

Hong Kong to introduce licensing regime for virtual asset exchanges

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On July 6, 2022, the Hong Kong government introduced the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022 (the Bill), which includes a new licensing regime for virtual asset exchanges to be supervised by the SFC and the criminalization of a range of virtual asset related misconduct. The Bill is the first virtual asset-specific legislation in Hong Kong and is expected to form the cornerstone of Hong Kong's virtual asset regulatory regime going forward.

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¹ Available at: <https://www.legco.gov.hk/yr2022/english/bills/b202206241.pdf>

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1. Why was the Bill introduced?

2. How does the Bill change Hong Kong's VA regulatory regime?

- The offence of making a fraudulent or reckless misrepresentation for the purpose of inducing another person to acquire or dispose of a VA.⁴
- The offence of employing any device, scheme or artifice with intent to defraud or deceive, or engaging in any act, practice or course of business that is fraudulent or deceptive, in a transaction involving any VA.⁵

3. How is VA defined under the Bill?

- is used (or is intended to be used) as a medium of exchange accepted by the public for payment for goods or services, the discharge of a debt, or for investment; or
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- In Singapore, the Payment Services Act 2019 regulates persons who carry on a business of providing services relating to “dealing in” virtual assets and “facilitating the exchange of” virtual assets, which in practice covers a larger range of crypto-related activities.
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² An international body that sets international standards for combating money laundering and terrorist financing

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³ See SFC's position paper on regulation of virtual asset trading platforms (November 6, 2019), available at: <https://www.sfc.hk/-/media/EN/files/ER/PDF/20191106-Position-Paper-and-Appendix-1-to-Position-Paper-Eng.pdf>

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⁴ Section 53ZRG

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⁵ Section 53ZRF

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⁶ Section 53ZRA(1)

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⁷ Section 53ZRA(2)

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⁸ Consultation Conclusions, paragraph 2.8, following on from paragraph 2.10 of the original Consultation Paper.

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⁹ Section 53ZRA(3) and (4)

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¹⁰ Schedule 3B (Part 1)

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¹¹ Section 53ZRK(3)(a)

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¹² Section 53ZRK(3)(b)(ii)

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¹³ See section 53ZRJ for the list of factors the SFC would consider in this assessment under the Bill, which is consistent with those under the existing SFO regime. The fit and proper guidelines of the SFC serves as a good reference point. January 2022 version available at <https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/guidelines/fit-and-proper-guidelines/Fit-and-Proper-Guidelines.pdf>

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¹⁴ Section 53ZRD(5)

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¹⁵ Division 8, Subdivision 1

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¹⁶ Consultation Conclusions, paragraph 2.9

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¹⁷ Section 53ZRB(3)(a) and (6)(a)

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- The offence of employing any device, scheme or artifice with intent to defraud or deceive, or engaging in any act, practice or course of business that is fraudulent or deceptive, in a transaction involving any VA.⁵

3. How is VA defined under the Bill?

- is used (or is intended to be used) as a medium of exchange accepted by the public for payment for goods or services, the discharge of a debt, or for investment; or
- provides rights, eligibility or access to vote on the management, administration or governance of the affairs in connection with, or to vote on any charge of the terms of any arrangement applicable to, any cryptographically secured digital representation of value; and

4. Which VA Exchanges have to be licensed?

5. What are the licensing requirements and conditions? What are the sanctions for non-compliance with the licensing regime?

6. How does the Bill compare with other jurisdictions?

- In Singapore, the Payment Services Act 2019 regulates persons who carry on a business of providing services relating to “dealing in” virtual assets and “facilitating the exchange of” virtual assets, which in practice covers a larger range of crypto-related activities.
- In Japan, the Payment Services Act regulates persons who carry out the business of (a) sale and purchase of virtual assets, (b) brokerage or acting as agent of virtual assets transactions, (c) virtual assets asset management and (d) virtual assets custody.

7. Is a VA Exchange based overseas required to be licensed under the new regime?

8. Does the new licensing regime allow VA Exchanges to offer trading in tokens which are securities?

9. What does the new regime mean for VA investors and financial institutions?

10. What supervisory powers will the SFC have?

11. Is there a transitional period?

¹⁸ <https://www.sfc.hk/en/faqs/intermediaries/licensing/Actively-markets-under-section-115-of-the-SFO>

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¹⁹ SFC’s Statement on initial coin offerings (Sep 5, 2017); Statement on Security Token Offerings (Mar 28, 2019)

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²⁰ SFC and HKMA Joint circular on intermediaries’ virtual asset-related activities (January 28, 2022)

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²¹ Division 8, Subdivision 2

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