



Hong Kong General Chamber of Commerce
香港總商會 1861

香港總商會
香港金鐘道統一中心廿二樓
Hong Kong General Chamber of Commerce
22/F United Centre,
95, Queensway, Hong Kong
Tel (852) 2529 9229
Fax (852) 2527 9843
Email chamber@chamber.org.hk
www.chamber.org.hk

Helping Business since 1861

11 April 2024

Mr. Christopher Hui, GBS, JP
Secretary for Financial Services & the Treasury
Financial Services & the Treasury Bureau
24/F, Central Government Offices
Tim Mei Avenue, Tamar Central, Hong Kong

Dear ,

**Re: FSTB Consultation Paper on
Legislative Proposals to Regulate Over-the-Counter Trading of Virtual Assets**

The Hong Kong General Chamber of Commerce welcomes the opportunity to respond to the captioned consultation.

We reiterate our position of support for the Government's work to developing a robust market for the development of virtual assets (VA) in Hong Kong. To this end, we recommend that consideration be given to developing a licensing regime for over-the-counter VA trading services that balances the continued demand for VA trading opportunities amidst the rapidly evolving digital landscape, against the need to safeguard investor interests and preserve market integrity.

At the same time, in respect to the execution of the legislative proposals, we provide our suggestions on the scope of services which would be permitted under the new licensing regime as well as the proposed supervisory scope.

Our comments on the consultative proposals are as detailed in the attached.

We hope you will give our comments your due consideration.

Yours sincerely,


Patrick Yeung
CEO

Encl.

Consultation Paper issued by the Financial Services and the Treasury Bureau on Legislative Proposals to Regulate Over-the-Counter (OTC) Trading of Virtual Assets (February 2024)

Response by The Hong Kong General Chamber of Commerce (HKGCC)

Introduction

1. HKGCC welcomes this opportunity to respond to the above consultation paper (CP). We set out first our general comments on the CP's proposals, then our answers to the specific consultation questions. In this context, we have been closely following and strongly supporting the Hong Kong SAR Government's work to develop a vibrant sector and ecosystem for Virtual Assets ("VA") in Hong Kong.

General Comments

2. We believe that it is critical that regulatory regimes encompass the full scope of digital currencies and assets to ensure the safety and stability of the financial system. Virtual asset (VA) trading is an activity which continues to be controversial, and subject to potentially heavy losses by investors. But, as noted in our response to the previous consultation paper by the Securities and Futures Commission (SFC) on regulation of VA trading platforms,¹ HKGCC recognises that there is still, and likely to continue to be, a demand for VA trading opportunities, and an availability of services to supply such demand. We also note the growth of both retail and institutional adoption of VA and the interest of some regulated financial institutions and service providers in entering the VA space. All of this should come with comprehensive and appropriate regulation to protect investors and ensure market integrity.
3. In this respect, we have a concern about the scope of the services which would be permitted under the new licensing regime proposed in the CP, which we explain in our answer to Question 5 of the Consultation Questions below.
4. We note and support the fact that the Government'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.

¹ https://www.chamber.org.hk/en/advocacy/policy_comments.aspx?ID=558

5. We also note and support the fact that the Government (like 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 Government (including the Customs and Excise Department (C&ED)) to work with the SFC and 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.
6. We look forward to the opportunity of putting forward further views on the legislation and engaging with the Government as the legislation is drafted.

Answers to Consultation Questions

Q1. Do you agree that the regulation of VA activities should be widened to cover OTC trading of VA?

Yes. Extending the regulation of VA activities to cover OTC trading of VA would be consistent with the current VASP legal framework, and the current consultation on stablecoins by the Hong Kong Monetary Authority (HKMA). It would therefore be appropriate to subject OTC trading to a licensing regime. However, our view is subject to an appropriate definition of OTC traders being included in the new legislation.

OTC trading often operates outside traditional exchanges, posing challenges for oversight and investor protection. By regulating OTC trading, the regulators can foster market integrity and investor confidence while addressing potential loopholes in the regulatory framework. However, any such measures should strike a balance between oversight, and allowing innovation to support the development of this market. In this respect, we have concerns about the limitation on services that OTC traders would be entitled to provide under the proposed new licensing regime, which we explain in our answer to Question 5 below.

Q2. Do you agree that we should observe the “same activity, same risks, same regulation” principle in drawing up a new regulatory framework for VA OTC services, incorporating AML/CTF requirements in accordance with international standards while ensuring sufficient investor protection?

Yes. Applying this principle in the proposed new regulatory framework for VA OTC services should promote fairness and consistency across the financial sector. However, the proposed new framework should allow flexibility for service providers to tailor services for different investor

segments.

Q3. Do you agree with the proposed scope and format of VA OTC services to be regulated and that operators of VA OTC services who provide temporary custody/escrow service as part of the transaction process should be brought within the regulatory remit?

Yes.

Q4. Do you agree that a licence applicant must have a local nexus and suitable premises/relevant local addresses for CCE's effective supervision and monitoring?

Yes. This proposal would be consistent with the regulatory requirements imposed by other Hong Kong regulatory bodies such as the SFC and HKMA. It would be difficult for the regulatory bodies to supervise and monitor effectively a purely web-based company that does not have any local office or locally-based personnel. These requirements should promote effective regulation and enforcement in areas such as customer protection, anti-money laundering, and market integrity safeguards.

Q5. Do you agree that VA OTC licensees should only be allowed to provide VA-fiat (and vice versa) spot trading services, and subsequent remittance of exchange proceeds on specified conditions?

Although we are generally in agreement with this proposal, we have a concern about the proposals (a) not to allow OTC VA service providers to engage in converting a VA to another VA and (b) thereby requiring such service providers to apply for a VATP licence if they wish to do so. The reasons for our concern are as follows:

- It is not clear from the CP why such a restriction is considered necessary. The justification that seems to be given is that "...most of the trades conducted through OTC shops involve the buying or selling of VA using fiat money. VA-to-VA trades through OTC shops are uncommon".² However, although these trades may currently be uncommon, this does not mean that they may not become more common in future. The licensing regime should, we submit, be flexible enough to accommodate new market developments, as noted in our General Comments and answer to Question 2 above, while being sufficiently robust to deal with any regulatory risks.
- Views are divided, however, on how the foregoing should be achieved, when it comes to OTC traders engaging in VA-to-VA trading. One view is that C&ED should be able to supervise, and

² CP para 2.12 footnote 11.

enforce the relevant rules in respect of, VA to VA trading, as well as VA to fiat money trading, under the proposed new licensing regime for OTC VA traders. Requiring OTC VA traders to apply to the SFC for a separate VATP licence if they wish to conduct VA to VA trading could add substantially to the costs of OTC VA traders, and may even deter them from locating in Hong Kong. This would be seem to be unhelpful in furthering the policy objective of maintaining and promoting Hong Kong's reputation as an international financial centre. The other view, however, is that a separate licence should be required from the SFC for VA to VA trading, to ensure that OTC traders are treated consistently with other operators engaging in VA-VA trading.

Q6. Do you agree that VA OTC licensees should only be allowed to offer services in respect of VA available for retail trading on at least one SFC-licensed VATP and stablecoins issued by issuers licensed by the HKMA?

Yes. This measure would be helpful in protecting retail investors from accessing inappropriate investment products or through inappropriate procedures. Coordinated efforts between the SFC and HKMA would help to ensure comprehensive regulation of the virtual asset ecosystem, while addressing the unique characteristics and risks associated with different types of virtual assets.

Q7. Should other regulatory requirements be added to mitigate the potential ML/TF and fraud risks of VA OTC services?

We have no suggestions at this stage as to additional requirements. However, we suggest that the application and effectiveness of the new regime be kept under review, to assess whether the introduction of any new regulatory requirements is appropriate.

Q8. Do you agree that a VA OTC licence should be renewed biennially?

No. Usually a licence, once granted, is valid until it is revoked for cause or surrendered. This is important for business planning, particularly in an innovative sector such as VA trading. In addition, requiring licensees to re-apply for licences every two years would add unnecessarily to their costs.

Q9. In respect of the transitional arrangement, do you prefer Option 1 or Option 2, and why? (Option 1: No Deeming Arrangement. Option 2: With Deeming Arrangement)

We are unable to express a preference on this issue at this stage without further information. In particular:

- Regarding Option 1, it seems that if a licence application is made within the requisite three-

month period, and a licence is not granted within the six-month period through no fault of the applicant, the applicant may still have to close down its business (“Upon the end of the transitional period, all VA OTC service providers have to be licensed to carry out any regulated activity”³). This seems unfair. For example, the licence application could be made timeously, but the licence may not be granted by the end of the six-month period due to the relevant C&ED division being subject to a heavy workload. It would seem unfair to require an OTC VA trader to close down its business in such circumstances.

- Regarding Option 2, the CP states that “For those applicants [again within the first three-month period] *that are able to meet the requirements specified by the CCE [Commissioner of Customs and Excise], a “deemed licence” will be granted in the interim for them to continue their operations beyond the transitional period and until a final determination of the licence applications is made by CCE*”. [emphasis added]. It is not clear what requirements will be “specified by the CCE”, what additional criteria (if any) CCE will apply in making the final determination, and when such determination would be made.

Q10. Do you agree with the exemption arrangement?

Yes.

Q11. Do you agree that, for the purpose of protecting the investing public, persons without a VA OTC licence should not be allowed to actively market a regulated VA OTC service to the public of Hong Kong?

Yes. Such a provision is necessary if the proposed new regime is to be effective.

Q12. Do you agree that CCE should be provided with the proposed powers?

In general, we agree with providing CCE with the proposed powers. However, we are concerned with the proposed power to “enter licensees’ business premises for conducting routine inspections”.⁴ To guard against any possibility that C&ED officials may be accused of conducting “fishing expeditions”, we recommend that they may only conduct an inspection if there is a reasonable cause to suspect an infringement of the law, or at least if the information could not be obtained first by less draconian means such as making inquiries of the person who is the subject of the investigation. Reference could be drawn in these respects from (a) the Competition Ordinance (CO), which provides that “the Commission may only conduct an investigation...if it has

³ CP para 2.22.

⁴ CP para 2.25.

reasonable cause to suspect that a contravention of a competition rule has taken place, is taking place, or is about to take place”,⁵ and (b) the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) , which provides that such search powers can only be exercised if the C&ED officials have first made inquiries with the person concerned and such inquiries have proved unsuccessful.⁶

Q13. Do you agree that the proposed penalty level for carrying out unlicensed VA OTC services will be sufficient to achieve the necessary deterrent effect?

It would seem that the proposed penalty level could have the necessary deterrent effect, but this remains to be seen based on the evidence. A review of the effectiveness of penalties could be undertaken after several years’ experience of the new regime.

Q14. Do you agree with the proposed sanctions, which are comparable to those under the existing regulatory regimes for VATPs and MSOs?

Yes.

Q15. Do you agree that the purview of the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal should be expanded to hear the appeals from VA OTC licensees against the future decisions of CCE?

Yes.

HKGCC Secretariat
April 2024

⁵ CO s 39(2).

⁶ AMLO s 9(6).