup>10</sup> See section 3(1)(b)(ii) of Schedule 3G to the AMLO.

<sup>11</sup> As defined in section 1 of Schedule 3G to the AMLO.

<sup>12</sup> See section 3(1)(b)(iii)(A) of Schedule 3G to the AMLO.

<sup>13</sup> See section 3(1)(b)(iii)(B) of Schedule 3G to the AMLO.

<sup>14</sup> See section 3(4)(a) of Schedule 3G to the AMLO.

- ii. it has a reasonable prospect of successfully showing that it is capable of complying with the regulatory requirements applicable to a licensed VATP<sup>15</sup>; and
- d) The SFC has acknowledged receipt in writing that it has received the licence application<sup>16</sup>.

13. Upon a review of the licence application and all the information available to the SFC, if the SFC considers that the VATP licence applicant does not meet any one of the above deeming conditions, the SFC may issue a notice to the VATP (no-deeming notice) to inform the VATP that the deeming arrangement will not apply to it<sup>17</sup>. While the licence application submitted pursuant to section 53ZRK of the AMLO will then be subject to a deemed withdrawal procedure<sup>18</sup>, the VATP must still proceed to close down its business by 31 May 2024 or by the expiry of the three months beginning on the day of the issuance of the notice (whichever is later)<sup>19</sup> irrespective of whether it has objected to the deemed withdrawal of its licence application<sup>20</sup>. Its staff members (including proposed licensed individuals as referred to in paragraph 15 below) should also stop performing, or holding himself or herself out as performing, any regulated function for the VATP unless these acts are done solely for the closing down of the VATP's business<sup>21</sup>.

14. If the SFC considers that the pre-existing VATP meets the deeming conditions, the VATP will automatically be deemed to be licensed from 1 June 2024 until its licence application is approved, withdrawn or refused (whichever is earlier)<sup>22</sup>.

#### *Proposed licensed individuals of pre-existing VATPs*

15. A licensed individual who applies to be a licensed representative (LR) and/or a responsible officer (RO) of a pre-existing VATP (the principal) (a proposed licensed individual) may be qualified for the deeming arrangement under the AMLO and can be deemed to be licensed from 1 June 2024 to perform a regulated function for the principal if he or she can meet the following deeming conditions:

- a) To be eligible for making an LR application, the proposed licensed individual must be performing a regulated function in Hong Kong for the principal at the time of submission of his or her application<sup>23</sup>;
- b) To be eligible for making an RO application, the proposed licensed individual:
  - i. must have been performing a regulated function in Hong Kong for a VATP (operating in Hong Kong or elsewhere) immediately before 1 June 2023<sup>24</sup>; and

<sup>15</sup> See section 3(4)(b) of Schedule 3G to the AMLO.

<sup>16</sup> See section 3(2) of Schedule 3G to the AMLO.

<sup>17</sup> See sections 3(3) to 3(7) of Schedule 3G to the AMLO.

<sup>18</sup> See section 3(3)(b) of Schedule 3G to the AMLO.

<sup>19</sup> See section 11(1) of Schedule 3G to the AMLO.

<sup>20</sup> See section 11(2) of Schedule 3G to the AMLO.

<sup>21</sup> See sections 12(2) and 12(3) of Schedule 3G to the AMLO.

<sup>22</sup> See section 4(2) of Schedule 3G to the AMLO.

<sup>23</sup> See section 5(1)(c) of Schedule 3G to the AMLO.

<sup>24</sup> See section 7(1)(c) of Schedule 3G to the AMLO.

- ii. must be performing a regulated function in Hong Kong for the principal at the time of submission of his or her application. The principal does not necessarily have to be the same VATP for which he or she was performing a function before 1 June 2023<sup>25</sup>;
- c) He or she submits a fully completed online licence application<sup>26</sup> to provide a VA service on behalf of the principal in connection with the principal's licence application<sup>27</sup> to the SFC via WINGS between 1 June 2023 and 29 February 2024 (ie, within the first nine months from 1 June 2023)<sup>28</sup>;
- d) For an LR application, the proposed licensed individual confirms in his or her licence application that<sup>29</sup>:
  - i. he or she is performing a regulated function in Hong Kong for the principal at the time of submission of his or her application<sup>30</sup>; and
  - ii. he or she will, on being deemed to be licensed on 1 June 2024, comply with the regulatory requirements<sup>31</sup> applicable to an LR of a licensed VATP<sup>32</sup>;
- e) For an RO application, the proposed licensed individual confirms in his or her licence application that<sup>33</sup>:
  - i. he or she has been performing a regulated function in Hong Kong for a VATP (operating in Hong Kong or elsewhere) immediately before 1 June 2023<sup>34</sup>;
  - ii. he or she is performing a regulated function in Hong Kong for the principal at the time of submission of his or her application<sup>35</sup>; and
  - iii. he or she will, on being deemed to be licensed on 1 June 2024, comply with the regulatory requirements<sup>36</sup> applicable to an LR and an RO of a licensed VATP<sup>37</sup>;

<sup>25</sup> See section 7(1)(d) of Schedule 3G to the AMLO.

<sup>26</sup> In accordance with sections 53ZRL, 53ZRM and 53ZRP (as applicable) of the AMLO.

<sup>27</sup> See sections 5(1)(b) and 7(1)(b) of Schedule 3G to the AMLO.

<sup>28</sup> See sections 5(1) and 7(1) of Schedule 3G to the AMLO.

<sup>29</sup> Under section 53ZTO(1) of the AMLO, a person commits an offence if he or she makes a representation that is false or misleading in a material particular for a licence application, and he knows that, or is reckless as to whether, the representation is false or misleading in a material particular.

<sup>30</sup> See section 5(1)(a)(iii) of Schedule 3G to the AMLO.

<sup>31</sup> As defined in section 1 of Schedule 3G to the AMLO.

<sup>32</sup> See section 5(1)(a)(iv) of Schedule 3G to the AMLO.

<sup>33</sup> Under section 53ZTO(1) of the AMLO, a person commits an offence if he or she makes a representation that is false or misleading in a material particular for a licence application, and he knows that, or is reckless as to whether, the representation is false or misleading in a material particular.

<sup>34</sup> See section 7(1)(a)(iv) of Schedule 3G to the AMLO.

<sup>35</sup> See section 7(1)(a)(v) of Schedule 3G to the AMLO.

<sup>36</sup> As defined in section 1 of Schedule 3G to the AMLO.

<sup>37</sup> See section 7(1)(a)(vi) of Schedule 3G to the AMLO.

- f) For an LR application, the proposed licensed individual proves in the licence application to the SFC's satisfaction that:
- i. he or she is performing a regulated function in Hong Kong for the principal at the time of submission of his or her application<sup>38</sup>; and
  - ii. he or she has a reasonable prospect of successfully showing that he or she is capable of complying with the regulatory requirements applicable to an LR of a licensed VATP<sup>39</sup>;
- g) For an RO application, the proposed licensed individual proves in the licence application to the SFC's satisfaction that:
- i. he or she has been performing a regulated function in Hong Kong for a VATP (operating in Hong Kong or elsewhere) immediately before 1 June 2023<sup>40</sup>;
  - ii. he or she is performing a regulated function in Hong Kong for the principal at the time of submission of his or her application<sup>41</sup>; and
  - iii. he or she has a reasonable prospect of successfully showing that he or she is capable of complying with the regulatory requirements applicable to an LR and an RO of a licensed VATP<sup>42</sup>;
- h) The SFC has acknowledged receipt in writing that it has received his or her licence application<sup>43</sup>; and
- i) The SFC has not issued a no-deeming notice to the principal and the principal is deemed to be licensed<sup>44</sup>.
16. Upon a review of the licence application and all the information available to the SFC, if the SFC considers that the proposed licensed individual does not meet any one of the above deeming conditions, the SFC may issue a notice to notify the proposed licensed individual that the deeming arrangement will not apply to him or her<sup>45</sup> and the licence application will be subject to a deemed withdrawal procedure<sup>46</sup>. If the SFC considers that the proposed licensed individual meets the deeming conditions, the proposed licensed individual will automatically be deemed to be licensed from 1 June 2024 until his or her licence application is approved, withdrawn or refused, or the individual ceases to act for or on behalf of the principal, or the principal's licence application is approved, withdrawn or refused (whichever is earlier)<sup>47</sup>.

<sup>38</sup> See section 5(4)(a) of Schedule 3G to the AMLO.

<sup>39</sup> See section 5(4)(b) of Schedule 3G to the AMLO.

<sup>40</sup> See section 7(4)(a) of Schedule 3G to the AMLO.

<sup>41</sup> See section 7(4)(a) of Schedule 3G to the AMLO.

<sup>42</sup> See section 7(4)(b) of Schedule 3G to the AMLO.

<sup>43</sup> See sections 5(2) and 7(2) of Schedule 3G to the AMLO.

<sup>44</sup> See sections 5(1)(d) and 7(1)(e) of Schedule 3G to the AMLO.

<sup>45</sup> See sections 5(3) to 5(7) and sections 7(3) to 7(7) of Schedule 3G to the AMLO.

<sup>46</sup> See sections 5(3)(b) and 7(3)(b) of Schedule 3G to the AMLO.

<sup>47</sup> Sections 6(2)(b) and 8(2)(b) of Schedule 3G to the AMLO.

17. Upon a pre-existing VATP and its proposed ROs and LRs being deemed to be licensed, the provisions of the AMLO apply as if each of them were persons licensed under the AMLO<sup>48</sup>. This means that they will be subject to the full scope of the SFC's supervisory, disciplinary, intervention and other applicable powers. The pre-existing VATP as well as its ROs and LRs should comply with all applicable legal and regulatory requirements under the AMLO (including the Guidelines for Virtual Asset Trading Platform Operators (VATP Guidelines)) as if they were formally licensed (including but not limited to the financial resources and soundness requirements under Part VI of the VATP Guidelines). The SFC will not hesitate to take appropriate actions against any non-compliance.
18. Please see the Appendix attached for the timeline of the transitional arrangements.

### **Licence applications of pre-existing VATPs for the deeming arrangement**

19. Pre-existing VATPs should be aware of the following points regarding their licence applications which are relevant to whether they can be qualified for the deeming arrangement.

#### *Timing of submitting licence applications*

20. A licence application submitted after 29 February 2024 will not qualify for the deeming arrangement, and the SFC has no power to grant an extension of the statutory deadline. For such cases, the pre-existing VATP must proceed to close down its business by 31 May 2024. It can only resume its business activities in Hong Kong, or actively market any VA service to Hong Kong investors when it is licensed by the SFC.
21. As part of the existing licence application process that applies to all licence applicants, the SFC will raise requisitions as appropriate. If the application is incomplete or any fundamental issue with the application is revealed during the requisition process, the SFC may consider returning the application where the fundamental issue can be resolved, instead of issuing a no-deeming notice to the applicant on the basis that the VATP licence applicant cannot show that it is capable of complying with the regulatory requirements applicable to a licensed VATP due to the fundamental issue. This would allow the applicant to resolve the fundamental issue before submitting a new application. However, this approach may not be practically feasible for applications submitted close to the 29 February 2024 deadline. Where an application is submitted past the deadline of 29 February 2024 due to the time needed in resolving the fundamental issue, the application would not qualify for the deeming arrangement. Hence, pre-existing VATPs should endeavour to submit their applications earlier and in ample time before the deadline of 29 February 2024.

#### *Information to be contained in licence applications*

22. As a pre-requisite condition for the deeming arrangement, pre-existing VATPs should demonstrate in their licence applications that they have a reasonable prospect of successfully showing that they are capable of complying with all applicable legal and regulatory requirements. For this purpose, a pre-existing VATP's licence application

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<sup>48</sup> See section 9 of Schedule 3G to the AMLO.

should meet the following requirements and include the following information and documents:

Arrangements in place to comply with regulatory requirements

23. A pre-existing VATP is required to provide all the necessary information and documents in its licence application, including the VATP's policies and procedures and the external assessment report, to demonstrate how it would step up its internal controls and systems so as to meet all applicable regulatory requirements by 1 June 2024.
24. For this purpose, the VATP's policies and procedures should cover (and the external assessment report should cover the design effectiveness of) the pre-existing VATP's proposed structure, governance, operations, systems and controls, with a focus on key areas such as governance and staffing, token admission, custody of virtual assets, KYC<sup>49</sup>, AML/CFT<sup>50</sup>, market surveillance, risk management and cybersecurity. The assessor should review and assess whether the VATP's policies and procedures are clearly written and in compliance with the applicable legal and regulatory requirements, particularly the VATP Guidelines and the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers).
25. Details of the selection criteria on the external assessor and the scope of the external assessment reports are set out in FAQs on the SFC's website.

RO applications

26. At the time of submitting its licence application which should not be later than 29 February 2024, a pre-existing VATP should meet the following minimum requirements in relation to its proposed ROs. Otherwise, the SFC may issue a no-deeming notice to the pre-existing VATP on the basis that it cannot show that it can comply with the regulatory requirements on ROs:
  - a) At least two RO applications must be submitted together with the VATP licence application to demonstrate that the pre-existing VATP can meet the minimum of two ROs requirement<sup>51</sup>.
  - b) At least two proposed ROs (one of them must be a director for supervising the business of the VATP of providing a VA service<sup>52</sup>) must be on board at the time of submitting the VATP licence application and they should have already complied with all the RO competence requirements, including the requirement of passing local regulatory framework papers (LRP requirement) as set out in the VATP Guidelines<sup>53</sup> unless any exemption applies<sup>54</sup>. However, if the proposed RO(s) are unable to comply with the LRP requirement by the time when the VATP submits the licence

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<sup>49</sup> Know-your-client processes

<sup>50</sup> Anti-money laundering and counter-financing of terrorism processes

<sup>51</sup> See section 53ZRK(3)(b)(ii) of the AMLO.

<sup>52</sup> See section 53ZRO(1)(b) of the AMLO.

<sup>53</sup> See paragraph 3.16 of the VATP Guidelines.

<sup>54</sup> See the exemptions in paragraphs 3.24 to 3.35 and 3.38 of the VATP Guidelines.



application, the VATP should demonstrate to the SFC's satisfaction that the proposed RO(s) will be able to comply with the LRP requirement by 29 February 2024.

- c) At least one RO (out of the proposed ROs as mentioned in paragraph 26b above) is required to be an onshore RO (onshore RO) residing in Hong Kong<sup>55</sup>. It should be noted, however, that in order for an RO to be eligible for the deeming arrangement, the RO must be performing a regulated function for the VATP in Hong Kong at the time of its application<sup>56</sup>.

27. For contingency purposes, a pre-existing VATP is advised to onboard more than two proposed ROs (including onshore ROs) who will have complied with all the RO competence requirements on or before 1 June 2024 to prepare for any possible situations (for example, resignation of a proposed RO) which would directly affect the VATPs' capacity to meet the above minimum requirements on ROs, and in turn, the eligibility requirements for the deeming arrangement. Given the nature of the business activities of a VATP, the SFC does not expect the scale of business operations of VATPs to be small and VATPs would likely have more ROs (including onshore ROs) than the minimum requirement.

28. For a pre-existing VATP whose proposed ROs have not been performing a regulated function in Hong Kong for a VATP before 1 June 2023 and therefore the proposed ROs are not qualified for the deeming arrangement, it is advised to submit its VATP licence application (together with its RO applications) as early as possible. This would allow the SFC sufficient time to assess and grant full licences to the proposed ROs by 1 June 2024.

#### LR applications

29. Non-RO LR applications do not have to be submitted together with the pre-existing VATP's licence application. However, these applications must be submitted before 29 February 2024 if the proposed LRs would like to be qualified for the deeming arrangement.

#### *Dual licences*

30. Upon the commencement of the new regime, the SFC will regulate the trading of security tokens by VATPs under the existing SFO licensing regime and the trading of non-security tokens by VATPs under the AMLO regime.

31. Given that the terms and features of virtual assets may evolve over time, a virtual asset's classification may change from a non-security token to a security token (or vice versa). To avoid contravening any of the licensing regimes and ensure business continuity, it would be appropriate for VATPs (together with their proposed ROs and LRs) to apply for approvals under both the SFO and the AMLO and become dually-licensed.

32. In this regard, pre-existing VATPs should also submit a completed licence application (with RO applications) for a licence to carry out a business of Types 1 and 7 regulated

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<sup>55</sup> See section 53ZRO(1)(c) of the AMLO.

<sup>56</sup> See section 7(1)(d) of Schedule 3G to the AMLO.



activities under the SFO together with its application for a licence to carry out a business of providing a VA service under the AMLO.

33. To streamline the application process, the SFC has put in place the following arrangements:

- a) Applicants for licences under both the existing SFO regime and the new AMLO regime only need to submit a single consolidated application online and indicate that they are applying for both licences simultaneously.
- b) A dually-licensed VATP is required to have at least two ROs licensed under the SFO and the AMLO (which can be satisfied by having two ROs dually-licensed under both the SFO and the AMLO). For proposed ROs who mainly have virtual asset industry experience or securities-related experience, the SFC will adopt a pragmatic approach, as appropriate, in assessing their relevant industry experience for their dual licence applications. Details are in FAQs on the SFC's website.

34. VATPs which have questions on the transitional arrangements or this circular are encouraged to discuss with the Fintech Unit of the SFC by sending the enquiries to [vatp-licensing@sfc.hk](mailto:vatp-licensing@sfc.hk).

**Fintech unit  
Intermediaries Division  
Securities and Futures Commission**

Enclosure