

**Consultation Paper on the
Proposed Regulatory Requirements for Virtual Asset Trading Platforms
(VATPs) Licensed by the Securities and Futures Commission
(February 2023)**

Submission by the Hong Kong General Chamber of Commerce

Introduction

1. HKGCC welcomes the opportunity to respond to this consultation paper (CP). We provide first our general comments on the CP's proposals, then our answers to the consultation questions.

General Comments

2. Virtual asset (VA) trading is an activity which has been beset by recent market turmoil, and heavy losses by investors.¹ But HKGCC recognises that there is still, and likely to continue to be, a demand for virtual asset trading opportunities, and an availability of services to supply such demand. We believe that regulators should not stand in the way of such demand being satisfied, provided that appropriate safeguards are in place to protect investors and ensure market integrity.
3. We note and support the fact that the SFC's proposed regulatory framework is based on the "*same business, same risk, same regulation*" principle. We believe that this principle should apply in particular to the regulation across different forms of financial assets, including commercial bank money, traditional investments, stablecoins and cryptocurrencies.
4. We also note and support the fact that the SFC attaches great importance to investor suitability and awareness, as many retail investors do not have adequate knowledge of virtual assets and their inherent risks. We would therefore encourage the SFC to work with other regulatory authorities, as well as with all participants in the VA industry, such as financial institutions, IT firms, academia and industry associations, to promote investor education and develop an industry-consistent framework to ensure investor suitability and awareness.
5. We welcome the fact that the proposed requirements under the new AML/CFT regime are based on the requirements under the existing Securities and Futures Ordinance (SFO) regime, as modified in the light of recent market circumstances.² Such continuity helps to ensure business certainty.
6. However, it is not clear what the legal nature of the new proposed requirements will be, i.e., how legally-binding they will be. Under the existing regime, the requirements take the form of terms and conditions in an agreement between the SFC and the business concerned, which the SFC says equates to licence conditions.³ These requirements are legally-binding and enforceable against the business concerned. In contrast, under the new regime, the SFC says that they will be replaced by guidelines, which are not in themselves legally-binding.⁴ Such an apparent relaxation in approach seems at odds with the SFC's stated intention of introducing a tougher investor protection regime in the VA environment, especially given recent market developments. The SFC's clarification of its proposed enforcement intentions in this regard would be welcome.

¹ CP paras 6-7.

² CP paras 15, 16.

³ CP para 21.

⁴ Securities and Futures Ordinance s 399(6); Anti-Money Laundering and Counter-Terrorist Financing Ordinance s 53ZTK(5).

Answers to Consultation Questions

Question 1: Do you agree that licensed platform operators should be allowed to provide their services to retail investors, subject to the robust investor protection measures proposed? Please explain your views.

7. HKGCC agrees that licensed VATPs should be allowed to provide their services to retail investors, subject to robust investor protection measures being in place. The need for robust investor measures being in place has been amply demonstrated by the recent turmoil in virtual asset markets, as summarised in the CP.⁵
8. The reason that we believe that VATPs should be allowed to provide their services to retail investors (subject to robust investor protection measures being in place) is as follows. In principle, we believe that where there is consumer demand for a particular service, and an available supply to satisfy it (as seems to be the case with VA platforms), the regulator should not stand in the way of the demand being satisfied, without good reason. With robust and sufficient investor protection measures in place, retail investors (not just professional ones) should be able to benefit from these new technological developments.
9. We defer to the industry specialists in the VA community - including banks, investment managers, and actual or potential virtual asset platform or service providers - to express their views on whether the proposed safeguards are necessary or sufficient, and whether further safeguards are appropriate.

Question 2: Do you have any comments on the proposals regarding the general token admission criteria and specific token admission criteria?

10. Our members' views are divided on this issue. One view supports the general criteria in principle, while recommending that they be reviewed periodically to assess whether they continue to ensure market integrity and investor protection. On the specific criteria, it has been requested that more clarity be provided, in particular on how the SFC would define and consequently assess the experience of the index providers, as well as the liquidity of the indices. However, a different view has been expressed that the specific criteria are too restrictive, that the need to evaluate the retail client's virtual asset knowledge during the onboarding process provides sufficient investor protection, and that there is therefore no need to restrict the types of token in which a retail investor can invest.

Question 3: What other requirements do you think should be implemented from an investor protection perspective if the SFC is minded to allow retail access to licensed VA trading platforms?

11. See our answers to Questions 1 and 2 above.

Question 4: Do you have any comments on the proposal to allow a combination of third-party insurance and funds set aside by the licensed platform operator or a corporation within its same group of companies? Do you propose other options?

12. We agree with this proposal. In addition, the view has been expressed to us that the SFC should introduce strict safeguards to ensure the safe custody of clients' assets, and that the VATP's funds or assets to be used for insurance purposes are of high liquidity and quality, as well as properly ring-fenced.

⁵ Note 1 above.

Question 5: Do you have any suggestions as to how funds should be set aside by the licensed platform operators (for instance, under house account of the licensed platform operator or under an escrow arrangement)? Please explain in detail the proposed arrangement and how it may provide the same level of comfort as third-party insurance.

13. It has been suggested to us that bank deposits should also be considered.

Question 6: Do you have any suggestions for technical solutions which could effectively mitigate risks associated with the custody of client virtual assets, particularly in hot storage?

14. We defer to the industry specialists in the virtual asset community on this issue.

Question 7: If licensed platform operators could provide trading services in VA derivatives, what type of business model would you propose to adopt? What type of VA derivatives would you propose to offer for trading? What types of investors would be targeted?

15. We agree in principle that platform operators should be allowed to provide trading in VA derivatives, as this can help investors with capital-allocation and risk-hedging. However, given the additional risks that derivatives-trading sometimes creates, it has been suggested to us that (a) the SFC classify VA derivatives as complex products under the 2022 Joint Circular of SFC and HKMA on VA Dealing and Advisory Service (with the extra requirements that this entails); (b) platform operators only be allowed to provide trading in VA derivatives which are listed on regulated public exchanges; and (c) the SFC compile and share for this purpose a list of approved exchanges and jurisdictions with equivalent regulatory status.

Question 8: Do you have any comments on how to enhance the other requirements in the VATP Terms and Conditions when they are incorporated into the VATP Guidelines?

16. We defer to the industry specialists in the virtual asset community on this issue.

Question 9: Do you have any comments on the requirements for virtual asset transfers or any other requirements in Chapter 12 of the AML Guideline for LCs and SFC-licensed VASPs? Please explain your views.

17. The view has been suggested to us that there may be insufficient time for platform operators to put systems in place to implement the “travel rules” by 1 June 2023, and that a transitional period of 12 to 18 months would be appropriate to allow implementation.

Question 10: Do you have any comments on the Disciplinary Fining Guidelines? Please explain your views.

18. While the SFC’s proposed guidance on its approach to imposing penalties is useful, it is also important that guidance is given to businesses on the safeguards that are available to them to challenge (a) the proposal to impose penalties; and (b) the imposition of penalties (if they are imposed).

