

5 July 2022

New Hong Kong Crypto Licensing Regime to Come Into Force on 1 March 2023

An amendment to Hong Kong's Anti-Money Laundering and Counter-Terrorist Financing Ordinance (“**AMLO**”) will be introduced to the Legislative Council for first reading on 6 July 2022¹, as the next step toward establishing a licensing regime for virtual asset service providers (“**VASPs**”) early next year.

All cryptocurrencies (except digital versions of fiat currency) are referred to in the Amendment Bill as “virtual assets”, and the proposed regime is aimed at eventually regulating every person carrying on a business of operating a “virtual asset service” in Hong Kong by distributing, dealing with, or advising on any virtual assets that fall within Hong Kong's statutory definition of securities or futures contracts. Such businesses will be considered VASPs and accordingly, will be required to obtain a licence from the Securities and Futures Commission in Hong Kong (“**SFC**”). At the moment, regulators are focusing on crypto exchanges that facilitate trading such virtual assets.

Under the proposed amendments to AMLO, a virtual asset exchange will be defined as providing services through electronic facilities whereby offers to sell/purchase cryptocurrency are regularly made and accepted in a way that forms or results in a binding transaction, or where persons are regularly introduced to other persons so that they can negotiate or conclude such purchases or sales of virtual assets, and where client money or virtual assets comes into either direct or indirect possession of the service provider.

Meanwhile, exchanges that handle trading in virtual assets that do not meet the definition of securities or futures will not be subject to this regime but can apply to participate in the SFC's regulatory sandbox on an opt-in basis.

A couple of other features of the proposed licensing regime are noteworthy. First, only corporate operators will be eligible for VASP licences and approval will require compliance with stringent regulatory requirements, including having adequate financial resources, risk management processes, policies, etc., as well as meeting the AMLO's AML/CTF requirements. Licensees, their responsible officers and licensed representatives will all need to satisfy the SFC's “fit and proper” requirements. Second, licensed VASPs can only provide virtual asset services to professional investors.

The Amendment Bill and proposed regulatory regime are aimed at addressing what are perceived to be growing risks in relation to cryptocurrency. The absence of regulation over cryptocurrency presents real risks to ordinary investors and consumers, as well as money laundering and terrorism financing risks to society at large. By moving forward with this legislation, the Hong Kong government joins other countries in efforts to develop a safe and regulated market for cryptocurrency. Nevertheless, as previously reported², the proposed licensing regime will be more restrictive and comprehensive than those in Singapore or the United Kingdom.

Under the proposed regulatory regime, it will be a criminal offense to operate a virtual asset exchange in Hong Kong without a licence or to publicly promote/provide the services of an overseas exchange that is not licensed in Hong Kong. Offenders face fines of between HKD500,000 and HKD5 million as well as up to 7 years in prison.

¹ The Amendment Bill is available at this [link](#).

² Legal update on Crypto Regulation in Hong Kong available at this [link](#).

The Amendment Ordinance is proposed to come into effect on 1 January 2023, except for the provisions that relate purely to the VASP regime, which will come into force on 1 March 2023. There will be a 9 month transition “grace” period for virtual asset exchanges currently operating in Hong Kong provided that they file applications with the SFC and confirm they will comply with all regulatory requirements. Operators intending to establish a virtual asset exchange here will need to do so prior to the 1 March 2023 deadline if they wish to take advantage of the licensing transition period.

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